

New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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June 12, 2018

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Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Office of the State Auditor is in the process of amending 2.2.2.9 NMAC et seq. ("Audit Rule"). The Audit Rule establishes policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico, and is governed by the Sections 12-6-1 to 12-6-14, NMSA 1978 ("Audit Act"). The amendments to the Audit Rule are proposed pursuant to the Audit Act, Subsection A of Section 12-6-3 NMSA 1978.

Proposed amendments to the rule address the following: a change to the due dates in the Audit Rule to remove any ambiguity regarding the requirement for state agencies to submit certain pages of their financial statements to the Department of Finance and Administration for inclusion in a timely statewide Comprehensive Annual Financial Report.

Copies of the proposed amendments to the rule are available at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507 and on the Office of the State Auditor website, <http://www.osanm.org>. The Agency will consider adopting the proposed new rule at a public hearing on July 12, 2018, which will take place at 1:30 p.m. at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507. Public comment is allowed at the public hearing on July 12, 2018. Please mail or deliver written comments on the proposed new rule to: C. Jack Emmons, Deputy State Auditor, at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa

Fe, New Mexico 87507, or by email at Jack.Emmons@osa.state.nm.us between June 12, 2018, and July 12, 2018.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the public hearing, please contact Mr. Emmons at least one week prior to the public hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Mr. Emmons at 505-476-3800 or Jack.Emmons@osa.state.nm.us if a summary or other type of accessible format is needed.

ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC HEARING TO REPEAL AND REPLACE 20.3.20 NMAC OF THE RADIATION PROTECTION REGULATIONS

The New Mexico Environmental Improvement Board ("EIB") will hold a public hearing beginning at 9:30 a.m. on Friday, August 24, 2018 at the State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico, 87501. The hearing location may change prior to the hearing date, and those interested in attending should visit the EIB website: <http://www.env.nm.gov/eib> prior to the hearing.

The purpose of the hearing is to consider repealing and replacing 20.3.20 NMAC. The New Mexico Environment Department ("NMED") Radiation Control Bureau is the proponent of the proposed repeal and replace.

The repeal and replacement would bring the rules into compliance with recent changes to the Medical Imaging and Radiation Therapy

Health and Safety Act, NMSA 1978, Sections 61-14E-1 to -12 (1990) ("Act"), formerly known as the Medical Radiation Health and Safety Act. The Act was amended to include licensing and certification requirements for persons operating medical equipment emitting both ionizing and non-ionizing radiation. Previously, the Act only regulated persons engaged in the practice of radiologic technology in the application of ionizing radiation. NMED proposes the EIB repeal and replace 20.3.20 NMAC of the Radiation Protection Regulations pursuant to its authority under Section 61-14E-5, NMSA 1978 and Section 74-1-8(A)(5). Please note that formatting and minor technical changes in the rules other than those proposed by NMED may be proposed at the hearing. Additionally, the EIB may make other changes as necessary in response to public comments and evidence presented at the hearing.

The proposed new rules may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505. The full text of the proposed amendments is also available online at <https://www.env.nm.gov/21691-2/>.

The hearing will be conducted in accordance with the EIB Rulemaking Procedures (20.1.1 NMAC); the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the State Rules Act, Section 14-4-5.3 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to the EIB Rulemaking Procedures, those wishing to present technical testimony must file a written notice of intent to do so with the EIB on or before 5:00 p.m. on August 3, 2018. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on August 3, 2018, and should reference the name of the regulation, the date of the hearing, and docket number EIB 18-01(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of
Boards and Commissions
Office of the Environmental
Improvement Board
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference

docket number EIB 18-01(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, EIB Administrator by August 13, 2018, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email pam.castaneda@state.nm.us. (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).

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

Notice of Non-Discrimination

The New Mexico Environment Department ("NMED") does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at [https://](https://www.env.nm.gov/NMED/EJ/index.html)

www.env.nm.gov/NMED/EJ/index.html to learn how and where to file a complaint of discrimination.

ENVIRONMENTAL IMPROVEMENT BOARD

AVISO DE AUDIENCIA PÚBLICA PARA REVOCAR Y REEMPLAZAR 20.3.20 NMAC DEL REGLAMENTO DE PROTECCIÓN CONTRA LA RADIACIÓN

La Junta para el Mejoramiento Ambiental de Nuevo México ("EIB" por su sigla en inglés) celebrará una audiencia pública a partir de las 9:30 de la mañana del viernes 24 de agosto de 2018, en la Sala 307 del Edificio del Capitolio Estatal, ubicado en 490 Old Santa Fe Trail, Santa Fe, Nuevo México, 87501. El lugar indicado para la audiencia podrá cambiar antes de la fecha de la audiencia, por lo que aquellos interesados en asistir deberán verificar esta información en el sitio web de la EIB: <http://www.env.nm.gov/eib> antes de la audiencia.

