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New Mexico Register

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

Volume XXXIV - Issue 8 - April 25, 2023

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The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.srca.nm.gov/new-mexico-register/>

New Mexico Register

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Notices of Rulemaking and Proposed Rules

ECONOMIC DEVELOPMENT, DEPARTMENT OF NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Economic Development Department hereby gives notice that it will conduct a virtual public hearing on Thursday, June 1, 2023, from 10:00am to 11:00 am (MDT). The purpose of the public hearing is to receive public commentary on the proposed rulemaking to create a new rule, 2.93.1 NMAC, Public Finance, Local Economic Development Act (LEDA).

Rule Information: Under the Local Economic Development Act the New Mexico Economic Development Department is granted authority to administer grants to local governments (Municipality and/ or County); to assist expanding or relocating businesses that are qualified entities that will stimulate economic development and produce public benefits pursuant to LEDA. The New Mexico Economic Development Department proposes to create rule to codify the LEDA program guidelines, processes, and policy.

Statutory Authorization: Section 5-10-1 to 5-10-13 NMSA 1978.

Public comment: Interested individuals are strongly encouraged to submit written comments regarding the proposed rulemaking relating to LEDA program to sara.gutierrez@edd.nm.gov or Sara Gutiérrez, Deputy Division Director, New Mexico Economic Development Department, P.O. Box 20003 Santa Fe, New Mexico 87504-5003. Written comments must be received no later than 12:00 pm on Tuesday, May 30, 2023. The New Mexico Economic Development Department encourages the early submission of written

comments. Individuals may also testify at the public hearing.

A PDF of the proposed rule and meeting details may be accessed through EDD's website edd.nm.gov or from Sara Gutiérrez at the contact above on April 25, 2023

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Sara Gutiérrez as soon as possible. The EDD requests at least ten days' advanced notice to provide special accommodations.

ETHICS COMMISSION

NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

Notice of Rulemaking: The State Ethics Commission [the commission] will hold a public hearing on the proposed adoption and amendment of certain rules, as detailed below. These amendments are proposed pursuant to Paragraph 2 of Subsection A of Section 10-16G-5, NMSA 1978. No technical scientific information was consulted in drafting these proposed amendments.

Copies of all the proposed amendments may be found at the Commission's website, <https://www.sec.nm.gov>, or at the commission's main office in Albuquerque: the State Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

Notice of Public Rule Hearing: The public rule hearing will occur on Friday, June 2, 2023 at 9:00 am in the main conference room of the New Mexico Department of Agriculture at New Mexico State University, 3190 S. Espina, Las Cruces, NM. The public hearing will be conducted in

a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Suha.Musa@sec.nm.gov. The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least five calendar days before the scheduled hearing.

Notice of Acceptance of Written Public Comment: Written public comments, including presentation of data, views, or arguments about the proposed amendments, from any interested member of the public will be accepted until 5:00 p.m. on Wednesday, May 31, 2023, by submitting them via email to ethics.commission@sec.nm.gov with the subject line "SEC Rulemaking R23-01," or via first class mail or by hand delivery to the commission's Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

Description of Proposed

Amendments: In compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed amendment, a short explanation of the purpose of the amendment, and specific legal authority authorizing the amendment and proposed new rule. The method and manner of public comment and notice of public hearing on the proposed rules are listed above.

The proposed amendments are as follows:

Amendments to 1.8.1 NMAC, Section 7, new Sections 10-13,

and renumbering old Sections 10 through 16 to Sections 14 through 20 (with no changes): These amendments are proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5, State Ethics Commission Act, NMSA 1978. The purpose of the proposed rule is to promulgate rules governing the Commission's initiation, prosecution, and resolution of civil actions to enforce the state's ethics laws.

Amendments to 1.8.3 NMAC, Sections 7, 9-11, 13-15: These amendments are proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978. These amendments are for the purpose of improving the efficiency of commission adjudications and to respond to recent amendments to Section 10-16G-10 NMSA 1978 of the State Ethics Commission Act.

1.8.5 NMAC ("Complaints against Notaries"): This rule is being proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978, and Laws 2023 Chapter 110 (being SB 246, Section 23(C)). The purpose of the proposed rule is to promulgate binding rules governing the Commission's receipt, investigation, and adjudication of complaints alleging violations of the Revised Uniform Law on Notarial Acts ("RULONA"), NMSA 1978.

**REGULATION
AND LICENSING
DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

**NOTICE OF PUBLIC COMMENT
HEARING AND PROPOSED
RULEMAKING**

The Financial Institutions Division of the Regulation and Licensing Department hereby gives notice of a public comment hearing to consider

the repeal of Title 12, Chapter 15, Part 16 – Certification of Qualified Entities as Solar Energy Improvement.

The Financial Institutions Division of the Regulation and Licensing Department ("Division") will hold a public hearing on Friday, June 2, 2023, beginning at 10:00 and continuing on subsequent days, as necessary, in person at 2550 Cerrillos Road, Santa Fe, NM 87505 and via the WebEx video conferencing platform. The purpose of the hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed repeal of Title 12, Chapter 15, Part 16 – Certification of Qualified Entities as Solar Energy Improvement. The Division, at its sole discretion, may determine whether to hold more than one hearing.

Information for attending the virtual hearing via the WebEx conferencing platform will be available on the Division's website, www.rld.nm.gov/financial-institutions/about-us/statutes-rules-guidance-actions-and-hearings/ at least 30 days prior to the hearing and is as follows:

Meeting link: <https://nmrld.webex.com/nmrld/j.php?MTID=m5a3994d089d066f90d649a55ccb78e73>

Meeting number: 2499 758 4649
Meeting password: RAKvUmTv223 (72588688 from video systems)

Join by phone: +1-415-655-0002

Join from a video system or application: Dial 24997584649@nmrld.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

The proposed repeal of Title 12, Chapter 15, Part 16 – Certification of Qualified Entities as Solar Energy Improvement are available on the Division's website, at www.rld.nm.gov/financial-institutions/about-us/statutes-rules-guidance-actions-

and-hearings/. The proposed repeal may also be obtained electronically by contacting Farrah D. Diaz, the Division's Legal Clerk, at Farrah.Diaz@rld.nm.gov or (505) 690-7450.

The hearing will be conducted in accordance with the Solar Energy Improvement Special Assessment Act, NMSA 1978, Sections 4-55C-1 to -9, (2009, as amended through 2019) and the Default Procedural Rule for Rule Making 1.24.25 NMAC.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the public hearing.

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

1. Identify the person or entity for whom the witness(es) will testify;
2. State whether the person filing the statement supports or opposes the Petition;
3. Identify each witness, including name, address, affiliation(s), and educational and work background;
4. Estimate the length of the direct testimony of each witness;
5. Identify all exhibits which are part of the Record Proper and, for exhibits not part of the Record Proper, attach a copy;
6. List or make available all technical materials relied upon by each witness in making statement of technical of fact or opinion contained in his or her direct testimony; and
7. Attach a summary of the testimony of each witness, stating any opinion(s) to be offered by such witness, and an explanation of the basis for such opinion(s).

Please provide submit any notices of intent to present technical testimony to the Division's Legal Clerk, Farrah D. Diaz, as soon as possible. Any member of the general public

may present non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony before or at the hearing.

All documents filed in this matter, including notices of intent, must be filed electronically via email to the Division's Legal Clerk, at Farrah D. Diaz, at Farrah.Diaz@rld.nm.gov

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Farrah D. Diaz, Legal Clerk for the Division, at Farrah.Diaz@rld.nm.gov or (505) 690-7450, at least 14 days prior to the hearing. TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

**SECRETARY OF STATE,
OFFICE OF THE
NOTICE OF PROPOSED
RULEMAKING**

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of this hearing is to obtain public input on amendments to the existing Voter Action Act rule to be codified as Part 1.10.27 NMAC.

A public hearing will be held on May 26, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Authority: Section 1-2-1 NMSA 1978 and Section 1-19A-15 NMSA 1978

1.10.27 NMAC Voter Action Act

Purpose: The secretary of state shall adopt rules to ensure effective administration of the Voter Action Act (Section 1-19A-1 to 1-19A-17 NMSA 1978) pursuant to Section 1-19A-15 NMSA 1978. The rules shall include procedures for qualifications, certification and disbursement of revenues and return of unspent fund revenues; obtaining qualifying contributions; certification of candidates; collection of revenues; and return of fund disbursements and other money to the fund.

Summary of Full Text: The proposed amendment adds a new section to the existing rule, 1.10.27.12 NMAC, that clarifies the process for collecting qualifying contributions through electronic fund transfers.

Details for Obtaining a Copy of Rule and Submitting Oral or

Written Comments: Copies of the proposed rule are available on the Office's website at www.sos.nm.gov or can be obtained from the Elections Bureau & Ethics Division by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is May 25, 2023. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified

sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

**SECRETARY OF STATE,
OFFICE OF THE
NOTICE OF PROPOSED
RULEMAKING**

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of these hearings is to obtain public input on a new rule, Election Fund Grants, Reimbursements and Reporting, to be codified as Part 1.10.36 NMAC.

A public hearing will be held on May 26, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Authority: Section 1-2-1 NMSA 1978 and Subsection A of 1-11-19 NMSA 1978

1.10.36 NMAC Election Fund Grants, Reimbursements and Reporting

Purpose: The purpose for the Election Fund Grants, Reimbursements and Reporting rule is to create uniform, effective procedure for election grants, reimbursements and reporting between the secretary of state and county clerks for the purposes of paying the costs of conducting and administering statewide elections required by the Election Code.

Summary of Full Text: 1.10.36.7 NMAC defines key terms like “eligible expenses,” “election supplies,” and “ineligible expenses.” 1.10.36.8 NMAC establishes timelines and requirements for memorandums of understanding between the secretary of state and county clerks. 1.10.36.9 NMAC contemplates procedures for additional and ineligible expenses. Section 1.10.36.10 outlines reporting requirements.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rules are available on the Office’s website at www.sos.nm.gov or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is May 25, 2023. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

**SECRETARY OF STATE,
OFFICE OF THE
NOTICE OF PROPOSED
RULEMAKING**

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of this hearing is to obtain public input on a new rule, Public Official Home Address Confidentiality, to be codified as Part 1.10.37 NMAC.

A public hearing will be held on May 26, 2023, from 9:00 am to 1:00 pm, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Authority: Section 1-2-1 NMSA 1978; Section 10-16A-9 NMSA 1978; A new section of the Election Code as passed by the 56th Legislature during its first session in Senate Bill 180.

**1.10.37 NMAC PUBLIC
OFFICIAL HOME ADDRESS
CONFIDENTIALITY**

Purpose: To establish procedures for the secretary of state and county clerks for the non-disclosure of home addresses for public officials and candidates on election and financial-related documents.

Summary of Full Text: 1.10.37.7 NMAC defines key terms like “election-related disclosures” and “financial-related disclosures.” 1.10.37.8 NMAC outlines uniform, effective procedure for public officials and candidates for the official designation of confidential home addresses. 1.10.37.9 NMAC provides for the preservation of original documents for instances of judicial review as now required by state statute.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the

proposed rule are available on the Office’s website at www.sos.nm.gov or can be obtained from the Elections Bureau & Ethics Division by calling (505) 827-3600 or emailing lindsey.bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@sos.nm.gov, fax 505-827-8403, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is May 25, 2023. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

**TRANSPORTATION,
DEPARTMENT OF
NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Department of Transportation (Aviation Division) is proposing to repeal and replace rule, 18.11.3. NMAC, Air Service Assistance Program.

Approval of the initial rulemaking action for the proposed repeal and replace rule was granted to the Aviation Division by the New Mexico State Transportation Commission on January 6th, 2022, pursuant to Sections 9-5-1, 67-3-8, 67-3-11, 67-1-13, 67-3-28 and 67-1-13 NMSA 1978. The legal authority authorizing

this rulemaking is Section 64-1-13 NMSA 1978.

A prior public hearing for the proposed repeal and replace rule, 18.11.3 NMAC, was held on May 23, 2022. Subsequent to that hearing, the Aviation Division determined that the proposed repeal and replace rule, 18.11.3 NMAC, needed to be revised before final action was taken. Pursuant to that revision, the Aviation Division has determined that a second comment period and public hearing is necessary.

Purpose: The purpose of this rule is to repeal and replace the Air Service Assistance Program with the Air Service Marketing Assistance Program.

Summary of Full Text: The current rule needs to be repealed and replaced to clarify the intent of the statute and to encourage more participation by municipalities, counties, tribal entities or other public entities located within the state of New Mexico.

Full Text of the Proposed Rule: Copy of the full text of the proposed repeal and replace rule may be found on the NMDOT website at the following internet link, under the *Public Notices* tab: <https://www.dot.nm.gov/public-legal-notice/>. A copy of the proposed rule may also be requested by contacting Daniel R. Moran at: Telephone (505) 699-5462 or Email: dan.moran@dot.nm.gov. A reasonable fee may be charged for printed copies.

Rulemaking Hearing: NMDOT will hold a public hearing for the purpose of receiving oral and written public comment from interested parties on the revised proposed repeal and replace rule, 18.11.3 NMAC. The hearing is scheduled on May 25, 2023, from 10:00 a.m. to 11:30 a.m. at New Mexico Department of Transportation, district three auditorium, 7500 Pan American Fwy. NE, Albuquerque, New Mexico.

Written Comments: To submit written comments on or before May 25, 2023, please send to: Daniel

R Moran, Aviation Division, New Mexico Department of Transportation, 3501 Access Rd C., Albuquerque, New Mexico 87106, Telephone (505) 699-5462; Email: dan.moran@dot.nm.gov. Written comments will be accepted from the date this notice is published in the New Mexico Register, April 25, 2023, and until the close of the hearing scheduled in this rulemaking, May 25, 2023. If you plan to submit written comments, argument, or data at the hearing, please make sure any documentation contains your name, phone number and email address, and please bring (3) copies of any documents to the hearing. 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 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: Daniel R. Moran at (505) 699-5462 or dan.moran@dot.nm.gov at least ten days before the hearing.

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.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT FORESTRY DIVISION

This is an amendment to 19.21.2 NMAC, adding new Sections 10, 11, 16, 18 and 20 and amending Sections 7, 9, 12, 13, 15, 17, and 19, effective 04/25/2023.

19.21.2.7 DEFINITIONS:

A. “Agricultural practice” means grazing and grazing management practices such as feeding, herding or gathering; ditch clearing or burning; planting; applying herbicides to cultivated fields; harvesting; mowing of hay fields or pastures; burning pastures or fields or cultivating, plowing or disking fields or similar activities; road maintenance; and the maintenance, repair or replacement of fences, dirt tanks (earthen impoundments), water tanks and troughs, wells and windmills, pumps or solar panels powering wells, loading chutes, corrals, erosion control structures and water pipelines.

B. “Applicant” means the person applying for a permit required by 19.21.2 NMAC to take endangered plants for scientific study, propagation or collection of voucher specimens or to take an endangered plant(s) where taking is incidental and not the purpose of carrying out an otherwise lawful activity. If a governmental entity is issuing a permit, lease, license, authorization, right-of-way, easement or similar document that allows a person to conduct the lawful activity (drilling, fence installation, pipeline construction, etc.), the applicant for an incidental take permit shall be the person conducting the lawful activity not the governmental entity.

