

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 19

October 13, 2021

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Notices of Rulemaking and Proposed Rules

<p style="text-align: center;">AGRICULTURE, DEPARTMENT OF</p> <p style="text-align: center;">NOTICE OF PROPOSED RULEMAKING</p>	<p>Cruces, NM, on the corner of Espina and Gregg.</p>	<p style="text-align: center;">HEALTH, DEPARTMENT OF</p> <p style="text-align: center;">NOTICE OF PUBLIC HEARING</p>
<p>NOTICE IS HEREBY GIVEN that the New Mexico Department of Agriculture (NMDA), pursuant to the Pest Control Act, Sections 76-6-1 to 76-6-9, NMSA 1978, proposes to amend 21.17.28 NMAC, PECAN WEEVIL EXTERIOR QUARANTINE.</p> <p>PURPOSE AND SUMMARY OF THE PROPOSED RULES: New Mexico's Pecan Weevil Exterior Quarantine rule was promulgated in 1969 for the purpose of reducing the risk of importing pecan weevil in to New Mexico from weevil infested areas exterior to New Mexico, areas of West Texas, Arizona, and California. The rule requires all in-shell pecans and other regulated articles that originated in pecan weevil quarantined counties to undergo a cold storage treatment to kill pecan weevil prior to entry into the state.</p> <p>The amendments remove several West Texas counties from New Mexico's list of quarantined counties, add a cold-storage treatment post-entry requirement, and added a second cold storage treatment option.</p> <p>STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.</p> <p>Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the New Mexico Department of Agriculture website (https://www.nmda.nmsu.edu)</p> <p>Monday, November 15, 2021 at 2:00 pm NMDA will host a public video/ telephonic and in person hearing at the New Mexico Department of Agriculture, at 3190 S. Espina, Las</p>	<p>Join via Video: Meeting URL: https://nmsu.zoom.us/j/93257469511 Meeting ID: 932 5746 9511 Passcode: 538839</p> <p>Join via Phone: +1 669 900 6833 or +1 253 215 8782 Meeting ID: 932 5746 9511 Passcode: 538839</p> <p>Oral comments will be accepted at the hearing from members of the public and any interested parties. Written comments will be accepted through 5:00 pm on November 15, 2021. Comments may be submitted via email to comments@nmda.nmsu.edu or may be filed by sending original copies to: New Mexico Department of Agriculture, Office of Director MSC 3189, PO Box 30005, 3190 S. Espina, Las Cruces, NM 88003-8005 Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, NMDA reserves the right to require that original signatures be provided to verify the electronic or facsimile signature.</p> <p>SPECIAL NEEDS: If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact NMDA at (575) 646-3702 at least one week prior to the meeting or as soon as possible.</p> <p>The Director will consider all oral comments, and will review all timely submitted written comments and responses.</p>	<p>The New Mexico Department of Health ("Department") will hold a public hearing on proposed amendments to 7.34.2.7 NMAC, 7.34.4.28 NMAC, and various sections of 7.34.3 NMAC. The hearing will be held on November 12, 2021 at 9:00 a.m. via an Internet-based video conference (Cisco Webex), and via telephone, due to the ongoing public health emergency concerning the threatening contagious disease COVID-19; in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004 and subsequent Executive Orders which declared a Public Health Emergency. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.</p> <p>The purpose of the proposed rules is to specify regulatory standards for the New Mexico Medical Cannabis Program.</p> <p>The proposed rule revisions include but are not limited to the following:</p> <ol style="list-style-type: none"> 1. Amendments to definitions sections at 7.34.2.7 and 7.34.3.7 NMAC. These primarily include revisions based upon changes effectuated by the Cannabis Regulation Act, NMSA 1978, Section 26-2C-1 <i>et seq.</i>, which transferred authority for the licensure and regulation of commercial cannabis establishments to the Cannabis Control Division of the Regulation and Licensing Department (RLD). 2. Amendments to 7.34.3.9 NMAC, consisting of an increase to the "adequate supply" limit, and the removal of the "medical exception". The amendments to this section

also include new text to explain the significance of the “adequate supply” limit in light of changes in law resulting from enactment of the Cannabis Regulation Act during the 2021 Special Legislative Session.

3. Amendments to 7.34.3.11 NMAC. These include the replacement of a reference to “producer” with the term “licensee”; and revisions to clarify that a registry identification card expires three years after the date of its issuance.

4. Amendments to 7.34.3.13 NMAC, consisting of the deletion of a sentence specific to transfer of cannabis to an approved laboratory. This is proposed to be removed due to the fact that the Cannabis Control Division now licenses testing laboratories and will determine who may transfer cannabis to those licensees.

5. Amendments to 7.34.3.19 NMAC, to include references to “reciprocal participants”, to include the ability to transfer cannabis as described in the Cannabis Regulation Act at Paragraph (3) of Subsection A of Section 26-2C-25 NMSA 1978, and to make other revisions consistent with the recent transfer of the licensing authority to the Cannabis Control Division.

6. Addition of a new section 7.34.3.22 NMAC. This section primarily duplicates the “Reciprocity” provisions contained at rule 7.34.4.28 NMAC, but is revised to reflect the increase to the reciprocal limit (consistent with the increase to the adequate supply limit). This new section also includes revisions to explain the significance of the reciprocal limit in light of changes in law resulting from enactment of the Cannabis Regulation Act during the 2021 Special Legislative Session.

7. Removal of the existing rule section 7.34.4.28 NMAC. The proposed new section 7.34.3.22 NMAC is proposed to be substituted for this existing reciprocity section, in anticipation that all of 7.34.4 NMAC will ultimately be repealed due to the transfer of responsibilities for the licensure of commercial cannabis establishments to the Cannabis Control Division of RLD.

The legal authority for the proposed rule amendments is at Subsection E of Section 9-7-6 NMSA 1978, and Subsections A, I, and J of Section 26-2B-7 NMSA 1978.

Free copies of the full text of the proposed rule amendments can be obtained online from the New Mexico Department of Health’s website at <http://nmhealth.org/about/asd/cmo/rules/> or from Andrea Sundberg using the contact information below.

The public hearing will be conducted to receive public comment on the proposed rule amendments described above. Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-844-992-4726, and enter the access code below. Your telephone comments will be recorded. To access the hearing via the Internet: please go to <http://www.webex.com>; click the “Join” button; click the “Join a Meeting” button; enter the following meeting number and password where indicated on the screen: Meeting Number (Access Code): 2487 817 2396 #, Meeting Password: St5aKNmcx68 and then click the “OK” button.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address:

Andrea Sundberg
NM Department of Health
Medical Cannabis Program
P.O. Box 26110
Santa Fe, NM 87502-6110

Or e-mailing the comment to the e-mail address MCP.comment@state.nm.us

Written comments must be received by the close of the public rule hearing on November 12, 2021. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within 3 days

of receipt, and will be available at the New Mexico Department of Health Medical Cannabis Program for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Andrea Sundberg by telephone at (505) 827-2318. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (NMHSD) is required by Federal Law to file a State Plan to describe how the Department administers the State’s TANF-funded cash assistance program. The State Plan must be submitted every two years to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The TANF State plan is combined with the Workforce Innovation and Opportunity Act (WIOA). The Department is required to offer a 45-day comment period for the TANF State Plan prior to submittal.

The register and proposed regulations are available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>.

If you do not have internet access, a copy of the proposed regulations may be requested by contacting Income Support Division (ISD) Policy and Program Development Bureau (PPDB) at 505-795-0493.

You may also send a request to: Human Services Department Income Support Division Attn:

Policy and Program Development
Bureau
PO Box 2348
Santa Fe, New Mexico 87504-2348

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

A public hearing to receive testimony on the TANF State Plan will be on Thursday November 29, 2021, from 10:00 am-11:00 am. The hearing will be held virtually through GoTo Meeting. a telephone number will be provided for individuals who would like to participate by telephone. <https://global.gotomeeting.com/join/537626389>

You can also dial in using your phone. United States: +1 (786) 535-3211 Access Code: 537-626-389

All written comments can be dropped off at the scheduled hearing time at the HSD Sandoval County Field Office, 4363 Jager Dr., Rio Rancho, NM 87144.

Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-795-0493.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-709-5468 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, Monday, November 29,

2021. Please send comments to: Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348
You may send comments electronically to: HSD-isdrules@state.nm.us

All written comment will be posted on the agency website within (3) three days of receipt.

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Barbers and Cosmetologists will hold a rule hearing on Monday, November 15, 2021, at 9:30 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in Hearing Room I for those desiring to attend in person.

Face masks are required to be worn in the Toney Anaya Building for all in-person attendees.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e90e0736d11a7ea995eae79f4d986e9e7>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2482 311 1310

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

16.34.2 NMAC – Licensing
16.34.14 NMAC – Fees

16.34.17 NMAC – Licensure for Military Service Members, Spouses, Dependent Children and Veterans

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/barbers-and-cosmetologists-overview/bc-board-information/bc-board-meetings/> or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Amanda Lewis, Team Leader, via electronic mail at: barber.cosmoboard@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, November 13, 2021. Written comments received prior to the rule hearing will be posted within three business days to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/barbers-and-cosmetologists-overview/bc-laws-rules-and-policies/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/barbers-and-cosmetologists-overview/bc-board-information/bc-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Amanda Lewis, Team Leader at (505) 476-4622.

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

Statutory Authority: The Barbers and Cosmetologists Act, NMSA 1978, Sections 61-17A-1 to 61.17A.25. Section 61-17A-7 (A)(1) specifically provides that the board shall “adopt and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Barbers and Cosmetologists Act.” Additional language authority for this rulemaking can be found in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to 36.

Purpose of the Proposed Rules:

The purpose of the rule hearing is to receive written and oral comments from the public on proposed rules amending 16.34.2 NMAC – Licensing to comply with 2021 legislative changes made during the special session in SB2 Expungement of Certain Records signed into law by the Governor Lujan Grisham on April 12, 2021, amending 16.34.14 NMAC – Fees to comply with legislation passed in 2019, changing the renewal period for all practitioners from one year to a two year cycle and adding a new part to the rules, 16.34.17 NMAC - Licensure for Military Service Members, Spouses, Dependent Children, and Veterans to comply with 2021 legislative changes made during the regular session in HB 120 Military Spouses Expedited Licensure signed into law by Governor Lujan Grisham on April 6, 2021.

Summary of Proposed Changes:

16.34.2 NMAC – Licensing

The amendments to this part is to add a new section to the rule to be in compliance with the 2021 legislative change regarding SB2 Expungement of Certain Records. The proposed rule sets out what criminal felony convictions directly relate to the particular employment, trade, business or profession of podiatry that may disqualify the applicant or licensee from holding a license. The rule also defines how the conviction may and may not be used when reviewing an application for licensure or for violation of Board statute or rules by a current licensee.

16.34.14 NMAC – Fees

The amendments to this part is to add the work biennial renewal and adjust the fees as listed accordingly. There is no change to the fee amount, however there is a change to the renewal period timeframe. This means the same fee is required, however the fee is collected every two years (rather than every year). The two year renewal requirement was implemented during the 2019 legislative session and codified at NMSA 1978, Section 61-17A-20.

16.34.17 NMAC - Licensure for Military Service Members, Spouses, Dependent Children and Veterans

The new part includes language originally listed in part 16.34.2 NMAC. New language is also added in compliance to the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from sixty days to thirty days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

**REGULATION AND
LICENSING DEPARTMENT
MASSAGE THERAPY BOARD**

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

The New Mexico Massage Therapy Board will hold a rule hearing on Tuesday, November 22, 2021, at 9:30 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room for those desiring to attend in person.

Facemasks are required to be worn in the Toney Anaya Building for all in-person attendees.

The meeting will also be held via

Cisco Webex Meetings for those desiring to attend virtually.

Event address for attendees: <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e7dc02243556ab8a5620e3695c638f911>

Event number: 2494 816 5975
Event password: 5MPxMRY7P2q

United States Toll
+1-415-655-0002
Access code: 2494 816 5975

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

16.7.4 NMAC - Requirements for Licensure

16.7.8 NMAC - Licensure for Military Service Members

The purposes of the amendments to 16.7.4 NMAC is to comply with the 2021 legislative change which requires that each board, among other things, “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction.” 61-1-36 NMSA 1978. Further, there is a proposed amendment to Subsection B of 16.7.4.10 NMAC which will allow high school students to begin massage therapy training before graduating from high school. There is a proposed amendment to Subsection F of 16.7.4.10 NMAC which removes the requirement that a specific organization be utilized with respect to obtaining first and CPR certification. Finally, there is a proposed amendment to Paragraph (4) of Subsection B of 16.7.4.16 to remove a provision that inadvertently renders a temporary license invalid upon the successful passage of a national certification examination.

The purpose of the amendment to 16.7.8 NMAC is to alter the language of the rule so that it aligns with the 2021 legislative changes

mandated by HB 120 which relates to expedited licensure for military service members, their spouses, their dependent children and for veterans pursuant to Section 61-1-34 NMSA 1978.

To obtain and review copies of the proposed changes you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/massage-therapy/mt-laws-rules-and-policies/>, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Nicolas Alderete, Board Administrator, via electronic mail at massage.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, November 1, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/massage-therapy/mt-laws-rules-and-policies/>, no more than three business days following receipt to allow for public view.

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

Statutory Authority: The Massage Therapy Practice Act, Sections 61-12C-1 to -28, NMSA 1978 (1991, as amended through 2019), among other provisions, specifically authorizes the Board to "adopt and file, in accordance with the provisions of the Uniform Licensing Act." Subsection A of Section 61-12C-8 NMSA 1978.

Summary of Proposed Changes:

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

16.7.4 NMAC - Requirements for Licensure

The proposed amendments to 16.7.4 NMAC include the addition of list of specific criminal convictions which could disqualify an applicant from receiving or renewing a license based on a previous felony conviction. Additionally, there is a proposed amendment which will allow high school students to begin massage therapy training before graduating from high school. There is a proposed amendment which removes the requirement that first aid and CPR training be completed through specific organizations. Finally there is a proposed amendment that removes a provision that rendered a temporary license invalid upon the successful passage of a national certification examination.

16.7.8 NMAC - Licensure for Military Service Members

The proposed amendments to this part includes a repeal and replace due to the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from 60 days to 30 days and removes "recent" from the definition of veteran. The rule also sets out application and renewal requirements.

REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

NOTICE OF PROPOSED RULEMAKING AND RULE HEARING

The Regulation and Licensing Department (Department) Private Investigations Advisory Board will hold a rule hearing on Wednesday, November 17, 2021 at 1:30p.m.

Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone. The rule hearing will be held via Cisco WebEx, please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e89295993bf533af1d409d2afc3e9be07>

To join the meeting by phone: 1-415-655-0002 United States Toll

Event Number (Access Code): 2489 921 1121

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

16.48.9 NMAC – Disciplinary Proceedings

On October 13, 2021 you may obtain and review copies of the proposed changes and public comments, by going to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/private-investigations/pi-laws-rules-and-policies/> or contact the Boards and Commissions Division at (505)690-5032.

The Department will begin accepting public comments on the proposed amendments beginning October 13, 2021. Please submit written comments on the proposed changes to Austin Basham, Board Administrator, via electronic mail at: pipolygraph@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Tuesday, November 16, 2021. Comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/private-investigations/pi-laws-rules-and-policies/> Persons will also be given the opportunity to present their comments during the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Austin Basham, Board Administrator (505)690-5032.

Statutory Authority: Legal authority for this rulemaking may be found in the Regulation and Licensing Act, Section 9-1-6, and the Private Investigations Act, Sections 61-27B-1 through 62-27B-36 NMSA 1978, which among other provisions, specifically authorizes the Department to “adopt and enforce rules necessary to carry out the provision of the Private Investigations Act, including establishing professional ethical standards.” Section 61-27B-5(C) NMSA 1978.

Summary of the New Rule:

16.48.9 – Disciplinary Proceedings:

This rule addresses the processes and procedures the Department will follow when a complaint is received by the Department against a licensee or registrant that is licensed or registered under the Private Investigations Act. This part also addresses the procedures followed for a complaint received for unlicensed activity under the Private Investigations Act. Proposed Section 16.48.2.14, Criminal Convictions, addresses the requirement for the list of disqualifying criminal convictions in Section 61-1-36 of the Uniform Licensing Act, as enacted in Senate Bill 2 by the New Mexico Legislature, in the 1st Special Session, in the 2021 Legislative Session.

REGULATION AND LICENSING DEPARTMENT PROFESSIONAL ENGINEERS & PROFESSIONAL SURVEYORS, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors has scheduled a rule hearing on Friday, December 3, 2021, at 9:00 a.m. Following the rule hearing, the Full Board will convene a regular board meeting to consider adoption of the rules and address regular business. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically utilizing the Zoom teleconferencing platform. A Board staff member will also be present on the day of the hearing from approximately 8:00 a.m. to 9:00 a.m. at the Toney Anaya Building, located at 2550 Cerrillos Road, Santa Fe, 3rd floor, NM 87505, to accept comments in written form and submit those comments to the Hearing Officer during the hearing. To attend the hearing online, please use the following link:

<https://us02web.zoom.us/j/82786717337?pwd=VllySVVZNERkRTlJbUxDMGJyeDI0QT09>

Meeting ID: 827 8671 7337
Passcode: 924605

To join the meeting by phone, please call:

One tap mobile
+13462487799,,82786717337#,,,,*924605# US (Houston)
+16699006833,,82786717337#,,,,*924605# US (San Jose)

Dial by your location
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)
+1 301 715 8592 US
(Washington DC)

Meeting ID: 827 8671 7337
Passcode: 924605
Find your local number: <https://us02web.zoom.us/j/kuKYe3keS>

The purpose of the rule hearing is to consider proposed amendments, repealing and/or replacing the following rules.

12.8.2 NMAC - Minimum Standards for Surveying in New Mexico
16.39.1 NMAC - General Provisions
16.39.3 NMAC - Engineering Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements
16.39.5 NMAC - Surveying
16.39.6 NMAC - Licensure for Military Service Members, Spouses and Veterans
16.39.7 NMAC - Misc.

To obtain and review copies of the proposed changes and public comments, you may download them from <https://www.sblpes.state.nm.us/>. A copy of the proposed rules may be requested by contacting BLPEPS via Isaac Maes at Isaac.maes@state.nm.us, via mail at New Mexico Board of Licensure for Professional Engineers and Surveyors ATTN: BLPEPS Request for Rule P.O. Box 25101, Santa Fe, NM 87504 (505) 476-4565 or (505) 476-4802.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to board.licensurepeps@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to: New Mexico Board of Licensure for Professional Engineers and Surveyors ATTN: BLPEPS Public Comments P.O. Box 25101, Santa Fe, NM 87504. The Board will accept written public comment received on or before 5:00 PM on November 15th, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the Toney Anaya Building, located at 2550 Cerrillos Road, Santa Fe, 3rd floor, NM 87505 on the date of the rule hearing. All written comments will be posted to the Board's website no later than three (3) business days following receipt to allow for public viewing. Persons will also be given the opportunity to present their oral or written comments at the public rule hearing.

The agenda for the Board meeting will be posted and available at least 72 hours before the meeting on the BLPEPS website at: <https://www.sblpes.state.nm.us/>.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Board office at (505) 476-4565 or (505) 476-4656. The BLPEPS requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Statutory Authority: Subsections B through E of Section 61-23-10 NMSA 1978 of the Engineering and Surveying Practice Act (“ES Practice Act”), Sections 61-23-1 to -36 NMSA 1978, specifically authorizes the Board, the Professional Engineering Committee, the Professional Surveying Committee, and the Joint Engineering and Surveying Committee to promulgate and amend rules of professional responsibility and to effect the provisions of the ES Practice Act. Section 61-23-14.1 NMSA 1978 of the ES Practice Act, provided additional grounds for reciprocity for engineers licensed in other jurisdictions. In addition, Section 61-23-17.4(A) NMSA 1978 of the ES Practice Act, changed the experience requirement for licensure as a professional surveyor and Section 14-4-5.7 of the State Rules Act, Sections 14-4-1 to -11 NMSA 1978 states “no rule is valid or enforceable if it conflicts with statute.” Sections 61-1-31.1 and 61-1-34 of the Uniform Licensing Act (“ULA”), Sections 61-1-1 to -36 NMSA 1978, requires the Board to update its expedited licensure for military families. Further, Section 61-1-36 NMSA 1978 of the ULA, requires the Board to “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the bases of a previous felony conviction.” Sections 28-2-3 and 28-2-4 of the Criminal Offender

Employment Act, Sections 28-2-1 to -6 NMSA 1978, provide how certain criminal records should be viewed when obtaining a license or other authority to practice the profession pursuant to Section 61-23-4 NMSA 1978.

Purpose of the Proposed Rules:

The proposed amendment/repeal/replace of the rules is intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certification holders, and to generally satisfy the Board’s obligation “to safeguard life, health and property and to promote the public welfare.” Section 61-23-2 NMSA 1978. In addition, there are proposed rule changes intended to address statutory changes to the Engineering and Surveying Practice Act. See S.B. 447, 53rd Leg. (N.M. 2019) available at <https://nmlegis.gov/Sessions/19%20Regular/final/SB0447.pdf> and H.B. 105, 46th Leg. (N.M. 2012) available at <https://nmlegis.gov/sessions/12%20Regular/final/HB0105.pdf>. Further, several of the proposed rule changes are intended to address recent statutory changes to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>, H.B. 120, 55th Leg., 1st Sess. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf>, and H.B. 30, 54th Legis., 1st Sess. (N.M. 2020) available at <https://nmlegis.gov/Sessions/20%20Regular/final/HB0030.pdf>. The proposed rules also incorporate statutory changes to the Criminal Offender Employment Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021) available at <https://nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>.

Summary of the Proposed Changes:

12.8.2 NMAC - Minimum Standards for Surveying in New Mexico

The proposed amendment/repeal/replace to this part is to revise

the current definition of “Basis of Bearing” by considering two options to modify the current definition to align with current surveying standards - option one is to modify the definition pertaining to boundary surveys, while option two is to remove the term elevation from the definition.

16.39.1 NMAC - General Provisions

The proposed amendment/repeal/replace to this part is to insert language regarding the Intern certification status, that it would no longer be active once a person attained a professional license as the professional license supersedes the Intern designation, clarifying that a licensee who requests for retired or inactive status cannot be approved unless the licensee does not have any pending complaints, pending litigation, and has completed any imposed disciplinary actions, and modifying the requirements of the reactivation of an inactive license of six (6) years or more.

16.39.3 NMAC - Engineering Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements

The proposed amendment/repeal/replace to this part is to add definitions for electronic signature, engineering experience and signature as well as to move or create subsections to clarify the subject matter related to the practice of engineering and the industrial exemption, and when more than one electronic signature is required. The rule also incorporates additional grounds for reciprocity for engineers licensed in other jurisdictions as required by Section 61-23-14.1 NMSA 1978 of the Engineering and Surveying Practice Act.

16.39.5 NMAC - Surveying

The proposed amendment/repeal/replace to this part is clarify the use of acronyms by adding the definition of NCEES, and to align the rules with Section 61-23-17.4(A) NMSA 1978 of the ES Practice Act, which changed the experience requirement for

The proposed amendment/ repeal/ replace to this part is to add subsections to include requiring certain documentation to qualify for expedited licensure for military service members, spouses and veterans, the absence of a license fee for the first three (3) years, and the requirement of the Board to issue the expedited license within 30 days of a completed application pursuant to the Uniform Licensing Act, Sections 61-1-31.1 and 61-1-34 NMSA 1978.

The proposed amendment/repeal/replace to this part is to modify subsections to comply with the statutory changes to the Criminal Offender Employment Act and the Uniform Licensing Act. The rule also adds new language governing the Board's consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board's consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certification holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public's continued confidence in the profession.

Technical Information: No technical information provided the basis for any of the proposed rules.

This notice replaces the Notice of Rulemaking previously posted in Volume XXXII, Issue 16 of the New Mexico Register on August 24, 2021.

The New Mexico Real Estate Commission is proposing to amend the rules listed below:
16.61.1.17 Part 1, General Provisions and Definitions, PP, Property Management, and RR, Property Manager.

The Commission will consider a proposal from a homeowner's association trade group that would amend the existing definitions of Property Management and Property Managers to remove references to the activities of homeowners and unit owner associations (HOA's) from the definitions.

16.61.3. 9 Real Estate Broker's License: Examination and Licensing Application Requirements.

Expedited Licensure for Military Members and Veterans:

The Commission proposes to amend Part 3 of its rules to conform with the provisions of House Bill 120 passed by the 2021 legislature that require professional and occupational licensing boards to issue licenses to military members, their spouses and dependent children, and veterans, within 30 days of receiving a completed application and to waive initial licensing fees.

16.61.3.9 Real Estate Broker's License: Examination and Licensing Application Requirements.

Potential Disqualifying Convictions

The Commission is required by law to post a list of potentially disqualifying convictions on its website no later than December 31, 2021.

The Commission proposes to amend Part 3 of its rules to conform with the provisions of Senate Bill 2 passed by the 2021 legislature that limit a professional and occupational licensing board's ability to deny, suspend, revoke, or condition a license only for felony convictions that relate to the profession or occupation in which the applicant has applied for licensure.