El propósito de la audiencia es considerar la revocación y el reemplazo de 20.3.20 NMAC. La Oficina de Control de la Radiación del Departamento del Medio Ambiente de Nuevo México ("NMED" por su sigla en inglés) es la entidad que propone la revocación y el reemplazo.

La revocación y el reemplazo modificarán las normas para que cumplan con los recientes cambios de la Ley de salud y seguridad relativa al diagnóstico médico por imágenes y radioterapia (la "Ley"), NMSA 1978, Secciones 61-14E-1 a -12 (1990), anteriormente conocida como la Ley de salud y seguridad relativa a la radiación médica. La Ley fue enmendada para incluir requisitos de licencia y certificación para los operadores de equipos médicos que emiten radiación tanto ionizante y como no ionizante. Previamente, la Ley solo regulaba con respecto a las personas involucradas en la práctica de tecnología radiológica para la

aplicación de radiación ionizante. El NMED propone que la EIB revoque y reemplace 20.3.20 NMAC del Reglamento de Protección contra la Radiación conforme a su autoridad según la Sección 61-14E-5, NMSA 1978 y la Sección 74-1-8(A)(5). Téngase en cuenta que, durante la audiencia, se podrán proponer cambios de formato y cambios técnicos de menor envergadura en las normas, aparte de aquellos propuestos por el NMED. Asimismo, la EIB podrá hacer otros cambios, según sea necesario, en respuesta a los comentarios del público y a las pruebas presentadas durante la audiencia.

Los interesados podrán examinar las nuevas normas propuestas durante el horario de atención al público, en la Oficina de Audiencias del NMED ubicada en el edificio Harold Runnels, 1190 South St. Francis Drive, Sala S-2102 Santa Fe, NM, 87505. El texto completo de las enmiendas propuestas también se puede ver en línea en: <https://www.env.nm.gov/21691-2/>.

La audiencia se llevará a cabo conforme a los Procedimientos Normativos de la EIB (20.1.1 NMAC); la Ley para el Mejoramiento Ambiental, Sección 74-1-9 NMSA 1978; la Ley Estatal para Reglamentos, Sección 14-4-5.3 NMSA 1978; y otros procedimientos correspondientes.

Todos los interesados tendrán una oportunidad razonable durante la audiencia de presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito; de presentar documentos y objetos de prueba; y de interrogar a los testigos. Toda persona interesada en presentar una declaración escrita que no sea de carácter técnico para que conste en actas, en lugar de testimonio oral, deberá presentar dicha declaración antes de la finalización de la audiencia.

De conformidad con los Procedimientos Normativos de la EIB, aquellos interesados en presentar

testimonio de carácter técnico deberán presentar ante la EIB un aviso por escrito de su intención de presentar dicho testimonio antes de las 5:00 de la tarde del 3 de agosto de 2018. El aviso de intención debe:

- identificar a la persona o entidad para la cual testificará/n el/los testigo/s;
- identificar a cada testigo técnico que la persona tenga la intención de presentar y establecer las cualificaciones de cada testigo, incluso una descripción de sus antecedentes educativos y laborales;
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa, e indicar la duración prevista del testimonio oral directo de ese testigo;
- incluir el texto de toda modificación recomendada para el cambio normativo propuesto; y
- hacer una lista y adjuntar todos los documentos y objetos de prueba que se anticipa que esa persona presentará en la audiencia.

Los avisos de intención para la audiencia deben llegar a la Oficina de Audiencias antes de las 5:00 de la tarde del 3 de agosto de 2018, y deben incluir como referencia el nombre del reglamento, la fecha de la audiencia y el número de expediente EIB 18-01(R). Los avisos de intención de presentar testimonio de carácter técnico deben enviarse a la Administradora de Juntas y Comisiones:

Pam Castaneda, Administrator of
Boards and Commissions
Office of the Environmental
Improvement Board
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Los interesados podrán ofrecer comentarios públicos que no sean de carácter técnico durante la audiencia o presentar declaraciones escritas que

no sean de carácter técnico en lugar de testimonio oral antes o durante la audiencia. Los comentarios escritos relativos a las revisiones propuestas podrán enviarse a la señorita Pam Castaneda, Administradora de Juntas y Comisiones, a la dirección antes indicada, y deben incluir como referencia el número de expediente EIB 18-01(R).

Toda persona que necesite asistencia, intérprete o un dispositivo auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, Administradora de la EIB, antes del 13 de agosto de 2018, en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, por teléfono al (505) 827-2425 o por correo electrónico a pam.castaneda@state.nm.us. (Los usuarios de TDD y TTY podrán acceder a ese número a través de New Mexico Relay Network: 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

La EIB podrá tomar una decisión acerca del cambio normativo propuesto al finalizar la audiencia o podrá convocar a una reunión después de la audiencia para considerar qué acción tomar con respecto a la propuesta.