~~A.~~ C. “Department” means the energy, minerals and natural resources department.

D. “Endangered plant” means a plant that is a member of the species listed in 19.21.2.9 NMAC.

E. “Harm” means direct physical injury or damage to a plant that results in reduced viability of the plant, including reproductive potential and future health and growth.

F. “Permittee” means the person issued a permit by the state forester or a person required to have a permit pursuant to 19.21.2 NMAC. The permittee shall be the person responsible for the scientific study, propagation or collection of voucher specimens of endangered plants or the person undertaking a lawful activity where taking of an endangered plant(s) is incidental and not the purpose of carrying out the otherwise lawful activity. If a governmental entity is issuing a permit, lease, license, authorization, right-of-way, easement or similar document that allows a person to conduct the lawful activity (drilling, fence installation, pipeline construction, etc.), the permittee for an incidental take permit shall be the person conducting the lawful activity not the governmental entity.

G. “Person” means an individual or entity including partnerships, corporations, associations or joint ventures and its officers, agents or employees; the state or a political subdivision of the state and its officers, agents or employees; or an agency, department or instrumentality of the United States and its officers, agents or employees.

~~B.~~ H. “Population site” means an area of occurrence of a particular species.

~~C.~~ I. “Specimen” means the physical parts or a plant in its entirety taken from a population site for the purpose of scientific study.

~~D.~~ J. “State forester” means the director of the department’s forestry division and the department secretary’s designated representative for the purposes of administering the department’s authorities and responsibilities under Section 75-6-1 NMSA 1978 including endangered plant investigations and issuance of ~~collection and transplantation~~ scientific study, propagation, collection of voucher specimen or incidental take permits.

~~E.~~ K. “Taking” means ~~the removal, with the intent to~~ to remove, harm, kill, destroy, possess, transport, export, sell, or offer for sale any of the plants, or parts thereof, listed in 19.21.2.9 NMAC, from the places in the state of New Mexico where they naturally grow including federally owned land, private land, state owned land or land owned by political subdivisions of the state, but not tribal trust or restricted fee land or individual trust allotments. Taking does not include the

(1) incidental removal, harm, killing or destruction of endangered plants resulting from agricultural practices; or
(2) removal, harm, killing, destruction, possession or transport of endangered plants by tribal members for religious purposes.

L. “Tribal member” means a member of an Indian nation, tribe or pueblo.

~~F.~~ M. “Voucher specimen” means an identifiable and representative specimen taken by a botanical collector from a population site for the purpose of documenting that site as occupied habitat. It shall be accompanied by pertinent information on location, habitat,

collector, date taken and any other notes the collector can present concerning the population site.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.7 NMAC - Rn & A, 19 NMAC 21.2.7, 11/30/2006; A, 07/28/2020; A, 04/25/2023]

19.21.2.9 LIST OF NEW MEXICO STATE ENDANGERED PLANT SPECIES: The following list of plants constitutes the New Mexico state endangered plant species list. Listed are the plant's scientific name, its common name and the criterion for inclusion by the subsection in 19.21.2.8 NMAC:

<i>Agalinis calycina</i> (Leoncita false-foxglove)	Subsection B of 19.21.2.8 NMAC
<i>Aliciella formosa</i> (Aztec gilia)	Subsection B of 19.21.2.8 NMAC
<i>Allium gooddingii</i> (Goodding's onion)	Subsection B of 19.21.2.8 NMAC
<i>Amsonia tharpii</i> (Tharp's bluestar)	Subsection B of 19.21.2.8 NMAC
<i>Argemone pinnatisecta</i> (Sacramento prickly-poppy)	Subsection A of 19.21.2.8 NMAC
<i>Asplenium scolopendrium</i> var. <i>americanum</i> (American Hart's-tongue fern)	Subsection A of 19.21.2.8 NMAC
<i>Astragalus humillimus</i> (Mancos milkvetch)	Subsection A of 19.21.2.8 NMAC
<i>Peniocereus greggii</i> (night-blooming cereus)	Subsection B of 19.21.2.8 NMAC
<i>Castilleja ornata</i> (Swale paintbrush)	Subsection B of 19.21.2.8 NMAC
<i>Castilleja tomentosa</i> (Tomentose paintbrush)	Subsection B of 19.21.2.8 NMAC
<i>Cirsium vinaceum</i> (Sacramento Mountains thistle)	Subsection A of 19.21.2.8 NMAC
<i>Cirsium wrightii</i> (Wright's marsh thistle)	Subsection B of 19.21.2.8 NMAC
<i>Cleome multicaulis</i> (slender spiderflower)	Subsection B of 19.21.2.8 NMAC
<i>Coryphantha robustispina</i> ssp. <i>scheeri</i> (Scheer's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Cylindropuntia viridiflora</i> (Santa Fe cholla)	Subsection B of 19.21.2.8 NMAC
<i>Cymopterus spellenbergii</i> (Spellenberg's springparsley)	Subsection B of 19.21.2.8 NMAC
<i>Cypripedium parviflorum</i> var. <i>pubescens</i> (golden lady's slipper)	Subsection B of 19.21.2.8 NMAC
<i>Echinocereus fendleri</i> var. <i>kuenzleri</i> (Kuenzler's hedgehog cactus)	Subsection A of 19.21.2.8 NMAC
<i>Erigeron hessii</i> (Hess' fleabane)	Subsection B of 19.21.2.8 NMAC
<i>Erigeron rhizomatus</i> (Zuni fleabane)	Subsection A of 19.21.2.8 NMAC
<i>Eriogonum gypsophilum</i> (gypsum wild buckwheat)	Subsection A of 19.21.2.8 NMAC
<i>Escobaria duncanii</i> (Duncan's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Escobaria organensis</i> (Organ Mountain pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Escobaria sneedii</i> var. <i>leei</i> (Lee's pincushion cactus)	Subsection A of 19.21.2.8 NMAC
<i>Escobaria sneedii</i> var. <i>sneedii</i> (Sneed's pincushion cactus)	Subsection A of 19.21.2.8 NMAC
<i>Escobaria villardii</i> (Villard's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Hedeoma todsenii</i> (Todsens pennyroyal)	Subsection A of 19.21.2.8 NMAC
<i>Helianthus paradoxus</i> (Pecos sunflower)	Subsection A of 19.21.2.8 NMAC
<i>Hexalectris colemanii</i> (Coleman's coralroot)	Subsection B of 19.21.2.8 NMAC
<i>Hexalectris nitida</i> (shining coralroot)	Subsection B of 19.21.2.8 NMAC
<i>Hexalectris arizonica</i> (crested coralroot)	Subsection B of 19.21.2.8 NMAC
<i>Ipomopsis sancti-spiritus</i> (Holy Ghost ipomopsis)	Subsection A of 19.21.2.8 NMAC
<i>Lepidospartum burgessii</i> (gypsum scalebroom)	Subsection B of 19.21.2.8 NMAC
<i>Lilium philadelphicum</i> (wood lily)	Subsection B of 19.21.2.8 NMAC
<i>Linum allredii</i> (Allred's flax)	Subsection B of 19.21.2.8 NMAC
<i>Opuntia arenaria</i> (sand prickly pear)	Subsection B of 19.21.2.8 NMAC
<i>Pediocactus knowltonii</i> (Knowlton's cactus)	Subsection A of 19.21.2.8 NMAC
<i>Pediomelum pentaphyllum</i> (Chihuahua scurfpea)	Subsection B of 19.21.2.8 NMAC
<i>Penstemon metcalfei</i> (Metcalfe's beardtongue)	Subsection B of 19.21.2.8 NMAC
<i>Polygala rimulicola</i> var. <i>mescalerorum</i> (San Andres milkwort)	Subsection B of 19.21.2.8 NMAC
<i>Puccinellia parishii</i> (Parish's alkali grass)	Subsection B of 19.21.2.8 NMAC
<i>Sclerocactus cloverae</i> (Clover's cactus)	Subsection B of 19.21.2.8 NMAC
<i>Sclerocactus mesae-verdae</i> (Mesa Verde cactus)	Subsection A of 19.21.2.8 NMAC
<i>Scrophularia macrantha</i> (Mimbres figwort)	Subsection B of 19.21.2.8 NMAC
<i>Spiranthes magnicamporum</i> (lady tresses orchid)	Subsection B of 19.21.2.8 NMAC
<i>Townsendia gypsophila</i> (gypsum Townsend's aster)	Subsection B of 19.21.2.8 NMAC

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.9 NMAC - Rn & A, 19 NMAC 21.2.9, 11/30/2006; A, 01/15/2019; A, 07/28/2020; A, 04/25/2023]

19.21.2.10 PROTECTION:

The taking of endangered plants, other than pursuant to a permit issued by the state forester, is prohibited. [19.21.2.10 NMAC – N, 04/25/2023]

19.21.2.11 INCIDENTAL TAKE PERMIT:

The state forester may issue, issue with conditions or deny requests for an incidental take permit to allow a permittee to take endangered plants so long as taking is incidental to and not the purpose of carrying out an otherwise lawful activity. Such requests shall be subject to the following requirements.

A. The state forester may issue an incidental take permit only if the applicant submits a completed application on a form designated by the state forester that contains the following:

(1) the impact on the species that will likely result from the taking including the number of endangered plants to be taken;

(2) information and analysis that establishes that such taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild including range wide and local species status, number of endangered plants in the activity area, number of endangered plants in the activity area taken, number of endangered plants in the activity area avoided, direct and indirect effects on the species and population resulting from the activity, disturbance frequency and intensity, cumulative effects resulting from the activity and interrelated effects affecting the species' survival and any supporting documentation;

(3) the best management practices and mitigation activities the applicant will use to avoid, minimize and mitigate the impacts to the species from such a taking during the implementation of the proposed activity (e.g., fencing off areas with endangered plants during construction period, saving topsoil layer and returning to site after construction, dust mitigation, seed collection, adjusting or reducing project footprint,

biological monitoring on site during construction); and

(4) signed commitment that applicant will implement the best management practices and mitigation activities and submit a written report upon completion of the practices and activities.

B. An application must also include

(1) the applicant's name, address, phone number, email address and, if applicable, name and title of the applicant's authorized representative;

(2) the location of the proposed activity with a map, location coordinates (if available) and size (acreage) of proposed activity;

(3) description of the proposed activity;

(4) property ownership; and

(5) a signed certification by the applicant that states that the applicant assumes complete responsibility for any resulting impacts on endangered plants or the occupied habitat of such plants caused by the activity.

C. An incidental take permit application for an endangered plant also listed under federal law must be accompanied by United States department of the interior, fish and wildlife service consultation response or biological opinion if federal law requires the response or biological opinion.

D. The state forester may authorize or require translocation of endangered plants as a condition of an incidental take permit if the applicant demonstrates the need for translocation or the state forester otherwise determines it is necessary. Where translocation is proposed, in addition to the information required by Subsection A of 19.21.2.11 NMAC, the applicant shall:

(1) explain the need for translocation;

(2) identify the number of plants to be translocated;

(3) explain the translocation method/protocol to be employed;

(4) identify the site to which the plants will be taken for translocation and describe the long-term protections provided at the site;

(5) identify the timeline for the proposed translocation;

(6) describe the monitoring plan for translocation; and

(7) include the name and qualifications of the person carrying out the translocation.

E. If the state forester denies an application for an incidental take permit or issues an incidental take permit with conditions, the state forester shall provide the reasons for the denial or conditions in writing.

F. A permittee may not transfer an incidental take permit without the state forester's written approval.

G. The state forester's issuance of an incidental permit is not authorization to conduct the proposed activity; the incidental take permit only authorizes the incidental take. If the permittee does not own the land where the activity will occur, the permittee shall also possess or obtain the landowner's authorization for the incidental take if the landowner requires. A permittee shall comply with other applicable federal, state or local laws; possess or obtain permits, licenses or other authorizations other entities require; and if not the owner of the land where the activity will occur, possess or obtain the landowner's authorization to conduct the activity or use the land for the activity.

H. The division does not require a person conducting an activity to survey to determine the existence of endangered plant(s), but this does not relieve the applicant to conduct surveys that may be required by federal, other state or local agencies.

I. Emergency response. The following are exempt from the requirement to obtain

an incidental take permit: law enforcement or emergency responses or other federal, state or local agency civil actions, whether or not undertaken by or in coordination with the division, that are necessary to prevent or respond to immediate threats to public health, safety or environment, including firefighting and flood management or controlling, containing and capturing releases of hazardous or harmful materials. If the division is not involved in the emergency response, it should be notified of the response as soon as practicable. Any known endangered plant(s) within the area of emergency response should be monitored to the extent practicable so that any adverse effects can be avoided or mitigated.
[19.21.2.11 NMAC – N, 04/25/2023]

19.21.2.10 — PERMITS:
19.21.2.12 PERMITS
FOR SCIENTIFIC STUDY OR
PROPAGATION:

A. [The state forester may issue permits to take state endangered plant species for the purpose of conducting scientific studies that enhance understanding for the distribution of, or conditions required for survival of, endangered plant species; or for propagation or transplantation activities that will enhance the survival of endangered plant species.] The state forester may also issue permits to take specimens for the purpose of conducting scientific studies that enhance understanding of the distribution of an endangered plant species, or will generate new knowledge in the genetic, anatomical, chemical, morphological, life history or in other relevant areas of research enhancing the understanding of the conditions required for survival of an endangered plant species; or for propagation activities that will enhance the survival of endangered plant species. If the state forester denies an application for a permit or issues a permit with conditions, the state forester shall provide the reasons for the denial or conditions in writing.

B. [The state forester shall only issue permits to individuals:

No one person may operate under the authority of another's permit.] The state forester may deny applications for scientific study or propagation permits in locations where endangered plant survival is especially precarious.

C. Each person applying for a scientific study or propagation permit must demonstrate sufficient expertise to carry out the permitted activities in a competent manner. The following information may be used to support the request for a permit: education in botany or related area, field experience, collection numbers, accessions into a recognized herbarium, publications and recommendations from recognized authorities.

D. The permittee's or permittee's representative's signature on the permit acknowledges willingness to comply with all applicable laws, rules or regulations and permit conditions.

E. [The permittee shall carry a copy of the permit at all times during the collection and transportation of endangered species.

F. A permit does not authorize the permittee to take federally threatened or endangered plants. Taking of these species also requires a federal permit issued by the U.S. fish and wildlife service.

G. A permit does not extend to the permittee the privilege to trespass or enter on lands without the owner's permission. The permittee should contact the appropriate management agency or landowner before beginning studies or taking specimens on federal, state or private lands.

H.] A state permit to take [., propagate or transplant the endangered plant species listed in 19.21.2.9 NMAC] endangered plants for scientific study or propagation is not required for federal employees working within the lands of their jurisdiction, nor for activities [within tribal reservations] on tribal trust or restricted fee lands or individual trust allotments.

F. A permittee may not transfer a scientific study or propagation permit without the state

forester's written approval.
[19.21.2.12 NMAC – Rn & A,
19.21.2.10 NMAC, 04/25/2023]

19.21.2.11 — SCIENTIFIC
INVESTIGATIONS:] 19.21.2.13
GENERAL PROVISIONS
FOR SCIENTIFIC STUDY OR
PROPAGATION:

A. The state forester may issue a permit to take endangered plants for scientific studies if the studies will generate new knowledge in the genetic, anatomical, chemical, morphological, life history or in other relevant areas of research enhancing the understanding of the conditions required for the survival of the endangered species.