Pursuant to the provisions of Senate Bill 2, the Commission proposes to amend Part 3 to include a list of felony convictions that would disqualify an applicant from being issued a real estate broker's license.

The New Mexico Real Estate Commission is currently accepting public comment on the proposed new rules. Please submit written comments on the proposed changes to the Commission at 55000 San Antonio Drive NE, Albuquerque, New Mexico 87109 or Wayne W. Ciddio via email at wayne.ciddio@state.nm.us, prior to November 15, 2021.

The Friday, September 24, 2021 rule hearing is vacated. The Commission will hear public comment and consider adoption of the proposed new rules at a regular meeting and rule hearing on:

Monday, November 15, 2021 at 9:00
a.m.
The Greater Albuquerque Association
of Realtors (GAAR)
1635 University Boulevard NE
Albuquerque, New Mexico 87102

Because GAAR's public meeting is space is under construction, brokers and members of the public will be attending the rule hearing by Zoom.

The Zoom link to the meeting is:

[https://gaar.zoom.us/
meeting/register/tZAoc-
GopzMoGdOP1DncaQ1p1wEDkRh6
BT78](https://gaar.zoom.us/join/9876543210)

Register in advance for this meeting:

After registering, you will receive a confirmation email containing information about joining the meeting.

Statutory Authority

61-29-4, NMSA 1978, Creation of Commission; powers and duties, authorizes the Commission to make and enforce rules to carry out the provisions of the Real Estate Brokers and Salesmen Act.

Public Comment and Participation

Interested persons may submit written comments on the proposed changes to the Commission rules by email at wayne.ciddio@state.nm.us or may submit written comments to the New Mexico Real Estate 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109, Attn. Wayne W. Ciddio, Executive Secretary.

Interested persons may make comments and ask questions about the proposed rules via Zoom during the rule hearing. The Commission will vote on the final rules at the conclusion of the rule hearing. Full copies of the texts of the proposed rules can be obtained from the Commission office at the email and physical addresses shown above.

Special Accommodations

If you are individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the meeting and hearing, contact Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission at (505) 785-3937 at least one week prior to the meeting or as soon as possible.

Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or other type of accessible format is needed.

Continuing Education Credits

Real estate brokers may receive up to four hours of continuing education credit during each three-year licensing cycle by attending the meeting and rule hearing. Qualifying brokers and qualifying broker candidates can fulfill the requirement to attend a meeting, rule hearing, or disciplinary hearing by attending this meeting and hearing.

REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE ADVISORY BOARD OF

NOTICE OF PROPOSED RULEMAKING AND RULE HEARING

The Regulation and Licensing Department (Department) in consultation with the Advisory Board of Respiratory Care Practitioners (Board) will hold a rule hearing on Friday, November 19, 2021 at 9:00 a.m. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone. The rule hearing will be held via Cisco WebEx, please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ea4e1491527db3e73617f310f37325a68>

Event Number: 2487 919 2992
Event Password: HFidKim3P38

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2487 919 2992

The purpose of the rule hearing is to consider the proposed rule amendments to Title 16, Chapter 23 Parts 1 through 18 of the New Mexico Administrative Code:

16.23.1 NMAC - General Provisions
16.23.2 NMAC - Fees

16.23.3 NMAC - Practitioner License Qualifications, Application, Renewal, and Expiration

16.23.4 NMAC - Part 4 will be repealed.

16.23.5 NMAC - Licensure for Military Service Members, Spouses, Dependent Children, and Veterans

16.23.6 NMAC - Initial Application and Renewal of Temporary Permits for Students, Student Externs, and Graduates

16.23.7 NMAC - Part 7 will be repealed

16.23.8 NMAC - Part 8 will be repealed

16.23.9 NMAC - Part 9 will be repealed

16.23.11 NMAC - Part 11 will be repealed

16.23.12 NMAC - Continuing Education

16.23.13 NMAC - Expanded Practice

16.23.15 NMAC - Part 15 will be repealed

16.23.16 NMAC - Part 16 will be repealed

16.23.17 NMAC - Grounds for Disciplinary Action and Disciplinary Proceedings

16.23.18 NMAC - Disciplinary Guidelines for Impaired Practitioner

On October 13, 2021 you may obtain and review copies of the proposed changes and public comments, by going to the Boards and Commissions Division, Advisory Board of Respiratory Care Practitioners website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/respiratory-care/rc-board-information/rc-board-meetings/> or by contacting the Board Administrator for the Board at (505) 476-4606.

The Department and the Board will begin accepting public comments on the proposed new rules beginning October 13, 2021. Please submit written comments on the proposed changes to Nicolas Henderson, Board Administrator, via electronic mail at: respiratorycarebd@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Thursday, November 18, 2021. Comments

received prior to the rule hearing will be posted to the RLD website within three days of receipt at:

<https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/respiratory-care/rc-board-information/rc-board-meetings/>
Any person in attendance will be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Nicolas Henderson, Board Administrator (505) 476-4606.

Statutory Authority: Legal authority for this rulemaking may be found in the Regulation and Licensing Act, Section 9-16-6 NMSA 1978, and the Respiratory Care Act, Section 61-12B-6 NMSA 1978, which among other provisions, specifically authorizes the Department, in consultation with the Board to “promulgate rules as may be necessary to implement the provisions of the Respiratory Care Act.”

Summary of Proposed New Rules:

16.23.1 - General Provisions: This part has been amended to consolidate all rule requirements in separate sections throughout Chapter 23, that have universal application to anyone affected or interested in the licensing and regulation of the practice of respiratory care. This part consolidates all definitions that were previously in separate parts of Chapter 23 into Section 16.23.1.7 NMAC, and organizes the definitions into alphabetical order. This part has been amended to allow the Department to administer the provisions of the Parental Responsibility Act pursuant to Section 16.1.1 NMAC.

16.23.2 - Fees: This part is being amended to correct the issuing agency and statutory authority sections.

16.23.3 - Practitioner License Qualifications, Application, Renewal, and Expiration: Part 3

has been amended to consolidate all rule requirements from Parts 4, 8, and 9, for a respiratory care practitioner’s license application, renewal and expiration. The definitions in this part have been consolidated into Section 16.23.1.7 NMAC. The issuing agency and statutory authority sections have been corrected. This part lists the documentation required for practitioner’s license, lays out the requirements for licensure by reciprocity, licensure expiration, inactive status, and renewal. This part was amended to remove the requirement for notarization of applications and to require applications to be signed by the applicant under penalty of perjury.

16.23.4 - Application Procedures for Practitioner License: The application requirements in Part 4 have been consolidated into Part 3. Part 4 will be repealed.

16.23.5 - Licensure for Military Service Members, Spouses, Dependent Children, and Veterans: This part has been amended to correct the issuing agency and statutory authority sections. The definitions in this part have been consolidated into Section 16.23.1.7 NMAC. This part was also amended to align with Section 61-1-34 NMSA 1978, amended in the 2021 legislative session in House Bill 120. The rule amends the requirements for expedited licensure for military service members their spouses, dependent children, and for all veterans with a license in good standing issued in another United States jurisdiction or by a branch of the United States armed forces. The rule lists the documentation required to obtain an expedited license pursuant to Section 61-1-34.

16.23.6 - Initial Application and Renewal of Temporary Permits for Students, Student Externs, and Graduates: This part has been amended to consolidate the provisions for renewal from Part 7. This part makes corrections to the issuing agency and statutory authority sections, and outlines the

requirements for temporary, student, and graduate permits. This part was amended to remove the requirement for notarization of applications and to require applications to be signed by the applicant under penalty of perjury. The definitions in this part have been consolidated into Section 16.23.1.7 NMAC.

16.23.7 - Temporary Student Permit Renewal: The temporary student permit renewal provisions in Part 7 have been consolidated into Part 6. Part 7 will be repealed.

16.23.8 - Renewal and Expiration of Practitioner License: The provisions for the renewal and expiration of practitioner licenses have been consolidated into Part 3. Part 8 will be repealed.

16.23.9 - Inactive Status for Practitioner License: The provisions required to place a practitioner license on inactive status have been consolidated into Part 3. Part 9 will be repealed.

16.23.11 - License Reactivation; License Lapse: The provisions for practitioner license reactivation and license lapse have been consolidated into Part 1. Part 11 will be repealed.

16.23.12 - Continuing Education: This part has been amended to make corrections to the issuing agency and statutory authority sections. The part was also amended to require twenty clock hours of continuing education as a requirement for biennial license renewal or license reactivation, and requires at least one clock hour of ethics related continuing education in the license renewal cycle. The rule also requires a minimum of twelve clock hours of the twenty clock hours of required continuing education must be consistent with the American Medical Association Category I types of training enumerated in the rule in Subsection D. The rule also enumerates the list of approved continuing education providers.

16.23.13 - Expanded Practice: This part has been amended to make corrections to the issuing agency and statutory authority sections. The definitions in this part have been consolidated into Section 16.23.1.7 NMAC.

16.23.15 - Parental Responsibility Act Compliance: This part was consolidated into Part 1. The Department will take responsibility for administering the disciplinary procedures required by the Parental Responsibility Act, pursuant to 16.1.1 NMAC. Part 15 will be repealed.

16.23.16 - Disciplinary Proceedings: This part was consolidated into Part 17. The definitions in this part have been consolidated into Section 16.23.1.7 NMAC. Part 16 will be repealed.

16.23.17 - Grounds for Disciplinary Action and Disciplinary Proceedings: This part has been amended to make corrections to the issuing agency and statutory authority sections. Definitions under this part have been moved to Section 16.23.1.7 NMAC, or have been removed because they are subject to common usage or are defined in a statute pursuant to Section 14-4-5, of the State Rules Act. Section 16.23.17.10 NMAC is new and delineates the disqualifying criminal convictions required by Section 61-1-36 NMSA 1978, enacted in the 2021 1st Special Session in Senate Bill 2. Section 16.23.17.13 NMAC has been amended to rename the "Standards of Practice Committee" to "Complaint Committee."

16.23.18 - Disciplinary Guidelines for Impaired Practitioner: This part has been amended to make corrections to the issuing agency and statutory authority sections. Definitions under this part have been moved to Section 16.23.1.7 NMAC. Definitions under this part have been moved to Section 16.23.1.7 NMAC.

SUPERINTENDENT OF INSURANCE, OFFICE OF NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the public video/telephonic hearing to determine Patient's Compensation Fund surcharge rates pursuant to the statutory mandates of NMSA 1978, Section 41-5-25 previously scheduled for October 7, 2021, and published in the NEW MEXICO REGISTER in issue 16 on August 24, 2021, was vacated and rescheduled for October 20, 2021 at 1:00 p.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1 312 626 6799
Meeting ID: 291 627 4744

All other orders and filings related to this matter are available for public view on the Patient's Compensation Fund Website at <https://pcf.osi.state.nm.us/index.php/reports-and-records/> under 2021 Rate Hearing (Docket No. 21 -0004 – PCF).

Any person with a disability requiring special assistance to participate in the hearing should contact Melissa Gutierrez at 505-476-0333 no later than October 15, 2021.

ISSUED this 13th day of October, 2021

/S/RUSSELL TOAL

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("OSI" or "Superintendent") will hold a public video/telephone hearing regarding the proposed new rule under 13.9. NMAC- PART 20: SUITABILITY IN ANNUITY TRANSACTIONS. This hearing will commence on **November 15, 2021, at 1:00 p.m.**

PURPOSE AND SUMMARY OF THE PROPOSED

AMENDMENTS: The purpose of this rulemaking is to establish the requirements for insurance producers to act in the best interest of consumers when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of the consumer at the time of the transaction are effectively addressed.

STATUTORY AUTHORITY:

Chapter 59A, Article 16 NMSA 1978 and Section 59A-2-9 NMSA 1978.

TO ATTEND THE HEARING:

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-312-626-6799
Meeting ID: 291 627 4744

The Superintendent designates Richard Word to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the "Rulemaking and Ratemaking" newsletter at: <https://newsletter.osi.state.nm.us/>.

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/home?to=%2Fcase-search> or the New Mexico Sunshine portal, or by requesting a copy by calling (505) 476-0333. Note: Due to the COVID-19 pandemic, the physical offices of the OSI remain closed to the public until further notice.

Written comments will be accepted through 4:00 p.m. November 15, 2021. Responses to written comments or oral comments will be accepted through 4:00 p.m. on November 30, 2021. All comments shall be filed electronically through the OSI eDocket at <https://edocket.osi.state.nm.us/>.

osi.state.nm.us/home?to=%2Fcase-search or received by mail to:

OSI Records and Docketing, NM Office of Superintendent of Insurance 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689.

For help submitting a filing, please contact OSI-docketfiling@state.nm.us.

The below docket number must be indicated on filed comments.

Docket No. 2021-0069

IN THE MATTER OF THE
ADOPTION OF A NEW RULE
REGARDING SUITABILITY IN
ANNUITY TRANSACTIONS

All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review all timely submitted written comments and responses.

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Melissa Gutierrez at 505-476-0333 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this 13th day of October, 2021
/S/RUSSELL TOAL

TRANSPORTATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Transportation (NMDOT) is proposing a new rule, 18.24.1 NMAC, Autonomous Vehicle Testing Rule.

Approval of the initial rulemaking action for the proposed new rule was granted to NMDOT by the New Mexico State Transportation Commission on May 20, 2021, pursuant to Sections 9-15, 67-3-8 and 67-3-11, NMSA 1978. The legal authority authorizing this rulemaking

is Section 66-7-12 and 66-7-13, NMSA 1978.

Summary of Full Text: Title 18, Chapter 24, Part 1, Autonomous Vehicle (AV) Testing introduces definitions that are specific to AV as established in the Society of Autonomous Engineers (SAE) Standard J-3016, the standard recognized by National Highway Traffic and Safety Administration (NHTSA), the federal regulatory authority on AV operations. It also establishes the required information to be submitted to the New Mexico Department of Transportation prior to testing and operations of AVs on public roadways. It establishes the necessary content of a Police Interaction Plan that must be in place by an AV tester in the event of a crash involving the operations and/or testing of an AV on public roadways. It establishes the minimum liability coverage for AV operations and/or testing on public roadways.

Purpose: The purpose for this rule is to implement the newly enacted Autonomous Vehicle Testing Rule.

Full Text of the Proposed Rule: A copy of the full text of the proposed new rule 18.24.1 NMAC may be found on the NMDOT website at the following Internet link, under the *Public Notices* tab: <https://dot.state.nm.us/content/nmdot/en/public-notices.html>. To obtain a printed copy of the proposed amended rule, contact Mershawn Griego at (505) 216-8831 or MershawnC.Griego@state.nm.us. A reasonable fee may be charged for printed copies.

Rulemaking Hearing: NMDOT will hold one statewide virtual public hearing for the purpose of receiving oral and written public comment from interested parties on the proposed repeal and replacement of 18.24.1 NMAC. This hearing will be held in conformance with the Governor's directives regarding gatherings and social distancing. The hearing is scheduled on Tuesday, November 16, 2021 from 1:00 p.m. to 3:00 p.m. To participate in this hearing:

Join Zoom Meeting:

<https://dot-state-nm-us.zoom.us/j/83240956940?pwd=V3ByZGNNd1h2dTdNWdGzdmozSm1uUT09>

Meeting ID: 832 4095 6940

Passcode: 010286

One tap mobile

+13462487799,,83240956940# US

(Houston)

+16699006833,,83240956940# US

(San Jose)

Dial by your location

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 301 715 8592 US

(Washington DC)

833 548 0276 US Toll-free

833 548 0282 US Toll-free

877 853 5257 US Toll-free

888 475 4499 US Toll-free

Meeting ID: 832 4095 6940

Find your local number: <https://dot-state-nm-us.zoom.us/j/kxFqnZUKt>

Written Comments: To submit written comments on or before the date of hearing, please send to: Mershawn Griego at New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504 or submit via email to MershawnC.Griego@state.nm.us. Written comments will be accepted from the date this notice is published in the New Mexico Register, October 13, 2021, and until the close of the final hearing scheduled in this rulemaking, November 16, 2021. If you plan to submit written comments, argument, or data, please make sure any documentation contains your name, phone number and email address. If submitting written comments by email, please indicate the rule number in the subject line. Oral comments will only be accepted at the public hearing and may be subject to time limitations. After the close of the final hearing scheduled in this rulemaking, the rulemaking record will be closed and no other comments will be accepted. All

written comments will be posted on the department's website within three days of receipt.

Accommodations: Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact Mershaw Griego at (505) 216-8831 or MershawC.Griego@state.nm.us at least ten days before the hearing.

WORKFORCE SOLUTIONS DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on November 18, 2021 from 10:00 pm to 12:00 pm. The public comment hearing will also be conducted virtually.

<https://zoom.us/j/91534652960?pwd=emZUZjJtMnB3NnFNQ0VYVY1NydlR6dz09>

Meeting ID: 915 3465 2960
Passcode: Cu1Fud

The purpose of the public hearing will be to obtain input and public comment on proposed prevailing wage rates and subsistence and zone pay for Public Works projects for 2022 and proposed changes to the Public Works Manual specific to the job classifications related to the prevailing wage rates and subsistence and zone pay.

Summary: The proposed amendment updates the prevailing wage rates and subsistence and zone pay in sections 11.1.2.20 and 11.1.2.21 NMAC for 2022 as required under NMSA §13-4-11.

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the labor relations division which oversees setting the prevailing wage and fringe benefit rates. Pursuant to Section 13-4-11, NMSA 1978, the Director of the Labor Relations Division shall determine the prevailing wage rates and the prevailing fringe benefit rates.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on November 17, 2021. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

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

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY PART 15 COVID-19 SCHOOL REQUIREMENTS

6.12.15.1 ISSUING
AGENCY: Public Education
Department hereinafter referred to as
the department.
[6.12.15.1 NMAC – N, 10/13/2021]

6.12.15.2 SCOPE: The
provisions of this regulation apply to
all public schools in New Mexico.
[6.12.15.2 NMAC - N, 10/13/2021]

6.12.15.3 STATUTORY
AUTHORITY: Sections 9-24-8,
12-10-10, 22-2-1, and 22-2-2 NMSA
1978.
[6.12.15.3 NMAC - N, 10/13/2021]

6.12.15.4 DURATION:
Permanent.
[6.12.15.4 NMAC - N, 10/13/2021]

6.12.15.5 EFFECTIVE
DATE: October 13, 2021, unless
a later date is cited at the end of a
section.
[6.12.15.5 NMAC - N, 10/13/2021]

6.12.15.6 OBJECTIVE:
This rule establishes the requirements
for the operation of public schools
during the COVID-19 pandemic.
[6.12.15.6 NMAC – N, 10/13/2021]

6.12.15.7 DEFINITIONS:
[RESERVED]

**6.12.15.8 REQUIREMENTS
FOR SCHOOLS:**
A. School districts

and schools shall follow all public
health orders, executive orders, and
department guidance, including
the COVID-19 response toolkit
for New Mexico's public schools,
for the operation of schools,
school sponsored activities, and
school premises, including school
transportation.

B. School districts and
schools shall honor tribal sovereignty
and abide by applicable tribal public
health orders, tribal executive orders,
and tribal council resolutions.
[6.12.15.8 NMAC – N, 10/13/2021]

6.12.15.9 [RESERVED]

6.12.15.10 [RESERVED]

6.12.15.11 [RESERVED]

6.12.15.12 [RESERVED]

HISTORY OF 6.12.15 NMAC:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to 16.62.2
NMAC, Sections 8 and 9, effective
10/13/2021**

16.62.2.8 TRAINEE: A
holder of a trainee registration, but not
a license or certificate, is authorized
to prepare appraisals of all types of
real estate or real property, provided
such appraisals are not described
or referred to as "state licensed"
or "state certified" and provided
further, the trainee appraiser does not
assume or use any title, designation
or abbreviation likely to create the
impression that he/she is a state-
licensed or state-certified real estate

appraiser. Trainees are not qualified
to perform under FIRREA, Title XI.
An applicant for trainee real estate
appraiser registration in the state of
New Mexico must:

A. be a legal resident
of the United States;
B. have reached the
age of majority;

C. within the five year
period preceding the application,
prove successful completion of
real estate appraisal education
of at least 75 board-approved
creditable class hours of qualifying
education as outlined in the required
core curriculum of the appraiser
qualifications board (AQB); real
estate appraisal education programs
completed for credit toward this
requirement shall include coverage of
the following topics, with emphasis
on ethics, and basic appraisal
principles and procedures in: basic
appraisal principles - 30 hours; basic
appraisal procedures - 30 hours; and
the 15-hour national USPAP course or
its equivalent;

D. comply with the
competency rule of (USPAP).

E. courses taken in
satisfying the qualifying education
requirements shall not be repetitive in
nature; each course credited toward
the required number of qualifying
education hours shall represent a
progression in which the appraiser's
knowledge is increased;

F. demonstrate to
the board that he/she is honest,
trustworthy and competent;

G. successful
completion of a written examination
on the New Mexico Real Estate
Appraisers Act, administered by the
board;

H. pay the fees set out
in 16.62.12.8 NMAC;

I. submit a duly made
application to the board office;

J. declare a supervisor; and

K. successfully complete a supervisor/trainee course, taught either in person or through distance education, consistent with AQB criteria, provided that successful completion of the course examination is required.

[1/14/2000; 16.62.2.8 NMAC - Rn & A, 16 NMAC 62.2.8, 9/13/2004; A, 11/25/2006; A, 6/13/2008; A, 8/21/2010; A, 7/10/2011; A, 1/1/2015; A, 2/3/2019; A, 10/13/2021]

16.62.2.9 SUPERVISING APPRAISER/TRAINEE:

A. Supervision of trainees: An appraiser may engage a declared trainee to assist in the performance of real estate appraisals and related activities, provided the supervising real estate appraiser:

(1) ~~[is in good standing and has been certified for at least three years;]~~ has been state certified and in good standing for a period of at least three years, whether in New Mexico or another domestic jurisdiction of comparable real estate appraisal laws and regulations, prior to being eligible to become a supervising appraiser. A supervising appraiser does not need to have been state-certified and in good standing in New Mexico for any specific minimum period of time;

(2) ~~[shall not have been subject to any disciplinary action within any jurisdiction within the last three years that affected the supervising real estate appraiser's legal eligibility to engage in appraisal practice, including but not limited to suspension, revocation, and limitations on the scope of the supervisor's practice]~~ shall not have been subject to any disciplinary action in any jurisdiction within the last three years that affected the supervising appraiser's legal eligibility to engage in appraisal practice. A supervisory appraiser subject to a disciplinary action shall be considered to have been in good standing three years after the successful completion or termination of any and all sanctions imposed against the appraiser;

(3) has no more than three trainees working under his/her supervision at one time;

(4) actively supervises the trainee by either being physically present or by a form of electronic communication; and

(5) is competent pursuant to USPAP in all appraisals supervised.

B. Prior to the date any trainee begins performing real estate appraisal and related activities under his/her supervision, the supervisor must:

(1) inform the board of the name of the trainee on the declaration form prescribed by the board; the supervisor must also inform the board within 10 days when a trainee is no longer working under his/her supervision; and

(2) complete a supervisor/trainee education program, either in person or via distance education consistent with the AQB and approved by the board, ~~[approved by the appraisal board]~~ regarding the role of a supervisor [;] provided further that:

(a) if continuously supervising trainees, supervisors must complete the class at least every four years; ~~[and]~~

(b) successful completion of the examination is not required; and

(3) this class may be used as part of the continuing education requirements for the biennial renewal cycle.

C. When training for residential license or residential certification the supervisor must accompany the trainee on complete interior inspections of the subject property on the first 25 assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type.

D. When training for general certification the supervisor must accompany the trainee on inspections of the subject property

on the first 25 non-residential assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type and market area.

E. The supervising appraiser shall:

(1) review all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee are utilized;

(2) certify that the report is in compliance with USPAP;

(3) maintain an experience log jointly with the appraiser trainee to ensure the experience log is accurate, current and complies with the requirements of the trainee appraiser's credentialing jurisdiction;

(4) sign the appraisal experience log at least every 30 days and use the title "supervising appraiser" when signing;

(5) review the hours claimed on the log and address any discrepancies.

F. Appraisal experience logs shall include:

(1) type of property;

(2) date of report;

(3) address of appraised property;

(4) description of work performed by the trainee appraiser and the scope of the review and supervision of the supervisory appraiser;

(5) number of actual work hours by the trainee appraiser on the assignment; and

(6) the signature and state certification number of the supervising appraiser.

G. Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.

H. The supervising appraiser shall not be employed by a trainee or by a company, firm or

partnership in which the trainee has a controlling interest.

I. Trainees: All trainees shall perform all real estate appraisal and related activities under the immediate, active, and personal supervision of a certified real estate appraiser.

(1) All appraisal reports must be signed by the trainee's declared supervisor. By signing the appraisal report, the certified appraiser accepts responsibility with the trainee for the content of and conclusions of the report.

(2) A trainee may assist in the performance of real estate appraisals and claim full credit for the actual hours worked on an appraisal, provided the trainee maintains a log on a form prescribed by the board.

(a) The log must detail all appraisals and related activities performed by the trainee. The hours claimed on the log must be verifiable by either signature on the report or by other written documentation in the work file.

(b) The log must be updated and signed by the supervisor at least every 30 days.