Aviso de no discriminación

El Departamento del Medio Ambiente de Nuevo México ("NMED" por su sigla en inglés) no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, conforme a lo exigido por las leyes y los reglamentos correspondientes. El NMED es responsable de la coordinación de esfuerzos para el cumplimiento de las reglas y la recepción de indagaciones relativas a los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, que incluye el Título VI de la Ley de Derechos Civiles de 1964, como fuera enmendado; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación de 1972; y la Sección

13 de las Enmiendas a la Ley Federal de Control de la Contaminación del Agua de 1972. Si tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación del NMED, puede comunicarse con la Coordinadora de No Discriminación: Kristine Pintado, Non-Discrimination Coordinator New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. Si piensa que ha sido discriminado con respecto a un programa o actividad del NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/NMED/EJ/index.html> para saber cómo y dónde presentar una queja por discriminación.

RETIREE HEALTH CARE AUTHORITY

NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Retiree Health Care Authority (NMRHCA) is considering amending the part name of the existing rule 2.81.11 NMAC - ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF YEARS OF CREDITABLE SERVICE, amending sections 6, 7, 8 and 9 and adopting a proposed new section 10 to be included in 2.81.11 NMAC. The purpose of the amendment of existing sections of the rule is to amend the subsidy schedule to increase the years for maximum subsidy for some plans. The purpose of the proposed new section is to establish a minimum age requirement to receive subsidy for coverage. The part name will be changed to “ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF AGE AND YEARS OF CREDITABLE SERVICE” in order to reflect the proposed rule. A summary of the full text of the proposed rule follows:

Section 9 of the existing rule 2.8.11 NMAC provides for the NMRHCA to pay a percentage of the subsidy to monthly premiums of eligible retirees, which percentage is dependent on the years of credited service of the retiree and is 100% at 20 years of credited service. The amendment changes the years at which 100% is paid to 25 and changes the percentages for fewer years of credited service for retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2020. Section 7 of the existing rule is amended to include a definition for “members of an enhanced retirement plan.” The new section 10 requires that eligible retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2020 be 55 years of age to receive subsidies. Section 8 is amended to clarify that disabled retirees receive a 100% subsidy regardless of years of service or age. Section 6 is amended to clarify that the objective of the part includes that subsidies will have a minimum age requirement for those retiring on or after January 1, 2020.

The NMRHCA is authorized to promulgate rules to implement the Retiree Health Care Act, NMSA 1978, Sections 10-7C-1 to -16 (1990, as amended through 2009) (“Act”) by NMSA 1978, Section 10-7C-7 (1998). By resolution dated May 8, 2018, the NMRHCA resolved to undertake the rulemaking in conformity with the Act, the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017), the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018) and the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013).

The NMRHCA is increasing the minimum years of service requirement to receive the maximum subsidy provided by the program to be consistent with requirements to receive a full pension benefit from both the Public Employee Retirement Association of New Mexico and

the New Mexico Educational Retirement Board. In addition, the agency is establishing a minimum age requirement for folks not retiring from an enhanced retirement plan to promote and strengthen the solvency of the program. A study of NMRHCA’s long-term solvency projections, NMRHCA 2017 Long-Term Solvency Model, is available at its website, www.nmrhca.org/financial-documents.aspx.

The full text of the proposed rule may be obtained by contacting Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107; telephone 505-222-6403, to request a copy of the rule. The full text and this notice are also available on NMRHCA’s website: <http://www.nmrhca.org/>.

A person may submit, by mail or electronic form, written comments on the proposed rule through the end of the public comment period, which ends July 26, 2018. Written comments should be submitted to Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107. Written comments also will be accepted by email: gregoryr.archuleta@state.nm.us or by fax: (505) 884-8611. All written comments received by the agency will be posted on <http://www.nmrhca.org/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107.

A public rule hearing on the proposed rule will be held before Greg Archuleta, Director of Communication and Member Engagement, NMRHCA, on July 26, 2018 from 1-3 p.m. at the NMRHCA

office's Alfredo R. Santistevan Board Room, located at 4308 Carlisle Blvd. NE, Suite 207 in Albuquerque, NM, 87107. Individuals may submit data, views or arguments orally or in writing to the proposed rule at the public rule hearing. Persons offering written comments at the hearing must have 2 copies for the hearing officer. Any individual with a disability in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Greg Archuleta at 505-222-6403 at least 10 days before the hearing.

TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following rule:

Tax Administration Act, Section 7-1-8 NMSA 1978

3.1.3.13 NMAC – Authorized Representative

The proposals were placed on file in the Office of the Secretary on May 30, 2018. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 14, 2018.

A public hearing will be held on the proposals on Wednesday, July 18, 2018, at 10:00 a.m. in the Secretary's Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Alicia Romero at alicia.romero@state.nm.us. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received

at least ten calendar days prior to the scheduled hearing. Accessible copies of the proposals are available upon request; contact the Tax Policy Office at policy.office@state.nm.us. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or by email to policy.office@state.nm.us on or before July 18, 2018. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than 3 business days following receipt to allow for public review.