B. Known population sites will be provided with the permit when the permittee requires them for the permitted study. The permit will contain any special parameters for the taking.

C. If a permittee takes any specimens the permittee shall deposit at least one voucher specimen at either the university of New Mexico herbarium or New Mexico state university herbarium.

D. When possible, the investigator shall take specimens in such a way as to not reduce the population (e.g. take a single stem from an herbaceous perennial, leaving the root intact, or other methods appropriate to the particular species).

E. The state forester may prohibit taking in known locations where survival is especially precarious.]

A. When a permittee takes specimens pursuant to a scientific study permit, the permittee shall deposit at least one voucher specimen at either the university of New Mexico herbarium or New Mexico state university herbarium. When possible, the permittee shall take specimens in such a way as to not reduce the population (e.g., take a single stem from an herbaceous perennial, leaving the root intact, or other methods appropriate to the particular species).

B. The permittee or permittee's representative shall

carry a copy of the scientific study or propagation permit at all times during the collection and transportation of endangered plants.

C. A scientific study or propagation permit for an endangered plant that is also listed under federal law must be accompanied by the United States department of the interior, fish and wildlife service recovery permit.

D. A scientific study or propagation permit does not extend to the permittee the privilege to trespass or enter on lands without the owner's permission. The permittee should contact the appropriate management agency or landowner before beginning studies or taking specimens on lands the permittee does not own or manage.

[19.21.2.13 NMAC – Rn & A, 19.21.2.11 NMAC, 04/25/2023]

~~[19.21.2.12]~~ **19.21.2.14**
VOUCHER SPECIMENS:

A. The state forester may issue a permit to take endangered plant voucher specimens during botanical inventories and environmental surveys for the purposes of species verification and documentation of population sites.

B. Taking specimens for the sole purpose of exchange with other herbaria is prohibited.

C. The collection of voucher specimens shall make no long-term detrimental effect on the population. The permittee may take a maximum of three specimens, if the population is sufficient. If the population is very small and the taking of a single individual is detrimental, then the state forester may condition the permit so that the permittee may take only a fragment of an individual for voucher purposes.

D. The permittee shall deposit at least one specimen of the three taken from each locality at the university of New Mexico herbarium or New Mexico state university herbarium. The permittee may send duplicates to the western New Mexico university herbarium, government agency collections within New Mexico or herbaria in

other states that are formally listed in index herbariorum. The label affixed to each specimen shall contain information on collection location, description of the habitat, collector's name, date of collection and estimated size of the population.

E. To assist in the identification and preservation of endangered plant species in New Mexico, permittees shall report all permitted collections of voucher specimens to the state forester by December 31 of each year. The report shall contain the voucher specimen label information and the place or places of deposition of specimens. [19.21.2.14 NMAC – Rn, 19.21.2.12 NMAC, 04/25/2023]

~~[19.21.2.13]~~ **PROPROPAGATION AND TRANSPLANTATION:**

19.21.2.15 PERMIT

APPROVAL:

A. The state forester may issue a permit to take endangered plants to propagate or transplant when evidence is presented that the activity will enhance that species' survival capability.

B. The state forester may issue a permit to transplant endangered species (not including federally listed taxa) when such species occur on areas of land use conversion.

C. The state forester may issue a permit for transplantation upon approval of a proposal the applicant submits outlining the need for such transplantation, the method to be employed, the site to which the plants will be taken for transplantation and the qualifications of the person carrying out the transplantation.

The state forester shall only issue a permit if the application meets the applicable requirements in 19.21.2.11, 19.21.2.12, 19.21.2.13 or 19.21.2.14 NMAC for approval of an incidental take permit, scientific study, propagation or collection of voucher specimen permit. The state forester may not approve an application for a permit if an applicant (a) has taken an endangered plant outside the scope of a prior permit's provisions or without a permit, (b) otherwise

failed to comply with a prior permit, (c) provided false information on a permit application or (d) attempted to transfer a prior permit without the state forester's written approval or allow someone else to use a prior permit.

[19.21.2.15 NMAC – Rn & A, 19.21.2.13 NMAC, 04/25/2023]

19.21.2.16 PERMIT

AMENDMENT: A permittee shall submit a written application to the state forester to request an amendment to a permit. The application shall describe the amendment requested and explain why the amendment is needed.

[19.21.2.16 NMAC – N, 04/25/2023]

~~[19.21.2.14]~~ **19.21.2.17 PERMIT**

REVOCATION: [Prohibited activities that render a collection permit invalid and may subject the permittee to prosecution include:]

A. The state forester may revoke a permit for actions or events including taking of [specimens of endangered plant species] endangered plants outside the scope of the permit's provisions or without a permit, failure to comply with the permit, discovery that any of the reasons that would have resulted in the state forester not approving a permit application exist, failure to deposit a voucher specimen in a designated New Mexico herbarium as required by Subsection A of 19.21.2.13 NMAC for a scientific study permit or by Subsection D of 19.21.2.14 NMAC for voucher specimen permits, taking specimens under a permit for commercial use, providing false information on the permit application, attempting to transfer the permit without the state forester's prior written approval or allowing someone else to use the permit.

B. The state forester shall provide 30 days' prior written notice of the permit revocation to the permittee unless such notice will result in long-term detrimental effect on the endangered plant population's survival. If such notice will result in long-term detrimental effect on

the endangered plant population's survival, the state forester shall provide at least 48 hours written notice.

[19.21.2.17 NMAC – Rn & A, 19.21.2.14 NMAC, 04/25/2023]

19.21.2.18 PERMIT TERM:

The permit term shall be for the scope of the activity or five years, whichever is less. If the activity is not completed within five years, the permittee shall apply for a new permit. The scope of the activity does not include subsequent maintenance, repair or replacement, which are considered separate activities.

[19.21.2.18 NMAC – N, 04/25/2023]

~~19.21.2.15~~ **PROTECTION AND PENALTIES:** 19.21.2.19 PENALTIES:

A. ~~[The taking, possession, transportation, exportation from the state, processing, sale or offer for sale or shipment within the state of plants listed in 19.21.2.9 NMAC, other than pursuant to a valid permit issued by the state forester, is prohibited.~~

~~—————~~ **B.]** Pursuant to Section 75-6-1 NMSA 1978, violation of 19.21.2 NMAC is a misdemeanor punishable by a fine of not less than \$300, nor more than \$1,000 or imprisonment for a term of not more than 120 days or both. Each individual endangered plant taken without a valid permit issued by the state forester is a violation of 19.21.2.10 NMAC; each individual incidence or occurrence is a violation of other provisions in 19.21.2 NMAC (e.g., failing to obtain a required permit, providing false information on a permit application, failing to comply with a permit condition).

~~[C.]~~ **B.** Any law enforcement officer may seize any endangered plants taken, possessed, transported, exported, processed, sold or offered for sale or shipped in violation of 19.21.2 NMAC.

[19.21.2.19 NMAC – Rn & A, 19.21.2.15, 04/25/2023]

19.21.2.20 TRANSITION:

The prohibition on removing,

harming, killing or destroying endangered plants without a permit issued by the state forester shall not apply to ground-disturbing activities for which a person received a permit or similar authorization from a federal, state or local government agency prior to April 25, 2023 so long as the ground disturbance commences by October 22, 2023.

[19.21.2.20 NMAC – N, 04/25/2023]

**ENERGY, MINERALS
AND NATURAL
RESOURCES
DEPARTMENT
STATE PARKS DIVISION**

This is an amendment to 18.17.2 NMAC, adding new Section 18 and amending Sections 3, 7, 8, 9, 11, 12, 13, 15 and 16, effective 04/25/2023.

18.17.2.3 STATUTORY AUTHORITY: ~~[NMSA 1978;]~~

Section 66-12-18 NMSA 1978 authorizes the state parks division to promulgate ~~[regulations]~~ rules to carry into effect the provisions of the Boat Act, ~~[NMSA 1978;]~~ Sections 66-12-1 *et seq.* NMSA 1978.

[12/31/96; 12/31/98; 18.17.2.3 NMAC - Rn, 18 NMAC 17.2.3, 9/15/2006; A, 1/01/2007; A, 04/25/2023]

18.17.2.7 DEFINITIONS:

A. “Certificate of number” means the registration certificate required to operate a motorboat on the waters of New Mexico.

B. “Combination lights” means lights required on vessels operating on the waters of New Mexico in the hours of darkness, green on the starboard (right) side and red on the port (left) side and shall throw the lights from dead ahead to two points abaft of the beam on their respective sides.

C. “Department” means the energy, minerals and natural resources department.

D. “Director” means the director of the energy, minerals

and natural resources department, state parks division.

E. “Division” means the energy, minerals and natural resources department, state parks division.

F. [“Flotation assist device” means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water's surface:

~~—————~~ **G.]”Person”** means an individual, partnership, firm, corporation, association, joint venture or other entity.

~~[H.]~~ **G. “Personal flotation device”** means a U.S. coast guard approved ~~[life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion]~~ personal flotation device used in accordance with its U.S. coast guard approved label.

~~[I.]~~ **H. “Personal watercraft”** means a class A motorboat less than 16 feet, designed to be operated by a person sitting, standing or kneeling on the vessel rather than the operator sitting or standing inside the vessel. Examples include jet skis, sea doos, wave runners and similar devices.

~~[J.]~~ **L. “Power driven vessel”** means any vessel propelled by machinery at the time of operation.

~~[K.]~~ **J. “Registration”** means the process by which motorboats owned by persons domiciled in New Mexico and motorboats not registered in another state nor by the United States, which are operated on the waters of this state are numbered as evidenced by a certificate of number issued by the New Mexico taxation and revenue department under a joint powers agreement with the department.

~~[L.]~~ **K. “Right of way”** means the right of a vessel, which is proceeding on an established forward course at a relatively constant speed to continue such course unchanged without reducing speed, turning, veering or reversing.

~~[M.]~~ **L. “Secretary”** means the secretary of the energy, minerals and natural resources department.

~~[N.]~~ **M. “Superintendent”** means a division employee who is in charge of a specific park.

~~☉~~ **N.** “Vessel” means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~P~~ **Q.** “Wake” means white water created from wave action breaking off the vessel’s bow or sides. [7/17/67...12/31/96; 12/31/98; 18.17.2.7 NMAC - Rn, 18 NMAC 17.2.7, 9/15/2006; A, 1/01/2007; A, 04/25/2023]

18.17.2.8 REGISTRATION:

A. Certificate of number: In accordance with the Boat Act, boats operating on waters of the state shall be numbered and the certificate of number shall be available for inspection at all times when the motorboat is in operation. Every certificate of number except those issued to dealers and manufacturers expires on December 31 of the third calendar year of registration. Registration shall be renewed triennially. Refunds shall not be made for any unused period of a certificate of number due to non-use of a vessel or change in ownership. No person shall transfer or authorize the transfer of a registration validation decal from one vessel to another.

B. Registration number: A motorboat’s registration number shall be painted on or permanently affixed to each side of the motorboat’s forward half, and no other number shall be displayed on that part of the motorboat. Numbers shall: read from left to right; be in plain vertical block characters; be of a color contrasting with the background; be distinctly visible and legible; be not less than three inches in height; and have spaces or hyphens that are equal to the width of a letter between the letter and number groupings. Example: NM 0000 AA or NM--0000--AA. The validation sticker shall be affixed within six inches to the right of the registration number on the port side of the vessel.

C. Dealer registrations: A dealer’s certificate of number shall be on board each vessel being demonstrated. Dealer numbers shall be displayed and mounted temporarily on such vessels. The dealer number shall not be affixed permanently on a vessel. An individual dealer shall not demonstrate more than three vessels at any one time.

D. Registration fees:

CLASS	MOTORBOAT LENGTH	THREE YEAR COST
A	Less than 16 ft.	\$28.50
1	16 ft. to less than 26 ft.	\$36.00
2	26 ft. to less than 40 ft.	\$43.50
3	40 ft. to less than 65 ft.	\$51.00
	65 ft. or over	\$66.00
	Duplicate Registration	\$ 5.00

[2/24/75...12/31/96; 12/31/98; 18.17.2.8 NMAC - Rn, 18 NMAC 17.2.8, 9/15/2006; A, 1/01/2007; A, 04/25/2023]

18.17.2.9 EQUIPMENT REQUIRED TO OPERATE A VESSEL: No person shall operate or give permission to operate a vessel on the waters of this state that is not equipped as required by 18.17.2.9 NMAC and the Boat Act.

A. Flotation devices:

(1) Vessels shall carry a U.S. coast guard approved wearable personal flotation device of proper size and fit for each person on board or being pulled as a skier, plus one U.S. coast guard approved throwable device [~~-, cushion or ring buoy~~]. A throwable device is not required for personal watercraft, kayaks, canoes, paddleboards, [~~or rubber rafts~~] wind sail boards, inner tubes, air mattresses, float tubes, rubber rafts or other inflatable watercraft. Personal flotation devices and throwable devices shall be in serviceable condition readily accessible for use and shall bear evidence of U.S. coast guard approval. Personal flotation devices and throwable devices shall be carried and used in accordance with any requirements on the approval label.

(2) Skiers and those being pulled on a floating object shall wear a U.S. coast guard approved [~~type I, H or HH~~] wearable personal flotation device while being pulled by a vessel.

(3) Vessels that carry passengers for hire shall provide a U.S. coast guard approved [~~type I life preserver~~] wearable personal flotation device for each person on board. Vessels shall carry an additional number of approved [~~type I life preservers~~] wearable personal flotation devices of children size equal to at least 10 percent of the total number of persons carried unless the service is such that children are never carried. [~~U.S. coast guard type H, HH or IV devices will not suffice for 18.17.2.9 NMAC.~~]

(4) Persons engaged in boating on a river or in boat races or persons using ice sailboats, personal watercraft, kayaks, canoes, paddleboards and rubber rafts on any waters of this state shall wear a U.S. coast guard approved wearable personal flotation device.

(5) Persons using wind sail boards, inner tubes, air mattresses, float tubes or other inflatable devices not covered in Paragraph (4) of Subsection A of 18.17.2.9 NMAC on waters of this state shall wear [~~a flotation~~]

assist device or] a U.S. coast guard approved wearable personal flotation device of the proper size and fit and in accordance with any requirements on the approved label.

(6) The operator of a vessel used for recreational purposes shall require children age 12 or under who are aboard the vessel to wear a personal flotation device approved by the United States coast guard while the vessel is underway, unless the child is below deck or in an enclosed cabin.

B. Fire extinguisher:

(1) Vessels constructed with any of the following characteristics shall be equipped with serviceable U.S. coast guard approved marine fire extinguisher of a size and in a quantity set forth in Paragraph (2) of Subsection B of 18.17.2.9 NMAC:

- (a) inboard engine;
- (b) closed compartments under thwarts and seats where portable fuel tanks may be stored;
- (c) double bottoms not sealed to the hull or that are not completely filled with flotation material;
- (d) closed living spaces;
- (e) closed storage compartments in which combustible or flammable materials may be stored; or
- (f) permanently installed fuel tanks.