(c) The log must contain a statement affirming that both the supervising appraiser and trainee have competence as defined by USPAP.

(d) An experience log submitted from a jurisdiction located outside of New Mexico will be accepted, provided all of the following criteria are satisfied:

(i) the experience where the appraisal experience occurred fully complied with all requirements of that jurisdiction;

(ii) the experience log meets the requirements of the jurisdiction where the appraisal experience occurred; and

(iii) both the trainee and supervisor attest to the accuracy and validity of the experience log.

(3) Trainees

must complete a supervisor/trainee education program, either in person or via distance education, approved by the appraisal board before supervision begins. The trainee shall not receive appraisal experience credit for appraisals performed until the class is completed.

(4) Trainees shall assure that the supervisor has properly completed and sent the declaration form to the appraisal board on or before the day the trainee begins assisting the supervising appraiser.

(5) Trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of this section.

J. Notification of disciplinary complaint: A supervising appraiser shall notify all declared trainees within 10 days of receiving written notification by the board that a complaint has been filed against the supervising appraiser.

[16.62.2.9 NMAC - N, 1/1/2015; A, 1/15/2017; A, 2/3/2019; A, 10/13/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.3 NMAC, Section 8, effective 10/30/2021.

16.62.3.8 LICENSED RESIDENTIAL:

Licensed Residential real estate appraisers may appraise complex residential or nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. Licensed Residential real estate appraisers may not assume or use any title, designation or abbreviation likely to create the impression of certification.

A. For federally related transactions, the licensed residential real estate appraiser classification applies to the appraisal of non-complex one to four residential units

having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than ~~[\$250,000]~~ \$400,000.

B. Complex one-to four-family residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical. For non-federally related transaction appraisals, transaction value shall mean market value.

C. All licensed residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP)

D. Applicants for licensed residential in the state of New Mexico must.

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove successful completion of real estate appraisal education of at least 150 board-approved creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules:

(a) basic appraisal principles 30 hours

(b) basic appraisal procedures 30 hours

(c) the 15 hour national USPAP course and examination 15 hours

(d) residential market analysis and highest and best use 15 hours

(e) residential appraiser site valuation and cost approach 15 hours

(f) residential sales comparison and income approaches 30 hours

(g) residential report writing and case studies 15 hours

(4) successfully complete the appraiser qualifications board (AQB) approved licensed residential real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months, and the applicant must meet the requisite experience requirement within 24 months;

(5) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(6) demonstrate to the board that he/she is honest, trustworthy and competent;

(7) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(8) pay the fee set out in 16.62.12.8 NMAC;

(9) meet the minimum criteria for state licensure issued by the appraisers qualifications board of the appraisal foundation;

(10) submit a duly made application to the board office;

E. Appraisers holding a valid trainee appraiser credential may satisfy the educational requirements of 75 board-approved hours for the licensed residential real property appraiser credential by completing the following additional educational hours:

- (1) residential market analysis and highest and best use 15 hours
- (2) residential appraiser site valuation and cost approach 15 hours
- (3) residential sales comparison and income approaches 30 hours
- (4) residential report writing and case studies 15 hours

F. Appraisers holding a valid licensed residential or general certified appraiser credential satisfy the educational requirements for the licensed residential appraiser credential.

G. Experience: Applicants for state licensed residential must have a minimum of 1,000 hours of experience obtained in no fewer than six months in real property appraisal as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraisers under whose supervision the experience was obtained. Experience logs submitted from jurisdictions located outside of New Mexico will be accepted subject to the criteria provided in Subparagraph (d) of Paragraph (2) of Subparagraph I of 16.62.2.9 NMAC. [10/1/1997; 16.62.3.8 NMAC - Rn & A, 16 NMAC 62.3.8, 9/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.4 NMAC, Section 8, effective 10/30/2021.

16.62.4.8 RESIDENTIAL CERTIFICATION: A holder of a residential certificate is eligible to prepare appraisals of all residential real estate for federally related transactions or other uses. He/she may appraise nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a residential certificate may not assume or use any title, designation or abbreviation likely to create the impression of general certification.

A. The certified residential real estate appraiser classification qualifies the appraiser to appraise one to four residential units without regard to value or complexity. The classification includes the

appraisal of vacant or unimproved land that is utilized for one to four family purposes or for which the highest and best use is for one to four family purposes. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

B. All certified residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP).

C. Applicants for certification in residential appraisal in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove successful completion of real estate appraisal education of at least 200 board-approved creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules:

- (a) basic appraisal principles 30 hours
- (b) basic appraisal procedures 30 hours
- (c) the 15 hour national USPAP course and examination 15 hours
- (d) residential market analysis and highest and best use 15 hours
- (e) residential appraiser site valuation and cost approach 15 hours
- (f) residential sales comparison and income approaches 30 hours
- (g) residential report writing and case studies 15 hours
- (h) statistics, modeling and finance 15 hours
- (i) advanced residential applications and case studies 15 hours

- (j) appraisal subject matter electives 20 hours
- (4) complete college-level education experience under one of the following scenarios: (Effective May 1, 2018, the appraiser qualifications board of the appraisal foundation adopted changes of the real property appraiser qualification criteria);
- (a) Option #1: hold a bachelor's degree or higher from an accredited college or university in any field of study;
- (b) Option #2: hold an associate degree in a field of study related to:
- (i) Business administration
 - (ii) Accounting
 - (iii) Finance
 - (iv) Economics; or
 - (v) Real Estate
- (c) Option #3; Successful completion of 30 semester hours of college-level courses in each of the following specific topic areas;
- (i) English Composition (three hours)
 - (ii) Microeconomics (three hours)
 - (iii) Macroeconomics (three hours)
 - (iv) Finance (three hours)
 - (v) Algebra, Geometry, or Higher Math (three hours)
 - (vi) Statistics (three hours)
 - (vii) Computer Science (three hours)
 - (viii) Business Law or Real Estate Law (three hours)
 - (ix) Two elective courses in any of the above topics, or in Accounting, Geography, Agricultural Economics, Business Management, or Real Estate (three) hours each).
- (d) Option #4: Successful completion of at least 30 hours of College Level Examination Program® (CLEP)® examinations that cover each of the following specific topic areas:

Equivalency Table		
CLEP Exams	CLEP Semester Hours Granted	Applicable College Classes
College Algebra	3	Algebra, Geometry, Statistics, or higher mathematics
College Composition	6	English Composition
College Composition Modular	3	English Composition
College Mathematics	6	Algebra, Geometry, Statistics, or higher mathematics
Principles of Macroeconomics	3	Macroeconomics or Finance
Principles of Microeconomics	3	Microeconomics or Finance
Introductory Business Law	3	Business Law or Real Estate Law
Computer Science	3	Information Systems

- (e) Option #5: any combination of Option #3 and Option #4 that includes all of the topics identified.
- (f) Option #6: No college-level education required. This option only applies to appraisers who have held a Licensed Residential credential for a minimum of five years and have no record of any adverse, final, and non-appealable disciplinary action affecting the Licensed Residential appraiser's legal eligibility to engage in appraisal practice with five years immediately preceding the date of application for a Certified residential credential.
- (5) pass examination: the appraiser qualifications board (AQB) approved certified real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination; the requisite experience requirement must be met within 24 months, successful completion of the examination is valid for a period of 24 months;
- (6) assure courses taken in satisfying the qualifying education requirements are not repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(7) demonstrate to the board that he/she is honest, trustworthy and competent;

(8) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(9) pay the fee set out in 16.62.12.8 NMAC;

(10) meet the minimum criteria for the state residential certificate classification issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

(11) submit a duly made application to the board office.

D. Trainee and licensed appraisers wishing to change to the residential certified appraiser classification must also satisfy the college degree requirement.

E. Appraisers holding a valid general certified appraiser credential satisfy the educational requirements for the residential certified appraiser credential.

F. Appraisers holding a valid trainee appraiser credential may satisfy the educational requirements of 125 board-approved hours for the certified residential real property appraiser credential by completing the following additional educational hours:

(1) residential market analysis and highest and best use 15 Hours

(2) residential appraiser site valuation and cost approach 15 Hours

(3) residential sales comparison and income approaches 30 Hours

(4) residential report writing and case studies 15 Hours

(5) statistics, modeling and finance 15 Hours

(6) advanced residential applications and case studies 15 Hours

(7) appraisal subject matter electives 20 Hours

G. Appraisers holding a valid licensed residential real property appraiser credential may satisfy the educational requirements of 50 board-approved hours for the certified residential real property appraiser credential by completing the following additional educational hours:

(1) statistics, modeling and finance 15 Hours

(2) advanced residential applications and case studies 15 Hours

(3) appraisal subject matter electives 20 Hours

H. Experience: applicants for state residential certification must have a minimum of 1,500 hours of experience in real property appraisal obtained during no fewer than twelve months as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraiser under whose supervision the experience was obtained. Experience logs submitted from jurisdictions located outside of New Mexico will be accepted subject to the criteria provided in Subparagraph (d) of Paragraph (2) of Subsection I of 16.62.2.9 NMAC.

[10/1/1997; 16.62.4.8 NMAC - Rn & A, 16 NMAC 62.4.8, 9/13/2004; A, 11/25/2006; A, 6/13/2008; A, 8/21/2010; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.5 NMAC, Section 8, effective 10/30/2021.

16.62.5.8 GENERAL CERTIFICATE: A holder of a general certificate may prepare appraisals on all real estate and may indicate that such appraisals are state certified.

A. All certified general real estate appraisers must comply with the competency rule of the national uniform standards of professional practice (USPAP).

B. Applicants for the general certificate in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) submit a duly made application to the board office.

(4) hold a bachelor's degree or higher from an accredited college or university;

(5) demonstrate to the board that he/she is honest, trustworthy and competent;

(6) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(7) pay the fee set out in 16.62.12.8 NMAC;

(8) meet the minimum criteria for state general certification classification issued by the appraiser qualifications board (AQB) of the appraisal foundation; (Effective January 1, 2015, the appraiser qualifications board of the appraisal foundation adopted changes of the real property appraiser qualification criteria).

(9) successfully complete the appraisal qualifications board (AQB) approved general certified real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months; and

(10) successfully complete the real estate appraisal core curriculum educational requirements with a particular emphasis on non-residential properties.

C. Applicants shall successfully satisfy the core curriculum educational requirement of 300 board-approved courses by completing the following:

(1)	basic
appraisal principles	30 hours;
(2)	Statistics,
Modeling, and Finance	15 hours;
(3)	basic
appraisal procedures	30 hours;
(4)	the 15
hour national USPAP course and examination	15 hours;
(5)	general
appraiser market analysis and highest and best use	30 hours;
(6)	general
appraiser sales comparison approach	30 hours;
(7)	general
appraiser site valuation and cost approach	30 hours;
(8)	general
appraiser income approach	60 hours;
(9)	general
appraiser report writing and case studies	30 hours;
(10)	appraisal
subject matter electives	30 hours.

D. Appraisers
holding a valid trainee appraiser credential may satisfy the educational requirements of 225 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

(1)	general
appraiser market analysis and highest and best use	30 hours;
(2)	statistics,
modeling and finance	15 hours;
(3)	general
appraiser sales comparison approach	30 hours;
(4)	general
appraiser site valuation and cost approach	30 hours;
(5)	general
appraiser income approach	60 hours;
(6)	general
appraiser report writing and case studies	30 hours;
(7)	appraisal
subject matter electives	30 hours.

E. Appraisers holding
a valid licensed residential real property appraiser credential may satisfy the educational requirements of 150 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

(1)	general
appraiser market analysis and highest and best use	15 hours;
(2)	statistics,
modeling and finance	15 hours;
(3)	general
appraiser sales comparison approach	15 hours;
(4)	general
appraiser site valuation and cost approach	15 hours;
(5)	general
appraiser income approach	45 hours;
(6)	general
appraiser report writing and case studies	15 hours;
(7)	appraisal
subject matter electives	30 hours.

F. Appraisers holding
a valid certified residential real property appraiser credential may satisfy the educational requirements of 100 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

(1)	general
appraiser market analysis and highest and best use	15 hours;
(2)	general
appraiser sales comparison approach	15 hours;
(3)	general
appraiser site valuation and cost approach	15 hours;
(4)	general
appraiser income approach	45 hours;
(5)	general
appraiser report writing and case studies	10 hours.

G. Experience:
applicants for state general certification must have a minimum of 3,000 hours of experience in

real property appraisal obtained during no fewer than 18 months, of which, 1,500 hours must be in non-residential appraisal work, submitted on a form prescribed by the board and attested to by the duly certified general supervising appraiser under whose supervision the experience was obtained. Experience logs submitted from jurisdictions located outside of New Mexico will be accepted subject to the criteria provided in Subparagraph (d) of Paragraph (2) of Subparagraph I of 16.62.2.9 NMAC. [10/1/1997; 16.62.5.8 NMAC - Rn & A, 16 NMAC 62.5.8, 9/13/2004; A, 11/25/2006; A, 8/21/10; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.13 NMAC, Sections 2, 6, 7, 8, 9, 10, 11, 15, 16, 17 and 18, effective 10/30/2021.

16.62.13.2 SCOPE: All applicants, trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/1997; 16.62.13.2 NMAC - Rn & A, 16 NMAC 62.13.2, 9/13/2004; A, 1/1/2015; A, 2/3/2019]

16.62.13.6 OBJECTIVE:
This part [lists actions which can be the cause of disciplinary action by the board against a trainee, licensee or certificate holder and provides a procedure for a respondent to accept a letter of reprimand pursuant to violations of law or regulations] sets forth procedures applicable to application denials, disciplinary proceedings, and administrative proceedings against unlicensed practitioners.

[10/1/1997; 16.62.13.6 NMAC - Rn, 16 NMAC 62.13.6, 9/13/2004; A, 11/25/2006, A, 1/1/2015; A, 10/30/2021]

16.62.13.7 DEFINITIONS:

A. “Complaint committee” [shall be appointed by the board. Complaint committee chairperson shall be an appraiser board member. The complaint committee is for the purpose of evaluating complaints.] means the committee created and appointed by the board for the purposes of reviewing, evaluating, and making recommendations on disciplinary cases.

B. “Board investigator” means an investigator utilized by the board for the purposes of carrying out investigations into disciplinary complaints.

C. “Administrative prosecutor” means the attorney assigned to administratively prosecute cases pending before the board.

D. “Disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978; [10/1/1997; 16.62.13.7 NMAC - Rn & A, 16 NMAC 62.13.7, 9/13/2004; A, 1/1/2015; A, 10/30/2021]

16.62.13.8 FILING

COMPLAINT: Upon receipt of a sworn complaint against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the board may administratively evaluate the complaint to determine whether sufficient information of a potential violation of board statute or rules, or the national uniform standards of professional appraisal practice (USPAP) exists to pursue investigation and possible formal disciplinary action. Upon receipt of a complaint, the board may:

A. evaluate or investigate the alleged violations;

B. refer the matter to [a peer] the complaint committee; or

C. dispose of a complaint if it determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous.

[10/1/1997; 16.62.13.8 NMAC - Rn & A, 16 NMAC 62.13.8, 9/13/2004; A, 1/1/2015; A, 10/30/2021]

16.62.13.9 REVIEW OF COMPLAINT: The chairman of the board shall appoint at least one appraiser member of the board to evaluate each complaint filed with the board.

A. The board member appointee/evaluator shall also be chairperson of the complaint committee. The evaluation of complaints shall be completed by this person.

B. If the board member appointee or evaluator determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous, an investigation shall not be initiated and the complaint shall be referred to the board with a recommendation that the case be closed. If the chair of the complaint committee determines that the complaint merits further investigation, the complaint will be assigned to the complaint committee.

C. The complaint committee may perform a regulatory review of an appraisal that is the subject of a complaint. Complaint committee members shall be competent to perform a regulatory review of an appraisal.

D. The complaint committee may refer the appraisal that is the subject of a complaint to a peer committee to perform a Standard 3 review of the appraisal.

E. Upon completion and review of the investigation initiated pursuant to this regulation, the board member appointee/evaluator along with the complaint committee shall recommend to the board either [~~recommend to the board~~] action in lieu of disciplinary action, [~~a recommendation for~~] formal disciplinary action, or [~~a recommendation~~] that the case be closed.

[10/1/1997; 16.62.13.9 NMAC - Rn & A, 16 NMAC 62.13.9, 9/13/2004; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021]

16.62.13.10 RESPONDING TO COMPLAINT: All disciplinary complaints shall be automatically

forwarded to the licensee for a response.

A. In response to an investigation against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the respondent must respond within 10 business days of receipt as allowed by the Uniform Licensing Act.

B. Failure to respond within time frame specified may result in disciplinary action up to and including revocation of license at the discretion of the board.

[16.62.13.10 NMAC - N, 11/25/2006; A, 1/1/2015; A, 1/15/2017; A, 10/30/2021]

16.62.13.11 INVESTIGATIONS OF DISCIPLINARY

COMPLAINTS: To the maximum extent permitted by law, the board may conduct investigations of disciplinary complaints.

A. Should the board choose to employ one, the board may utilize the services of an investigator. The investigator may operate pursuant to a contract with the board, as the board's employee, or as the employee of a department to which the board is administratively attached, at the discretion of the board.

B. The board may issue investigative subpoenas as part of its review and investigation of disciplinary complaints. Each of the following individuals, acting independently, may approve and sign an investigative subpoena: the chairperson of the complaint committee, the board administrator, and, if utilized, the board investigator.

C. The board's staff, the members of the board's complaint committee, and, if utilized, the board investigator may carry out investigations on to disciplinary complaints. No board member other than the chairperson of the complaint committee shall carry out investigations into disciplinary complaints.

[16.62.13.11 NMAC - N, 10/30/2021]

16.62.13.14 REFUSAL, SUSPENSION OR REVOCATION:

A. Disciplinary

proceedings may be instituted by the sworn complaint of any person, including members of the board, filed with the board. ~~[The complaint shall conform with the provisions of the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.]~~

B. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any trainee, license or certificate held or applied for upon finding, after a hearing, that the trainee appraiser, licensee, certificate holder or applicant has violated any provision of the Real Estate Appraisers Act (Section 61-30-1 et seq., NMSA 1978) or regulations or continually or repeatedly or persistently or willfully violated any of the prohibitions found hereinafter:

(1) obtaining or attempting to obtain any fee through fraud, misrepresentation, or other dishonesty;

(2) impersonating another person trainee, licensed or certified to practice real estate appraisal or permitting or allowing any person to use his/her registration, license or certificate;

(3) aiding or abetting the practice of real estate appraisal by a person not a trainee, licensed or certified by the board;

(4) the suspension or revocation by another state of a trainee registration, license or certificate to practice real estate appraisal based upon acts by the trainee appraiser, certificate holder or licensee similar to acts described in the section;

(5) the solicitation of any person either by a trainee appraiser, licensee or certificate holder or by one in his/her employ or under his/her control under circumstances suggesting that the appraiser or other person was taking advantage of the person being solicited from making a rational independent decision as to whether or not to obtain the services of an appraiser, or any particular appraiser;

(6) falsifying of real estate appraisal records, whether or not for personal gain;

(7) practicing beyond the scope of the trainee, license or certificate as defined by state law and/or regulations;

(8) advertising in any manner that violates the board's regulation on advertising, as provided in 16.62.16 NMAC; or

(9) making false statements in any application for trainee, licensure or certification.

~~[C.]~~ If the complaint committee, following an investigation and review, believes there is sufficient evidence that would justify denying, revoking or suspending a professional license or taking other disciplinary action, it will recommend to the board to issue a notice of contemplated action ("NCA").

~~D.~~ Based on the board's decision, board staff will send a request for an NCA to the litigation division of the attorney general's office. The NCA request must include a description of the licensee's allegedly improper conduct and the provisions of the board's practice act and rules that the conduct allegedly violated. If the respondent is an applicant, the NCA must include an explanation as to why the board is contemplating denying licensure. An assistant attorney general in the litigation division, referred to as the "administrative prosecutor," will review the file. Based on his/her review, the administrative prosecutor may return the file to the board for additional investigation or information or will draft an NCA.]

~~[E.]~~ **C.** Constitutional due process principles require a board to conduct an administrative hearing at the timely request of a respondent who has been served with an NCA. The respondent is entitled to:

(1) a statement of the charge(s);

(2) notice of the time and place of the hearing;

(3) a hearing before an impartial decision maker;

(4) the right to cross-examine witnesses who testify against him/her;

(5) the right to present his or her own witnesses, and

(6) the right to be represented by an attorney or a licensed member of the profession or both.

[10/1/1997; 16.62.13.14 NMAC - Rn & A, 16 NMAC 62.13.14, 9/13/2004; A, 11/25/2006; A, 1/1/2015; A, 10/30/2021]

16.62.13.15 ~~[DELEGATION OF AUTHORITY:]~~ HEARINGS AND DISCIPLINARY PROCEEDINGS:

[The authority of the real estate appraisers board to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq. and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.]

A. All disciplinary proceedings conducted by the board shall fully conform to the provisions of the Uniform Licensing Act, Sections 61-1-11 to 34 NMSA 1978 (1957, as amended through 2019).

B. If the board so votes, board staff will send a request for an NCA to the litigation division of the attorney general's office. The NCA request must include a description of the licensee's allegedly improper conduct, all supporting documentation and evidence, a written summary of the provisions in statute or rule that the conduct allegedly violated, and any other documentation that may be required by the litigation division. If the respondent is an applicant, the NCA request must also include an explanation as to why the board is contemplating denying licensure. After reviewing the file, the board's administrative prosecutor

may draft an NCA, return the file to the board for additional investigation got information, propose a settlement agreement or other resolution to the case, or decline in writing to prosecute the case on behalf of the board. The administrative prosecutor is not required to be an investigator and shall not be requested to perform investigative work on behalf of the board.

C. If a respondent requests an evidentiary hearing in response to an NCA, the board administrator or compliance liaison may designate a hearing officer to preside over the hearing. Alternatively, at the discretion of the board chair or upon vote of the board, the entire board may preside over the hearing.

D. Upon the issuance of a notice of hearing, no motion for continuance, motion to vacate, or proposed settlement agreement may be filed with the board less than 10 days prior to the hearing except under extraordinary, unforeseen circumstances beyond the control of the movant. In the absence of such circumstances, a hearing officer may not continue or vacate a hearing in response to a motion submitted to the board later than 10 days prior to the hearing. Lack of knowledge or familiarity with this rule may not be considered extraordinary or unforeseen circumstances.

E. Parties to a disciplinary case may raise issues in the form of dispositive motions. Any such dispositive motion, when made at a hearing presided over by a hearing officer, shall be taken under consideration by the hearing officer and presented to the board along with the final hearing officer report. [16.62.13.15 NMAC – N, 1/16/2021; A, 10/30/2021]

16.62.13.16 SETTLEMENT AGREEMENTS: As a means of resolving disciplinary complaints against licensees, applicants, and unlicensed practitioners without the time and expense of formal hearings, settlement agreements are encouraged throughout the disciplinary process.

A. Prior to the board voting on a disciplinary complaint or the matter being referred to the office of the attorney general for administrative prosecution, the board staff may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement may take effect under any circumstances until the board so votes.

B. Prior to or after the Board has issued a notice of contemplated action to the respondent, the board's administrative prosecutor may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

C. Upon the issuance of a notice of hearing, settlement agreements may only be considered by the board if submitted to the board in written form and signed by the respondent. In the absence of extraordinary unforeseen circumstances beyond the control of both the administrative prosecutor and respondent, a hearing officer may not continue or vacate a hearing on the basis of a proposed settlement agreement if the proposed agreement is submitted to the board later than 10 days prior to the hearing.

D. No board member may be presumed to be biased or excused for cause based solely on the basis that the member considered, approved, or rejected a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case.

[16.62.13.16 NMAC – N, 10/30/2021]

16.62.13.17 DELEGATION OF AUTHORITY: The authority of the real estate appraisers board to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by

the New Mexico department of human services, as provided in 40-5A-1 NMSA 1978, et seq, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.62.13.17 NMAC - N, 10/30/2021]

16.62.13.18 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

(1) homicide;
(2) aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;

(3) robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation or personal property or funds;

(4) breaking and entering, criminal damage to property, arson, or other related crimes of violence against property;

(5) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;

(6) battery on a peace officer, assault on a peace officer, or other crimes against law enforcement;

(7) trafficking controlled substances;

(8) crimes involving child abuse or neglect;

(9) fraud, forgery, money laundering.

embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another:

(10) making a false statement under oath or in any official document;

(11) evasion of a lawful debt or obligation, including but not limited to tax obligations; or

(12) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions in Subsection A of this rule.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Real Estate Appraisers Act or Appraisal Management Company Registration Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than

the disqualifying criminal convictions listed in Subsection A of this rule.
[16.62.13.18 NMAC - N, 10/30/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.18 NMAC, Sections 2, 7, 8 and 9, effective 10/30/2021.

16.62.18.2 SCOPE: [This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.] The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to 61-1-34 NMSA 1978.
[16.62.18.2 NMAC - N, 1/1/2015; A, 10/30/2021]

16.62.18.7 DEFINITIONS:
[**A.** — “**Military service member**” means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. — “**Recent veteran**” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.]