3.1.3.13 AUTHORIZED REPRESENTATIVE

A. The authorization of any person [~~other than an attorney or accountant licensed to practice in New Mexico or, with respect to income tax only, an enrolled agent,~~] to be a representative of a taxpayer must be in writing, must contain sufficient information for the department to identify the taxpayer and the representative and must be signed by the taxpayer. The authorization must be in a form prescribed by the department, and renewed at an interval set by the department.

B. Upon presentation of a proper authorization from a taxpayer's representative, the secretary or employee may reveal information concerning the taxpayer and the taxpayer's return. If, however, the adversarial position of the representative or some change of circumstance in the relationship between the taxpayer and the taxpayer's authorized representative leads the secretary or employee to question the continued validity of the authorization, the secretary or employee may inquire of the taxpayer whether the authorization remains valid. A taxpayer may revoke an authorization of a person to be the taxpayer's representative by filing a document with the department so stating.

[11/5/85, 8/15/90, 10/31/96; 3.1.3.13 NMAC - Rn & A, 3 NMAC 1.3.13, 12/29/00, xx/xx/20xx]

TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to repeal and replace the following rule:

Weight Distance Tax Act, Section 7-15A-13 NMSA 1978

3.12.12 NMAC - Weight Distance Tax Identification Permit

The proposals were placed on file in the Office of the Secretary on May 30, 2018. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 14, 2018.

A public hearing will be held on the proposals on Wednesday, July 25, 2018, at 10:00 a.m. in the Secretary's Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Alicia Romero at alicia.romero@state.nm.us. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing. Accessible copies of the proposals are available upon request; contact the Tax Policy Office at policy.office@state.nm.us. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630

or by email to policy.office@state.nm.us on or before July 25, 2018. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than 3 business days following receipt to allow for public review.

TITLE 3: TAXATION
CHAPTER 12: HIGHWAY USE TAXES AND FEES
PART 12: WEIGHT DISTANCE TAX IDENTIFICATION PERMIT

3.12.12.1 ISSUING

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

[3.12.12.1 NMAC - Rp, 3.12.12.1 NMAC, xx/xx/20xx]

3.12.12.2 SCOPE: This part applies to all registrants, owners and operators of motor vehicles with a declared gross weight of 26,001 pounds or more if the motor vehicles are used or intended to be used on New Mexico highways, when the motor vehicle is registered with New Mexico.

[3.12.12.2 NMAC - Rp, 3.12.12.2 NMAC, xx/xx/20xx]

3.12.12.3 STATUTORY

AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.12.12.3 NMAC - Rp, 3.12.12.3 NMAC, xx/xx/20xx]

3.12.12.4 DURATION:

Permanent.

[3.12.12.4 NMAC - Rp, 3.12.12.4 NMAC, xx/xx/20xx]

3.12.12.5 EFFECTIVE

DATE: xx/xx/20xx, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.12.12.5 NMAC - Rp, 3.12.12.5 NMAC, xx/xx/20xx]

3.12.12.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the

provisions of the Weight Distance Tax Act.

[3.12.12.6 NMAC - Rp, 3.12.12.6 NMAC, xx/xx/20xx]

3.12.12.7 DEFINITIONS:

[RESERVED]

[3.12.12.7 NMAC - Rp, 3.12.12.7 NMAC, xx/xx/20xx]

3.12.12.8

WEIGHT DISTANCE TAX IDENTIFICATION PERMIT TO BE ISSUED:

A. Upon receipt of an approved application by a motor carrier, the department will issue weight distance tax identification permit(s) to the motor carrier for the number of vehicles they own that are subject to the weight distance tax.

The motor carrier will be required to identify each permit they receive to a specific vehicle by indicating the unit and vehicle identification numbers on the face of the permit.

B. The weight distance tax identification permit is an administrative certificate that will be issued on non-reproducible paper to motor carriers who submit an approved application.

C. Weight distance tax identification permits issued by the department will only be valid for the calendar year for which they are issued.

[3.12.12.8 NMAC - Rp, 3.12.12.8 NMAC, xx/xx/20xx]

3.12.12.9

WEIGHT DISTANCE TAX IDENTIFICATION PERMIT - ADMINISTRATIVE FEE:

Any person that applies for and receives a weight distance tax identification permit shall pay an administrative fee. The administrative fee shall be ten dollars (\$10.00) upon the effective date of this regulation. The administrative fee may be increased or decreased by the secretary after due consideration of the costs of issuing and administering weight distance tax identification permits and of enforcing permits use. Persons who have current weight distance tax identification permits will be

notified if the secretary changes the fee at least 30 days prior to effective date of a change in the fee. The administrative fee will be deposited in the weight distance tax identification permit fund to pay the costs of issuing and administering weight distance tax identification permits and costs incurred by the department, the motor transportation division of the department of public safety and the department of transportation to enforce the use of such permits by motor carriers in accordance with the Weight Distance Tax Act. The administrative fee will be imposed for every permit, including annual renewals and replacements.