(2) Fire extinguisher requirements by boat length:

CLASS	LENGTH OF MOTORBOAT	NUMBER OF EXTINGUISHERS REQUIRED	SIZE OF FIRE EXTINGUISHERS
A	Less than 16 feet	One	[B-I] 5-B
1	16 feet to less than 26 feet	One	[B-I] 5-B
2	26 feet to less than 40 feet	Two or One	[B-I] 5-Bs or [B-H] 20-B
3	40 feet or more	Three or One [each]	[B-I] 5-Bs or [B-H and B-I] 20-B

(3) Disposable (non-rechargeable) fire extinguishers meeting this requirement shall be not more than 12 years old from the date stamped on the bottle.

C. Sound producing devices: Vessels shall carry on board a sound producing device in accordance with the following minimum requirements:

- (1) less than 26 feet (this includes kayaks, canoes, paddleboards and rubber rafts): mouth, hand or power operated whistle or other sound producing mechanical device capable of producing a blast of two second duration and audible for at least one-half mile;
- (2) 26 feet but less than 40 feet: hand or power operated horn or whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell;
- (3) 40 feet or more: power operated horn or

whistle capable of producing a blast of two seconds or more duration and audible for a distance of at least one mile and a bell.

D. Flame arrestor:

Enclosed gasoline engine carburetors (except outboard motors) installed in a vessel shall be equipped with a U.S. coast guard approved backfire flame arrestor that is marked with a U.S. coast guard approval number or in compliance with UL 1111 tests or the standard SAE J-1928, MARINE.

E. Water closets:

No person shall maintain or operate a vessel on the waters of this state equipped with a water closet unless the closet is self-contained and incapable of discharging directly into the water.

F. Lights:

(1) [Motorboats] Power driven vessels operating one-half hour after sunset to one-half hour before sunrise or during times of poor visibility shall display a combination light on the vessel's fore part and a white light aft to show 360

degrees around the vessel's horizon and above the combination light. The combination light shall be green on the starboard (right) side and red on the port (left) side and shall throw the lights from dead ahead to two points abaft of the beam on their respective sides.

(2) A sailing vessel underway one-half hour after sunset to one-half hour before sunrise or during times of poor visibility shall exhibit lights as required below or by U.S. coast guard rule.

(a) A sailing vessel of seven meters in length or more shall exhibit sidelights and a sternlight.

(b) A sailing vessel of less than seven meters in length shall, if practicable, exhibit sidelights and a sternlight, but if she does not, she shall exhibit an all-round white light or have ready at hand an electric torch or lighted lantern showing a white light, which shall be exhibited in sufficient time to prevent collision.

(c)

A sailing vessel of 12 meters or more in length proceeding under sail when also being propelled by machinery shall exhibit forward, where it can best be seen, a conical shape, apex downward. A sailing vessel of less than 12 meters in length is not required to exhibit this shape but may do so.

(2) (3) Vessels

[not covered by Paragraph (1) of Subsection F of 18.17.2.9 NMAC] under oar or paddle shall when underway or anchored in a non-designated mooring area one-half hour after sunset to one-half hour before sunrise or during times of poor visibility have ready at hand an electric torch or lighted lantern showing a white light, which shall be exhibited in sufficient time to prevent collision.

(4) The

display of red, green and white lights contrary to Subsection F of 18.17.2.9 NMAC or U.S. coast guard regulations is prohibited.

G. Other equipment:

Persons engaged in canoeing, kayaking, paddle boarding or rubber rafting and persons using wind sail boards, inner tubes, air mattresses, float tubes or other inflatable devices are not required to have a bailing bucket, bilge pump or any length of stout rope.

[7/17/1967...12/31/1996; 12/31/1998; 18.17.2.9 NMAC - Rn, 18 NMAC 17.2.9, 9/15/2006; A, 1/01/2007; A, 1/01/2013; A, 04/25/2023]

18.17.2.11 PROHIBITED OPERATIONS:

The operator of a vessel operating on the waters of this state shall not engage the vessel in prohibited activities nor allow passengers to engage in activities prohibited by 18.17.2 NMAC or the Boat Act.

A. Riding the foredeck and gunwales of vessels:

(1) Except

when casting off, mooring or when otherwise necessary such as for water rescue, picking up a swimmer or retrieving articles blown overboard, when a vessel is underway no vessel

operator shall allow a person to ride or sit on the [gunwales or on the bow] bow, gunwales, transom, seats on raised decks or any other place not intended for the carrying of passengers [of a vessel when underway], unless the vessel is equipped with adequate guard rails designed to prevent a person from slipping under or rolling over the rail.

(2) Except

when casting off, mooring or when otherwise necessary such as for water rescue, picking up a swimmer or retrieving articles blown overboard, when a vessel is underway no person shall ride or sit on the bow, gunwales, transom, seats on raised decks or any other place not intended for the carrying of passengers, unless the vessel is equipped with adequate guard rails designed to prevent a person from slipping under or rolling over the rail.

(3) Persons

shall not sit on a seat back while the vessel is underway or allow their legs to hang overboard at any time.

(4) Persons

shall not ride outside the railing of a pontoon boat when underway.

(5) Persons

shall not ride on the elevated fishing seats of the vessel while the vessel is underway.

B. Trolling:

Trolling or drift fishing is prohibited within 150 feet of a marina, boat ramp or courtesy dock.

C. Speed:

(1) Vessel

operators shall not operate vessels at a speed greater than is reasonable or proper according to conditions prevailing at the time of operation.

(2) Vessel

operators shall operate vessels at speeds controlled as necessary to avoid swamping or collision with any watercraft or person.

(3) Vessel

operators shall observe no-wake speeds when operating within 150 feet of launch ramps, docks, mooring lines, beached or anchored vessels within 150 feet of shore, swimmers, fishermen and areas designated for "no-wake" boating. Exception to

no-wake operation: under adverse weather conditions, a vessel may maintain the minimum speed necessary to maintain a safe course.

D. Overloading:

No vessel operator shall carry more people on board than the number stated on a vessel's capacity plate or as computed by multiplying the vessel's length times its width and dividing by 15.

E. Pollution:

No person shall deposit or discharge liquid or solid waste or other refuse into this state's waters.

F. Buoys, water

marking system: No person shall anchor from, deface or relocate a buoy placed by the division or any government agency for the purpose of aiding navigation. No person shall operate a vessel in a manner that will interfere unnecessarily with the safe navigation of other vessels or anchor a vessel in the traveled portion of a channel in a way that will prevent or interfere with any other vessel passing through the same area.

G. Operation while

under the influence of alcohol or

controlled substances:

No person shall operate a motorboat or vessel, nor use water skis, surfboard or similar device, while under the influence of alcohol or any controlled substance.

H. Age restriction:

No person under the age of 13 shall operate a motorboat unless under an adult's onboard supervision.

I. Use of airborne

devices prohibited: No person, while being towed by a watercraft, shall use a device, except for a parasail, for the purpose of becoming airborne over the waters of this state. No person while operating a watercraft shall tow a person using a device, except for a parasail, for the purpose of becoming airborne over the waters of this state.

J. No person shall

operate a motorized vessel less than 26 feet in length without having on or affixed to their person a line or link that activates the emergency cut off switch (ECOS) while on plane or above no-wake speed. Exceptions to this requirement include when

(1) the vessel is not equipped with ECOS by the manufacturer;

(2) the engine of the vessel is three horsepower or less;

(3) while using the vessel for fishing or while docking or trailering the vessel; or

(4) when the main helm of the vessel is in an enclosed cabin.

[7/17/1967...12/31/1996; 5/31/1997; 18.17.2.11 NMAC - Rn & A/E, 18 NMAC 17.2.11, 9/15/2006; A, 1/01/2007; A, 04/25/2023]

18.17.2.12 BOATING ACCIDENTS:

A. The operator or legal representative of a vessel involved in a collision, accident or other casualty on a water of this state shall:

(1) report the collision, accident or other casualty immediately to the local law enforcement agency; and

(2) file a [~~U.S.~~ coast guard] boating accident report within 48 hours with the division if the collision, accident or other casualty resulted in a death, injury requiring more than standard first aid or property damage in excess of \$100; forms are available at offices of state parks with lakes; reports shall be sent to and forms are also available at: State Parks Division; 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505; (505) 476-3355.

B. No person shall knowingly make false claims or statements when reporting a collision, accident or casualty.

[10/17/1968...12/31/1996; 12/31/1998; 18.17.2.12 NMAC - Rn, 18 NMAC 17.2.12, 9/15/2006; A, 1/01/2007; A, 1/01/2013; A, 04/25/2023]

18.17.2.13 WATER SKIING:

Water skiing is permitted on the waters of this state; however, in the interest of public safety, the director or his designee may designate certain areas as closed to such activity and prohibit entry into these areas for water skiing.

A. Prohibited skiing activities:

(1) Water skiing is prohibited within 150 feet of a public dock (other than a ski dock), mooring line, launching ramp, boat, fisherman, swimmer or a person not also engaged in water skiing.

(2) No person shall intentionally obstruct or interfere with water skiers engaged in waterskiing.

(3) The use of personal watercraft such as jet skis, sea-doos, wave runners and similar devices to tow water skiers, surfboards, tubes or similar devices is prohibited except as provided in Paragraph (2) of Subsection B of 18.17.2.13 NMAC.

B. Skiing special requirements:

(1) A person in the towing vessel shall raise an international fluorescent orange or a red warning flag whenever a person on water [~~skies~~] skis or other water device has fallen, dropped off or is starting, [~~in order~~] to warn other vessels away from the area. The flag shall be a minimum of 12 inches by 12 inches and displayed high enough to be visible 360 degrees around the vessel without obstruction.

(2) No person shall pull a water skier with a personal watercraft unless:

(a) water skiing laws and rules are complied with;

(b) the personal watercraft pulling the skier has manufacturer recommended seating for at least three people;

(c) there is a vacant seat on the pulling vessel for the skier; and

(d) the personal watercraft has an observer on board in addition to the operator.

[7/17/1967...12/31/1996; 18.17.2.13 NMAC - Rn, 18 NMAC 17.2.13, 9/15/2006; A, 1/01/2007; A, 04/25/2023]

18.17.2.15 TRAFFIC CONTROL:

When a person

operating a vessel meets, overtakes or crosses another vessel's course, the operator shall take the appropriate action.

A. **Meeting:** When two vessels approach each other head-on or nearly so, each vessel shall steer to the starboard (right) so as to pass port (left) side to port side.

B. **Passing on parallel courses:** When the courses of two vessels approaching one another are so far on the starboard side of each other as not to be meeting head-on, the vessels shall pass on the starboard side of each other.

C. **Overtaking:** When one vessel is overtaking another, the vessel overtaking shall keep clear of the vessel being overtaken.

D. **Crossing:** When the courses of two vessels are such that their courses, if continued unchanged, will cross, the vessel approaching from the left shall give way by altering course, slowing down, stopping or reversing.

E. **Power [~~operated~~ driven vessels:** A power [~~operated~~] driven vessel shall yield the right-of-way to a [~~non-powered~~] non-power-driven vessel except when the non-power-driven vessel is passing the power-driven vessel from behind the power-driven vessel shall maintain course.

F. **Vessel departure/arrival:** A vessel leaving a pier or dock has the right-of-way over a vessel approaching a dock.

G. **Distance:** Vessels shall keep 150 feet away from swimmers, water skiers, fishermen, diver flags and others not participating in the same activity.

[7/17/1967...12/31/1996; 18.17.2.15 NMAC - Rn, 18 NMAC 17.2.15, 9/15/2006; A, 1/01/2007; A, 04/25/2023]

18.17.2.16 RESTRICTED OPERATION ON STATE

WATERS: Limits to the size, type and operation of vessels on waters within the state are provided below. Officials of the division and other state and federal agencies authorized by the director or by law and who

are on official duty are exempt from 18.17.2.16 NMAC while operating in an emergency condition.

A. Bottomless lakes: [~~Operation of motorboats powered by more than three horsepower is prohibited.~~] Only paddle craft, vessels under oar and float tubes are permitted.

B. ~~[Heron] Clayton lake:~~ Motorized boating activity is limited to no-wake operation only.

C. Cochiti lake: Motorized boating activity is limited to no-wake operation only.

D. Fenton lake: Only paddle craft, vessels under oar and float tubes are permitted.

E. Heron lake: Motorized boating activity is limited to no-wake operation only.

~~[D] E. **Murphy lake:** Only vessels [powered with oars or electric motors] with electric motors, paddle craft, vessels under oar and float tubes are permitted.~~

~~[E. **Fenton lake:** Vessels with motors or sails are prohibited.~~

~~_____ F] G. **San Juan river:** Motorized vessels are prohibited on the San Juan river, within Navajo Lake state park. The use of non-motorized vessels on the San Juan river within Navajo Lake state park is authorized from the [~~San Juan~~] Texas hole day use area downstream and is limited to the purpose of fishing unless otherwise authorized by the director.~~

[G] H. Santa Cruz: Motorized boating activity is limited to no-wake operation only.

[H] I. Sugarite canyon: [~~Gas powered boats are prohibited on lake Maloya. All boating is prohibited on lake Alice.~~] Only vessels with electric motors, paddle craft, vessels under oar and float tubes are permitted on lake Maloya. Only float tubes are permitted on lake Alice.

[7/17/1967...12/31/1996; 18.17.2.16 NMAC - Rn, 18 NMAC 17.2.16, 9/15/2006; A, 1/01/2007; A, 04/25/2023]

18.17.2.18 TERMINATION OF VOYAGE: Division law enforcement officers, sheriffs in their respective county and members of the state police may terminate the voyage of a vessel when they determine the continued use of the vessel will create hazardous conditions that constitute a danger to the health and safety of the occupants of the vessel or others. The officer may direct the operator of the vessel to return to mooring, remove the vessel from the water or prohibit launching of the vessel until the unsafe conditions end or are corrected. Reasons for termination of voyage include

A. operating a vessel contrary to the provisions of 18.17.2.9 NMAC;

B. operating a vessel contrary to the provisions of 18.17.2.11 NMAC or otherwise operating a vessel in a reckless or negligent manner;

C. operating a vessel in hazardous weather as to create an undue risk to the life of the occupants of the vessel; or

D. any other conditions a reasonable person would deem create a danger to the occupants of the vessel or others and only the immediate termination of the voyage would prevent serious injury or death. [18.17.2.18 NMAC - N, 04/25/2023]

**HEALTH,
DEPARTMENT OF**

**TITLE 7 HEALTH
CHAPTER 1 HEALTH
GENERAL PROVISIONS
PART 19 VIOLENCE
INTERVENTION PROGRAM
FUND**

7.1.19.1 ISSUING AGENCY: New Mexico Department of Health, epidemiology and response division. [7.1.19.1 NMAC - N, 04/25/2023]

7.1.19.2 SCOPE: The violence intervention program fund shall apply to requests made for funds available pursuant to the Violence

Intervention Fund Act, Sections 24-34-1, et seq, NMSA 1978. [7.1.19.2 NMAC - N, 04/25/2023]

7.1.19.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the following statutory authorities:

A. The Department of Health Act, Subsection E of Section 9-7-6, NMSA 1978, which authorizes the secretary of the department of health to “make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions”.