A. — “**License**” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

B. — “**Licensing fee**” has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

C. — “**Military service member**” has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

D. — “**Substantially equivalent**” means the determination by the board that the education, examination, and experience

requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Real Estate Appraisers Act.

E. — “**Veteran**” has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.62.18.7 NMAC - N, 1/1/2015; A, 10/30/2021]

16.62.18.8 APPLICATION REQUIREMENTS:

[**A.** — Applications for registration shall be completed on a form provided by the board.

B. — The information shall include:

(1) completed application and fee;

(2) satisfactory

evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Article 30 NMSA 1978;

(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.]

A. Applications for registration shall be completed on a form provided by the board.

B. The applicant shall provide a complete application that includes the following information:

(1) applicant's full name;

(2) current mailing address;

(3) current electronic mail address, if any;

(4) date of birth;

(5) background check, if required; and

(6) proof as described in Subsection C below.

C. The applicant shall

provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay, and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Real Estate Appraisers Act. [16.62.18.8 NMAC - N, 1/1/2015; A, 10/30/2021]

16.62.18.9 RENEWAL REQUIREMENTS: [A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance set forth in 16.62.2 NMAC and for the renewal of a license set forth in 16.62.7 NMAC]

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.62.7 NMAC pursuant to Chapter 61, Article 30 NMSA 1978.

B. As a courtesy, the board, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date. [16.62.18.9 NMAC - N, 1/1/2015; A, 10/30/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.65.2 NMAC, adding section 16, effective 10/30/2021.

16.65.2.16 NOTIFICATION OF DISCIPLINARY ACTION:

A registrant shall notify the board in writing within 30 days after the registrant is notified of any denial, revocation, or suspension of its designation, registration, certificate, or license under any law of any jurisdiction, other than New Mexico, regulating appraisal management companies, the imposition of any other form of discipline under any

such law, or the commencement of a disciplinary or enforcement action against the registrant under any such law. The board shall commence disciplinary proceedings and, at the conclusion of those proceedings, determine the extent of the final discipline to be imposed in New Mexico, which may be less or more severe than the discipline imposed by the other jurisdiction that imposed discipline. [16.65.2.16 NMAC – N, 10/30/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.65.3 NMAC, Section 8, effective 10/30/2021.

16.65.3.8 APPLICATION FOR REGISTRATION: Incomplete application and fees will be returned to the applicant for supplementation of necessary documentation. All applicants must submit the following documentation to the board:

A. a completed application on a form prescribed by the board;

B. registration fee as provided in Part 5;

C. a notarized authorization for criminal background check for each person that owns, is an officer of or has a financial interest in the AMC with the prescribed fee;

D. a notarized authorization for criminal background check for the CP with the prescribed fee;

E. a notarized authorization for criminal background check for the EIC with the prescribed fee;

F. an irrevocable consent to service of process completed by the CP;

G. proof that the EIC has successfully completed an AQB approved 15 hour USPAP course.

H. documentation showing any and all discipline imposed on the applicant in any

jurisdiction under any law governing or regulating appraisers or appraisal management companies.

~~(H.)~~ **L.** The board will register the AMC on the federal registry maintained by the ASC and pay the fee as collected during the application process.

~~(H.)~~ **J.** Upon issuance an AMC license shall be valid for no fewer than 12 months.
[16.65.3.8 NMAC - N, 10/16/2009; A, 1/16/2011; A, 1/15/2017; A, 10/30/2021]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.65.4 NMAC, Section 8, effective 10/30/2021

16.65.4.8 DISCIPLINARY PROCEDURES:

A. The board may initiate disciplinary action upon:
(1) complaint;
(2) audit finding;

(3) information that the applicant, registrant, exempt company, compliance person, or other key person is the subject of an order of the board or any other state appraisal management company regulatory agency denying, suspending, or revoking the person or entity's privilege to operate as an appraisal management company, or information as to any other disciplinary action by an agency of another jurisdiction responsible for regulating appraisers; and

~~(3)~~ **(4)** any other knowledge the board receives of an alleged violation.

B. Upon receipt of a complaint or knowledge of an alleged violation the board may:

(1) review or investigate the alleged violations;
(2) referred the matter to a complaint committee; or

(3) informally dispose of a complaint if it determines that there is insufficient information or lack of probable cause.

C. The registrant shall have an opportunity to response to the complaint in writing. Failure to respond may be deemed waiver of any defenses.

D. Based upon the review or investigations, the complaint committee or other board designee will make a recommendation to the board for action.

E. Every registration shall be afforded notice and an opportunity to be heard before the board uses its authority to take any action that would result in:

(1) suspension;
(2) revocation;
(3) censure or reprimand; or
(4) fine.

F. When the board is taking an action defined in Subsection E of this section, the board shall serve upon the registrant written notice of contemplated action (NCA) and indication an opportunity for hearing. The NCA shall be served by personnel service on the controlling person of the AMC.

G. If a registrant does not request a hearing within the time and in the manner required by the NCA, the board may take the action contemplated.
[16.65.4.8 NMAC - N, 10/16/2009; A, 10/30/2021]

TAXATION AND REVENUE DEPARTMENT

The New Mexico Taxation and Revenue Department approved the repeal of 3.2.1 NMAC, Tax Administration - Filing (filed 4/17/2001) and replaced it with Tax Administration - Filing (adopted on 9/20/2021), effective 10/13/2021.

TAXATION AND REVENUE DEPARTMENT

The New Mexico Taxation and Revenue Department approved the

repeal of 3.2.215 NMAC, Gross Receipts Taxes - Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer (filed 5/17/2001) and replaced it with Gross Receipts Taxes - Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer (adopted on 9/20/2021), effective 10/13/2021.

TAXATION AND REVENUE DEPARTMENT

The New Mexico Taxation and Revenue Department approved the repeal of 3.2.300 NMAC, Gross Receipts Taxes - Credit - Gross Receipts Tax - Services (filed 6/4/2001) and replaced it with Gross Receipts Taxes - Credit - Gross Receipts Tax - Services (adopted on 9/20/2021), effective 10/13/2021.

TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION CHAPTER 2: GROSS RECEIPTS TAXES PART 1: GENERAL PROVISIONS

3.2.1.1 ISSUING

AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.1.1 NMAC - Rp, 3.2.1.1 NMAC 10/13/2021]

3.2.1.2 SCOPE: This part applies to all persons engaging in business in New Mexico.

[3.2.1.2 NMAC - Rp, 3.2.1.2 NMAC 10/13/2021]

3.2.1.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.1.3 NMAC - Rp, 3.2.1.3 NMAC 10/13/2021]

3.2.1.4 DURATION: Permanent.

[3.2.1.4 NMAC - Rp, 3.2.1.4 NMAC 10/13/2021]

3.2.1.5 EFFECTIVE

DATE: October 13, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.1.5 NMAC - Rp, 3.2.1.5 NMAC 10/13/2021]

3.2.1.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.1.6 NMAC - Rp, 3.2.1.6 NMAC 10/13/2021]

3.2.1.7 DEFINITIONS:

The terms defined in 3.2.1.7 NMAC apply throughout 3.2 NMAC.

A. Benefit:

“benefit” is any consideration to either party. “Benefit” is not limited to profits, pecuniary gains, or any particular kind of advantage.

B. Consideration:

“consideration” is any benefit, interest, gain or advantage to one party, usually the seller, or any detriment, forbearance, prejudice, inconvenience, disadvantage, loss of responsibility, act or service given, suffered, or undertaken by the other party, usually the buyer.

C. Detriment:

“detriment” is a forbearance of either party of a right which the party is entitled to exercise or any consideration flowing from either party, not limited to payment of money or transfer of property.

D. Digital good:

A “digital good” means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone. A digital good generally takes the form of a license to use and which property is stored, conveyed, and used in a digital or electronic format. Digital goods are generally intangible property for purposes of the Gross Receipts and Compensating Tax Act.

E. Financial corporations:

(1) A financial corporation is any corporation primarily dealing in moneyed capital and in substantial competition with commercial banks.

(2) Example 1: FC is a corporation which is primarily engaged in the following activities:

(a) buying and selling mortgages on real estate,

(b) initiating mortgages on real estate and selling these mortgages, and

(c) servicing mortgages. FC is a financial corporation because it is primarily dealing in moneyed capital and is in substantial competition with commercial banks.

(3) Example 2: IA is an insurance agency which, as an adjunct of its primary business, loans money to finance premiums. IA is not a financial corporation because it is not primarily dealing in moneyed capital and it is not in substantial competition with commercial banks.

(4) Example 3: A corporation which receives a commission on sales of money orders to its customers as an adjunct of its primary business is not a financial corporation within the meaning of Subsection C of Section 7-9-3 NMSA 1978 simply because it engages in this business activity.

(5) Example 4: A corporation which is engaged in the following activities is not a financial corporation because it is not primarily dealing in moneyed capital and is not in substantial competition with commercial banks:

(a) acting as an investment advisor to a mutual fund and others and receiving a fee for such services;

(b) acting as principal underwriter for the same mutual fund as in Paragraph (2) of Subsection E of 3.2.1.7 NMAC above and receiving a fixed percentage of the selling price of the securities sold as a commission or fee;

(c) issuing a weekly stock analysis report

as an advisory service, receiving for this service payment in the form of subscription fees.

F. Franchise:

(1) A “franchise” is an agreement in which the franchisee agrees to undertake certain business activities or to sell a particular type of product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor agrees to assist the franchisee through advertising, promotion and other advisory services. The franchise usually conveys to the franchisee a license to use the franchisor’s trademark or trade name in the operation of the franchisee’s business.

(2) Example: Y, a pie company of Cambridge, Massachusetts, grants to X of Virden, New Mexico, the right to make pies according to their exclusive recipe and to operate Y Pie shops throughout New Mexico. The right to make the pies and operate the pie shops, whether granted for a “one-time” payment or for a continuing percentage of the proceeds of the shops, is a franchise. Therefore, the receipts of Y, from its granting of the franchise are subject to gross receipts tax.

G. Computer-related terms:

(1) “Computer software” means computer programming in whatever form or medium.

(2) “Custom software” means computer programming developed specifically at the order of another or for a specific purpose. “Custom software” includes the modification of existing computer programming.

(3) “Packaged software” means computer programming embodied in electronic, electromagnetic or optical materials for transfer from one person to another, with or without explanatory materials, instructions or other programming and intended to be sold or licensed without modification to multiple buyers or users.

(4) “Digital software” means packaged software that is transmitted electronically rather on any type of material.

(5) “Software” means “computer software”.

H. “Marketplace provider”: A “marketplace provider” means a person who facilitates the sale, lease or license of tangible personal property or services or licenses for use of real property on a marketplace seller’s behalf, or on the marketplace provider’s own behalf. To “facilitate”, as that term is used here, means listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider’s services. A marketplace provider also includes a person that has gross receipts as a marketplace provider under Section 7-9-3.5 NMSA 1978 from the sales of licenses, including digital goods.

I. Marketplace seller: A “marketplace seller” means a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider. A marketplace seller also includes a seller that sells licenses through a marketplace provider.

J. Practitioner of the healing arts: A “practitioner of the healing arts” is a person licensed to practice in this state medicine, osteopathic medicine, acupuncture and oriental medicine, dentistry, podiatry, optometry, chiropractic, nursing or similar medical services for human beings. The term also includes veterinarians licensed to practice in this state.

K. Person engaged in the construction business: A “person engaged in the construction business” is a person who performs construction

services as defined in Section 7-9-3.4 NMSA 1978.

[3.2.1.7 NMAC - Rp, 3.2.1.7 NMAC 10/13/2021]

3.2.1.8 CITATION OF REGULATIONS: Unless otherwise stated, all citations of statutes in Chapter 3.2 NMAC with respect to the Gross Receipts and Compensating Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[3.2.1.8 NMAC - Rp, 3.2.1.8 NMAC 10/13/2021]

3.2.1.9 [RESERVED]

3.2.1.10 [RESERVED]

3.2.1.11 CONSTRUCTION:

A. Construction service as distinguished from other services.

(1) The term “construction” is limited to the activities, or management of the activities, which are listed in Section 7-9-3.4 NMSA 1978 and which physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project.

(2) “Construction” does not include services that do not physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project, even though they may be related to a construction project. The fact that a service may be a necessary prerequisite or ancillary to construction or a construction project does not in itself make the service a construction service. Excluded from the meaning of “construction” are activities such as, but not limited to: hauling to or from the construction site, maintenance work, landscape upkeep, the repair of equipment or appliances, laboratory work or accounting, architectural, engineering, surveying, traffic safety or legal services. Some of these activities may qualify as construction-related services; see Section 7-9-52 NMSA 1978.

B. Construction

includes: Pursuant to Section 7-9-3.4 NMSA 1978 the term “construction” includes the painting of structures, the installation of sprinkler systems and the building of irrigation pipelines.

C. Construction does not include:

(1) The term “construction” does not include the installation of carpets or the installation of draperies, but see 3.2.209.25 NMAC.

(2) The term “construction”, as defined in Section 7-9-3.4 NMSA 1978, does not include leasing or renting tangible personal property, such as construction equipment, with or without an operator but see Section 7-9-52.1 NMSA 1978 for transactions on or after January 1, 2013.

D. Oil and gas industry construction:

(1) “Construction”, as this term is used in Section 7-9-3.4 NMSA 1978, includes the following activities related to the oil and gas industry:

(a) building and altering of gas compression plant facilities and pump stations, including: clearing of property sites; excavating for foundations; building and setting foundation forms; mixing, pouring, and finishing concrete foundations for buildings and plant equipment on foundations; fabricating and installing piping; installing electrical equipment, insulation, and instruments; erecting buildings; placing sidewalks, drives, parking areas; installing storage tanks; and dismantling equipment and reinstalling elsewhere;

(b) building of or extension of gas-gathering pipelines, including: connecting gathering lines to lease separators, fabricating and installing meter runs, digging trenches, beveling pipe, welding pipe, wrapping pipe, backfilling trenches, testing pipelines, fabricating and installing pipeline drips and installing conduit for pipelines crossing roads or railroads;

(c) building of or extension of product

pipelines, including: building pressure-reducing stations; connecting pipelines to storage tanks, fabricating and installing valve assemblies, digging trenches, beveling pipe, welding pipe, wrapping pipe, laying pipe, backfilling trenches, testing pipelines and installing conduit for pipeline crossing roads or railroads;

(d)

building secondary-recovery systems, including: excavating and building foundations, installing engines and water pumps, installing pipelines for water intake, installing pipelines for carrying pressured water to input wells, installing instruments and controls and erecting buildings;

(e)

installing lease facilities, including: installing wellheads, flow lines, chemical injectors, separators, heater-treaters, tanks, stairways and walkways; building foundations; and setting pump units and engines, central power units and rod lines;

(f)

demolishing pipelines, including: digging trenches to uncover pipelines, dismantling and removing drips and meter runs, backfilling trenches, tamping and smoothing right-of-way;

(g)

increasing pipeline capacity, including: removing small pipelines and replacing with larger lines, and digging adjoining trenches and laying new pipelines;

(h)

repairing plant, including: replacing tubing in atmospheric condensers, replacing plugged boiler tubing; removing cracked, broken or damaged portions of foundations and replacing anew; replacing compressors, compressor engines, or pumps; and regrouting and realigning compressors;

(i)

drilling wells, including: drilling ratholes, excavating cellars and pits, casing crew services, cementing services, directional drilling, drill stem testing and fishing jobs in connection with drilling operations;

(j)

general dirt work, including: building roads, paving with caliche or other

surfacing materials; digging pits, trenches, and disposal ponds, building firewalls and foundation footing; and constructing pads from caliche or other materials.

(2)

“Construction”, as the term is used in Section 7-9-3.4 NMSA 1978, does not include the following activities related to the oil and gas industry:

(a)

well servicing, including: acidizing and fracturing formations; pulling and rerunning rods or tubing; loading or unloading a well; shooting; scraping paraffin; steaming flow lines and tubing; inspecting equipment; fishing jobs, other than in connection with drilling operations; bailing cave-ins; reverse circulating and resetting packers;

(b)

lease and plant maintenance, including: cleaning; weed-control; preventive care of machinery, pipelines, gathering systems, and engines; tank cleaning; testing of flow lines by pressure or X-ray means; cleaning lines and tubing by acid treatment or mechanical means, or replacing and restoring machinery components;

(c)

transporting equipment, including: transporting drilling rigs, rigging-up and rigging-down, and hauling water and mud;

(d)

salvaging of materials from a “production unit”, as defined in the Oil and Gas Emergency School Tax Act, such as: killing the gas pressure, removing casing heads, welding pull nipples on the casing, cutting or shooting casing strings, pulling casings from the well bore, cementing to fill the abandoned well or plug the well, filling the cellar, and welding steel pipe markers;

(e)

rental of equipment such as: power tongs, blowout preventors, tanks, pipe racks, core barrels, integral parts of a drilling rig or integral parts of a circulation unit, for transactions on or after January 1, 2013, see Section 7-9-52.1 NMSA 1978;

(f)

measuring, “logging” and surveying services in connection with the drilling of an oil or gas well are construction-related services as of January 1, 2013, see Section 7-9-52 NMSA 1978. “Logging” as that term is used in this subsection is a method of testing or measuring an oil or gas well by recording various aspects of the geological formations penetrated by the well.

E. Construction

includes prefabricated buildings; prefabricated versus modular buildings:

(1)

The sale of prefabricated buildings, whether constructed from metal or other material, is the sale of construction. A prefabricated building is a building designed to be permanently affixed to land and manufactured (usually off-site) in components or sub-assemblies which are then assembled at the building site. Prefabricated buildings are not designed to be portable nor are they capable of being relocated.

(2)

A portable building or a modular building is a building manufactured (usually off-site) which is designed to be moveable or is capable of being relocated and, when delivered to the installation site, generally requires only blocking, levelling and, in the case of modular buildings, joining of modules. For the purposes of Subsection F of 3.2.1.11 NMAC, neither portable buildings, modular buildings nor manufactured homes defined as vehicles by Section 66-1-4.11 NMSA 1978 are prefabricated buildings.

F. Construction

materials and services; landscaping:

(1)

Landscaping items, such as ornaments, rocks, trees, plants, shrubs, sod and seed, which are sold to a person engaged in the construction business, that are an integral part of the construction project, are construction materials. Persons who seed, lay sod or install landscape items in conjunction with a construction project are performing construction services.

(2) Receipts from selling landscaping items to, and from seeding, laying sod or installing landscape items for, persons engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller as provided in Section 7-9-51 and Section 7-9-52 NMSA 1978, respectively.

G. Nontaxable transaction certificates:

(1) Nontaxable transaction certificates are available from the department for persons who are engaged in the construction business and performing activities, as set forth in Sections 7-9-3.4, 7-9-52 and 7-9-52.1 NMSA 1978 to execute to providers of construction materials, construction services, construction-related services and lessors of construction equipment. See 3.2.201.11 NMAC for additional requirements on construction contractors to obtain nontaxable transaction certificates.

(2) Only persons who are licensed by the state of New Mexico as construction contractors may apply for and execute nontaxable transaction certificates under the provisions of Sections 7-9-51 NMSA 1978, 7-9-52 NMSA 1978, and 7-9-52.1 NMSA 1978, except that a person who performs construction activities as defined in Section 7-9-3.4 NMSA 1978 in the ordinary course of business, and who is exempt from the laws of the state of New Mexico requiring licensing as a contractor may apply for and execute such certificates.

H. Construction materials; general:

(1) The term “construction materials” means tangible personal property which is intended to become an ingredient or component part of a construction project.

(2) Tangible personal property intended ultimately to become an ingredient or component part of a construction project although not purchased for a specific project is nonetheless a construction material.

Example: A government agency makes bulk purchases of asphalt which is stored by the agency for use in future road construction or repair projects. The asphalt is a construction material.

(3) Tools, equipment and other tangible personal property not designed or intended to become ingredients or component parts of a construction project are not construction materials if such materials accidentally become part of a construction project. *Example:* A workman accidentally drops a pair of gloves and a hammer into a form into which concrete is being poured. Because the gloves and the hammer are not intended to be included in the concrete structure, they are not construction materials.

[3.2.1.11 NMAC - Rp, 3.2.1.11 NMAC 10/13/2021]

3.2.1.12 ENGAGING IN BUSINESS:

A. Engaging in business - Generally: For periods beginning July 1, 2020, “engaging in business” conforms to the constitutional requirement for substantial nexus under *South Dakota v. Wayfair*, 585 U.S. ____ (2018). A person that has physical presence in the state and is also conducting activity with the purpose of direct or indirect benefit is engaging in business and subject to the imposition of gross receipts tax. A person that does not have physical presence in the state is nevertheless engaging in business and has substantial nexus in New Mexico if, in the preceding calendar year, that person has total taxable gross receipts from sales, leases and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to this state pursuant to Section 7-1-14 NMSA 1978, of at least one hundred thousand dollars (\$100,000).

B. Affiliated corporations:

(1) When a corporation is carrying on or causing to be carried on, with a wholly owned subsidiary, any activity with

the purpose of direct or indirect benefit, both the corporation and the subsidiary are “engaging in business”.

(2) *Example:* B corporation, which operates a hotel supply house, sells supplies only to C Hotel Corporation, which owns all the stock in B Corporation. B claims that since it sells only to C, its parent corporation, it is not engaging in business. B and C are each engaging in business because the purpose of their activities is to benefit either or both corporations.

C. Corporation not for profit: When a corporation not for profit is carrying on or is causing to be carried on any activity with the purpose of direct or indirect benefit it is “engaging in business”.

D. Leasing property:

(1) Persons leasing property employed in New Mexico are engaging in business within the state for the purpose of direct or indirect benefit.

(2) *Example:* X, an out of state business, leases construction machinery to Y who employs the leased property in New Mexico. X asks if X is engaged in business in New Mexico for purpose of registration, reporting and paying the gross receipts tax. X is engaged in business in New Mexico.

E. Hotels and motels providing interstate telecommunications service to guests:

(1) Hotels, motels and similar establishments offering interstate telecommunications service to guests in conjunction with the rental of rooms or other facilities are not “engaging in interstate telecommunications business” for purposes of the Interstate Telecommunications Gross Receipts Tax Act.

(2) A hotel, motel or similar establishment is primarily engaged in the business of renting rooms and meeting facilities to the general public. Providing interstate telephone service or other interstate telecommunications services to guests is incidental to the primary business of the hotel, motel or similar establishment. Receipts

from providing such service are additional receipts from engaging in the primary business and are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Subsection D of 3.2.1.12 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

F. Persons not engaging in business - foster parents: Individuals who enter into an agreement with the state of New Mexico to provide foster family care for children placed with them by the state are not thereby engaging in business. Receipts of the individuals from providing foster care pursuant to such an agreement are not receipts from engaging in business.

G. Persons not engaging in business - certain caretakers: Individuals who enter into an agreement with the state of New Mexico to provide non-medical personal care and housekeeping assistance to low income disabled adults pursuant to the critical in home care program are not thereby engaging in business. Receipts of the individuals from such caretaking activities are not receipts from engaging in business.

H. Persons not engaging in business - home care for developmentally disabled family members: Any individual who enters into an agreement with the state of New Mexico to provide home based support services for developmentally disabled individuals in the home of the developmentally disabled individuals or the home of the support provider and receives payments which under 26 USCA 131 are "qualified foster care payments" is not thereby engaging in business. Receipts of the individuals which are "qualified foster care payments" from providing such home based support services pursuant to such an agreement are not receipts from engaging in business.

I. Owner engaged in business when selling to an owned entity:

(1) Except as provided in Paragraph (2) of this Subsection, when an owner of an

entity sells property in New Mexico to, leases property employed in New Mexico to, or performs services in New Mexico for the entity or other owners of the entity, the owner is engaging in business in New Mexico except when the transaction may be characterized for federal income tax purposes as a contribution of capital.

(2) When a partner or interest holder in an entity taxed as a partnership is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third -parties transacting business with the partnership, the partner is not engaging in business separately from the partnership and the allocations, payments, or distributions are not gross receipts. A partner may, however engage in business separately from the partnership and any transactions between that partner and the partnership, where the partner is not acting as a partner on behalf of the partnership, constitute gross receipts from engaging in business. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership; or

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement; or

(c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

(3) For the purposes of Subsection H of 3.2.1.12 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

J. Persons not engaging in business - sale or exchange of renewable-fueled

electricity generated from a system installed in a personal residence. Any individual who sells or transfers electricity to an entity engaged in the business of selling electricity, for which the individual receives monetary compensation or credit against a future month's electricity use, is not engaged in business if the electricity is generated from a renewable-fueled system installed in a personal residence.

[3.2.1.12 NMAC - Rp, 3.2.1.12 NMAC 10/13/2021]

3.2.1.13 [RESERVED]

3.2.1.14 GROSS RECEIPTS - GENERAL:

A. Credit card sales: Gross receipts of the seller of property or services or the lessor of property include the full sale or lease contract amount of any property or service sold or of any property leased when payment is made through the use of a credit card which has been issued by a third party. The seller or lessor may not deduct from gross receipts the amount charged by the credit card company for converting the account into cash.