[3.12.12.9 NMAC - Rp, 3.12.12.9, xx/xx/20xx]

History of 3.12.12 NMAC:

[RESERVED]

WATER QUALITY CONTROL COMMISSION

NOTICE OF PUBLIC HEARING TO AMEND 20.7.5 NMAC, WASTEWATER FACILITY CONSTRUCTION LOANS

The New Mexico Water Quality Control Commission ("Commission" or "WQCC") will hold a public hearing beginning at 9:00 a.m. on Tuesday, August 14, 2018, and continuing thereafter as necessary in Room 307 at the State Capital Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit the WQCC website: <http://www.env.nm.gov/wqcc> prior to the hearing. The purpose of the hearing is to consider amendments to the rules on Wastewater Facility Construction Loans, 20.7.5 NMAC ("Rules") proposed by the New Mexico Environment Department ("NMED").

The amendments would bring the Rules into compliance with recent changes to the Wastewater Facility Construction Loan Act (Sections

74-6A-1 thru 74-6A-15 NMSA 1978) ("Act"). The Act governs the administration of New Mexico's Clean Water State Revolving Fund ("CWSRF") which provides low interest loans and grant/loan packages to eligible entities for wastewater and storm water projects. Primarily, these amendments would expand the scope of projects and borrowers eligible for consideration for funding pursuant to the Act. Additionally, the amendments would bring 20.7.5 NMAC into compliance with changed criteria for zero-percent loans through the CWSRF.

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505. The full text of the proposed amendments is also available online at <http://www.env.nm.gov/general/wqcc-18-01-r/>.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures (20.1.6 NMAC); the Water Quality Act, Section 74-6-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to the WQCC Rulemaking Procedures, those wishing to present technical testimony must file a written notice of intent to do so with the Commission on or before 5:00 p.m. on July 25, 2018. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;

- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;

- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;

- include the text of any recommended modifications to the proposed regulatory change; and

- list and attach all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on July 25, 2018, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 18-01(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of
Boards and Commissions
Office of the Water Quality Control
Commission
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference docket number WQCC 18-01(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator by July 31, 2018, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email pam.castaneda@state.nm.us. (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).

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

Notice of Non-Discrimination
NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/NMED/EJ/index.html> to learn how and where to file a complaint of discrimination.

PROPOSED AMENDMENT

This is an amendment to 20.7.5 NMAC, Sections 6, 7, 10, 11, 12, 13, and 14, effective XX/XX/2018.

20.7.5.6

OBJECTIVE: The

objective of this part is to establish a program to provide financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities pursuant to the act.

[20.7.5.6 NMAC - Rp, 20.7.5.6 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.7 DEFINITIONS:

as used in this part.

A. “Act” means the Wastewater Facility Construction Loan Act.

B. “Administrative fee” means a fee assessed and collected by the department from the [local authority] qualified borrower on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

C. “Clean Water Act” means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions.

D. “Clean water state revolving loan administrative fund” means a separate fund created outside the wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs of administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative fund and shall be used explicitly for the purpose above.

E. “Commission” means the water quality control commission.

F. “Department” means the New Mexico environment department.

G. “Eligible project” means any project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the

United States Code, as of January 1, 2018, including a wastewater facility project, a nonpoint source water pollution control project, and a watershed project that meet the criteria of the Clean Water Act.

[G:] H. “Final loan agreement” means an agreement executed by the [local authority] qualified borrower and the department upon completion of the project in order to [evidence] document the permanent financing of the final loan amount.

[H:] I. “Final loan amount” means the aggregate amount of the principal disbursed by the department to the [local authority] qualified borrower during the construction of the [wastewater facility] eligible project, together with accrued and unpaid interest on the aggregate principal thereof.

[I:] J. “Financial assistance” means loans, combination loan/grants, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees, or any combination of these purposes.

[J:] K. “Force account construction” means construction performed by the employees of a [local authority] qualified borrower rather than through a contractor.

[K:] L. “Fund” means the wastewater facility construction loan fund established in Section 74-6A-4 NMSA 1978 of the Wastewater Facility Construction Loan Act.

[L:] M. “Local authority” means any municipality, county, water and sanitation district or any similar district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection; “Local authority” means a municipality, intermunicipal agency, county, incorporated county, mutual domestic water consumers association as defined by the Sanitary

Projects Act, sanitation district, water and sanitation district or any similar district, recognized Indian tribe, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

[M:] N. “Payment” means a disbursement from the fund directly to the [local authority] qualified borrower.

[N:] O. “Priority list” means the list of eligible projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

[O:] P. “Priority system” means the system approved by the commission for ranking eligible projects for which financial assistance applications have been received pursuant to the act.

Q. “Qualified borrower” means a creditworthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act, as of January 1, 2018, including a state agency, an interstate agency, and a local authority.