B. The Violence Intervention Program Fund Act, Section 31-30-8, NMSA 1978, which authorizes the department of health to adopt rules to carry out the provisions of the act. [7.1.19.3 NMAC - N, 04/25/2023]

7.1.19.4 DURATION: Permanent. [7.1.19.4 NMAC - N, 04/25/2023]

7.1.19.5 EFFECTIVE DATE: April 25, 2023, unless a later date is cited at the end of a section. [7.1.19.5 NMAC - N, 04/25/2023]

7.1.19.6 OBJECTIVE: The objective of Part 19, Chapter 1 is to establish standards and procedures for funding programs under the Violence Intervention Program Fund Act. These standards and procedures are designed for the purpose of making funds available to administer the provisions of the Violence Intervention Program Act and award violence intervention program grants to state agencies, counties, municipalities or tribal governments that the department finds are disproportionately impacted by violent crimes, including homicides, shootings and aggravated assaults, and develop standards pertaining to the collection and sharing of data by grantees. This rule will inform eligible agencies and stakeholders of the procedures to access funds. The department of health through the injury and behavioral epidemiology

bureau, will administer the fund pursuant to the Violence Intervention Program Fund Act and this rule. [7.1.19.6 NMAC - N, 04/25/2023]

7.1.19.7 DEFINITIONS:

A. Definitions

beginning with “A”:

(1)

“**Accumulation**” defined as the prior approved expenditure or disposition in the current fiscal year of funds distributed in the fiscal year.

(2) “**Act**”

defined as the Violence Intervention Program Fund Act, Section 24-34-1, et seq, NMSA 1978.

B. Definitions

beginning with “B”: “**Bureau**”

defined as the injury and behavioral epidemiology bureau of the epidemiology and response division, New Mexico department of health.

C. Definitions

beginning with “C”:

(1) “**Chief**”

defined as the bureau chief of the injury and behavioral epidemiology bureau.

(2)

“**Commission**” defined as the New Mexico sentencing commission.

(3)

“**Community-based service provider**” defined as an entity that is eligible to be awarded a contract to provide services that accomplish the purposes of the Violence Intervention Program Act.

D. Definitions

beginning with “D”:

(1)

“**Department**” defined as the New Mexico department of health.

(2) “**Director**”

defined as the director of the epidemiology and response division.

(3) “**Division**”

defined as the epidemiology and response division.

E. Definitions

beginning with “E”: [RESERVED]

F. Definitions

beginning with “F”:

(1) “**Fiscal**

year” defined as the state fiscal year that runs from July 1 through June 30 each year.

(2) “**Fund**”

defined as the violence intervention program fund.

G. Definitions

beginning with “G”: “**Grantee**”

defined as a state agency, county, municipality or tribal government that has applied for and received funding pursuant to the Violence Intervention Program Act for the purposes of addressing gun violence and aggravated assaults in a locally focused geographic area.

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”: [RESERVED]

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”: [RESERVED]

M. Definitions

beginning with “M”: [RESERVED]

N. Definitions

beginning with “N”: [RESERVED]

O. Definitions

beginning with “O”: [RESERVED]

P. Definitions

beginning with “P”: [RESERVED]

Q. Definitions

beginning with “Q”: [RESERVED]

R. Definitions

beginning with “R”: [RESERVED]

S. Definitions

beginning with “S”: “**Secretary**” defined as the secretary of the New Mexico department of health.

T. Definitions

beginning with “T”: [RESERVED]

U. Definitions

beginning with “U”: [RESERVED]

V. Definitions

beginning with “V”: [RESERVED]

W. Definitions

beginning with “W”: [RESERVED]

X. Definitions

beginning with “X”: [RESERVED]

Y. Definitions

beginning with “Y”: [RESERVED]

Z. Definitions

beginning with “Z”: [RESERVED]

[7.1.19.7 NMAC - N, 04/25/2023]

7.1.19.8 DUTIES OF

THE BUREAU: The bureau shall administer the fund, administer

the provisions of the Violence Intervention Program Act and pursuant to the Act and this rule receive and review applications for and award violence intervention program grants to state agencies, counties, municipalities or tribal governments that the department finds are disproportionately impacted by violent crimes, including homicides, shootings and aggravated assaults. [7.1.19.8 NMAC - N, 04/25/2023]

7.1.19.9 DUTIES OF THE

COMMISSION: The commission shall:

A. provide state agencies, counties, municipalities and tribal governments with data relevant to grant applications pursuant to Subsection B of Section 31-30-5 NMSA 1978;

B. each year through 2027, with the department, the commission shall report to the legislature by December 1 regarding the awards and outcomes of each grantee pursuant to Subsection B of Section 31-30-9, NMSA 1978. [7.1.19.9 NMAC - N, 04/25/2023]

7.1.19.10 ANNUAL

REPORTS: Each grantee shall report to the department and the commission by November 1 of each year regarding the:

A. purpose and amount of each grant received by the grantee for the previous fiscal year; and

B. processes, outputs and outcomes resulting from each grant approved by the department for the previous fiscal year, including relevant data as required by department rules.

[7.1.19.10 NMAC - N, 04/25/2023]

7.1.19.11 VIOLENCE INTERVENTION PROGRAM:

The purpose of the Violence Intervention Program Act is to create a non-reverting fund in the state treasury, the “violence intervention program fund”, to consist of appropriations, gifts, grants and donations, to be administered by the department for awarding violence intervention program

grants to state agencies, counties, municipalities or tribal governments that the department finds are disproportionately impacted by violent crimes, including homicides, shootings and aggravated assaults.

A. Eligibility: subject to the availability of the funds in the violence intervention fund, state agencies, counties, municipalities or tribal governments that the department finds are disproportionately impacted by violent crimes, including homicides, shootings and aggravated assaults may apply for funding under this rule.

B. Application process: In the first year of the program, within 60 days of the effective date of this rule, and thereafter, annually prior to the start of each state fiscal year, eligible state agencies, counties, municipalities, or tribal governments may apply to participate in the violence intervention fund program by submitting the application forms in a timely manner, as prescribed and distributed by the bureau. Such application forms will include, but not be limited to:

(1) Grant application form provided by the bureau including, but not limited to the following:

(a) budget form and narrative including a plan of expenditure for the amounts requested from the fund;

(b) project narrative which includes:

(i) need statement-provide a description of your agency and the constituents you serve. This narrative should describe the severity of violence and its impact on the community, as well as a description of the unmet need or problem that the grant project will address;

(ii) project description including identified high-risk target population and programs to address the problem.

(2) Violence prevention strategic plan - the strategic plan must include, at a minimum:

(a) an assessment of current violence prevention capacity and any current violence prevention activities and their effectiveness;

(b) description of selected evidence-based, evidence informed, or research-based programs and strategies to be implemented;

(c) action plans for program implementation and evaluation;

(d) statement of desired (measurable) outcomes and criteria with which to assess implementation success.

C. Funding amounts: Based upon the allocation decision by the authority in 7.27.9.12 NMAC, Funding amounts shall be determined by the department, will be based on criteria described in the grant application form, and will be dependent on availability of funds in the violence intervention fund.

D. Accumulation: It is anticipated that the entire amount of the annual award to each grantee will be spent during the fiscal year in which it is awarded. In the event that the entire amount cannot or will not be expended, the grantee must return the unexpended balance to the bureau unless it submits an accumulation and expenditure plan that is approved by the bureau prior to the close of the fiscal year in which it was awarded. The bureau may approve up to one additional fiscal year to expend the balance.

[7.1.19.11 NMAC - N, 04/25/2023]

7.1.19.12 GENERAL PROVISIONS: Oversight, inspection, and audit: The department is responsible for the oversight of expenditures from the fund. All recipients of violence intervention funds under the act shall be subject to reasonable oversight and as needed, visitation by authorized representatives of the bureau. Records of purchases, training programs, or personnel expenditures accomplished with awards from the fund shall be open for inspection. This oversight may include an

objective audit if deemed necessary. Findings from all oversight activities will be shared with the fund recipient and as appropriate a written deficiency correction report may be requested.

[7.1.12. NMAC - N, 04/25/2023]

HISTORY OF 7.1.19 NMAC: [RESERVED]

HEALTH, DEPARTMENT OF

This is an amendment to 7.1.31 NMAC, Section 9, effective 4/25/2023.

7.1.31.9 SUBMISSION OF CLAIMS DATA TO DATABASE:

A. All-payer claims database data providers:

(1) Data providers must submit all available data and health information with necessary identifiers to the database as described in the APCD-Common Data Layout (APCD-CDL™, Version [1-1] 2.1 with errata, Copyright [2018-2020] 2021 by APCD Council, National Association of Health Data Organizations, the University of New Hampshire) within the time frames in this rule and in accordance with procedures established herein.

(2) Any data provider used by an entity that participates in the database such as a third-party administrator or pharmacy benefit manager must provide claims data to the department or the data vendor upon request of the entity.

(3) The following plans or entities may voluntarily provide claims data to the database within the time frames and in accordance with procedures established by the department:

(a) Employer sponsored plans subject to the Employee Retirement Income Security Act of 1974; and

(b) any governmental or tribal program or facility that provides health care services to American Indians and Alaska Natives.

(4) Health insurance carriers that only offer the following excepted benefit coverages are not required to report:

- (a) specific disease;
- (b) accident or injury;
- (c) hospital indemnity and other fixed indemnity;
- (d) disability;
- (e) long-term care; and
- (f) vision coverage.

(5) ~~Centennial care~~ Medicaid managed care organizations provide claims data to the New Mexico human services division (HSD), and who will then submit that data to the department of health.

(6) Health insurance carriers covering less than 500 individuals are not required to submit files to the database but are required to report the number of individuals with coverage during the previous year on March 1st.

B. Data submission procedures:

(1) The department shall:

- (a) utilize an internet-based user interface (or similar technology) that allows for secure submission and acceptance of data submissions;

- (b) perform quality assurance and validation of all submitted data and provide feedback to the data providers; and

- (c) provide data submissions procedures to data providers in a data submission guide that is based on a current version of the APCD-Common Data Layout.

(2) Data submission frequency: data shall be submitted at least monthly.

(3) Data providers shall make every effort to initially submit complete, accurate, and valid data in the APCD-Common

Data Layout and shall correct all identified errors within the timelines established by the department or its designee.

(4) An initial test submission of data may be required.

(5) Data dating to January 1, ~~[2019]~~ 2020 must be submitted initially.

(6) The department may sanction data providers who do not comply with this rule.

(7) Data shall be submitted beginning January 1, ~~[2022]~~ 2023. [7.1.31.9 NMAC - N, 04/20/2021; A, 4/25/2023]

NEW MEXICO FINANCE AUTHORITY OPPORTUNITY ENTERPRISE REVIEW BOARD

TITLE 2 PUBLIC FINANCE CHAPTER 93 OPPORTUNITY ENTERPRISE ACT ENTERPRISE ASSISTANCE PART 1 GENERAL PROVISIONS

2.93.1.1 ISSUING AGENCY: New Mexico Opportunity Enterprise Review Board. [2.93.1.1 NMAC – N, 4/25/2023]

2.93.1.2 SCOPE: All persons or entities applying for enterprise assistance under the opportunity enterprise revolving fund administered by the New Mexico finance authority, Sections 6-34-8 and 6-34-12, NMSA 1978. [2.93.1.2 NMAC – N, 4/25/2023]

2.93.1.3 STATUTORY AUTHORITY: Sections 6-34-6 and 6-34-7, NMSA 1978. [2.93.1.3 NMAC – N, 4/25/2023]

2.93.1.4 DURATION: Permanent. [2.93.1.4 NMAC – N, 4/25/2023]

2.93.1.5 EFFECTIVE DATE: April 25, 2023, unless a later date is cited at the end of a section. [2.93.1.5 NMAC – N, 4/25/2023]

2.93.1.6 OBJECTIVE:

A. Section 6-34-3, NMSA 1978, provides that the authority may adopt separate rules to administer the opportunity enterprise revolving fund to originate enterprise assistance for opportunity enterprise projects recommended by the board, govern the process through which applicants may apply for enterprise assistance from the opportunity enterprise revolving fund, and collect fees and costs related to providing enterprise financing to each opportunity enterprise financing partner.

B. Section 6-34-5, NMSA 1978 provides that the authority shall provide staff support for necessary administrative services of the board.

C. Section 6-34-6, NMSA 1978 provides that the authority shall upon the recommendation of the board, process, review and evaluate applications for enterprise assistance received from applicants.

D. Section 6-34-7, NMSA 1978 provides that the opportunity enterprise review board is required to adopt rules necessary to carry out the provisions of the act and allowing the authority to establish procedures for applying and qualifying for enterprise assistance, establishing economic development goals for the state in consultation with the department, governing the application procedures and requirements for enterprise assistance, determining how to select and prioritize applications for enterprise assistance to be funded by the authority, and providing safeguards to protect public money and other public resources.

E. Section 6-34-12, NMSA 1978 provides that the authority shall administer the opportunity enterprise revolving fund and recover from the opportunity enterprise revolving fund the costs of

administering the fund and originating enterprise assistance.

F. Subsection K of Section 6-21-5, NMSA 1978 provides that the authority may fix charges and collect fees and other charges in connection with the making of loans, leases and any other services rendered by the authority.
[2.93.1.6 NMAC – N, 4/25/2023]

2.93.1.7 DEFINITIONS:

A. “Act” means the Opportunity Enterprise Act, Sections 6-34-1 through 6-34-15, NMSA 1978, as the same may be amended and supplemented.

B. “Application” means a written document made publicly available by the authority and filed with the authority for enterprise assistance for the purpose of evaluating, in consultation with the department, the applicant’s qualifications and proposed enterprise development project or projects for types of enterprise assistance which may be provided by the authority under the act.

C. “Authority” means the New Mexico finance authority.

D. “Board” means the opportunity enterprise review board created by the Act.

E. “Bylaws” means the bylaws of the board adopted on August 24, 2022, as amended and supplemented from time to time.

F. “Department” means the economic development department.

G. “Economic development opportunities” means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project.

H. “Enterprise assistance” means opportunity enterprise financing, an opportunity

enterprise lease or an opportunity enterprise loan.

I. “Enterprise development project” means the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state.

J. “Fund” means the opportunity enterprise revolving fund.

K. “Opportunity enterprise partner” means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the authority determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the state and is eligible for enterprise assistance pursuant to the act.

L. “Project review committee” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review proposed enterprise development projects to be recommended for funding from the fund.

M. “State” means the state of New Mexico.
[2.93.1.7 NMAC – N, 4/25/2023]

2.93.1.8 ELIGIBILITY AND PRIORITIZATION POLICIES FOR ENTERPRISE DEVELOPMENT PROJECTS:

The board will develop and consider a variety of factors in reviewing and evaluating enterprise development project proposals to determine which enterprise development projects to recommend to the authority for enterprise assistance from the fund. Board policies shall give priority to projects that:

A. demonstrate local support and financial need,

B. create or expand economic development opportunities within the state,

C. contribute to diversification of the state’s economy,

D. advance environmentally sustainable economic development goals of the state, and

E. other means of financing a proposed enterprise development project are unavailable or insufficient. The board shall establish policies to consider in prioritizing enterprise development projects.
[2.93.1.8 NMAC – N, 4/25/2023]

2.93.1.9 ENTERPRISE DEVELOPMENT PROJECT PROPOSAL, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:

A. The board and the department will administer an outreach program to local governments and potential opportunity enterprise partners for the purpose of making recommendations to the authority regarding enterprise assistance, and to notify applicants that enterprise development project proposals are being accepted for review by the project review committee and the board for prioritization and recommendation for funding to the authority.