B. Consideration other than money:

(1) If the consideration received by the seller or lessor for the item sold or leased or for the service performed is in a form other than money, the fair market value of the consideration received or the fair market value of the item sold or of the lease or of the service performed must be included in gross receipts. The value of the consideration received or the item sold or of the lease or of the service performed is the fair market value at the time of the transaction.

(2) Example 1: X has Y, a garage owner, repair X's automobile. In exchange for the service performed by Y, X gives Y a deer rifle. The fair market value of the rifle at the time of the transaction is the measure of Y's gross receipts.

(3) Example 2: X, a New Mexico construction company, contracts with Y

Electric Co-op Association for the construction of transmission lines. The contract requires X to furnish all materials and labor for a fixed price; however, it permits a reduction of the contract price in the amount of the value of materials furnished by Y. The gross receipts of X include the value of any material supplied by the cooperative.

(4) Example

3: X is a firm engaged in the construction business in New Mexico. The receipts of X from the sale of a completed construction project include the value of construction services performed by the buyer of the construction project pursuant to a "sweat labor contract" if the performance of services are required to fulfill a contractual obligation of X. A "sweat labor contract", as used in this example, is a contract whereby the buyer of a completed construction project agrees to perform certain construction services for the seller of the construction project as partial payment of the sale price of the construction project.

(5) Example

4: M agrees to drill an oil well for the XYZ Oil Company. The contract provides that M will drill the well for \$7.50 per foot and a one-eighth interest in the minerals which belong to XYZ. The well, when completed, produces forty barrels of oil per day for a period which is expected to last for 10 years. M admits that the \$7.50 per foot that is received from drilling the well are gross receipts subject to the gross receipts tax. M questions whether the value of the one-eighth interest is gross receipts. The value of the mineral interest is consideration and must be included in M's gross receipts. It will be valued at its fair market value at the time the well is completed.

(6) Example

5: The A Oil Company hires the B Drilling Company to drill a well on its property. A furnishes drill bits to B, but A has the right to deduct the rental value of the bits from the total footage or day rate price it agrees to pay B for the drilling. The use of the drill bits is partial consideration, furnished by

A, for the performance of the drilling service by B and the reasonable value of their use must be included in B's gross receipts. A also must include the rental value of the bits in its gross receipts because it is leasing the drill bits to B. However, if A furnishes drill bits to B and does not have the right to deduct the rental value of the bits from the total footage or day rate price which it has agreed to pay B for the drilling, then no amounts from the drill bit transaction are includable in either A's or B's gross receipts. The same applies if B furnishes the drill bits.

C. Consideration less than fair market value:

(1) In

a transaction where the actual consideration received does not represent the fair market value of the property sold or leased or of the service sold, the fair market value shall be included in the gross receipts of the seller or lessor. Fair market value is the value which the property or service can command in an arms length transaction between two independent parties in an open market.

(2) The

following example illustrates the application of Section 7-9-3.5 NMSA 1978 with respect to consideration less than fair market value. Example: X, a land and cattle company, is a corporation which is affiliated with Y, an equipment company. Because of their affiliation, X leases a \$30,000 tractor from Y for \$1.00 a month. Y reports that its gross receipts from this transaction are \$1.00. Y's gross receipts are the market value of a monthly lease of a \$30,000 tractor. Y must pay gross receipts tax on the adjusted amount.

D. Sale of commercial paper:

(1) The full

sale or leasing contract amount of property or service sold, excluding any type of time price differential, is included in the seller's gross receipts even though the seller subsequently sells the contract and does not receive the total contract price in money. No deduction is allowed for discounts

suffered from the sale of commercial paper arising from a sale or lease.

(2) Example:

X sells a washing machine to Y under a conditional sales contract in which the full sale contract amount, excluding time price differential, is \$120. The principal on the washing machine is to be paid for over a twelve month period at \$10 a month. X collects \$20 of principal under the contract and then assigns its rights to W for \$90. Depending upon the method regularly used for reporting gross receipts, X would either pay tax on the full contract amount for the month in which the sale was made (accrual basis) or pay tax measured by the receipts as they were received (cash basis). If X had elected to pay tax measured by its receipts as they were received, X would have reported \$20 during the first two months from this transaction. When X assigned the contract, X would have to include \$100 in the gross receipts for the third month since a deduction is not allowed for a discount suffered upon the transfer of a conditional sales contract.

E. Interdepartmental transfers:

(1) Receipts

derived from an interdepartmental transfer of services or property are not subject to the gross receipts tax. To qualify as an interdepartmental transfer, the transfer must be a transfer of services or property within the same corporation or other taxable entity.

(2) Example:

C, a company located in New Mexico, operates both an electric utility and a water utility. C records on its books the sale of the electricity to the water utility in order to comply with the public service commission regulations but does not thereby incur gross receipts as that term is used in the Gross Receipts and Compensating Tax Act. Such book entries do not record receipts from selling property in New Mexico but record interdepartmental transfers. However, the value of the electricity at the time of its conversion to use by the water

utility is subject to the compensating tax.

F. Service charges computed on balances:

(1) Service charges on accounts receivable balances or installment sales contracts which are not computed at the time of sale, are time-price differential charges, are not subject to the gross receipts tax and are not to be included in the sales price of an item brought into New Mexico for the purpose of computing the compensating tax.

(2) Example: X corporation located outside New Mexico is engaged in the business of publishing books. X has several nonemployee salesmen soliciting orders on a commission basis in New Mexico. Every such order is forwarded to X's main office where it is reviewed and then either accepted or rejected. Accepted orders are shipped directly to the purchaser from X's binderies located outside of New Mexico. Since X has salesmen in New Mexico, it is an agent for collection of the compensating tax, pursuant to Section 7 9 10 NMSA 1978. The purchaser may elect to pay for the books on an installment basis. If after 90 days from purchase, the balance has not been paid, a one percent per month service charge is added to the balance. This charge is not precomputed and no portion thereof is due unless the purchaser elects to pay on an installment plan extending over 90 days. Such a charge is a time-price differential and is not a part of the sales price of the item. Therefore, it should not be included in the sales price when considering the amount of compensating tax that should be paid over to the state of New Mexico.

G. Corporations and organizations not organized for profit - fund raising activities:

(1) Receipts of a corporation or organization not organized for profit, other than an organization granted a 501(c)(3) determination by the internal revenue service, derived from fund raising activities which are in the nature of donations, gifts, and contributions are not subject to the gross receipts tax.

(2) The department will presume that the total receipts of such a nonprofit organization from a fund raising activity are receipts derived from a taxable activity if the project involves the performance of any service or the sale or lease of any property by the organization. This presumption may be overcome by establishing the following:

(a) the purchaser or lessee of the property or service intended by the purchase or lease to make a gift, donation, or contribution to the organization; and

(b) the purchase or lease price clearly exceeded the fair market value of the service or property or the fair rental value of the property.

(3) If these conditions are satisfied, the amount of consideration received by the organization in excess of the fair market price or fair rental value is not subject to the gross receipts tax.

H. Discount coupons: The gross receipts attributable to a sale in which a seller accepts discount coupons provided by buyers are measured by the cash received plus the value of the coupon. However, if the discount coupon is not redeemable by the seller, the acceptance of the coupon constitutes a cash discount allowed and taken and is excluded from gross receipts.

I. Gross receipts embezzled: Receipts that have been embezzled or lost through bookkeeping errors are not a cash discount allowed and taken; such receipts are not deductible under Section 7 9 67 NMSA 1978 because they are not a refund, allowance or uncollectible debt.

J. Vending machines:

(1) A vending machine is a device that, when the appropriate payment has been inserted into it, whether payment is made by coins, tokens, paper money, credit card, debit card or other means, dispenses tangible personal property, performs a service (including entertainment) or dispenses tickets, tokens or similar objects redeemable

for money, tangible personal property or services; but "vending machine" does not include any device which is designed to primarily or solely to play a game of chance, such as slot machines, video gaming machines and the like.

(2) Amounts received from allowing the vending machine to be placed in a location as well as amounts received from use of or sales from vending machines are gross receipts and are subject to the gross receipts tax. The vending machine owner is responsible for reporting the receipts and paying the gross receipts tax.

(3) Receipts derived from allowing vending machines to be placed in a location not owned or rented by the vending machine owner are gross receipts and are subject to the gross receipts tax. Except as provided otherwise in Subsection K of Section 3.2.1.14 NMAC, the person receiving the receipts is responsible for reporting the receipts and paying the gross receipts tax with respect to such receipts.

(4) If the vending machine owner and a person controlling the premises where the machine is located enter into a written agreement similar to the one below, the department will presume that a joint venture has been created, that the joint venture is registered with the department and that the vending machine owner has agreed to pay all gross receipts tax due with respect to the joint venture. In such a case, the person owning the machine, on behalf of the joint venture, will report and pay the gross receipts tax due on all the receipts derived from either allowing the vending machine to be placed in a location or sales from the vending machine for all parties in the joint venture and the person controlling the premises is relieved of the duty to report or pay gross receipts tax on those same receipts.

(5) Agreement: Total amounts collected from the vending machine shall be allocated between the vending machine owner and the person

controlling the location. The vending machine owner will receive a percentage of the amounts collected net of gross receipts tax due, plus an amount equal to the gross receipts tax payable on the entire proceeds from the vending machine. The person controlling the location will receive a percentage of the amounts collected net of gross receipts tax due. The vending machine owner will report and pay any gross receipts tax due on all the receipts derived from either the use of or sales from the vending machine.

(6) In the event that no such agreement exists, the department will presume that no joint venture exists. In such a case, the vending machine owner will be subject to gross receipts tax on the entire amounts collected from the use of or sales from the vending machine, and the person controlling the premises will be subject to gross receipts tax on the amount that person receives from the vending machine owner for allowing the placement of the machine on the premises.

(7) In the event the vending machines are leased to the person who services them, the term "vending machine owner" means the lessee of the vending machines.

K. "Gross receipts" excludes leased vehicle surcharge: For the purposes of Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-9-3.5 NMSA 1978, the term "leased vehicle gross receipts tax" includes the leased vehicle surcharge. The amount of any leased vehicle surcharge may be excluded from gross receipts.

L. Receipts from furnishing parts or labor under automotive service contract:

(1) When an automobile dealer, who is the promisor under an automotive service contract as that term is defined under Subsection C of Section 3.2.1.16 NMAC, furnishes parts or labor or both to satisfy the promisor's obligation to repair the breakdown involving a part specified in the contract, the dealer has taxable gross receipts equal to the retail value of the

parts and labor furnished. A transfer of property or performance of service for a consideration has occurred and therefore a receipt from selling property or performing services has been realized by the dealer.

(2) The consideration received by the dealer is the discharge of the dealer's obligation to make the repair which obligation arose when the covered breakdown occurred.

(3) Receipts of a repair facility, including an automobile dealer, from furnishing parts and labor to fulfill the obligation of another person under an automotive service contract are gross receipts and not deductible under Sections 7-9-47 and 7-9-48 NMSA 1978, even though the seller has received NTTCS for other transactions.

M. Receipts from deductibles/co-payments under automotive service contracts: The receipts of a New Mexico automotive dealer or other repair facility, including the promisor under an automotive service contract, from the "deductible" or "co-payment" amount paid by a customer as required by automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC in connection with the provision of repair services under contract are gross receipts.

N. Receipts of dealer from own reserve:

(1) The receipts of a New Mexico auto dealer for repairs provided by the dealer under an automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the dealer is obligated as promisor are not gross receipts if:

(a) the receipts are paid from a reserve account established by the dealer under an agreement with an auto service contract administrator or an insurance company, or both, and

(b) the dealer is entitled to a return of any amounts in the reserve account not used to pay for parts and labor or to pay other charges against the dealer

in connection with the auto service contract.

(2) In this situation, the dealer is being "paid" from the dealer's own funds and has no receipts. However, the dealer as promisor is liable for gross receipts tax on the retail value of the parts or labor or both furnished to discharge the dealer's obligation.

O. Water conservation fee: Section 74-1-13 NMSA 1978 imposes the water conservation fee on the operator of a public water supply system. The fee is measured by the amount of water produced. The operator is not authorized to impose the water conservation fee on the operator's customers. If the operator of the system separately bills an amount characterized as a reimbursement of the water conservation fee to the operator's customers, the separately stated amount is simply an element of the price of the water sold and the "reimbursement" is included in gross receipts. The definition of "gross receipts" does not exclude the water conservation fee or amounts characterized as reimbursements of water conservation fee paid.

P. Sales of items subject to the federal manufacturer's excise tax:

(1) The gross receipts from sales of items such as motor vehicle tires include the total amount of money or the value of other consideration received even though this amount includes the Federal Manufacturer's Excise Tax, 26 U.S.C.A. Section 4061 et seq., (1986) which is separately stated on the invoice. Gross receipts do not include the amount of money attributable to the Federal Communications Excise Tax, 26 U.S.C.A. Section 4251, et seq., (1986), and the Federal Air Transportation Excise Tax, 26 U.S.C.A. Section 4261 et seq., (1986), which are user's taxes.

(2) Example: A tire dealer sells a tire in New Mexico to a retail customer for \$40.00 and separately states \$1.00 for Federal Manufacturer's Excise Tax on the sales ticket. The seller's

gross receipts for this transaction are \$41.00.

Q. Transactions among related persons are gross receipts

(1) Each person engaging in business in New Mexico is subject to the provisions of the Gross Receipts and Compensating Tax Act. Each person who is a member of any group of related or affiliated persons and who engages in business in New Mexico is a taxpayer. The provisions of the Gross Receipts and Compensating Tax Act apply to the transactions between that taxpayer and all other persons, including the other related or affiliated persons, even though consideration is not received in the form of cash or other monetary remuneration.

(2) Example 1: A cooperative association and X both engage in business in New Mexico. The cooperative sells services to X, one of its members. The cooperative is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Example 2: Both X and a cooperative association engage in business in New Mexico. X is a member of the cooperative and sells services to it. X is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(4) Example 3: X engages in business in New Mexico, specifically by selling office supplies. X is also a partner in a partnership. Sales by X to the partnership are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(5) Example 4: C is a corporation engaging in business in New Mexico. S, an individual who is the majority stockholder in C, buys in New Mexico services and goods from C. C's receipts from these transactions with S are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(6) Example 5: C and S are corporations engaging in business in New Mexico. S is a

wholly-owned subsidiary of C. C sells tangible personal property in New Mexico to S. C's receipts from the transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(7) Example 6: X and Y are both divisions of corporation Z. X and Y are both parts of the same person, Z, and are not "related persons". Receipts from transactions between these two divisions are activities within Z and do not constitute gross receipts.

(8) Example 7: P, an individual, operates two businesses as sole proprietorships. One of P's businesses transfers tangible personal property to the other. Since both businesses and P are the same person, they are not "related persons" and the transaction does not constitute gross receipts.

R. Owner's receipts from transactions with owned entity are gross receipts

(1) Except as provided in Paragraph (2) of this Subsection, when a person who owns all or part of an entity has receipts from the sale of property in New Mexico to, the lease of property employed in New Mexico to or the performance of services in New Mexico for the entity, the person's receipts are gross receipts except when the transaction may be characterized for federal income tax purposes as a contribution of capital. The person's receipts include the actual amount of money received by the person plus the value of any additional consideration. Additional consideration includes forbearance of charges against the person's ownership interest. These gross receipts are subject to the gross receipts tax unless an exemption or deduction applies.

(2) When a partner or interest holder in an entity is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for

third-parties transacting business with the partnership, these receipts of the partner are not gross receipts and are not subject to the gross receipts tax. When a partner engages in business separately from the partnership any transactions of that partner with the partnership, where the partner is not acting as a partner on behalf of the partnership, are gross receipts. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

(a) that the partner engages in similar transactions with third parties other than the partnership;

(b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement;

(c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

(3) For the purposes of Subsection S of Section 3.2.1.14 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

(4) Example: C is a corporation and S is C's wholly owned subsidiary corporation. C and S create L, a limited liability company; C and S each own fifty percent of L. L purchases a twenty percent interest in P, a limited partnership. C sells goods to P. P pays the amount charged. C has gross receipts from this transaction equal to the amount received for the goods. [3.2.1.14 NMAC - Rp, 3.2.1.14 NMAC 10/13/2021]

3.2.1.15 GROSS RECEIPTS; TANGIBLE PERSONAL PROPERTY:

A. Lease purchase agreement as a sale: The receipts from a two party "lease-purchase" or "paid-out lease" agreement for tangible personal property will be treated as receipts from the sale of tangible personal property under the

Gross Receipts and Compensating Tax Act if the lessee-buyer treats the property as an asset and depreciates the property pursuant to generally accepted accounting practices.

B. Consignment

sales: Receipts of both a consignor and a consignee from the sale of tangible personal property handled on consignment are subject to the gross receipts tax.

C. Delivery expenses:

(1) Receipts from charges by a seller of tangible personal property for delivery costs, including postage and transportation charges, paid by the seller and passed on to the buyer, are an element of the sales price of the property.

(2) *Example:*

X sells tangible personal property in the state of New Mexico and transports property to buyers located in New Mexico in its own equipment from its factory and warehouse. In some instances the contracts of sale which X has with its buyers stipulate that title passes on completion of manufacturing; in other cases there is no stipulation regarding passage of title. On its billing to buyers, X separately states amounts categorized as "warehouse charges" and "delivery charges". These separately stated charges are elements of the sale price of the property.

D. Freight charges:

(1) Transportation costs that are paid by the seller to the carrier are an element of the sales price of the property.

(2)

Transportation costs that are paid to the carrier by the buyer are not an element of the sales price of the property. If the buyer transports the property with the buyer's own equipment, the cost of the transportation does not increase the value of the property.

(3) If the

seller transports the property with its own equipment, and the cost of the transportation is already included in the price of the property, it is considered as an element of the sales price of the property. If extra separate charges are made, receipts from such charges are gross receipts.

E. Refundable

deposits: Amounts received in the form of refundable deposits on bottles, cartons, cases and the like are to be included in gross receipts of the seller or lessor and are subject to the gross receipts tax.

F. Buyer's financing

costs: In a situation where:

(1) a lending institution lends money directly to a buyer of tangible personal property;

(2) the buyer executes a promissory or installment note together with a security agreement or a retail financing agreement directly to the lending institution;

(3) neither the note nor the agreement is endorsed or guaranteed in any manner by the seller of the property; and

(4) the lending institution as agent for the buyer, pays the seller by crediting the account of the seller with an amount equal to the loan against the property, with no amount added or later rebated, the receipts of the seller from the sale of the property include any down payment and the amount credited to the account of the seller unless that amount is less than the fair market value of the property sold, in which case the fair market value would be the measure of the seller's gross receipts.

G. Sale of items

subject to the state Cigarette Tax

Act: The gross receipts from sales of cigarettes include the total amount of money or the value of other consideration received even though this amount includes the excise tax levied by the Cigarette Tax Act.

H. Florist receipts:

Receipts of a New Mexico florist are gross receipts when the florist:

(1) receives an order and payment for flowers under an agreement that the flowers are to be delivered at another location by another florist; and

(2) uses long distance communication to authorize the other florist to make delivery; and

(3) pays the other florist for the flowers.

I. Sale of food and

beverage at horse racetracks:

Receipts from the sale of food and beverage either by a concessionaire or the owner of a New Mexico horse racetrack, including the track at the state fair grounds, are subject to the gross receipts tax. If a concessionaire pays a racetrack owner a consideration for operating a food and beverage concession, the racetrack owner's receipts are subject to the gross receipts tax.

J. Packaged

software:

(1) The transaction constitutes a sale of tangible personal property or a digital good, as defined by 3.2.1.7 NMAC when a person sells a packaged software where:

(a) no extraordinary services are performed in order to furnish the packaged software; and

(b) the buyer pays a fixed amount for the packaged software and the license to use the software; and

(c) the buyer is allowed to resell the license to use the software with the packaged software itself.

(2) Sale of such property for resale is subject to the deduction provided in Section 7-9-47 NMSA 1978.

(3) This version of Subsection J of Section 3.2.1.15 NMAC is retroactively applicable to transactions occurring on or after July 1, 1991.

K. Sale of postage

stamps:

(1) Receipts in excess of the face value of the postage stamps from reselling uncanceled postage stamps issued by the United States postal service or any foreign government are gross receipts. Receipts in excess of the face value of the postage from imprinting, mechanically or by other means, the amount of postage on documents to be mailed are gross receipts.

(2) Receipts from selling canceled postage stamps issued by the United States postal

service or any foreign government are gross receipts.

L. Refined metals:

The receipts of a person who sells refined metals in New Mexico are gross receipts subject to the gross receipts tax regardless of whether the seller is a severer or processor as defined in the Resources Excise Tax Act or the Severance Tax Act. [3.2.1.15 NMAC - Rp, 3.2.1.15 NMAC 10/13/2021]

3.2.1.16 GROSS RECEIPTS - REAL ESTATE AND INTANGIBLE PROPERTY:

A. Insurance proceeds:

(1) Receipts of an insured derived from payments made by an insurer pursuant to an insurance policy are not subject to the gross receipts tax. Such receipts are not receipts derived from the sale of property in New Mexico, the leasing of property employed in New Mexico, or the performance of a service.

(2) Example: ABC is an auto dealer in the business of selling new and used cars. In addition to selling cars, ABC also maintains a service garage with a large inventory of automobile parts. As part of its regular sales practice, ABC allows potential purchasers to test drive the cars. ABC carries automobile insurance which is applicable in the situation where the potential purchaser is test driving the car. When an accident occurs, even though some or all the parts used to repair the automobile are taken from ABC's inventory of parts and ABC does the actual repair work, payment received from the insurance company for the damaged automobile is not gross receipts. Such a payment is not received as consideration for selling property in New Mexico, leasing property employed in New Mexico, or for performing services. ABC is not liable for compensating tax on the value of the parts used or the labor.

B. Receipts from sale of automotive service contracts:

(1) "Automotive service contract" means an undertaking, promise or

obligation of the promisor, for a consideration separate from the sale price of a motor vehicle, to furnish or to pay for parts and labor to repair specified parts of the covered motor vehicle only if breakdowns (failures) of those specified parts occur within certain time or mileage limits. The promisor's obligation is conditioned upon regular maintenance of the motor vehicle by the purchaser of the automotive service contract at the purchaser's expense. The automotive service contract may also obligate the promisor to reimburse the purchaser for certain breakdown related rental and towing charges. The automotive service contract may require the payment of a specified "deductible" or "co-payment" by the purchaser in connection with each repair.

(2) The receipts of a person from selling an automotive service contract are not gross receipts. The undertaking, promise or obligation of the promisor under the automotive service contract to pay for or to furnish parts and service if an uncertain future event (breakdown) occurs is not within the definition of property under Subsection J of Section 7-9-3 NMSA 1978. Since the receipts from selling an automotive service contract do not arise "from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico", the receipts are not gross receipts as defined in Section 7-9-3.5 NMSA 1978 and are not subject to the tax imposed by Section 7-9-4 NMSA 1978.

(3) The furnishing by the promisor of parts or labor or both to fulfill the promisor's obligation when a breakdown occurs is a taxable event.

C. Receipts from insurance company under an automotive service contract program: The receipts of a New Mexico automotive dealer from an insurance company are not taxable gross receipts if the payments by the insurance company are to reimburse the dealer, who is promisor under an automotive service contract as that term is defined in Subsection

C of 3.2.1.16 NMAC, for all parts and labor furnished by the dealer under the contract or for parts and labor furnished by the dealer under the contract in an amount in excess of a specified reserve established by the dealer under an agreement with the insurance company. The receipt of the payments from the insurance company are not receipts from the sale of parts and labor but are payments to indemnify the dealer for the dealer's expense in fulfilling the dealer's obligation. The value of parts and labor furnished to make the repairs was subject to the gross receipts tax when the parts and labor were furnished to discharge the dealer's obligation as the promisor under the automotive service contracts.

D. Gift certificates:

(1) Receipts from the sale of gift certificates are receipts from the sale of intangible personal property of a type not included in the definition of "property" and, therefore, are not gross receipts.

(2) When a gift certificate is redeemed for merchandise, services or leasing, the person accepting the gift certificate in payment receives consideration, which is gross receipts subject to the gross receipts tax unless an exemption or deduction applies. The value of the consideration is the face value of the gift certificate.

(3) When a gift certificate is purchased during the time period set out in Laws 2005, Chapter 104, Section 25 subsequent redemption of the gift certificate for the purchase of qualified tangible personal property after that period is not deductible under Laws 2005, Chapter 104, Section 25.

(4) When a gift certificate is redeemed during the time period set out in Laws 2005, Chapter 104, Section 25 for the purchase of qualified tangible personal property, the receipts from the sale are deductible under Laws 2005, Chapter 104, Section 25.

E. Merchant discount and interchange rate fee receipts:

Bank receipts derived from credit and debit card merchant discounts and bank interchange rate fees are not gross receipts within the meaning of the Gross Receipts and Compensating Tax Act and therefore are not taxable.

F. Prepaid telephone cards - "calling cards":

(1) Receipts from the sale of an unexpired prepaid telephone card, sometimes known as a "calling card", are receipts from the sale of a license to use the telecommunications system and, therefore, are gross receipts and are not interstate telecommunications gross receipts. Receipts from selling an expired prepaid telephone card are receipts from the sale of tangible personal property and are gross receipts and are not interstate telecommunications gross receipts.