R. “State agency” means an agency or department of the executive branch of government.

[P:] S. “Wastewater facility” means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping and ventilating stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers, and other real or personal property and appurtenances incidental to their use or operation. “Wastewater facility” also includes a nonpoint source water pollution control or Brownfield redevelopment

project as eligible under the Clean Water Act.

[~~Q.~~] **T.** Other terms will retain their definition as given in the act.

[20.7.5.7 NMAC - Rp, 20.7.5.7 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE:

A. Only [~~local~~ authorities] qualified borrowers will be eligible for financial assistance from the fund.

B. The project must appear on the current priority list at the time of the financial assistance award.

C. To be eligible for financial assistance from the fund, [~~local authorities~~] qualified borrowers shall:

(1) meet the requirements of financial capability set by the department to assure sufficient revenue to operate and maintain the facility for its useful life, if applicable, and to repay the financial assistance;

(2) agree to operate and maintain the [~~wastewater~~] eligible project facility so that the project facility will function properly over its structural and material design life, if applicable;

(3) agree to maintain separate project accounts, to maintain project accounts properly in accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;

(4) agree to provide a written assurance prior to construction, signed by an attorney, or other authorized representative, that the [~~local authority~~] qualified borrower has or will acquire proper title, easements and rights-of-way to the property upon or through which the [~~wastewater~~] eligible project facility proposed for funding is to be constructed or extended;

(5) require the contractor of the [~~construction~~] eligible project to post a performance

and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions;

(6) provide a written notice of project completion [~~and start of operation of the wastewater facility~~]; and

(7) provide such information to the department as required [~~by the commission~~] in order to comply with the provisions of the Clean Water Act and state law.

D. Financial assistance shall be made only to [~~local authorities~~] qualified borrowers that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance, and equipment replacement expenses. [20.7.5.10 NMAC - Rp, 20.7.5.10 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:

A. Applications for financial assistance shall be made by the [~~local authority~~] qualified borrower on a form specified by the department.

B. Applicants for financial assistance shall provide the department with:

(1) a description of the scope of work of the project;

(2) a cost estimate of the project; and

(3) a target date for initiation of construction.

C. The department will review the application for eligibility, and technical merits. The department will notify the [~~local authority~~] qualified borrower of any inadequacies in the submittal. The [~~local authority~~] qualified borrower may correct any inadequacies and resubmit the application.

D. Upon determination by the department that an application is eligible and complete, the application will be ranked utilizing the priority system and will be placed

on the priority list.

[20.7.5.11 NMAC - Rp, 20.7.5.11 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST:

A. Financial assistance shall only be made to [~~local authorities~~] qualified borrowers on the project priority list developed in accordance with the priority system as adopted by the commission.

B. The commission shall adopt a system for the ranking of projects for financial assistance.

C. The department shall prepare a priority list of applicants for financial assistance based on the priority system approved by the commission.

[20.7.5.12 NMAC - Rp, 20.7.5.12 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS:

A. Eligible items for financial assistance made from state only funds include but are not limited to the costs of engineering [~~feasibility~~] reports, contracted engineering design, inspection of construction, special engineering services, start-up services, contracted construction, materials purchased or equipment leased for force account construction, land, or acquisition of existing facilities. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean Water Act.

B. Financial assistance shall be made only to [~~local authorities~~] qualified borrowers that employ or contract with a [~~registered~~] New Mexico licensed professional engineer to provide and be responsible for engineering services on the project. Such services include, but are not limited to [~~an engineering report~~] engineering reports, construction contract documents, supervision of construction, and start-up services.

C. Ineligible for financial assistance made with state

only funds items include:

(1) the costs of water rights;

(2) local authority administrative costs;

(3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act;

(4) force account construction; and

(5) administrative [fee] fees.
[20.7.5.13 NMAC - Rp, 20.7.5.13 NMAC, 12/16/2015; A, XX/XX/2018]

20.7.5.14

ADMINISTRATION OF THE LOAN PROGRAM AND FUND:

A. The loan program and fund is administered by the department as agent for the commission. Pursuant to Section 74-6A-9.A (10) of the Wastewater Facility Construction Loan Act, the department shall develop new, and implement existing, policies, procedures, and guidelines necessary and appropriate to implement the provisions of the act and the Clean Water Act.

B. The necessary administrative expenses required of the board, the commission, and the department to implement the provisions of the act will be appropriated from the fund.

C. The department may impose and collect a fee from each ~~[local authority]~~ qualified borrower that receives financial assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund, and used solely for the costs of administering the fund as follows:

(1) an administrative fee may be assessed on all financial assistance provided after January 1, 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

(2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of

20.7.5.14 NMAC above, the total administrative fee assessed shall not exceed five percent of the total loan amount; the fee will be assessed on the outstanding principal balance of the loan payable; these fees are due on the same dates the payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from the requirement by the department; the department may determine, establish and revise from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenue available to pay such costs; the administrative fee payments must be deposited in the clean water state revolving loan administrative fund as they are received; interest on the clean water state revolving loan administrative fund shall be transferred to the administrative fund as it is received; and

(3) an administrative fee of two percent of the unpaid principal balance of the refinanced loan will be assessed against the ~~[local authority]~~ qualified borrower and shall be paid into the clean water state revolving loan administrative fund at the time of closing of the refinancing.