B. The authority will provide forms and guidelines for enterprise development project proposals and applications for enterprise assistance. The authority may consider the recommendations and priorities of the board.

C. Applications for enterprise assistance shall describe the scope and plans of the enterprise development project or proposed use of leased property, demonstrate that the enterprise development project or lease will create or expand economic development opportunities within the state, demonstrate that the enterprise project or lease will contribute to the diversification of the state’s economy, demonstrate that the enterprise development project or lease will comply with all applicable state and federal law, provide sufficient evidence that other means of financing a proposed enterprise development project are unavailable

or insufficient, and include any other documentation or certifications that the authority deems necessary.

D. Department staff will complete an initial evaluation of the application for enterprise assistance and enterprise development project proposals promptly following receipt in consideration of information provided by applicants according to the factors listed in Subsection C of 2.93.1.9.NMAC. Such evaluation will include recommendations regarding suitability for enterprise assistance. The department may obtain input and information relevant to carrying out the purposes of the act from outside consultants in evaluating enterprise development project proposals and applications for enterprise assistance. The department will then forward to the project review committee for review, the relevant application and the corresponding recommendation of the department, along with all third-party input and information compiled by the department.

E. The project review committee will consider the proposed enterprise development project and may confer with outside parties, including any person familiar with the proposed enterprise development project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed enterprise development project. The project review committee will make a recommendation to the board on each enterprise development project proposal.

F. Upon the recommendation of the project review committee, the board will prioritize the proposed enterprise development projects for recommendation to the authority for consideration of enterprise assistance.

G. After completion of the review process by the project review committee and the board and receipt of a favorable recommendation on the enterprise development project proposal, the prioritized enterprise development projects will be recommended by the board to the authority for consideration of enterprise assistance.

H. NMFA may request an additional application from recommended enterprise assistance projects.

I. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to enterprise assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.

[2.93.1.9 NMAC – N, 4/25/2023]

2.93.1.10 ENTERPRISE DEVELOPMENT PROJECTS AND ELIGIBLE COSTS:

A. The board may recommend to the authority that enterprise assistance from the fund should be made available for enterprise development projects as provided by Section 6-34-6, NMSA 1978.

B. Enterprise assistance from the fund shall be made only for eligible items, a determined by the authority, which includes:

- (1) opportunity enterprise financing;
- (2) opportunity enterprise loans;
- (3) acquiring title or other interest in an enterprise development project;
- (4) paying the

reasonably necessary administrative costs, payments in lieu of taxes and other costs and fees incurred by the authority in carrying out the provisions of the act.

[2.93.1.10 NMAC – N, 4/25/2023]

2.93.1.11 ENTERPRISE DEVELOPMENT PROJECT FINANCING:

The authority may recommend structured enterprise assistance packages that include opportunity enterprise financing, opportunity enterprise leases, opportunity enterprise loans, or other type of assistance authorized by the authority and the board, if applicable. The structure, terms and conditions of the financial assistance

will be determined by the authority.

Upon completion of an enterprise development project, the authority shall allow the opportunity enterprise partner responsible for the completion of that project an opportunity to obtain an opportunity enterprise lease for that property, provided that any breach of the terms of any enterprise assistance may preclude that opportunity enterprise partner from leasing the property, and in that event, the property shall be made available for lease to other opportunity enterprise partners.

[2.93.1.11 NMAC – N, 4/25/2023]

2.93.1.12 FINANCING APPROVAL REQUIREMENTS:

Based on the priority and evaluation factors set forth in Sections 8, 9, and 10 above, as well as the requirements of the Act, the board may recommend to the authority enterprise development projects for consideration of enterprise assistance. Board recommendations may be considered by the authority but shall not be binding on the authority. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to enterprise assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.

[2.93.1.12 NMAC – N, 4/25/2023]

2.93.1.13 RECONSIDERATION OF BOARD DECISIONS:

Any applicant affected by a decision of the board may request reconsideration of the decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless of whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for

reconsideration, including any factual or legal matter on which the applicant believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chair of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.
[2.93.1.13 NMAC – N, 4/25/2023]

2.93.1.14 ENTERPRISE ASSISTANCE CONTRACT:

A. The authority and opportunity enterprise partner awarded enterprise assistance will enter into a contract to establish the terms and conditions of enterprise assistance from the authority. The contract to provide enterprise assistance shall:

(1) define the roles and responsibilities of the authority and the opportunity enterprise partner;

(2) provide clawback or recapture provisions, if applicable, that protect the public investment in the event of a default on the contract;

(3) provide a finance plan detailing the financial contributions and obligations of the authority and opportunity enterprise partner;

(4) require an opportunity enterprise partner to provide guarantees, letters of credit or other acceptable forms of security, as determined by the authority;

(5) specify how rents, if applicable, will be collected and accounted for;

(6) specify how debts incurred on behalf of the opportunity enterprise partner will be repaid; and

(7) provide that, in the event of a default, the authority may (a) elect to take possession of the property, including the succession of all right, title and interest in the enterprise development project; and (b) terminate the lease or cease any further funding and exercise any other rights and remedies that may be available.

B. The interest rate on any enterprise assistance extended, if applicable, shall be determined by the authority

C. The contract will contain provisions which require enterprise assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. The authority will monitor terms of the contract and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection. In the event of default under an enterprise assistance contract by an applicant, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

E. All contracts for enterprise assistance shall be provided to the board by the authority no later than 30 days from the execution of that contract. The board shall review contracts from time to time and determine whether the use of enterprise assistance is a prudent expenditure of public funds and report to the legislature annually on that determination. The board shall also make recommendations to the authority of potential rulemaking, application or lending changes to ensure transparent and efficient processes for carrying out the provisions of the Act.
[2.93.1.14 NMAC – N, 4/25/2023]

HISTORY OF 2.93.1 NMAC: [RESERVED]

PUBLIC SAFETY, DEPARTMENT OF

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 2 DEPARTMENT OF PUBLIC SAFETY
PART 4 LAW ENFORCEMENT RETENTION FUND REPORTING, MONITORING AND ADMINISTRATION**

10.2.4.1 ISSUING AGENCY: Department of Public Safety.
[10.2.4.1 NMAC – N, 04/25/2023]

10.2.4.2 SCOPE: All law enforcement agencies eligible to receive funding from the law enforcement retention fund for the purpose of providing a retention differential disbursement to eligible law enforcement officers employed by that law enforcement agency.
[10.2.4.2 NMAC - N, 04/25/2023]

10.2.4.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Subsection E of Sections 9-19-6 and 9-19-14 NMSA 1978 of the Department of Public Safety Act. Section 9-19-14 NMSA 1978, creates a law enforcement retention fund in the state treasury and requires the department to develop rules, forms, standards, procedures and related training for law enforcement agencies to report retention information when seeking monies to provide retention differential disbursements to eligible law enforcement officers within the law enforcement agency's employ.
[10.2.4.3 NMAC - N, 04/25/2023]

10.2.4.4 DURATION: Permanent
[10.2.300.4 NMAC - N, 04/25/2023]

10.2.4.5 EFFECTIVE DATE: 04/25/2023, unless a later date is specified at the end of a section.
[10.2.4.5 NMAC - N, 04/25/2023]

10.2.4.6 OBJECTIVE: The objective of this rule is to provide

forms, standards and procedures for law enforcement agencies to report retention information when seeking monies from the law enforcement retention fund, for the purpose of providing retention differential disbursements to eligible law enforcement officers within the law enforcement agency's employ [10.2.4.6 NMAC - N, 04/25/2023]

10.2.4.7 DEFINITIONS:

This rule adopts the definitions found in Section 9-19-2 NMSA 1978 and Subsection M of Section 9-19-14 NMSA 1978, as if fully set forth herein. In addition to the definitions adopted, the following terms have the following meaning:

- A. "Date of hire"** means the month, date and year the individual was hired by a law enforcement agency for the purpose of serving as a law enforcement officer with that agency.
- B. "DPS"** means the department of public safety.
- C. "Eligible officer"** means an officer who has remained employed as a law enforcement officer with the same law enforcement agency one year and one day after reaching four, nine, fourteen and nineteen years of consecutive service from the law enforcement officer's date of hire with that law enforcement agency.
- D. "Employer tax liability"** means the employer contribution for payroll taxes outlined in the Federal Insurance Contribution Act for Social Security and/or Medicare. This does not include any employer contributions for retirement or other benefit plans.
- E. "Law enforcement academy"** means the New Mexico law enforcement academy created by Section 29-7-2 NMSA 1978 or any of the satellite academies certified by the New Mexico law enforcement academy board.

F. "Law enforcement retention fund" means a fund in the state treasury, consisting of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income

from investment of the fund and money otherwise accruing to the fund. Money in the fund does not revert to any other fund at the end of the fiscal year. The fund is administered by DPS to provide monies to law enforcement agencies who request the funds for the purpose of providing retention differential disbursements to law enforcement officers within the agency's employ who meet statutorily prescribed requirements.

G. "LERF" means law enforcement retention fund.

H. "Portal" means the electronic system through which law enforcement agencies annually report to the DPS the data required by this rule in order for the law enforcement agency to receive funding from the law enforcement retention fund for the purpose of providing retention differential disbursements to eligible officers employed by that agency.

I. "PRDD" means the amount of the projected retention differential disbursement stated in dollars and cents to be paid to the eligible officer.

J. "Reporting fiscal year" means the fiscal year in which the law enforcement agency is reporting to DPS the information set forth in Subsection A of 10.2.4.9 NMAC.

K. "Salary" means the base hourly rate of pay of the law enforcement officer for two thousand eighty hours, excluding overtime, any percentage pay increases or multiple components of pay.

L. "Years of service" means the number of consecutive years, months and days, beginning with the date of hire, a law enforcement officer is employed for the purpose of serving as a law enforcement officer with a single law enforcement agency.

[10.2.4.7 NMAC - N, 04/25/2023]

10.2.4.8 CALCULATION OF THE PROJECTED FIVE PERCENT RETENTION DIFFERENTIAL DISBURSEMENT BY THE REPORTING LAW ENFORCEMENT AGENCY: The

salary used by the law enforcement agency to calculate the five percent retention differential disbursement for those officers projected to be eligible officers in the upcoming fiscal year, shall be the salary of the officer on the date the officer reached four, nine, 14 or 19 years of consecutive service with the law enforcement agency requesting the retention differential disbursement.

[10.2.4.8 NMAC - N, 04/25/2023]

10.2.4.9 REPORTING REQUIREMENTS FOR AGENCIES SEEKING RETENTION DIFFERENTIAL DISBURSEMENTS

A. Every law enforcement agency seeking monies from the LERF for retention differential disbursements for officers within its employ, who are projected to be eligible officers in the upcoming fiscal year, shall annually report to DPS the following information:

(1) The full legal name and date of hire of the officer projected to be an eligible officer in the upcoming fiscal year, the PRDD for that officer, the amount of the annual salary on which the PRDD was calculated and the amount of the employer tax liability attributable to the PRDD. The amount of the employer tax liability shall specify the amount attributable to Social Security and the amount attributable to Medicare;

(2) The aggregate number of law enforcement officers employed by the law enforcement agency during each of the five fiscal years immediately preceding the reporting fiscal year. For any officer employed less than a full fiscal year, the law enforcement agency shall report the number of months and days the officer was employed, identifying the officer without personally identifying information (e.g. Officer # 1, Officer # 2, etc.).

(3) For each officer included in Paragraph (2) of Subsection A above, the number of years (or partial years) of service of each law enforcement officer with the reporting agency.

(4) The number of law enforcement officers that left the employ of the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year. The number of years of service with the reporting law enforcement agency of each departing officer and the stated reasons why each law enforcement officer left the employ of the law enforcement agency.

(5) The number of applicants to the law enforcement agency for a position as a law enforcement officer during the fiscal year immediately preceding the reporting fiscal year.

(6) The number of applicants to the law enforcement agency for a position as a law enforcement officer in the fiscal year immediately preceding the reporting fiscal year, who attended a law enforcement academy.

(7) The number of law enforcement officers within the reporting agency's employ who received one or more certifications during the fiscal year immediately preceding the reporting fiscal year.

(8) The number of law enforcement officers added to the law enforcement agency by way of lateral transfer during the fiscal year immediately preceding the reporting fiscal year and the years of service of each added officer at each previous law enforcement agency if known to the reporting agency.

(9) Any changes to compensation, recruiting, retention or benefits of officers implemented by the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year.

(10) The number of officers that are projected to become eligible for a retention differential disbursement in the upcoming fiscal year, and the projected amount of the retention differential disbursement including any employer tax liabilities.

(11) Any other information requested by DPS that is

used for determining retention rates, unless disclosure of such information is otherwise prohibited by law.

B. The information in Subsection A above shall be reported to the DPS for the upcoming fiscal year no later than May 31.

C. The information in Subsection A above shall be reported to the DPS through the electronic portal, unless DPS advises the applying law enforcement agencies that a different reporting method should be used.

[10.2.4.9 NMAC - N, 04/25/2023]

10.2.4.10 PROCEDURE FOR CALCULATION OF DISBURSEMENTS FROM THE LERF, SUBMISSION OF OBJECTIONS TO THE DISBURSEMENT AND REVERSION OF UNDISBURSED FUNDS

A. Following receipt of the information required to be reported in 10.2.4.9 NMAC, DPS shall calculate the total amount necessary to be disbursed to each requesting law enforcement agency to provide a retention differential disbursement to all eligible officers employed by that law enforcement agency in the fiscal year for which the funds are requested, plus the employer tax liability for each PRDD.

B. Following calculation of the PRDD and employer tax liability for each officer projected to be an eligible officer in each requesting agency, the DPS shall determine whether the balance in the LERF is sufficient to permit the total disbursements calculated. If the balance in the LERF is insufficient to pay the total amount of the disbursement to each requesting agency, DPS shall reduce the amount to be disbursed to each law enforcement agency on a pro rata basis to an amount permitted by the monies available in the LERF.

C. Once the calculation of the PRDD, employer tax liability and any necessary pro rata deduction is complete, DPS shall issue a Notice of Intent to Disburse letter to each agency that requested monies from

the LERF. This notice shall advise the agency of the amount DPS intends to distribute from the LERF to the agency for the PRDD and related employer tax liability, including an explanation of the pro rata deduction, if any. If the agency disagrees with the amount set forth in the Notice of Intent to Disburse letter, the agency shall have 30 days from its receipt of the letter to notify DPS of its objection and the reasons therefor.

D. The written Objections to the Notice of Intent to Disburse shall be sent to: DPS. LERF@dps.nm.gov.

E. DPS will respond to all objecting agencies in writing, within 30 days of the date on which all objections by all agencies are due. DPS will either affirm its original Notice of Intent to Disburse letter or issue an Amended Notice of Intent to Disburse letter. If the agency requesting monies from the LERF remains aggrieved, the agency may proceed as provided in 10.2.4.12 NMAC.