(2) Receipts from recharging a rechargeable prepaid telephone card are receipts from the sale of a license to use the telecommunications system and are gross receipts and are not interstate telecommunications gross receipts.

(3) Subsection F of 3.2.1.16 NMAC is retroactively applicable to transactions and receipts on or after September 1, 1998. [3.2.1.16 NMAC - Rp, 3.2.1.16 NMAC 10/13/2021]

3.2.1.17 GROSS RECEIPTS - LEASING:

A. Leasing of property employed in New Mexico:

(1) Receipts derived from the rental or leasing of property employed in New Mexico are subject to the gross receipts tax.

(2) *Example 1:* A is in the business of leasing heavy equipment used in construction projects. The receipts from the leasing of such equipment employed in New Mexico prior to January 1, 2013, are subject to the gross receipts tax. See Section 7-9-52.1 NMSA 1978 for deductibility of receipts from such leases on or after January 1, 2013.

(3) *Example 2:* Y, a New York corporation, leases four block-making machines to X who uses the machines in X's block

making business in New Mexico. The rental contract is signed in Nebraska. The receipts which Y receives from the rental of the equipment employed in New Mexico are taxable.

(4) Example

3: P corporation leases photocopying machines to Q, a state agency. The receipts of P corporation from leasing these machines to the state agency are subject to the gross receipts tax.

B. Additional charges:

(1) Receipts derived from additional charges made in conjunction with the rental or leasing of property employed in New Mexico are subject to the gross receipts tax.

(2) Example 1:

C owns and operates a business which leases gas cylinders. There is a clause in the lease whereby the lessee will be liable for an additional charge if the gas cylinders are kept past a specific date provided in the lease contract. Receipts from these penalties or demurrage charges for keeping the gas cylinders past the specified date provided are receipts from leasing property employed in New Mexico and are subject to the gross receipts tax.

(3) Example

2: D is in the business of leasing concrete forms which are employed in New Mexico. The terms of the lease agreement require that the property leased be returned to the lessor in the condition in which it was leased. Any receipts from charges for repairing and cleaning concrete forms returned to the lessor in a damaged condition, for any material used in repair of such forms, or from charges for the purchase price of forms which are not returned to the lessor, are receipts from leasing property employed in New Mexico and are subject to the gross receipts tax.

C. Lease of license - franchise agreement: Receipts derived from the lease of a license, such as a liquor license, or from a franchise agreement, are subject to the gross receipts tax.

D. Multistate use of leased equipment:

(1) Where property is rented or leased for employment both within and outside New Mexico the renter or lessor will be subject to the gross receipts tax on that portion of the receipts which is derived from the renting or leasing of property employed in New Mexico.

(2) In order to determine the portion of the receipts which are subject to the gross receipts tax, the total receipts from the lease are to be multiplied by whichever of the following fractions more accurately reflects the receipts from the period of employment of the leased item inside New Mexico:

(a)

the numerator is the total miles traveled by the leased items in New Mexico and the denominator is the total miles traveled by the leased items during the lease period; or

(b)

the numerator is the total time the leased items were employed in New Mexico and the denominator is the total time of the lease period.

(3) The department will allow a person engaged in the business of leasing property employed both within and without New Mexico to use other methods of apportioning the receipts of such leasing activities upon showing that the other methods more accurately reflect the portion of employment of leased items within New Mexico.

(4) Example:

B owns and operates a business located in Santa Fe, New Mexico, which rents or leases vehicles, airplanes, and mobile equipment. The items leased are employed both within and without New Mexico. B is subject to the gross receipts tax on that portion of the receipts which is from employment of the vehicles, airplanes, and mobile equipment within New Mexico.

E. Leasing of property employed outside New Mexico:

(1) Receipts derived from the rental or leasing of property employed outside New Mexico are not subject to the gross receipts tax.

(2) Example:

L, a resident of Hobbs, New Mexico, owns a sawmill in Wyoming which is leased to S for three thousand dollars (\$3,000) per year. These receipts are not derived from selling property in New Mexico, leasing property employed in New Mexico, performing services outside of New Mexico the product of which is initially used in New Mexico, or performing services in New Mexico. These receipts are not includable in L's gross receipts.

F. Use of vehicles in New Mexico:

(1) Receipts from the rental or leasing of vehicles, airplanes, or mobile equipment which are employed both within and outside New Mexico are subject to the gross receipts tax on that portion of the receipts which are from employment of the vehicles, airplanes, or mobile equipment within New Mexico.

(2) In order to determine the portion of receipts described in the above paragraph which are subject to the gross receipts tax, the total receipts from the lease are to be multiplied by whichever of the following fractions more accurately reflects the receipts from the period of employment of the leased item inside New Mexico:

(a) the numerator is the total miles traveled by the leased items in New Mexico and the denominator is the total miles traveled by the leased items during the period of lease; or

(b) the numerator is the total time the leased items were physically present in New Mexico and the denominator is the total time of the lease period.

(3) The department will allow a person engaged in leasing the above described items to use other methods of apportionment upon a showing that the other methods will more accurately reflect the period of employment of the leased item within New Mexico.

G. Safe harbor lease - purchaser/lessor: A purchaser/lessor who enters into a qualified "safe harbor lease" transaction as

defined in Section 168 of the Internal Revenue Code will be subject to the gross receipts tax on the receipts if the property being leased is located in New Mexico.

H. Leasing

computers: Receipts from renting or leasing the use of computers or related equipment in New Mexico, on either a part-time or a full-time basis, are subject to the gross receipts tax. [3.2.1.17 NMAC - Rp, 3.2.1.17 NMAC 10/13/2021]

3.2.1.18 GROSS RECEIPTS: SERVICES GENERALLY:

A. Receipts from performing a service in New Mexico or performing a service outside New Mexico the product of which is initially used in New Mexico. Receipts derived from performing a service in New Mexico or performing a service outside New Mexico the product of which is initially used in New Mexico are subject to the gross receipts tax unless a specific exemption or deduction provided for in the Gross Receipts and Compensating Tax Act applies.

B. Sales of state licenses by nongovernmental entities:

(1) Amounts retained by nongovernmental entities as compensation for services performed in selling state licenses are gross receipts.

(2) Example: G owns and operates a small grocery store in rural New Mexico which is located near a popular fishing area. As a convenience to the public, G sells New Mexico game and fish licenses. For its services in selling these licenses, G retains a small percentage of the total license fee. The amounts retained are gross receipts because they are receipts derived from services performed in New Mexico. G may not deduct the amounts retained pursuant to Section 7-9-66 NMSA 1978 which deals with commissions derived from the sale of tangible personal property not subject to the gross receipts tax. A New Mexico game and fish license is not tangible personal property pursuant to

Subsection J of Section 7-9-3 NMSA 1978.

C. Stockbrokers' commissions: Gross receipts include commissions received by stockbrokers for handling transactions. The commissions are receipts from performing a service.

D. Directors' or trustees' fees: Receipts from attending a board of directors or board of trustees meeting in New Mexico are gross receipts from performing services in New Mexico. Receipts from attending a board of directors or board of trustees meeting outside New Mexico are not gross receipts because the initial use of the product of the service is not in New Mexico.

E. Racing receipts:

(1) Unless the receipts are exempt under Section 7-9-40 NMSA 1978:

(a) the receipts of vehicle or animal owners from winning purse money at races held in New Mexico are receipts from performing services in New Mexico and are subject to the gross receipts tax if any charge is made for attending, observing or broadcasting the race.

(b) receipts of vehicle drivers, animal riders and drivers and other persons from receiving a percentage of the owner's purse are receipts from performing services in New Mexico and are subject to the gross receipts tax, unless the person receiving the percentage of purse money is an employee, as that term is defined in 3.2.105.7 NMAC, of the owner.

(2) Where there is an agreement between the driver, rider or other person and the owner for distribution of the winning purse, then only the amount received pursuant to the agreement is gross receipts of the driver, rider or other person receiving the distribution.

(3) Racetrack operators. Receipts of operators of racetracks other than horse racetracks, from gate admission fees and entrance fees paid by drivers are subject to the gross receipts tax. Any portion of these fees paid out by the operator as

prizes are not exempt or deductible since the payments are part of the operator's cost of doing business.

F. Advertising

services: The service of advertising is performed and initially used at the location of the intended recipient or viewer regardless of where related services may be performed or the location of the advertiser who purchases the advertising services.

(1)

Advertising receipts of a newspaper or broadcaster. The receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from performing advertising services in New Mexico do not include the customary commission paid to or received by a nonemployee advertising agency or a nonemployee solicitation representative, when said advertising services are performed pursuant to an allocation or apportionment agreement entered into between them prior to the date of payment.

(2)

Advertising space in pamphlets. Receipts from selling advertising service to New Mexico merchants in a pamphlet printed outside New Mexico and distributed wholly inside New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax.

(3) Billboard

advertising. Receipts derived from contracts to place advertising on outdoor billboards located within the state of New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax, regardless of the location of the advertiser.

G. Day care centers:

(1) Receipts

from providing day care are receipts from performing a service and are subject to the gross receipts tax.

(2) Receipts

from providing day care for children in a situation where a commercial day care center provides day care for the children and the expenses of the

care for some of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(3) Receipts

from providing day care for children in a situation where a person provides day care for children in a residence and the care for all these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(4) Receipts

from providing day care for children in a situation where a person provides day care for children in the children's home and the care for all of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

H. Child care:

(1) Receipts

derived by a corporation for providing child care facilities for its employees are subject to the gross receipts tax on the amount received from its employees.

(2) Example:

The X corporation operates a licensed child care facility to accommodate dependent children of its employees. In order to defray a portion of the cost of the facility, the corporation charges each employee two dollars (\$2.00) per child per week for the use of the facility. All receipts from the two-dollar charge per child per week are subject to the gross receipts tax.

I. Service charges;

tips:

(1) Except

for tips, receipts of hotels, motels, guest lodges, restaurants and other similar establishments from amounts determined by and added to the customer's bill by the establishment for employee services, whether or not such amounts are separately stated on the customer's bill, are gross receipts of the establishment.

(2) A tip is a

gratuity offered to service personnel to acknowledge service given. An amount added to a bill by the customer as a tip is a tip. Because the tip is a gratuity, it is not gross receipts.

(3) Amounts

denominated as a "tip" but determined

by and added to the customer's bill by the establishment may or may not be gross receipts. If the customer is required to pay the added amount and the establishment retains the amount for general business purposes, clearly it is not a gratuity. Amounts retained by the establishment are gross receipts, even if labeled as "tips". If the customer is not required to pay the added amount and any such amounts are distributed entirely to the service personnel, the amounts are tips and not gross receipts of the establishment.

(4) Examples:

(a)

Restaurant R has a policy of charging parties of six or more a set percentage of the bill for food and drink served as a tip. If a customer insists on another arrangement, however, the set amount will be removed. R places all amounts collected from the set tip percentage into a pool which is distributed to the service staff at the end of each shift. The amounts designated as tips and collected and distributed by R to the service staff, are tips and not gross receipts. If R retains any amounts derived from the set tip percentage, the amounts retained are gross receipts.

(b)

Hotel H rents rooms for banquets and other functions. In addition to the rental fee for the room, H also charges amounts for set-up and post-function cleaning. H retains these amounts for use in its business. These amounts are gross receipts. They are gross receipts even if H denominates them as "tips".

J. Entertainers: The receipts of entertainers or performers of musical, theatrical or similar services in New Mexico are subject to the gross receipts tax.

K. Data access

charges: Receipts from fees or charges made in connection with property owned, leased or provided by the person providing the service are subject to the gross receipts tax when the information or data accessed is utilized in this state.

L. Allied company
underwriting automotive service

contracts: When a New Mexico automotive dealer pays an entity which is allied or affiliated with that dealer (allied company) to undertake all of the dealer's obligations under automotive service contracts as that term is defined in Subsection C of 3.2.1.16 NMAC on which the dealer is promisor, the undertaking of the allied company does not involve the sale of property in New Mexico or the lease of property employed in New Mexico. The undertaking principally involves an obligation of the allied company to indemnify the dealer by paying the dealer for furnishing parts and labor to fulfill the dealer's obligation to furnish the parts and labor. However, the undertaking also involves the performance of services by the allied company for the dealer since the allied company undertakes to handle the claims of automotive service contract purchasers and otherwise perform the dealer's task under the contract. Absent a showing of a different value by the allied company or the department, seven and a half percent of the contract amount paid by the dealer to the allied company will be treated as consideration received for services performed in New Mexico.

M. Custom software:

(1) Receipts derived by a person from developing custom software are receipts from performing a service.

(2) When custom software is developed by a seller for a customer, but the terms of the transaction restrict the customer's ability without the seller's consent to sell the software to another or to authorize another to use the software, the seller's receipts from the customer are receipts from the performance of a service. The seller's receipts from authorizing the customer's sublicensing of the software to another person are receipts from granting a license.

N. Check cashing is a service: Receipts from charges made for cashing checks, money orders and similar instruments by a person other than the person upon whom the check, money order or similar instrument is

drawn are receipts from providing a service, not from originating, making or assuming a loan. Such charges are not interest.

O. Receipts of collection agencies:

(1) The fee charged by a collection agency for collecting the accounts of others is gross receipts subject to the gross receipts tax, regardless of whether the receipts of the client are subject to gross receipts tax and regardless of whether the agency is prohibited by law from adding its gross receipts tax amount to the amount collected from the debtor.

(2) Example 1: X is a cash basis taxpayer utilizing the services of Z collection agency for the collection of delinquent accounts receivable. From its New Mexico offices, Z collects from X's New Mexico debtors in the name of X, retains a percentage for its services and turns over the balance to X. The percentage retained by Z is its fee for performing services in New Mexico. The fee is subject to the gross receipts tax. It makes no difference that federal law prohibits Z from passing the cost of the tax to the debtor by adding it to the amount to be collected. X's gross receipts include the full amount collected by Z.

(3) Amounts received by collection agencies from collecting accounts sold to the collection agency are not gross receipts.

(4) Example 2: X, a cash basis taxpayer, sells its delinquent accounts receivable to Z, a collection agency, for a percentage of the face amount of the accounts. X's gross receipts include the full amount of the receivables, excluding any time-price differential. The amount subsequently collected by Z from those accounts, however, is not subject to gross receipts tax because the amount is not included within the definition of gross receipts. In this situation Z is buying and selling intangible property of a type not included within the definition of property in Subsection J of Section 7-9-3 NMSA 1978.

P. Commissions of independent contractors when another pays gross receipts tax on the receipts from the underlying transaction. The following regulations address independent contractors, including commissioned sales agents, who are not consignees or marketplace providers.

(1) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to the tangible or intangible personal property of other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the sale of the property. This situation involves two separate transactions. The first is the sale of the property by its owner to the customer and the second is the performance of a sales service by the independent contractor for the owner of the property. The receipts from the sale of the property are gross receipts of the person whose property was sold. Receipts, whether in the form of commissions or other remuneration, of the person performing a sales service in New Mexico are gross receipts of the person performing the sales service.

(2) Example 1: S is a national purveyor of tangible personal property. S has stores and employees in New Mexico. S also has catalogue stores in less populated parts of New Mexico. Catalogue stores maintain minimal inventories; their primary purpose is to make S's catalogues available to customers, to take orders of merchandise selected from the catalogues, to place the orders with S and to provide general customer service. The catalogue stores are operated by independent contractors and not by S. S pays the contractors commissions based on the orders placed. In charging its customers, S charges the amount shown in the catalogue and does not add any separate amount to cover the cost of the contractors' commissions. S pays gross receipts tax on its receipts from the sale of catalogue merchandise. The contractors

contend that the cost of their selling services is included in the amount S charges for its merchandise and so their commissions are not gross receipts. The contention is erroneous. The contractors have receipts from performing a service in New Mexico; it is immaterial that S paid the amount of gross receipts tax S owed on S's receipts. See, however, the deduction at Subsection B of Section 7-9-66 NMSA 1978.

(3) Example

2: M is a nationwide, multi-level sales company with presence in New Mexico. M sells products to households mainly through a network of individual, independent contractors. The network of sellers is controlled by one or more sets of individuals, also independent contractors, who train and supervise the individuals selling the merchandise; these supervisory contractors may also sell merchandise. The sellers display, promote and take orders for M's products. Payment for orders are sent to M along with the orders. M ships the merchandise directly to the final customers. M has agreed to, and does, pay the gross receipts tax on the retail value of the merchandise sold, whether sold by M or one of the independent contractors. Based on the volume and value of merchandise sold, M pays both the selling and supervisory independent contractors a commission. The commissions received by the independent contractors engaging in business in New Mexico with respect to merchandise sold in New Mexico are gross receipts subject to the gross receipts tax. The commissions are receipts from performing a service in New Mexico. The fact that M pays gross receipts tax on M's receipts from the sale of the property is immaterial in determining the liability of the independent contractors.

(4)

Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to a service to be performed by other persons are gross receipts whether or not the other person reports and pays gross receipts

tax with respect to the receipts from the performance of the underlying service. This situation involves two transactions. The first is the performance of the underlying service by the other person for the customer and the second is the performance of the sales service by the independent contractor for the performer of the underlying service. The receipts from the performance of the underlying service for the customer are gross receipts of the person performing that service. Receipts, whether in the form of commissions or other remuneration, of the person performing the sales service are gross receipts of the person performing the sales service.

(5) Example

3: P is the publisher of a magazine published in New Mexico. P enters into arrangements with independent contractors to solicit ads to be placed in P's publication. P pays each contractor a percentage of the billings for the ads placed by the contractor as a commission. The independent contractors claim that they owe no gross receipts tax with respect to ads solicited in New Mexico because P has paid gross receipts tax on P's advertising revenues. The contractors are incorrect. There are two transactions in this situation, P's service of publishing advertisements and the contractors' service of soliciting ads for P. The fact that P paid the amount of gross receipts tax due on P's advertising revenues is immaterial regarding the contractors' gross receipts tax obligations on their receipts.

(6) If the

receipts from the underlying sale of the tangible property are exempt or deductible, the commission received by an independent contractor from selling the tangible property of another may be subject to the deduction provided by Section 7-9-66 NMSA 1978.

Q.

Consignees and Marketplace Providers: Consignees and marketplace providers have gross receipts from amounts collected by those persons for the sale, lease or license of property or the sale of

services to customers as defined under Section 7-9-3.5, regardless of whether the consignee or marketplace provider is obligated to pay the consignor or marketplace seller some part of the amounts collected or whether the contract between the consignee and consignor or the marketplace provider and marketplace seller calls for the consignor or marketplace provider to perform certain services in conjunction with the sale, lease or license of property or the sale of services to the customer. A consignee or marketplace provider will be considered to be selling a separate service for the consignor or marketplace seller only if the contract requires the performance of the service separate and apart from any sale, lease or license of property of stale of a service to the customer.

R. Receipts from

winning contest:

(1) Receipts

of a contestant from winning purse money in a rodeo or an athletic game, match or tournament held in New Mexico are gross receipts from performing services if any charge is made for attending, observing or broadcasting the event. Such receipts are subject to the gross receipts tax unless an exemption or deduction applies. Where the contestant is a team and there is an agreement among the team members governing distribution of the purse money, then only the amount received by each team member pursuant to the agreement is gross receipts of the team member.

(2) Subsection

R of 3.2.1.18 NMAC does not apply to receipts exempt under Section 7-9-40 NMSA 1978 nor does it apply to activities that are primarily or solely gambling.

[3.2.1.18 NMAC - Rp, 3.2.1.18 NMAC 10/13/2021]

3.2.1.19 GROSS RECEIPTS; RECEIPTS OF AGENTS:

A. Nonemployee

agents:

(1) The

receipts of nonemployee agents are

subject to the gross receipts tax to the extent the education provided by Section 7-9-66 NMSA 1978 is not applicable. The indicia outlined in 3.2.105.7 NMAC will be considered in determining whether a person is an employee or a nonemployee agent.

(2) Example

1: S is a nonemployee salesperson for Z Corporation, an out-of-state business. Z Corporation arranges for S to sell securities belonging to corporation shareholders. Z accepts payment from the purchasers of the security, deposits this payment in a trust account, pays S the commission and then distributes the balance to the seller of the securities. Z does not incur gross receipts tax liability as the result of its activity because it is not selling property or performing services in New Mexico for a consideration. The commissions received by S for selling securities in New Mexico are receipts for performing services in New Mexico and are subject to the gross receipts tax.

(3) Example

2: The receipts of a nonemployee agent or sub-agent derived from commissions received from;

(a)

correspondence schools for enrolling persons in those schools;

(b)

freight companies, bus transportation firms, and similar business concerns for rendering services; and

(c)

the owner of trailers or trucks for leasing those trailers or trucks, are subject to gross receipts tax.

B. Receipts of condominium and other real property owners associations:

(1) As of

March 8, 1988, the provisions of this subsection do not apply to receipts which are exempt under the provisions of Section 7-9-20 NMSA 1978.

(2)

Associations in which common areas are owned by unit owners:

(a)

Amounts received by this type of association from unit owners (owners

of homes, offices, apartments or other real property) for accumulation in a trust account owned by the unit owners and expended to provide insurance and pay taxes on the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association.

(b)

Amounts received by an association of this type from unit owners for accumulation in a trust account owned by the unit owners for current or future expenditures for the improvement, maintenance or rehabilitation of the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association.

However, with respect to receipts not exempt under Section 7-9-20 NMSA 1978, when payments are made from the trust account to the association or its employees, officers or representatives for the improvement, maintenance or rehabilitation, these payments are taxable gross receipts of the association under Section 7-9-3.5 NMSA 1978. When payments are made directly from the account to third parties, those third parties will be liable for the gross receipts tax on those receipts.

(c)

With respect to receipts which are not exempt under Section 7-9-20 NMSA 1978, associations of this type which bill unit owners may issue nontaxable transaction certificates (NTTCs) when appropriate under Section 7-9-48 NMSA 1978 (sale of a service for resale) to suppliers of these services, unless the service is deductible by the association under the Internal Revenue Code as an ordinary and necessary business expense. The association must report and pay gross receipts taxes on all its receipts for services, including those for which NTTCs are given. This version of Paragraph (2) of Subsection B of 3.2.1.19 NMAC applies to transactions occurring on or after July 1, 2000.

(3) Example

A 1: Property Owners Association A receives monthly payments from

each individual owner of property located in XYZ condominiums. The funds are held in a separate trust account by Association A for the XYZ unit owners to pay, on behalf of themselves, the property tax accruing to the common areas, insurance covering the common areas, maintenance and repair of the common areas and future improvements and additions to the common areas. On November 10, Association A, as trustee of such funds, issues a check directly from the trust account to the county treasurer for payment of property taxes on the common areas. This payment goes from the trust account directly to the county treasurer with Association A acting as agent for the actual owners of property; therefore, these funds do not become a part of Association A's gross receipts.

(4) Example

A 2: Association A employs a maintenance person to maintain and clean the common areas. The maintenance person is responsible for mowing lawns, maintaining the landscape, cleaning halls, lobbies and other common areas and making minor repairs to common facilities. Funds received by Association A from the trust account to pay the maintenance person's wages and to pay various payroll taxes and employee benefits are gross receipts for the performance of service on which Association A is required to pay tax.

(5) Example A

3: NMO Construction Co. contracts to paint and remodel the halls, lobbies and other common areas of the condominiums. Association A, acting as agent, draws funds from the trust account which are paid directly to NMO Construction Co. Since such funds do not become receipts of Association A, the association is not liable for tax on these funds. The funds pass directly to NMO Construction Co. who becomes liable for the gross receipts tax on its receipts for performing construction services.

(6) Example

A 4: For the last 10 years, funds

have accumulated in the trust for construction of a swimming pool. A Pool Co. builds the pool and is paid directly from the trust account. A Pool Co. is subject to gross receipts tax on the receipts from the construction of the pool. Association A, acting as agent for the property owners, has no receipts and pays no tax on this transaction.

(7) Example

A 5: Association A purchases, with its own funds, chemicals which its employee will use to maintain the new swimming pool. To recover this expense, Association A increases the amount it charges the property owners each month and draws funds from the trust account which it places with its own funds. These receipts of Association A are subject to the tax since Association A is performing services for the property owners. This treatment of receipts applies to purchases of other maintenance or cleaning supplies which Association A consumes in the performance of maintenance and cleaning services. Association A may not execute a non-taxable transaction certificate for the purchase of these chemicals or other cleaning supplies, because the chemicals and supplies are consumed in the performance of services by the association.

(8)

Associations in which common areas are owned by the association with long-term real property rights held by individual unit owners:

(a)

An association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association but subject to long-term (10 or more years) real property rights of the unit owners (as defined in Paragraph (2) of Subsection B of 3.2.1.19 NMAC) granted by deed or covenant, appurtenant to and inseparable from unit ownership, transferable only by the unit owner or upon acceptance of deed, and not extinguishable by the association shall be subject to tax in the same manner as associations described in Subsection B of this section. If the unit owners cease to

hold or possess such real property rights, the association shall become subject to tax in the same manner as associations described in Paragraph (9) of Subsection B of 3.2.1.19 NMAC.

(b)

All examples in Paragraphs (3) through (7) of Subsection B of 3.2.1.19 NMAC also apply to associations of unit owners identified in Paragraph (8) of Subsection B of 3.2.1.19 NMAC.