D. Financial assistance agreements will be prepared by the department and executed by the ~~[local authority]~~ qualified borrower for the project which can be financed with available balances in the fund.

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than 30 years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

F. The interest rate for the loan portion of the financial assistance shall be the rate in effect when the final loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced

in accordance with Subsection I of 20.7.5.14 NMAC. The interest rate shall be the base rate provided in Subsection G of 20.7.5.14 NMAC unless the local authority qualifies for a hardship rate provided in Subsection H of 20.7.5.14 NMAC.

G. At the beginning of each state fiscal year, the commission may determine a base rate for the state fiscal year which is less than or greater than the current base rate.

H. Hardship rates shall be approved by the department when a local authority meets the associated conditions at the time the financial assistance agreement is executed:

(1) When the local authority's per capita income is less than the statewide per capita income based on the most current United States (U.S.) bureau of census statistics.

(2) The local authority's per capita income is less than three-fourths of the statewide per capita income based upon the most current U.S. bureau of census statistics.

(3) A combination of loan and grant funds in those years when grant funding is available for assistance to rural communities.

(4) An interest rate of zero percent when:

(a) the local authority's average user cost is at least fifteen dollars per month or a higher amount as determined by the commission. The calculation of average user cost shall be consistent with a statewide methodology established by the department; and

(b) the local authority's ~~[median-household income]~~ per capita income is less than three-fourths of the statewide non-metropolitan ~~[median-household income]~~ per capita income based upon the most current U.S. bureau of census statistics.

Interest Rate	Local Authority Criteria
2.375%	Per capita income equal to or above statewide average; base interest rate. (G.)
1.2%	Per capita income less than that statewide average. (H.)(1)
0.6%	Per capita income less than $\frac{3}{4}$ of the statewide average. (H.)(2)
0%	[Median household income] Per capita income less than $\frac{3}{4}$ if the statewide [median household income] per capita income and the average user cost is equal to or greater than \$15.00 per month. (H.)(4)(a)(b)

L. The interest rate for a state agency shall be the lowest interest rate available above zero percent in 20.7.5.14 H.

[H.] J. A local authority may refinance the loan portion of the financial assistance if the local authority later qualifies for a reduced rate. The refinancing may only occur at or after the execution of a final loan agreement.

[F.] K. Financial assistance recipients shall comply with all applicable federal, state, and local laws and regulations, including but not limited to:

- (1) procurement;
- (2) record keeping;
- (3) accounting;
- (4) audit and inspection;
- (5) occupational health and safety;
- (6) environmental review; and
- (7) non-discrimination.

[K.] L. In the event of default by the ~~[local authority]~~ qualified borrower, the department as agent for the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law. [20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, 05/30/2017; A, XX/XX/2018]

WATER QUALITY CONTROL COMMISSION

AVISO DE AUDIENCIA PÚBLICA PARA ENMENDAR 20.7.5 NMAC, PRÉSTAMOS PARA LA CONSTRUCCIÓN DE INSTALACIONES DE AGUAS RESIDUALES

La Comisión de Control de Calidad del Agua de Nuevo México (“Comisión” o “WQCC”, por su sigla en inglés) llevará a cabo una audiencia pública a las 9:00 de la mañana, el martes 14 de agosto de 2018 que continuará según sea necesario en la Sala 307 en el Capitolio del Estado, ubicado en 490 Old Santa Fe Trail, Santa Fe, New Mexico. La ubicación de la audiencia puede cambiar antes de la fecha de la audiencia, y los interesados en asistir deben visitar el sitio web de WQCC: <http://www.env.nm.gov/wqcc> antes de la audiencia. El objetivo de la audiencia es considerar enmiendas a las normas sobre préstamos para la construcción de instalaciones de aguas residuales, 20.7.5 NMAC

(“Reglamento”) propuestas por el Departamento de Medio Ambiente de Nuevo México (“NMED” por su sigla en inglés).

Las enmiendas pondrían el Reglamento en conformidad con los cambios recientes en la Ley de Préstamos para la Construcción de Instalaciones de Aguas Residuales (Secciones 74-6A-1 a 74-6A-15 NMSA 1978) (“Ley”, por su sigla en inglés). La Ley rige la administración del Fondo Rotatorio Estatal de Agua Limpia de Nuevo México (“CWSRF” por su sigla en inglés) que otorga préstamos a bajo interés y paquetes de subvenciones/préstamos a entidades elegibles para proyectos de aguas residuales y aguas pluviales. En primer lugar, estas enmiendas ampliarían el alcance de los proyectos y los prestatarios elegibles para la consideración de fondos de conformidad con la Ley. Además, las enmiendas pondrían el 20.7.5 NMAC en conformidad con los criterios modificados para préstamos del cero por ciento a través de CWSRF.