F. DPS shall disburse the monies to the requesting law enforcement agencies in accordance with the Notice of Intent to Disburse letter and any amendment thereto in accordance with the choice selected by the law enforcement agency in SHARE Financials as state of New Mexico vendors. Some law enforcement agencies may be set up for manual warrants.

G. DPS shall disburse the monies to all requesting law enforcement agencies in accordance with their respective Notice of Intent to Disburse letters and any amendments thereto, on December 15 of the fiscal year in which the monies are projected to be disbursed by the law enforcement agencies to the eligible officers.

H. Upon receipt of the disbursement, the law enforcement agency shall place the monies in an interest bearing account. Interest earned will revert to DPS as set forth in this rule.

I. The law enforcement agency shall disburse the PRDD to the eligible officer no

sooner than the date the officer attains eligibility and no later than 30 days following the date of eligibility, or the law enforcement agency’s receipt of the disbursement from DPS, whichever occurs last.

J. The law enforcement agency shall disburse the monies attributable to the employer’s tax liability to the appropriate taxing authority as required by law.

K. The law enforcement agency shall report the date of disbursement of the PRDD and the employer taxes on the same to the DPS through the portal within 30 days of disbursement.

L. Within 60 days after the end of the fiscal year in which PRDDs and the accompanying employer tax liability are disbursed and paid and no later than August 31, the law enforcement agency shall return to the DPS any monies disbursed for projected PRDDs and employer tax liability, which were not disbursed and paid as projected, together with any interest earned thereon, in the form of a check. The law enforcement agency returning the monies shall include with the check, a statement of all PRDDs made and employer tax liability paid for each officer, identified by the officer’s full legal name, date of the disbursement and date of payment of the employer tax liability. The law enforcement agency shall also provide a statement of the full legal names of the officers projected to receive a retention differential disbursement, who did not receive a disbursement, the amount of the returned PRDD, the amount of the returned employer tax liability and the reason the disbursement was not made. The law enforcement agency shall also include a statement of the interest that accrued on the funds while in the agency’s custody, that is being returned to DPS.

[10.2.4.10 NMAC - N, 04/25/2023]

10.2.4.11 WAIVER OF REPORTING REQUIREMENT

A. Any agency requesting a waiver of all or a portion of the information that the law enforcement agency is required to

report under Subsection A of 10.2.4.9 NMAC, shall file a written request for waiver no later than May 31 of the fiscal year the report is due. The request for waiver shall specify the section or sections of the rule for which waiver is sought and the reason therefor.

B. DPS will respond in writing to a request for waiver of the required reporting information within 30 days of its receipt of the request.

C. The agency’s decision on a request for waiver is final.

[10.2.4.11 NMAC - N, 04/25/2023]

10.2.4.12 APPEAL PROCESS

A. There is no statutory right of appeal from DPS’s decision on a Notice of Intent to Disburse letter or its denial of a request to waive the required reporting information.

B. A law enforcement agency aggrieved by a DPS decision may proceed by requesting an applicable writ as provided by law.

[10.2.4.12 NMAC - N, 04/25/2023]

HISTORY OF 10.2.4 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE AND ORIENTAL MEDICINE, BOARD OF

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 3/29/2023 hearing, to repeal its rule 16.2.7 NMAC, Acupuncture and Oriental Medicine Practitioners - Educational Programs filed 9/22/2003 and replace it with 16.2.7 NMAC, Acupuncture and Oriental Medicine Practitioners - Educational Programs, adopted 3/29/2023 and effective 4/25/2023.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE AND ORIENTAL MEDICINE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 7 EDUCATIONAL PROGRAMS

16.2.7.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine. [16.2.7.1 NMAC - Rp, 16.2.7.1 NMAC, 4/25/2023]

16.2.7.2 SCOPE: All licensed doctors of oriental medicine, temporarily licensed doctors of oriental medicine, approved educational programs and all applicants for licensure as a doctor of oriental medicine, temporary licensure and for approval of an educational program. [16.2.7.2 NMAC - Rp, 16.2.7.2 NMAC, 4/25/2023]

16.2.7.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 14, NMSA 1978. [16.2.7.3 NMAC - Rp, 16.2.7.3 NMAC, 4/25/2023]

16.2.7.4 DURATION: Permanent. [16.2.7.4 NMAC - Rp, 16.2.7.4 NMAC, 4/25/2023]

16.2.7.5 EFFECTIVE DATE: April 25, 2023, unless a later date is cited at the end of a section. [16.2.7.5 NMAC - Rp, 16.2.7.5 NMAC, 4/25/2023]

16.2.7.6 OBJECTIVE: This part establishes the requirements for approval of educational programs, the requirements for making an

application for approval of an educational program, the renewal of the approval of the educational program and the requirement of notification of changes.

[16.2.7.6 NMAC - Rp, 16.2.7.6 NMAC, 4/25/2023]

16.2.7.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC.

[16.2.7.7 NMAC - Rp, 16.2.7.7 NMAC, 4/25/2023]

16.2.7.8 EDUCATIONAL PROGRAM REQUIREMENTS:

All educational programs shall be approved by the board. Using the requirements of 16.2.7.8 NMAC and 16.2.7.9 NMAC (Sections 8 and 9 of Part 7 of the rules), the board will evaluate whether or not an educational program shall be approved. If a visit is necessary to evaluate the educational program, the cost of the visit, including any administrative costs, shall be paid in advance by the educational program.

A. The foundation educational program requirement shall be the four academic year masters of oriental medicine program that meets the national certification commission for acupuncture and oriental medicine (NCCAOM) accreditation/equivalent education policy as defined here. Graduation/education must be obtained from a formal education program that has met the standards of the accreditation commission for acupuncture and herbal medicine (ACAHM) or an equivalent educational body. A program may be established as having satisfied this requirement by demonstration of one of the following:

- (1) accreditation or candidacy for accreditation by ACAHM; or
- (2) approval by a foreign government's ministry of education, ministry of health, or equivalent foreign government agency; each candidate must submit their documents for approval by a foreign credential equivalency service approved by the NCCAOM for that

purpose; programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAHM in effect at the time of application; or

(3) approval by a foreign private accreditation agency that has an accreditation process and standards substantially equivalent to that of ACAHM, and that is recognized for that purpose by the appropriate government entity in that foreign country; each candidate must submit their documents for approval by a foreign credential equivalency service approved by the NCCAOM for that purpose; programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAHM in effect at the time of application.

B. The educational program shall provide a program that shall be at least four academic years and shall include in-class education that comprises a minimum of 2,400 clock hours of classes including a minimum of 1,100 hours of didactic education in acupuncture and oriental medicine and a minimum of 900 hours of supervised clinical practice, instruction and observation in acupuncture and oriental medicine. The curriculum shall provide the knowledge and skills required to maintain appropriate standards of acupuncture and oriental medical care.

C. The educational program shall include a didactic curriculum that educates and graduates physicians who are competent to practice acupuncture and oriental medicine and who are able to diagnose, prescribe, and treat accurately and that specifically includes, in addition to the requirements of the act, oriental principles of life therapy, including the prescription of herbal medicine, diet and nutrition, manual therapy/physical medicine and counseling, not to exceed 900 hours of the required 2,400 hours specified in Subsection B of 16.2.7.8 NMAC and that includes a minimum of 450 hours of education in herbal medicine.

D. The educational program shall include a clinical curriculum that includes clinical instruction and direct patient contact. This clinical part of the educational program shall include at least 900 hours of supervised clinical practice, instruction and observation in the following areas:

(1) the observation of and assistance in the application of principles and techniques of oriental medicine including diagnosis, acupuncture, moxibustion, manual therapy/physical medicine, diet and nutrition, counseling and the prescription of herbal medicine; and

(2) a minimum of 400 hours of actual treatment in which the student is required to perform complete treatment as the primary student practitioner.

E. The educational program shall include a curriculum that educates and graduates physicians who are competent to demonstrate a clinically relevant, complementary and integrative knowledge of biomedicine and biomedical diagnosis sufficient to treat and refer patients when appropriate.

F. The educational program may honor credit from other educational programs.

G. The names and educational qualifications of all teaching supervisors, resident teachers, and visiting teachers of acupuncture and oriental medicine shall be submitted to the board and shall meet the following:

(1) all teachers of acupuncture and oriental medicine in New Mexico shall have a license or temporary license to practice acupuncture and oriental medicine in New Mexico issued by the board; any educational program in violation of this provision shall be subject to suspension or revocation of the educational program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC;

(2) all teachers of acupuncture and oriental medicine at educational programs outside New

Mexico shall be licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine in the state or country in which he or she practices and teaches; any educational program in violation of this provision shall be subject to suspension or revocation of the educational program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC;

(3) exceptions may be made at the board's discretion and for good cause.

H. Educational programs may employ or contract with tutors to teach components of the educational program. Educational programs may honor credit from tutors. A tutor is defined in the act as "a doctor of oriental medicine with at least ten years of clinical experience who is a teacher of acupuncture and oriental medicine."

I. The educational program may be subject to inspection by the board.

[16.2.7.8 NMAC - Rp, 16.2.7.8 NMAC, 4/25/2023]

16.2.7.9 EDUCATIONAL PROGRAM CERTIFICATE OR DIPLOMA AND TRANSCRIPT REQUIREMENTS: Educational programs shall provide the following:

A. A transcript of grades, as part of the student's record, that includes the following:

- (1) name of the student;
- (2) address of the student;
- (3) date of birth;
- (4) course titles;
- (5) grade received in each course; and
- (6) number of clock hours per course.

B. A certificate or diploma stating that the student has satisfactorily completed the educational program only after personal attendance in all required classes, and satisfactory completion of the educational program requirements.

[16.2.7.9 NMAC - Rp, 16.2.7.9 NMAC, 4/25/2023]

16.2.7.10 APPLICATION FOR ANNUAL APPROVAL OF AN EDUCATIONAL PROGRAM:

All educational programs in New Mexico are required to be annually approved by the board. Any educational program outside New Mexico, that so chooses, may apply to receive annual approval status. These educational programs shall be granted approval after submitting to the board:

A. the initial application fee for annual approval of an educational program specified in 16.2.10 NMAC and paid by certified check or money order in U.S. funds; and

B. an application that is complete and in English on a form prescribed by the board that contains the matriculation date for the educational program and the information necessary to verify that the standards of professional education required by 16.2.7.8 and 16.2.7.9 NMAC are being met including an official copy of the curriculum. The board shall act upon the application within 60 days of the receipt of the application and shall inform the educational program of the status of the application in writing by mail postmarked within seven days of acting on it.

[16.2.7.10 NMAC - Rp, 16.2.7.10 NMAC, 4/25/2023]

16.2.7.11 APPLICATION FOR SINGLE INSTANCE APPROVAL OF AN EDUCATIONAL PROGRAM:

An educational program that does not have annual approval status from the board shall receive a single instance approval of the educational program for use by a single applicant after the educational program that graduated the applicant has submitted to the board:

A. the application fee for a single instance approval of an educational program, specified in 16.2.10 NMAC, paid by certified check or money order in U.S. funds; and

B. an application that is complete and in English on a form prescribed by the board that contains the matriculation date for the educational program and the information necessary to verify that the standards of professional education required by 16.2.7.8 and 16.2.7.9 NMAC are being met including an official copy of the curriculum. The application and the application fee shall be received at the board's office at least 90 days prior to the next scheduled clinical skills examination. The board shall send a written response to the applicant for approval of an educational program informing the applicant of the application's completeness or needed documentation postmarked at least 85 days before the next scheduled clinical skills examination date. All documentation requested to complete the application shall be received at the board's office at least 70 days before the next scheduled clinical skills examination date. The applicant shall be notified of approval or denial of the application in writing by mail postmarked at least 60 days prior to the next scheduled clinical skills examination date. Note that the above deadlines exist to synchronize with the deadlines for applicants regarding the clinical skills exam as defined in 16.2.4.11 NMAC.

[16.2.7.11 NMAC - Rp, 16.2.7.11 NMAC, 4/25/2023]

16.2.7.12 ANNUAL RENEWAL, LATE RENEWAL AND EXPIRED APPROVAL:

To maintain annual approval status, an educational program shall submit by May 1st an annual renewal application that is complete and in English on a form prescribed by the board and the required fee for renewal of approval of an educational program, specified in 16.2.10 NMAC, paid by certified check or money order in U.S. funds. The approval period is defined as August 1st to July 31st of the subsequent year. The approval expires at 12:00 midnight on July 31st. Renewal applications received after September 30th of any year must be submitted with the late

fee specified in 16.2.10 NMAC (Part 10 of the rules) and paid by certified check or money order in U.S. funds. If the annual renewal application and fee are not received within 60 days after expiration, following the approval period, the annual approval is expired and the educational program shall submit the initial application and initial application fee to become approved.

[16.2.7.12 NMAC - Rp, 16.2.7.12 NMAC, 4/25/2023]

16.2.7.13 NOTIFICATION OF CHANGES: If ownership of the educational program changes or the educational program is substantially changed the educational program shall notify the board within 10 days of such change. The educational program may then be subject to inspection. The educational program shall be on a probationary approval status until final approval is given under the changed circumstances. [16.2.7.13 NMAC - Rp, 16.2.7.13 NMAC, 4/25/2023]

History of 16.2.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

AB 81-1, Regulations Governing Acupuncture Practitioners, filed 10/15/1981;
 AB 82-1, Regulations Governing Acupuncture Practitioners, filed 6/16/1982;
 AB 84-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1984;
 BCD 87-1, Emergency Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 10/30/1987;
 ACU 88-1 Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1989;
 ACU 91-12, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Approval of Institutes and Private Tutorship, filed 2/18/1991;
 ACU 91-12, Regulations Governing Acupuncture Practitioners, Tutors,

and Institutes Approval of Institutes and Private Tutorship, filed 12/18/1991;
 Rule 12 Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Approval of Institutes and Private Tutorship, filed 2/24/1993.

History of Repealed Material:

16.2.7 NMAC, Approval of Educational Programs (filed 6/14/1996) - Repealed 4/20/2000.
 16.2.7 NMAC, Approval Of Education Program (filed 4/20/2000) - Repealed 10/22/2003.
 16.2.7 NMAC, Approval Of Education Program (filed 9/22/2003) - Repealed 4/25/2023.

Other History:

Rule 12, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Approval of Institutes and Private Tutorships (filed 12/18/1991) replaced by 16 NMAC 2.7, Approval of Educational Programs, effective 7/1/1996;
 16 NMAC 2.7, Approval of Educational Programs (filed 6/14/1996) renumbered and amended as 16.2.7 NMAC, Approval of Educational Programs, effective 4/20/2000.
 16.2.7 NMAC, Approval of Educational Programs (filed 4/20/2000) replaced by 16.2.7 NMAC, Educational Programs, effective 10/22/2003.
 16.2.7 NMAC, Educational Programs (filed 9/22/2003) replaced by 16.2.7 NMAC, Educational Programs, effective 4/25/2023.

**REGULATION
 AND LICENSING
 DEPARTMENT
 ACUPUNCTURE AND
 ORIENTAL MEDICINE,
 BOARD OF**

This is an amendment to 16.2.1 NMAC, Section 7 effective 4/25/2023.