(9)

Associations in which common areas are owned by association:

Different treatment is required for an association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association and the unit owners (as defined in Subparagraph (a) of Paragraph (2) of Subsection B of 3.2.1.19 NMAC) do not possess the real property rights to the common elements described in Paragraphs (2) and (8) of Subsection B of 3.2.1.19 NMAC. All receipts of this type of association (e.g., payments by unit owners for maintenance and use of the common areas) are fully taxable and no NTTCs may be issued for services purchased. Because of the association's status as owner and the absence of real property rights of the unit owners in the common areas, the association is not acting as the unit owners' agent, nor is it reselling a service.

(10) Example

C 1: Association C holds title to all common areas of a development which includes a clubhouse, golf course, swimming pool and tennis courts. Each owner of property within the development is a member of Association C and pays a membership fee. In consideration for the fees received, Association C grants each member a license to use facilities owned by the association. Association C is liable for gross receipts tax on its receipts from granting the licenses to use the facilities.

(11) Example

C 2: Association C contracts with a security services company to

provide a security officer to patrol the facilities which the association owns. Association C does not resell these services provided by the security services company and may not execute a non-taxable transaction certificate to purchase these services.

(12) Example

C 3: Association A, Association B and Association C maintain vending machines from which soft drinks, snacks and other items of tangible personal property are sold. The associations are deriving gross receipts from the sale of tangible personal property and must pay gross receipts tax on these receipts. However, they may also execute a non-taxable transaction certificate when purchasing the soft drinks, snacks and other tangibles, since these items are resold by the associations.

C. Reimbursed expenditures.

(1)

The receipts of any person received as a reimbursement of expenditures incurred in connection with the performance of a service or the sale or lease of property are gross receipts as defined by Section 7-9-3.5 NMSA 1978, unless that person incurs such expense as agent on behalf of a principal while acting in a disclosed agency capacity. An agency relationship exists if a person has the power to bind a principal in a contract with a third party so that the third party can enforce the contractual obligation against the principal.

(2)

Receipts from the reimbursement of expenses incurred as agent on behalf of a principal while acting in a disclosed agency capacity are not included in the agent's gross receipts if the expenses are separately stated on the agent's billing to the client and are identified in the agent's books and records as reimbursements of expenses incurred on behalf of the principal party.

(3)

If these requirements are not met, the reimbursement of expenses are included in the agent's gross receipts.

(4)

Example
I: A, an accountant, whose office

location is in Albuquerque is engaged to audit the financial statements of C, A's client. To facilitate the audit A must travel to Deming to examine the operations and records of C's business location in Deming. In addition to the normal fee for A's service, A charges C for A's expenses for travel, meals and lodging which A incurred in traveling to Deming. A's gross receipts include the total amount of consideration received from C, including amounts received to cover A's expense of travel.

(5) Example

2: L, an attorney, pays a filing fee to the clerk of the district court on behalf of C, L's client. In billing for the professional services rendered, L separately states on the billing the amount of the filing fee which was paid to the court clerk. L is an agent for C in the instance of filing documents with the court. When L paid the filing fee, L was acting within the terms of a disclosed agency relationship. L should exclude the amount received for reimbursement for L's expenditure in paying the court filing fee.

(6) Example

3: R, an architect, whose office is located in Santa Fe, is engaged by C to design and oversee the construction of a project in Albuquerque. In the course of performing those services for C, R incurs charges for long distance telephone calls. R charges C for the long distance telephone calls under the terms of R's contract with C. R's gross receipts include the amounts it collects from C for long distance calls. No disclosed agency relationship exists which would enable the telephone company to hold C liable for the long distance charges incurred by R.

(7) Example

4: X contracts with company Y to perform administrative functions relating to the employment relationship between Y and its workers. Y pays X the costs for Y's employees' payroll, payroll taxes, worker's compensation, contributions to employee benefits and healthcare and other amounts X pays to or on behalf of Y's

workers. Y separately pays X a two percent fee for the administrative services. Y or X recruits workers, selects them for work assignments, establishes their rate of pay, assigns their schedule, instructs them when and where to work, assigns them their duties, supervises and monitors the performance of their duties, authorizes leaves of absence, handles worker's complaints, union grievances or disputes, and disciplines, lays off or terminates the workers. X issues payroll checks, with X as payor. The checks are distributed by Y to workers. X also secures worker's compensation coverage for the workers, calculates, withhold and submits payroll taxes to appropriate taxing authorities, calculates and makes contributions to union health, pension and welfare benefit trust funds for workers, funds unemployment insurance contributions and responds to unemployment compensation claims, and processes garnishment orders. X can require Y to post a bond or other security for the payment of payroll. Y agrees to indemnify X against worker's claims for non-payment of wages, any claims arising from the acts of worker at the work site, grievances by unions representing the worker arising from acts of Y, wage and hour claims, tax claims, and failure of Y to provide training to workers. X has no gross receipts from the amount representing the payroll, payroll taxes, worker's compensation and benefits; this amount is not subject to the gross receipts tax. The additional two percent, however is X's fee for performing services and is subject to tax.

(8) Example

5: A enters into an agreement with its client B to provide temporary workers to B. The agreement provides that A retains the right to select and hire employees, to control when the employees are paid, and the right to replace employees. A issues the payroll checks to employees with A as payor. The employees are unaware of any principal-agent relationship between A and B. All receipts A receives from B for payroll and A's

commission or fee for its services to B are subject to gross receipts tax.

(9) All

receipts or fees for services provided by an agent are subject to the gross receipts tax.

D. Reimbursement of expenditures made to volunteers:

(1) A

volunteer who contributes time, effort or talent without expectation of consideration or remuneration is not selling the services performed. When a volunteer receives reimbursement for out-of-pocket expenses incurred in the performance of a service as a volunteer which were directly related to the work volunteered, reimbursement of those expenses is not gross receipts.

(2) For

purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, the term "volunteer" means any person who contributes time, effort or talent for the direct benefit of an organization which is exempt from taxation under the Internal Revenue Code. The term also extends to any person who contributes time, effort or talent without the receipt of consideration or remuneration to the state of New Mexico or any agency or any political subdivision of the state, or to the United States or any agency of the United States. "Volunteer" further includes any elected official serving without consideration or remuneration and any appointive non-employee member of any public commission or board serving without consideration or remuneration, whether the appointment was made by the governor, any other elected official or a public body.

(3) For

purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, "reimbursement" includes per diem amounts set by statute to reimburse uncompensated elected and appointed governmental officials for the expense of carrying out official duties.

[3.2.1.19 NMAC - Rp, 3.2.1.19 NMAC 10/13/2021]

3.2.1.20 Gross Receipts of Marketplace Providers and Marketplace Sellers:

A. Gross Receipts of Marketplace Providers: Under Section 7-9-3.5 NMSA 1978, the receipts of marketplace providers are defined to include receipts collected by a marketplace provider engaging in business in the state from sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are sourced to this state and are facilitated by the marketplace provider on behalf of marketplace sellers, regardless of whether the marketplace sellers are engaging in business in the state. As used here, the term “collected by a marketplace provider” means amounts paid by the customer directly to the marketplace provider or indirectly through third parties, where the marketplace provider either retains the receipts or transmits all or part of the receipts to the marketplace seller, regardless of whether the marketplace provider retains any portion of the gross receipts as consideration in exchange for the marketplace provider’s services. The receipts of the marketplace provider, therefore, include all gross receipts collected from the customer for the sales, leases and licenses, regardless of whether any amount is paid over to the marketplace seller. The gross receipts collected by the marketplace provider are treated as receipts of that marketplace provider from sales, leases and licenses for purposes of the Gross Receipts and Compensating Tax Act, including exemptions and deductions, as though the marketplace provider had gross receipts from selling, leasing or licensing.

B. Gross Receipts of Marketplace Sellers: Under Section 7-9-3.5 NMSA 1978, a marketplace seller that sells, licenses or leases through a marketplace provider to customers in New Mexico has gross receipts in New Mexico from selling, licensing or leasing under Section 7-9-3.5 NMSA 1978. A marketplace seller may be entitled to deduct gross receipts for sales, licenses or leases facilitated on its behalf by a marketplace provider under Section 7-9-117 NMSA 1978. A marketplace

seller that is not entitled to deduct gross receipts for sales, licenses or leases facilitated on its behalf by a marketplace provider under Section 7-9-117 NMSA 1978 may be entitled to other exemptions and deductions under the Gross Receipts and Compensating Tax Act that would otherwise apply to those gross receipts.

[3.2.1.20 NMAC - N, 10/13/2021]

3.2.1.21 TAX ON GROSS RECEIPTS FROM SERVICES PERFORMED OUTSIDE THE STATE:

A. Beginning July 1, 2021 most services performed outside New Mexico the product of which is initially used in New Mexico are not exempt under Section 7-9-13.1 NMSA 1978.

B. The term “initial use” is used here as defined in Section 7-9-3 NMSA 1978 and in other regulations under the Gross Receipts and Compensating Tax Act. Gross receipts from selling services performed outside New Mexico are subject to the gross receipts tax only if the product of the service is initially used in the state. If the product of the service performed outside of New Mexico is delivered in New Mexico but not initially used in the state, receipts from selling the service are not taxable in the state.

C. If the product of a service performed outside of New Mexico is initially used in the state, then the business location to which the gross receipts and related deductions are reported and the applicable tax rate will be determined under Section 7-1-14 NMSA 1978, which, depending on the type of service, may look to the location of delivery of the service to the customer.

[3.2.1.21 NMAC - Rp, 3.2.1.21 NMAC 10/13/2021]

3.2.1.22 LEASING: Security agreement distinguished from a lease - tax consequences:

A. The gross receipts from leasing equipment to a lessee for the lessee’s own use and not for

subsequent leasing are subject to the gross receipts tax unless the presence of all or a majority of the following or similar indicia indicates that the transaction between lessor and lessee is in fact a financing transaction between a secured party and a buyer:

(1) There is a written agreement which provides that, upon compliance with the terms of the agreement, the buyer has the option to purchase the property without additional consideration or with nominal consideration; exercise of the option in itself is not sufficient to establish the transaction as an installment sale.

(2) The secured party pays for the equipment selected by the buyer from the stock of an independent vendor with funds allocable to a line of credit previously extended by the secured party to the buyer.

(3) The payments made by the buyer to the secured party are determined by the cost of the equipment selected by the buyer plus an interest charge added by the secured party.

(4) If the buyer is not a federal, state, local or Indian government, the equipment is carried as an asset on the books of the buyer and depreciated by the buyer, not the secured party, and if the buyer is a federal, state, local or Indian government, the tangible personal property is not carried as an asset on the books of the seller or depreciated by the seller.

(5) The secured party treats the total amount of payment as receivables on its books and treats the interest charged the buyer as “unearned income”, transferring amounts to “income” as payments are received.

B. The presence of these or other such factors between the parties to an agreement denominated as a “lease agreement” will lead to the conclusion that the lessee under such an arrangement is the purchaser of the equipment, and that the lessor as the seller of the equipment is a secured party financing the sale and is using the “lease” as a

form of security agreement. In such cases the rental receipts of the lessor will not be gross receipts from leasing and, unless all or a portion of the rental receipts are gross receipts from the installment sale of property, will not be subject to the gross receipts tax. However, the gross receipts from the sale of such equipment by a vendor in New Mexico who also may be the secured party in a two party transaction will be subject to the gross receipts tax unless an exemption or deduction applies.

C. The buyer, other than a federal, state, local or Indian government, in such an arrangement will be liable for payment of the compensating tax if the buyer introduces property into this state which was acquired outside the state as a result of a transaction that would have been subject to the gross receipts tax had it occurred within the state and if the property is not subject to any exemption from payment of the compensating tax.

[3.2.1.22 NMAC - Rp, 3.2.1.22 NMAC 10/13/2021]

3.2.1.23 “PERFORMANCE OF A SERVICE”, “PRODUCT OF THE SERVICE”, “INITIAL USE”, AND “DELIVERY”; PRESUMPTIONS:

A. Relationship between certain terms and consistency in use of those terms. The terms “sale of a service performed,” “performance of a service,” “product of the service,” “initial use” and “delivery” are defined or used in the Gross Receipts and Compensating Tax Act and regulations in a way that makes them closely related in their application. The terms are used in Section 7-9-3.5 NMSA 1978, the definition of “gross receipts,” to describe gross receipts from performing or selling services that will be subject to tax and in Section 7-9-57 NMSA 1978 to describe a deduction for sales to out-of-state buyers. Regardless of the context in which they are used, or whether the service is performed inside or outside the state, these terms will be interpreted and applied consistently.

B. Delivery and initial use of the product of construction services and construction related services, in-person services, and services which that produce tangible personal property.

(1) The product of a construction service or a construction related service is delivered and initially used in New Mexico if the related construction site is located in New Mexico.

(2) The product of an in-person service is delivered and initially used in New Mexico if the location of the performance of the service is in New Mexico.

(3) The product of a service, the primary purpose of which is to produce tangible personal property, is delivered and initially used in New Mexico if the tangible personal property is delivered to the purchaser or a person designated to receive the property in New Mexico.

C. Delivery and initial use of the product of a service other than construction services, construction related services, in-person services, or services which produce tangible personal property - generally.

(1) As defined under Subsection E of Section 7-9-3 NMSA 1978, “initial use” or “initially used” means the first employment for the intended purpose and expressly excludes the following:

(a) observation of tests conducted by the performer of services;

(b) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(c) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(d) inspection of preliminary prototypes developed by the performer of services; or

(e) similar activities.

(2) The location of delivery or initial use of the product of a service is determined based on relevant facts and circumstances, including primarily:

(a) The location of the purchaser or the person to whom the service is intended to be delivered.

(b) The terms of the agreement between the parties, as evidenced by any formal writing or documentation as well as the parties’ behavior, including, but not limited to, any behavior which constitutes an alteration of the parties’ agreement.

(c) The nature of the service and the manner in which similar services are ordinarily delivered and initially used.

(3) The delivery and initial use of the product of a separate service, which is sold with other services or property, will be determined based on the facts and circumstances relating to that separate service. For this purpose, a “separate service” is a service that would be considered a service under 3.2.1.29 NMAC, but may be sold together with property or other services, and which the seller could have sold separately to the buyer, though it was in fact sold as part of a single transaction or contract along with other services or property. Similarly, a single contract may involve services that are to be performed in multiple phases, where each phase may constitute a separate service under 3.2.1.29 NMAC. The delivery and initial use of the product of each separate service, as described in this Paragraph (3), may occur at different locations under the relevant facts and circumstances.

(4) A single or separate service, as that term is used in Paragraph (3) of Subsection C of 3.2.1.23 NMAC may, under all the relevant facts and circumstances, appear to have multiple points of delivery or initial use both inside and outside the state. In particular, this may be the case for services sold to businesses or organizations. If there is a primary location of delivery or initial use, this location will be

deemed the location of delivery or initial use for purposes of the Gross Receipts and Compensating Tax Act. The primary location of delivery may be determined by facts and circumstances that show the location of the persons or offices that contracted for or oversee the service or that approve payment of the service or determine if the service has been completed properly. The primary location of initial use may be determined by the primary location of delivery or the place in which the most significant portion of initial use takes place.

D. Presumptions as to delivery and initial use of the product of the service in New Mexico; reliance on purchaser representations. Other than services described in Subsection B, of 3.2.1.23 NMAC, the following presumptions apply to all sales of services unless the seller has information and evidence sufficient to rebut the presumptions:

(1) if the purchaser of the service is an individual, then delivery and initial use of the product of the service are presumed to occur in New Mexico if the seller has information showing a billing address or other primary location for that purchaser in New Mexico;

(2) if the purchaser of the service is a person other than an individual, then delivery and initial use of the product of the service are presumed to occur in New Mexico if that person's domicile or primary place of business or operations is in New Mexico;

(3) if the purchaser of the service is a person other than an individual and the person has its domicile or primary place of business or operations outside New Mexico, then delivery and initial use of the product of the services are presumed to occur in New Mexico if the seller's primary contact for purposes of the contract or the billing address for the services is located in New Mexico; and

(4) in a case where the facts and circumstances demonstrate that delivery of the

product of the service occurs in New Mexico, initial use of the product of the service is presumed to occur in New Mexico.

In order to rebut these presumptions, the seller must show that delivery or initial use of the product of the service is not in New Mexico considering the relevant facts and circumstances as generally described in this Subsection C of 3.2.1.23 NMAC. The seller may also rely in good faith on written representations made by the purchaser of the service that the initial use of the service will not be made in New Mexico, provided that the seller has no indication that this representation is untrue.

E. Partial performance of service inside the state If a seller performs services partially inside and outside New Mexico which are delivered in New Mexico but are initially used outside the state, only the portion of the gross receipts from the service performed inside New Mexico will be subject to the gross receipts under Sections 7-9-3.5 and 7-9-57 NMSA 1978. Because the seller delivers the product of the service in New Mexico, the portion of gross receipts from the service performed in the state is not deductible under Section 7-9-57 NMSA 1978. The seller may apportion the gross receipts from the service performed inside and outside the state using the relative direct costs incurred.

F. Change in facts and circumstances during the performance of a service and incomplete services. A change in facts and circumstances during the performance of a service may change the delivery or initial use of the product of a service. Likewise, the failure to complete the performance of a service may change the delivery or initial use of the product of a service.

G. No effect on compensating tax due. The provisions of this regulation apply only to a seller's determination of whether the delivery or initial use of the product of a service are in New Mexico. A purchaser who makes a taxable use of a service in New Mexico may owe

the compensating tax even if the seller was not required to pay tax on the gross receipts from the performance or sale of that service.

H. Examples:

(1) A lawyer in New Mexico and her New Mexico client, with a New Mexico billing address, agree that the lawyer will perform the legal service of drafting a will. The lawyer charges for her service on an hourly basis. The lawyer reviews the client's finances and other information. The lawyer completes the will and provides it to the client. After reviewing the will, the client executes the will. Under Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. Nor would the lawyer be able to rebut these presumptions since, under all the facts and circumstances, delivery of the product of the service occurs in New Mexico when the client receives the draft will from the lawyer and initial use of the product of the service occurs in New Mexico when the client executes the will.

(2) Same facts as in Paragraph (1) of Subsection H of 3.2.1.23 NMAC, except that before the will is finally drafted, the client tells the lawyer she has changed her mind and will not need the will. The lawyer and the client agree that the lawyer will not provide any documentation of advice or a draft of the will based on the work done, even though the client will pay for the hours already worked. As in Paragraph (1) of Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. Nor would the lawyer be able to rebut this presumption since under the product of this incomplete service is the work done by the lawyer for the client in New Mexico and there are no facts that would rebut the presumption that delivery and initial use of this product occur in New Mexico.

(3) Same facts as in Paragraph (1) of Subsection H of 3.2.1.23 NMAC, except the client is outside New Mexico and the

lawyer delivers the will to the client outside New Mexico where the client executes the will. In this case, there is no presumption under Subsection D of 3.2.1.23 NMAC that delivery or initial use of the product of the service is in New Mexico. Under the facts and circumstances, the product of the service, the will, is delivered and initially used outside New Mexico. Therefore, the lawyer will be entitled to a deduction under Section 7-9-57 NMSA 1978 provided the lawyer has evidence required to support the deduction.

(4) Same facts as in Paragraph (1) of Subsection H of 3.2.1.23 NMAC, except the lawyer performs the service outside New Mexico and the lawyer delivers the will to the client in New Mexico, where the client executes the will. As in Paragraph (1) of Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. Nor would the lawyer be able to rebut this presumption since under the facts and circumstances, the product of the service, the will, is delivered and initially used in New Mexico. Note that while lawyer in this case would have gross receipts subject to tax because the service is initially used in the state, under 3.1.4.13 NMAC, because the service is a professional service, the gross receipts would be sourced to the state reporting location and subject to tax at the state rate.

(5) Same facts as in Paragraph (2) of Subsection H of 3.2.1.23 NMAC except the lawyer is outside New Mexico. As in Paragraph (2) of Subsection D of 3.2.1.23 NMAC, delivery and initial use of the product of the service are presumed to be in New Mexico. In this case, however, the product of this incomplete service is the work done by the lawyer for the client outside New Mexico and the lawyer may, therefore, be able to rebut the presumption that delivery or initial use of this product occurs inside New Mexico. Assuming the lawyer can rebut the presumption and show that initial use of the product of the service occurs outside New Mexico, the

lawyer would have no gross receipts subject to tax.

(6) A New Mexico seller agrees to provide a consulting service to a federal government agency, contracting and overseeing the performance of the service at an out-of-state location. The contract for the service provides that the seller is required to prepare a report summarizing the work and deliver that report to the out-of-state location. The contract also provides that the government will use the report to select products for purchase at facilities outside New Mexico. During the contract, the government agency, which has offices in New Mexico, answers questions posed by the New Mexico seller and responds to requests for data. Here, there is no presumption in this case under Subsection D of 3.2.1.23 NMAC that the delivery or initial use of the product of the service are in New Mexico. Furthermore, under all the facts and circumstances, the product of the service, the report, is delivered and initially used outside the state.

(7) A seller performs website design services outside New Mexico for a client that has business locations inside and outside the state. The seller works with and responds to the client's technology manager the client's out-of-state office. The seller and the client agree that the seller will make a demo of the proposed website for the technology manager to test. After the test, the seller will finish the website, with any necessary changes, and will give the client access to operating the website. The operation of the website will be done primarily at offices of the client outside the state, although some operations will also be done in the New Mexico office. Here, there is no presumption under Subsection D of 3.2.1.23 NMAC that the product of the service is delivered or initially used in New Mexico. Furthermore, under all the facts and circumstances, the product of the service, the final website, will be delivered and initially used outside the state.

(8) A seller of medical testing services performed

outside New Mexico has a client in New Mexico who purchases the services for its own medical facilities both inside and outside the state. The seller of testing services charges by the test. The results of tests are sent to the client's medical facilities in New Mexico where they are reviewed and then made available to doctors and patients. Each testing service is a separate sale of a service. Here, for each service, the product of the service is presumed to be delivered and initially used in New Mexico under Subsection D of 3.2.1.23 NMAC. The seller in this case will not be able to rebut the presumption because, under the facts and circumstances, the product of these services are the results which are delivered to New Mexico and initially used at facilities where they are reviewed.

(9) A seller of payroll services performed outside New Mexico has a business client which has offices both inside and outside New Mexico. The seller's contact is with the business's headquarters, outside the state, and the seller obtains information to perform the payroll service from the business's chief accountant located in that office. Each pay period, the seller transmits funds electronically drawing on the business's accounts to pay employees and to submit tax returns and also transmits reports to the business at the headquarters office. This information is reviewed by the headquarters office and any mistakes are communicated by the business to the seller. Each year the seller also transmits W-2s and other tax information by mail. Here, there is no presumption under Subsection D of 3.2.1.23 NMAC that the product of the service is delivered or initially used in New Mexico. It may appear that the product of the service is delivered and initially used both in and outside New Mexico. Under Paragraph (4) of Subsection C of 3.2.1.23 NMAC and under all the relevant facts and circumstances, the product of the service, payroll information, is deemed delivered to the primary location of delivery

outside the state and the initial use of the product of the service is, likewise, deemed delivered to occur at the primary location of initial use outside the state.

(10) Same facts as the example above, except that the seller of payroll services performs those services in New Mexico. Again, as in the previous, while the product of the service may appear to be delivered and initially used both inside and outside New Mexico, under Paragraph (4) of Subsection C of 3.2.1.23 NMAC and under all the relevant facts and circumstances, the product of the service, payroll information, is deemed delivered to the primary location of delivery outside the state and the initial use of the product of the service is, likewise, deemed to occur at the primary location of initial use outside the state.

(11) A seller of video editing services performed inside New Mexico are sold to an out-of-state customer who posts the edited video on-line for use by its customers throughout the United States. After the edited video is delivered and posted on the customer's website, the customer then asks the seller in New Mexico to test access to the video, and the seller agrees to do so. The fact that the final action related to the service, the testing of the access to the video, occurs in New Mexico does not change the result under all the relevant facts and circumstances that the delivery and initial use of the product of the service, the edited video, occurs outside New Mexico when the video is delivered to and posted by the customer on its website.

(12) Same facts as Paragraph (11) of Subsection H of 3.2.1.23 NMAC except that the seller in New Mexico agrees to both edit the video and provide data from a survey of other websites. The seller charges separately for these services, which it also regularly sells on a separate basis, but the contract and billing information for the two services are combined. These services would be separate services under 3.2.1.29 NMAC and the delivery and initial use of the product of each service

would be determined based on the relevant facts and circumstances for each service.

[3.2.1.23 NMAC - N, 10/13/2021]

3.2.1.24 [RESERVED]

3.2.1.25 MANUFACTURING - GENERAL EXAMPLES:

A. For purposes of Subsection H of Section 7-9-3 NMSA 1978, combining means assembling two or more pieces of tangible personal property to create another piece of personal property. Processing means to convert tangible personal property into a marketable form. A person is engaged in the business of manufacturing only if:

(1) that person combines or processes components or materials;

(2) the value of the tangible personal property which has been combined with other tangibles or which has been processed has increased as a direct result of the manufacturing process; and

(3) the person manufacturing sells the same or similar type of manufactured products in the ordinary course of business.