16.2.1.7 DEFINITIONS:
 The following definitions apply to the rules and the act.

A. Definitions

beginning with "A":

- (1) "A4M" is the American academy of anti-aging medicine.
- (2) "ACAM" is the American college of alternative medicine.
- (3) ["ACAOM"] "ACAHM" is the accreditation commission for acupuncture and [oriental] herbal medicine, formerly known as and synonymous with the accreditation commission for acupuncture and oriental medicine, (ACAOM), and any previous or former names used by the institution including the national accreditation commission for schools and colleges of acupuncture and oriental medicine, (ACSCAOM).
- (4) "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.
- (5) "AMA" is the American medical association.
- (6) "Animal acupuncture" is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act 61-14-1 to 61-14-20 NMSA 1978 and the rules of the New Mexico board of veterinary medicine 16.25.9.15 NMAC.

(7) "Applicant" is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.

(8) "Applicant for temporary licensure" is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.

(9) "Auricular acupuncture detoxification" is an acupuncture related technique used only in the treatment and prevention of alcoholism, substance abuse and

chemical dependency. Auricular acupuncture detoxification may be described or referred to as “auricular detoxification”, “acupuncture detoxification”, “auricular acupuncture detoxification”, or “acudetox”.

(10)

“**Auricular detoxification specialist supervisor**” is a doctor of oriental medicine registered with the board under the provisions of 16.2.16.18 NMAC.

(11)

“**Auricular detoxification specialist training program**” is a training program approved by the board under the provisions of 16.2.16.26 NMAC to train certified auricular detoxification specialists and auricular detoxification supervisors.

(12)

“**Auricular detoxification specialist training program trainer**” is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

(13)

“**Authorized substances**” are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to Paragraph (1) of Subsection C of Section 61-14A-8 NMSA 1978 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific category of expanded practice as defined in 16.2.19 NMAC.

B. Definitions

beginning with “B”:

(1)

“**Bioidentical hormones**” means compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.

(2)

“**Biomedical diagnosis**” is a diagnosis of a person’s medical status based on the commonly agreed

upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, ninth revision, clinical modification (ICD-9-CM).

(3)

“**Biomedicine**” is the application of the principles of the natural sciences to clinical medicine.

C. Definitions

beginning with “C”:

(1) “**Certified**

auricular detoxification specialist”

is a person certified by the board under the provisions of 16.2.16.10 NMAC to perform auricular detoxification techniques, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. A person certified pursuant to Paragraph (1) of Subsection B of 61-14A-4 NMSA 1978 shall use the title of “certified auricular detoxification specialist” or “C.A.D.S.”

(2) “**Chief**

officer” is the board’s chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

(3) “**Clinical**

experience” is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than 500 patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least 25 different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.

(4)

“**Clinical skills examination**”

is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.

(5)

“**Complainant**” is the complaining party.

(6)

“**Complaint committee**” is a board committee composed of the complaint committee chairperson and the complaint manager.

(7) “**Complaint committee chairperson**” is a member of the board appointed by the board’s chairperson.

(8)

“**Complaint manager**” is the board’s administrator or any member of the board appointed by the board’s chairperson.

D. Definitions

beginning with “D”:

(1)

“**Department**” is the state of New Mexico regulation and licensing department.

(2)

“**Detoxification**” is a concept in integrative medicine based on the principle that illnesses can be caused by the accumulation of toxic substances (toxins) in the body. Therapeutic support of elimination of these toxins is detoxification.

(3) “**Doctor**

of oriental medicine” is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

E. Definitions

beginning with “E”:

(1)

“**Educational course**” is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

(2)

“**Educational program**” is a board approved complete formal program that has the goal of educating a person

to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four academic years and meets the requirements of Section 61-14A-14 NMSA 1978 of the act and 16.2.7 NMAC.

(3)

“**Expanded practice**” is authorized by of Section 61-14-8.1 NMSA 1978 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in 16.2.19 NMAC. Expanded practice is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Paragraph (2) of Subsection G of Section 61-14A-3 NMSA 1978 of the act.

(4) “**Extern**”

is a current applicant undergoing supervised clinical training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC.

(5)

“**Externship**” is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC.

(6)

“**Externship supervisor**” is a doctor of oriental medicine who has at least five clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board’s application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC.

F. Definitions

beginning with “F”: [RESERVED]

G. Definitions

beginning with “G”: **Good cause**” is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting

good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”:

(1) “**Inactive licensee**”

means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC.

(2) “**ICE**”

is the institute for credentialing excellence.

(3) “**IFM**”

is the institute for functional medicine.

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”:

(1)

“**Licensee**” is a doctor of oriental medicine licensed pursuant to the act.

(2) “**License**”

has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

(3) “**Licensing candidate**”

is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

(4) “**Licensing fee**”

has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

(5)

“**Licensure by endorsement**”

is a licensing procedure for the experienced practitioner who completed his initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC. Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

(6) “**Limited temporary license**”

is a license issued under the provisions of 16.2.5.12 NMAC for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized healthcare practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

(7) “**Live cell products**”

are living cells from glandular tissues and other tissues.

M. Definitions

beginning with “M”: “**Military service member**”

has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

N. Definitions

beginning with “N”:

(1) “**Natural substances**”

are substances that exist in or are produced by nature and have not been substantially transformed in character or use.

(2) “**NCA**”

is a notice of contemplated action.

(3)

“**NCCAOM**” is the national certification commission for acupuncture and oriental medicine.

O. Definitions

beginning with “O”:

(1) “**Office**”

is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

(2)

“**Oxidative medicine**” is the understanding and evaluation of the oxidation and reduction biochemical

functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body's oxidation and reduction function and health.

P. Definitions

beginning with "P":

"Protomorphogens" are extracts of glandular tissues.

Q. Definitions

beginning with "Q": [RESERVED]

R. Definitions

beginning with "R":

(1)

"Respondent" is the subject of the complaint.

(2) **"Rules"**

are the rules, promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC.

S. Definitions

beginning with "S":

(1)

"Substantial 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 Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 NMSA 1978 *et. seq.*

(2)

"Supervised clinical observation" is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(3)

"Supervised clinical practice" is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(4)

"Supervision" is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC. No more than four students shall be under supervision for supervised clinical practice and no

more than four students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

T. Definitions

beginning with "T":

(1)

"Temporary licensee" is a doctor of oriental medicine who holds a temporary license pursuant to the act, 61-14-12 NMSA 1978 and 16.2.5 NMAC.

(2)

"Therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells.

(3)

"Treatment program" is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of 16.2.16.28 NMAC.

U. Definitions

beginning with "U": "USP 797"

is the United States pharmacopeia Chapter 797 pharmaceutical compounding.

V. Definitions

beginning with "V": "Veteran"

has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

W. Definitions

beginning with "W": [RESERVED]

X. Definitions

beginning with "X": [RESERVED]

Y. Definitions

beginning with "Y": [RESERVED]

Z. Definitions

beginning with "Z": [RESERVED]

[16.2.1.7 NMAC - Rp, 16.2.1.7 NMAC 02/11/2022; A, 4/25/2023]

**REGULATION
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DEPARTMENT
ACUPUNCTURE AND
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BOARD OF**

This is an amendment of 16.2.5 NMAC, Section 12 effective 04/25/2023.

**16.2.5.12 LIMITED
TEMPORARY LICENSE**

APPLICATION: Upon approval of an application for a limited temporary license that fulfills the requirements listed below, the board shall issue a limited temporary license that will be valid for the dates specified on the license but shall not exceed 18 consecutive months from the date of issuance and is not renewable. A limited temporary license shall be for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program. The limited temporary license shall include the name of the limited temporary license holder, the effective dates of the license, the name of the sponsoring New Mexico doctor of oriental medicine or New Mexico educational program, and a statement that the license shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. The requirements for a limited temporary license shall be:

A. the fee for application for a limited temporary license specified in 16.2.10 NMAC;

B. an application for limited temporary license that is complete and in English on a form provided by the board that shall include the applicant’s name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program;

C. an affidavit as provided on the “temporary license application” from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program attesting to the qualifications of the applicant and the activities the applicant will perform; and

D. an affidavit as provided on the “temporary license application” as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

(3) is in arrears on a court-ordered child support payment; and

E. an affidavit as provided on the “temporary license application” stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.5.12 NMAC, may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978; and

F. an affidavit as provided on the “temporary license application” stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; and

(2) the applicant must notify the board within ten days if the applicant’s address changes or the circumstances of the applicant’s relationship to the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program change; and

(3) the applicant may only engage in those activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program for the limited time specified on the temporary license; and

G. ~~[a copy of the applicant’s license, certification or registration or other document proving that the applicant is legally recognized in another state or~~

country to practice acupuncture and oriental medicine or another health-care profession and who possesses knowledge and skill that are included in the scope of practice of doctors of oriental medicine; the copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; for applicants in the United States who practice in a state in which there is no legal recognition, a copy of the certification document in acupuncture, Chinese herbal medicine or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the national certification commission for acupuncture and oriental medicine (NCCAOM) shall be sufficient; the copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; for applicants outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal requirement for practice, the above provisions in this paragraph shall not apply; and

~~H. a copy of the applicant’s diploma for graduation from the educational program that is required to be licensed, certified, registered or legally recognized to practice in the state or country where the applicant practices; this copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; and~~

~~I. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that they are competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any~~

document relevant to an application shall be at the expense of the applicant.] the applicant shall provide one or more of the following:

(1) a current curriculum vitae demonstrating experience in the field in which they will be teaching;

(2) a current license to practice in the field in which they will be teaching;

(3) proof of education in the field in which they will be teaching.

H. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the letter from the translator certifying that they are competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear a letter from the sponsor certifying that the translation is a true and faithful translation of the original; the translation of any document relevant to an application shall be at the expense of the applicant.

I. for teachers returning to New Mexico after having fulfilled the above requirements, an affidavit by the sponsoring organization testifying that all information is current and correct will be sufficient without re-submitting documentation.

J. if the applicant is certified by the NCCAOM or another state's acupuncture board that reviews continuing education courses, documentation providing NCCAOM, or other state instructor status will suffice.

[16.2.5.12 NMAC - Rp 16.2.5.12 NMAC, 2/11/2022; A, 4/25/2023]

**REGULATION
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ACUPUNCTURE AND
ORIENTAL MEDICINE,
BOARD OF**

This is an Amendment to 16.2.17 NMAC, Section 9 effective 4/25/2023.

16.2.17.9 EDUCATIONAL PROGRAM REQUIREMENTS:

A. An applicant for licensure by endorsement shall provide proof that he completed an educational program in acupuncture that fulfilled the requirements of the national certification commission for acupuncture and oriental medicine in place in 1992 or if graduated after 1992 is in compliance with the educational program requirements in 16.2.7 NMAC or that was accredited by the accreditation commission for acupuncture and [oriental] herbal medicine, [ACAOM] ACAHM. [~~formerly the national accreditation commission for schools and colleges of acupuncture and oriental medicine and ACSCAOM.~~]

B. If the educational program is no longer in existence, or if the applicant's records are not available for good cause, the applicant for licensure by endorsement shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept as adequate and sufficient or reject such evidence presented in lieu of the records otherwise required.

C. If an applicant graduated before 1992 from an educational program lacking annual approval status from the board for the year of graduation, as defined in 16.2.7.10 NMAC, then the applicant shall apply for a single instance review. The applicant must obtain an approval of the educational program for use by a single applicant and will need to submit the following to the board:

(1) the required application fee as specified in 16.2.10 NMAC, paid by check or money order in U.S. funds; and

(2) an application on a form prescribed by

the board, completed and in English, that contains the matriculation date for the educational program, the information necessary to verify that the standards of professional education required by 16.2.17.9 NMAC and an official copy of the curriculum.

[16.2.17.9 NMAC - Rp, 16.2.17.9 NMAC, 2/11/2022; A, 4/25/2023]

**REGULATION
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ACUPUNCTURE AND
ORIENTAL MEDICINE,
BOARD OF**

This is an amendment to 16.2.18 NMAC, Section 8 effective 4/25/2023.

16.2.18.8 GENERAL REQUIREMENTS FOR EDUCATIONAL COURSE APPROVAL:

The board shall approve an educational course for a specific category of expanded practice upon completion of the following general requirements and the specific requirements listed for the specific category of expanded practice educational course approval. All courses shall adhere to ICE credentialing standards. All references to application in this section refer to the educational course application.

A. The educational course shall provide at least the minimum number of hours of education in the areas listed for the specific category of educational course hours. One [(+)] hour of education shall be equal to that defined by the accreditation commission for acupuncture and [oriental medicine (ACAOM)] herbal medicine (ACAHM). The education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine.

B. The educational course application shall include a description of the education

being provided as required by the educational course general curriculum defined in 16.2.18.11 NMAC and the educational course curriculum defined for the specific category of expanded practice for which the educational course is applying for approval.

C. The educational course application shall include the curriculum vitae for all teachers, and proposed substitute teachers all classes shall be taught by qualified teachers approved by the board, provided the following conditions are met:

(1) the education in the pharmacology of the authorized substances shall be taught by a licensed pharmacist, Pharm D or a Ph.D. in pharmacology; and
(2) the education in the clinical therapeutic use of the authorized substances shall be taught by a licensed health care practitioner with appropriate training and a minimum of five ~~(5)~~ years experience using the authorized substances.

D. The educational course application shall include documentation that all required clinical practice hours shall have a teacher to student ratio of at least one ~~(1)~~ teacher to no more than eight ~~(8)~~ students.

E. The educational course application shall include examples of the test questions that students enrolled in the course are required to successfully pass in order to ensure competence in all required areas. Testing methodology shall be approved by the board and testing shall be administered, subject to approval by a credentialed PhD psychometrician, as described in the ICE credentialing standards and as approved by the board. The educational course shall send all student test scores and evaluation scores directly to the board.

F. The educational course application shall include an example of the certificate that shall be given for successful completion of the educational course.

G. Each educational course shall be completed within two

~~(2)~~ years of commencement of that course.

H. A student who is allergic or hypersensitive to an authorized substance may be excused from participating in clinical practice when such an authorized substance is being used.

I. A board member or an agent of the board has the authority to observe, audit and evaluate educational courses at any time after an application has been filed. A course audit or evaluation may result in denial, suspension or revocation of the course's approval by the board in accordance with law.

J. The educational course provider shall specify whether the organization offering the educational course is a sole proprietorship, partnership, LLC, corporation or non-profit corporation and shall provide proof of such legal business status.

K. An educational course shall submit a new application on the form approved by the board, pay the appropriate fee defined in 16.2.10 NMAC and comply with all other new application requirements if any of the following changes:

- (1) ownership;
- (2) faculty;

and

- (3) curriculum.

L. An educational course shall inform the board in writing, provided that the educational course certifies that all factors defined in Subsection J of 16.2.18.8 NMAC remain unchanged, if any of the following changes:

- (1) name;
- (2) address;

and

- (3) phone

number.

[16.2.18.8 NMAC - Rp, 16.2.18.7 NMAC, 6/16/2015; A, 4/25/2023]

End of Adopted Rules

2023 New Mexico Register Submittal Deadlines and Publication Dates Volume XXXIV, Issues 1-24

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Issue 1	January 5	January 18
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	May 4	May 16
Issue 10	May 18	May 31
Issue 11	June 1	June 13
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Issue 20	October 12	October 24
Issue 21	October 26	November 7
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