B. The following examples illustrate the application of Subsection H of Section 7-9-3 NMSA 1978.

C. *Example 1:* Y sells parts and bodies for automobiles to X. X, who owns a used car lot and garage, places the parts and bodies in and on used cars from his lot. X then resells the renovated cars to the general public in the ordinary course of business. X is manufacturing because X is assembling and fabricating the cars to increase their value and is selling them in the ordinary course of business.

D. *Example 2:* Y, a machine tool firm, assembles three machine tools solely for its own use in producing components. Y does not sell any of these three machine tools. Assembling the machine tools is not "manufacturing" because Y is not assembling the tools to increase their value for sale in the ordinary course of business.

E. *Example 3:* S, who is in the business of building custom boats, purchases fiberglass and other supplies from F, a fiberglass manufacturer. S is furnished blueprints by customers and all the materials that are to be purchased are specified in those blueprints. After S obtains all the materials from F, S builds the boats to the specifications set out in the blueprints and then sells the boats to customers in the ordinary course of business. S is manufacturing boats. S may therefore give F a nontaxable transaction certificate.

F. *Example 4:* R is in the business of retreading and recapping pneumatic tires. If R retreads and recaps a tire carcass which R owns in order to increase its value for sale in the ordinary course of business and that tire carcass becomes a component part of a recapped tire, then R is "manufacturing".

G. *Example 5:* P is in the business of printing and silk screening. If P uses only printing supplies which P owns as an ingredient or component part of the end product which P sells in the ordinary course of business, then P is "manufacturing". If P uses printing supplies such as paper, ink, staples, glue, binding, chemicals, and dyes provided by the customer, then even though such supplies become ingredient or component parts of an end product which P sells in the ordinary course of business, P is "performing a service" and not "manufacturing".

H. *Example 6:* Y is a newspaper publishing company located outside New Mexico with no business location, salespersons or other presence in New Mexico. Z is a printing company inside New Mexico. Y arranges to have Z print the newspapers which it publishes. Z is required to provide newsprint (paper), ink, and all the materials required for the production of newspapers. Z is manufacturing printed material. Z, in the given fact situation, does not have receipts from either publishing a newspaper or selling a newspaper; therefore, the deductions provided

by Section 7-9-63 NMSA 1978 and Section 7-9-64 NMSA 1978 do not apply. Z may deduct from its gross receipts its receipts from selling printed material to Y if the printed material is delivered to Y outside New Mexico.

I. *Example 7:* A is in the business of painting oil and water color pictures for sale in the ordinary course of business. A is a manufacturer of tangible personal property. A combines oils, color pigments, fixing agents, canvas, frames and glass in a painting as components and properly issues a nontaxable transaction certificate to the seller of the components. A cannot properly issue a nontaxable transaction certificate to the seller of brushes, palettes, knives, cleaners, erasers and easels since these items of property are not components for purposes of Subsection H of Section 7-9-3 NMSA 1978.

[3.2.1.25 NMAC - Rp, 3.2.1.25 NMAC 10/13/2021]

3.2.1.26 [RESERVED]

3.2.1.27 PROPERTY:

A. Bills, notes, etc.:

Tangible personal property does not include bills, notes, checks, drafts, bills of exchange, certificates of deposit, letters of credit, or any negotiable instrument. Coins, stamps, and documents which have a historic value or market value in excess of their face value are tangible personal property.

B. Sale of license to use software is sale of property:

(1) The definition of property includes licenses. The sale of a license to use software constitutes a sale of property and comes within the definition of gross receipts.

(2) The transaction constitutes a sale of a license to use the software program when a computer software company sells an already-developed software program where:

(a) no extraordinary services are performed in order to furnish the program;

(b) the buyer pays a fixed amount for the license to use the program and use is generally limited to a specific computer; and

(c) the buyer may not resell to any other person a license to use the program and may not transfer the software package itself to any other person.

C. Granting the right to hunt is the sale of a license to use:

For purposes of this section, granting by a landowner to another, a right to access and hunt within the boundaries of the landowner's real property is a license to use the real property. A license is a form of property as defined in Subsection J of Section 7-9-3 NMSA 1978 and the receipts from the sale of a license are subject to the gross receipts tax. The following are four types of hunting-related transactions, that when sold, may include the sale of a license:

(1) the sale of a hunting package that includes permission to hunt on private land;

(2) the sale of an authorization to hunt on private land granted by the New Mexico department of game and fish;

(3) the granting of permission or access to enter onto the private land to hunt; or

(4) the sale of a license/permit issued by the state to hunt on public land.

D. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a "hunting package" may include the following components:

(1) lodging;
(2) meals;
(3) delivery and transportation services;

(4) guide services;
(5) license to use the property;
(6) carcass of the hunted animal; or
(7) other services or tangible personal property included in the package.

E. *Example:* X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[3.2.1.27 NMAC - Rp, 3.2.1.27 NMAC 10/13/2021]

3.2.1.28 [RESERVED]

3.2.1.29 SERVICES:

A. When a transaction is predominantly a service:

(1) A transaction involving both the transfer of tangible personal property to the buyer and the performance of a service other than a construction or research and development service is predominantly a service when:

(a) the seller is not regularly engaged in selling or leasing the same or similar tangible personal property other than in conjunction with the sale of a service; and

(b) at least one of the following conditions applies:

(i) the transaction is primarily the performance of work and the transfer of any property through the transaction is incidental to the performance of the required work; or

(ii) the transaction requires the performance of work which is substantially greater in value than the value of the tangible personal property involved in the transaction; or

(iii) the performer of the service has the power to influence significantly the degree of involvement of the tangible personal property in the transaction.

(2) When the transaction is predominantly a service other than construction, any tangible personal property transferred in conjunction with the service is incidental to the service and the value of the property becomes an element of and is incorporated into the value of the service sold. Type 2 nontaxable transaction certificates (NTTCs) may not be executed to acquire the property so incorporated.

(3) *Example*
A1: C, a consultant, reviews operations of clients; C does not engage in the business of selling office supplies. C is hired to evaluate certain operations of L. C presents the evaluation to L as a written report, with supplemental data on computer disks. C contends that the paper used for the report and the computer disks were sold to L and therefore C may execute a Type 2 NTTC to acquire these tangibles. The transaction with L is predominantly the performance of a service. The paper and computer disks convey the result of the C's service and are incidental to that service. C may not execute Type 2 NTTCs for the purchase of these tangibles.

(4) *Example*
A2: X is engaged in the business of performing certain services and is not engaged in selling tangible personal property in the ordinary course of

business. X enters into a cost plus a fixed fee contract with Y to conduct a survey of residents of this state to determine consumer acceptability of and demand for particular household products which Y manufacturers and plans to distribute into New Mexico. The contract specifies that on completion or termination of the contract any tangible property purchased by X, and billed by X, will be paid by Y as a cost of fulfilling the requirements of the contract. X chooses to purchase a personal computer to use in the performance of the service. X will enter results of the surveys into the computer which will classify the responses and generate reports which X will analyze, interpret and submit to Y. Since X has the power to exert significant influence over the degree of involvement (use) of the computer under the contract and since X is not engaged in selling computers or similar property in the ordinary course of business, X's receipts attributed to the cost of the computer are receipts from performing a service. X may not execute a Type 2 NTTC for the purchase of the computer.

(5) *Example*
A3. A well servicing company uses disposable bits and other disposable "rubber goods" in servicing oil and natural gas wells. The disposable items are used up in the course of the servicing; pieces of the abraded material are left in the well. The company claims it should be allowed to execute Type 2 NTTCs because the disposable items are left with the owner(s) of the well. These materials are incidental to the performance of the service. The company may not execute Type 2 NTTCs in acquiring these disposable items.

(6) Construction is defined to be a service and that service is defined to include all tangible personal property which becomes an ingredient or component part of the construction project. Under the provisions of Section 7-9-51 NMSA 1978, however, a person engaging in the construction business may execute a nontaxable transaction

certificate for the purchase of tangible personal property which will become an ingredient or component part of a construction project.

(7) The product of a research and development service may be tangible property, such as prototypes, facsimiles, reports or other similar property. Even though the product of the service may itself be tangible, receipts from the transaction are receipts from the sale of a service and not from the sale of tangible personal property. Accordingly the performer of research and development services may not execute a nontaxable transaction certificate when purchasing tangible personal property used to assemble or create such product of the service, except as provided by Section 3.2.205.11 NMAC.

(8) *Example*
B1: B, an engineering company, contracts to design a product for Y, a manufacturer, who intends to manufacture the product for sale to the general public. The contract requires B to submit plans for the product and a prototype of it. B contends that the plans and prototype are tangible personal property and therefore Type 1 or Type 2 NTTCs may properly be executed. B is performing a research and development service, even though the product of the service is embodied in tangible personal property. The tangibles used are incidental to the performance of the service. Type 1 and Type 2 NTTCs may not be executed to acquire the tangible personal property making up the plans and prototype.

(9) *Example*
B2: B, an engineering company, is a qualified contractor within the meaning of Section 3.2.205.11 NMAC under a contract with D, an agency of the United States. The contract is a research and development contract covered by the agreement between the state of New Mexico and several agencies of the United States, including D. The contract calls for B to design and submit plans for a rocket motor and to

develop and deliver a facsimile of the rocket casing to a research facility for testing. B maintains that B is selling tangible personal property to the federal government. B is performing research and development services. The plans and facsimile are products of that service. The transaction is predominantly the performance of a service rather than the sale of tangible personal property. B is not selling tangible personal property to the federal government but may be eligible to execute Type 15 NTTCs if the conditions specified by Section 3.2.205.11 NMAC and the State-Federal agreement are met.

(10) When the performer of the service either is regularly engaged in selling or leasing by itself the type of tangible personal property transferred in the transaction, a single transaction may encompass both the sale of a service and the sale of property as distinct and separable parts of the transaction. In such a case, Type 2 NTTCs may be executed to acquire the tangible personal property resold if the conditions in Subsection A of Section 3.2.205.10 NMAC are met.

(11) *Example B3:* F, an accountant, performs bookkeeping services for several clients. The accountant transmits various forms and papers to the clients in the course of providing this service. G, another accountant, runs short of certain forms and purchases some from F to tide G over until G's regular suppliers are open for business. F contends that, because F has sold to G tangible personal property by itself of the type sold to F's clients, two separate transactions occur with F's clients. F is not regularly engaged in the business of selling these forms. F's transactions with F's clients are not separable into distinct service and tangible components. F's transactions are predominantly the performance of a service.

(12) *Example B4:* H, who operates a computer hardware and software company, is hired to write computer programs for one of M's divisions, acquire and set up 25 computer stations for

use of the division and to train the division personnel in the use of the stations and programs. H contends that the computer stations are sold to M and therefore H may execute Type 2 NTTCs to acquire them for resale. The transaction encompasses both the performance of services (developing the programs and training the division personnel) as well as the sale of tangible personal property (the computer stations) as separable elements. Therefore H may execute Type 2 NTTCs in acquiring the computer stations.

(13) See Paragraph (8) of Subsection A of Section 3.2.205.10 NMAC for transactions in which buyer regularly sells the tangible personal property by itself.

B. Transactions in which neither the performance of a service or the sale of tangible personal property predominates:

(1) In some cases, a transaction involving the performance of a service other than a construction or research and development service and the sale of tangible personal property may not be predominately either the performance of a service or the sale of tangible personal property, as for example where receipts attributable to each constitutes more than forty percent of the total receipts from the transaction. In such cases, if the market value or costs of the tangible personal property or services is readily ascertainable and if the taxpayer's records adequately reflect the portion of receipts derived from the sale of tangible personal property and the portion derived from the performance of services, the receipts may be apportioned accordingly. The burden rests on the taxpayer to provide that information, and to justify that the portion of receipts attributable to the sale of the tangible personal property or to the performance of services accurately reflects the relative market value or costs, including reasonably apportioned overhead, of the tangible personal property or services. The clearest way of carrying that burden is to specify separately on the invoice

the charges for the property and the charges for the services, and to retain sufficient records to allow a determination that the relative value of either the property or the services is not overstated.

(2) *Example 1:* Taxpayer X enters into a contract with a governmental entity to maintain the entity's computer equipment. The contract obliges X to check and maintain the equipment, providing replacement parts such as toner cartridges on a regular basis, and to repair the equipment, including the replacement of broken parts. X bills the entity separately stating the charges for its maintenance and repair services and for the replacement parts. Receipts from the charges for replacement parts will be receipts from the sale of tangible personal property to a governmental entity and are deductible pursuant to Section 7-9-54 NMSA 1978. Receipts from charges for the services are not deductible.

(3) Subsection E of Section 3.2.1.29 NMAC does not apply to construction or to transactions in which prototypes or other tangible products of a service are transferred. [3.2.1.29 NMAC - Rp, 3.2.1.29 NMAC 10/13/2021]

3.2.1.30 USE AND USING: The definition of "use" and "using" pursuant to Subsection N of Section 7-9-3 NMSA 1978 includes three components: use, consumption and storage.

A. Use: The first component, "use", means to employ or utilize property or a service for a particular purpose. Use does not include mere ownership or possession of property. Use does not include the mere treatment, processing or servicing of tangible property to make the property fit for utilization when the ultimate use of the property is outside New Mexico. Use does not include the transfer to the customer of tangible personal property in the course of the treatment, processing or servicing or the return of the property

to the owner at the conclusion of the treatment, processing or servicing.

(1) Example

1: The uses of a chair are many and varied. Its designed or intended use is being sat on by human beings. A chair, however, may also be “used” to wedge a door shut, as a step-ladder to reach something, as a receptacle to hold objects, as a display item, as a support to prop up a table or shelf and many other purposes not planned by its designer or maker. In contrast, a chair is not “used” by being assembled, polished, painted, upholstered or recaned.

(2) Example 2:

B enters into a contract with C, a firm in New Mexico. Under the contract, B sends a gaseous compound to C for separation. C returns the separated materials to B or delivers them to D for further processing. B has not used the compound or the separated materials in New Mexico.

B. Storage:

(1) The term

“using” includes storage in New Mexico except where the storage is for subsequent sale of the property in the ordinary course of the seller’s business or for use solely outside New Mexico.

(2) Example

1: D, a resident of Utah, buys pipe in Texas to be used solely in Utah. The pipe is shipped into New Mexico, unloaded, and stored for three days. It is then reloaded and shipped to Utah. There is no use of the pipe in New Mexico within the meaning of Subsection N of Section 7-9-3 NMSA 1978. The transaction which occurred was merely storage for use solely outside New Mexico.

(3) Example 2:

X Construction Company purchases a bulldozer in Illinois intending to use it in its construction business. The bulldozer is then delivered to X in New Mexico. X does not have any immediate use for the bulldozer so it is stored in the back lot of the construction company with other equipment. Two months later X changes plans and sells the bulldozer to Y Construction Company who needs it for a job. The bulldozer

remained in storage from the day X received it until the day it was sold. Since the storage of the tractor was not for subsequent sale in the ordinary course of X’s business, the storage of the tractor is a “use” within the meaning of Subsection N of Section 7-9-3 NMSA 1978. Therefore, X Construction Company will be subject to the compensating tax on the value of the tractor because it has used the property in New Mexico. [3.2.1.30 NMAC - Rp, 3.2.1.30 NMAC 10/13/2021]

HISTORY OF 3.2.1 NMAC:

Pre-NMAC History:

BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 1967, filed 9/29/1967.

BOR 69-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12-5-69, filed 12/5/1969.

BOR 72-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/72, filed 3/9/1972.

BOR 74-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/73, filed 3/20/1974.

BOR 76-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/76, filed 7/26/1976.

R.D.79-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/79.

R.D. Rule No. 82, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/7/1982.

R.D. Rule No. 84, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 5/4/1984.

TRD Rule No. 9-86, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/2/1986.

TRD Rule GR-90, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material: 3.2.1 NMAC - Gross Receipts Taxes - General Provisions (filed 4/17/2001) Repealed effective 10/13/2021.

NMAC History:

3 NMAC 2.1, Gross Receipts Taxes - General Provisions, filed 11/4/1996.

3.2.1 NMAC, Gross Receipts Taxes - General Provisions, filed 4/17/2001.

3.2.1 NMAC - Gross Receipts Taxes - General Provisions (filed 4/17/2001) replaced 3.2.1 NMAC - Gross Receipts Taxes General Provisions effective 10/13/2021.

TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION

CHAPTER 2: GROSS RECEIPTS TAXES

PART 215: DEDUCTION - GROSS RECEIPTS TAX - SALE OF CERTAIN SERVICES TO AN

OF-STATE

BUYER

3.2.215.1 ISSUING

AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1150 South St. Francis Drive, P.O. Box 630, Santa Fe NM 97504-0630.

[3.2.215.1 NMAC - Rp, 3.2.215.1 NMAC 10/13/2021]

3.2.215.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.215.2 NMAC - Rp, 3.2.215.2 NMAC 10/13/2021]

3.2.215.3 STATUTORY

AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.215.3 NMAC - Rp, 3.2.215.3 NMAC 10/13/2021]

3.2.215.4 DURATION:

Permanent.

[3.2.215.4 NMAC - Rp, 3.2.215.4 NMAC 10/13/2021]

3.2.215.5 EFFECTIVE

DATE: October 13, 2021, unless

a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.215.5 NMAC - Rp, 3.2.215.5 NMAC 10/13/2021]

3.2.215.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.215.6 NMAC - Rp, 3.2.215.6 NMAC 10/13/2021]

3.2.215.7 DEFINITIONS:
[RESERVED]

[3.2.215.7 NMAC - Rp, 3.2.215.7 NMAC 10/13/2021]

3.2.215.8 [RESERVED]

[3.2.215.8 NMAC - Rp, 3.2.215.8 NMAC 10/13/2021]

3.2.215.9 SERVICES PERFORMED ON FEDERAL AREAS:

Federal areas located within the boundaries of New Mexico are not outside New Mexico for purposes of Section 7-9-57 NMSA 1978.

[3.2.215.9 NMAC - Rp, 3.2.215.9 NMAC 10/13/2021]

3.2.215.10 OTHER EVIDENCE:

A. As used in Section 7-9-57 NMSA 1978, "other evidence acceptable to the secretary" includes invoices, contracts, photostatic copies of checks and letters which show that the sale is to an out-of-state buyer and which indicate that the initial use of the product of the service did not occur in New Mexico.

B. Example 1: E drafts a manuscript about deer hunting in New Mexico and sends the manuscript to a sports magazine publisher in New York. The publisher accepts by letter the story for publication and encloses a check. E may deduct this payment from gross receipts if E preserves the letter or a photostatic copy of the check.

C. Example 2:

(1) W is a writer who performs some writing services in New Mexico. W's

manuscripts and all rights thereto are sold by W's literary agent in New York City, exclusively to publishers, motion picture companies and other media located outside New Mexico. None of the rights to W's manuscripts or other literary works are sold to publishers, editors or media within the state of New Mexico. Funds are remitted to the literary agent in New York by the out-of-state purchaser of the rights to W's works. The agent then pays W. W's receipts may be deducted from gross receipts if:

(a)

The buyers of W's works deliver nontaxable transaction certificates to W; or

(b)

W's agent certifies in writing that all of W's work is published or otherwise initially used outside New Mexico; or

(c)

W's agent accounts to W for each sale on a document or documents clearly indicating that the sales are to out-of-state buyers and that the initial use of the product of the service did not occur in New Mexico and W preserves the agent's detailed accounting.

(2) If the

buyers rewrite, publish or otherwise initially use W's writing services inside New Mexico, the compensating tax imposed by Subsection B of Section 7-9-7 NMSA 1978 is due from the buyer on the value of the services at the time they were rendered.

[3.2.215.10 NMAC - Rp, 3.2.215.10 NMAC 10/13/2021]

3.2.215.11 [RESERVED]

[3.2.215.11 NMAC - Rp, 3.2.215.11 NMAC 10/13/2021]

3.2.215.12 [RESERVED]

[3.2.215.12 NMAC - Rp, 3.2.215.12 NMAC 10/13/2021]

HISTORY OF 3.2.215 NMAC:

Pre-NMAC History:

BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 1967, filed 9/29/1967.

BOR 69-4, Regulations in Effect and Pertaining to the New Mexico Gross

Receipts and Compensating Tax Act, 12-5-1969, filed 12/5/1969.

BOR 72-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/1972, filed 3/9/1972.

BOR 74-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/1973, filed 3/20/1974.

BOR 76-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/1976, filed 7/26/1976.

R.D.79-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/1979.

R.D. Rule No. 82, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/7/14982.

R.D. Rule No. 84, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 5/4/1984.

TRD Rule No. 9-86, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/2/1986.

TRD Rule GR-90, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material:

3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 5/17/2001, Repealed effective 10/13/2021.

NMAC History:

3 NMAC 2.57, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 3/4/1996.

3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 5/17/2001.

3.2.215 NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to an Out-of-State Buyer, filed 5/17/2001 Replaced 3.2.215

NMAC, Deduction - Gross Receipts Tax - Sale of Certain Services to and Out of State Buyer, effective 10/13/2021.

TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION CHAPTER 2: GROSS RECEIPTS TAXES PART 300: CREDIT - GROSS RECEIPTS TAX - SERVICES

3.2.300.1 ISSUING

AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.

[3.2.300.1 NMAC - Rp, 3.2.300.1 NMAC 10/13/2021]

3.2.300.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.300.2 NMAC - Rp, 3.2.300.2 NMAC 10/13/2021]

3.2.300.3 STATUTORY

AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.300.3 NMAC - Rp, 3.2.300.3 NMAC 10/13/2021]

3.2.300.4 DURATION:

Permanent.

[3.2.300.4 NMAC - Rp, 3.2.300.4 NMAC 10/13/2021]

3.2.300.5 EFFECTIVE

DATE: October 13, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.300.5 NMAC - Rp, 3.2.300.5 NMAC 10/13/2021]

3.2.300.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.300.6 NMAC - Rp, 3.2.300.6 NMAC 10/13/2021]

3.2.300.7 DEFINITIONS:

[RESERVED]

[3.2.300.7 NMAC - Rp, 3.2.300.7 NMAC 10/13/2021]

3.2.300.8 CREDIT FOR TAX PAID TO ANOTHER STATE ON SERVICES:

The credit allowed pursuant to the provisions of Section 7-9-79.1 NMSA 1978 shall not exceed the lesser of:

A. the actual amount of tax paid to the other state, paid to any political subdivision of the other state or the combined total paid to the other state and political subdivisions of that state; or

B. the amount determined by multiplying the total consideration received from the sale of the service exclusive of the amount of tax paid to the other state and any political subdivision of that state times the rate of gross receipts tax imposed under Section 7-9-4 NMSA 1978.

[3.2.300.8 NMAC - Rp, 3.2.300.8 NMAC 10/13/2021]

3.2.300.9 CREDIT FOR TAX PAID ON SERVICES PERFORMED OUTSIDE THE STATE:

Under Section 7-9-79.1 NMSA 1978, if another state's sales, gross receipts, or similar tax is paid on services performed outside the state, the gross receipts from which would be subject to the New Mexico gross receipts tax, the taxpayer may take a credit for against the gross receipts tax owed for an amount of the other state's tax paid, provided the credit may not exceed gross receipts tax due on each transaction.

[3.2.300.9 NMAC - N, 10/13/2021]

HISTORY OF 3.2.300 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 119967, filed 9/29/1967.
BOR 69-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act,

12-5-1969, filed 12/5/1969.

BOR 72-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/1972, filed 3/9/1972.

BOR 74-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/1973, filed 3/20/1974.

BOR 76-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/1976, filed 7/26/1976.

R.D.79-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/1979.

R.D. Rule No. 82, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/7/1982.

R.D. Rule No. 84, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 5/4/1984.

TRD Rule No. 9-86, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/2/1986.

TRD Rule GR-90, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material:

3.2.300 NMAC, Credit - Gross Receipts Tax - Services, filed 6/4/2001, Repealed effective 10/13/2021.

NMAC History:

3 NMAC 2.79.2, Credit - Gross Receipts Tax - Services, filed 11/4/1996.

3.2.300 NMAC, Credit - Gross Receipts Tax - Services, filed 6/4/2001.

3.2.300 NMAC, Credit - Gross Receipts Tax - Services, filed 6/4/2001, Replaced 3.2.300 NMAC, Credit - Gross Receipts Tax - Services effective 10/13/2021.

End of Adopted Rules

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 12
Issue 2	January 14	January 26
Issue 3	January 28	February 9
Issue 4	February 11	February 23
Issue 5	February 25	March 9
Issue 6	March 11	March 23
Issue 7	March 25	April 6
Issue 8	April 8	April 20
Issue 9	April 22	May 4
Issue 10	May 6	May 25
Issue 11	May 27	June 8
Issue 12	June 10	June 22
Issue 13	June 24	July 7
Issue 14	July 8	July 20
Issue 15	July 22	August 10
Issue 16	August 12	August 24
Issue 17	August 26	September 14
Issue 18	September 12	September 28
Issue 19	September 30	October 13
Issue 20	October 14	October 26
Issue 21	October 28	November 9
Issue 22	November 15	November 30
Issue 23	December 2	December 14
Issue 24	December 16	December 28

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