Las enmiendas propuestas se pueden

revisar durante el horario normal de atención al público en la Oficina de Audiencias de NMED ubicada en el edificio Harold Runnels, 1190 South St. Francis Drive, Sala S-2102 Santa Fe, NM, 87505. El texto completo de las enmiendas propuestas también está disponible en línea en <http://www.env.nm.gov/general/wqcc-18-01-r/>.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de WQCC (20.1.6 NMAC); la Ley de Calidad del Agua, Sección 74-6-6 NMSA 1978; la Ley de Reglas del Estado, Sección 14-4-5.3 NMSA 1978 y otros procedimientos aplicables.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito; para presentar exhibiciones; y para examinar a los testigos. Cualquier persona que desee presentar una declaración escrita que no sea de carácter técnico para que conste en actas en lugar de un testimonio oral

debe presentar dicha declaración antes del cierre de la audiencia.

De conformidad con los Procedimientos de Reglamentación de WQCC, aquellos interesados en presentar un testimonio de carácter técnico, deberán presentar ante la Comisión un aviso por escrito de su intención presentar dicho testimonio antes de las 5:00 p.m. del día 25 de julio de 2018. El aviso de intención deberá:

- identificar a la persona o entidad para la cual testificará/n el/os testigo/s;
- identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las calificaciones del testigo, incluida una descripción de sus antecedentes educativos y laborales;
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa, e indicar la duración estimada del testimonio oral directo de ese testigo;
- incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- hacer una lista y adjuntar todo los documentos y objetos de pruebas que se anticipa que van a ser presentadas por esa persona en la audiencia.

Las notificaciones de intenciones para la audiencia deberán recibirse en la Oficina de Audiencias antes o hasta las 5:00 p.m. del día 25 de julio de 2018, y deben incluir como referencia el nombre del reglamento, la fecha de la audiencia y el número de expediente WQCC 18-01 (R). Las notificaciones de intención de presentar un testimonio técnico deben enviarse a:

Pam Castaneda, Administrator of
Boards and Commissions
Office of the Water Quality Control
Commission
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Los interesados podrán ofrecer comentarios públicos que no sean de carácter técnico durante la audiencia o presentar declaraciones escritas que no sean de carácter técnico en lugar de testimonio oral durante o antes de la audiencia. Los comentarios escritos relativos a las revisiones propuestas pueden enviarse a la Sra. Pam Castaneda, Administradora de Juntas y Comisiones, a la dirección antes indicada, y deben incluir como referencia el número de expediente WQCC 18-01 (R).

Si alguna persona necesita asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, Administradora de la WQCC antes o hasta el día 31 de julio de 2018, en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, o por teléfono al (505) 827-2425 o por correo electrónico a pam.castaneda@state.nm.us. (Los usuarios de TDD o TTY podrán acceder a ese número a través de la Red de retransmisión de Nuevo México: 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

La Comisión podrá tomar una decisión sobre el cambio normativo propuesto al final de la audiencia o podrá convocar una reunión después de la audiencia para considerar que acción tomar con respecto a la propuesta.

Aviso de no discriminación

NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, tal como lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relacionadas con los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación

por Edad de 1975, Título IX de las Enmiendas Educativas de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de NMED contra la discriminación, puede comunicarse con: Kristine Pintado, Coordinadora de No Discriminación Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Dr., Suite N4050, PO Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminación identificado anteriormente o visitar nuestro sitio web en [https://www.env.nm.gov/NMED/EJ/index .html](https://www.env.nm.gov/NMED/EJ/index.html) para aprender cómo y dónde presentar una queja de discriminación.

Aviso de no discriminación

NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y los reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos para el cumplimiento de las reglas y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, que incluye el Título VI de la Ley de Derechos Civiles de 1964, según enmendado; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación de 1972; y la Sección 13 de las Enmiendas a la Ley Federal de Control de la Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa de no discriminación, norma o procedimiento de NMED, usted puede comunicarse con la Coordinadora de No Discriminación: Kristine Pintado, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr.,

Suite N4050, P.O. Box 5469, Santa Fe, NM, 87502, (505) 827-2855. nd.coordinator@state.nm.us. Si usted piensa que ha sido discriminado con respecto a un programa o actividad de NMED, usted puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/NMED/EJ/index.html> para saber cómo y dónde puede presentar una queja por discriminación.

**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.

<p style="text-align: center;">GAME AND FISH, DEPARTMENT OF</p> <p>The New Mexico State Game Commission (Department of Game and Fish) approved, at its 5/22/2018 hearing, to repeal its rule 19.30.12 NMAC, Pronghorn License Allocation System, filed 11/16/2004, effective 4/1/2019.</p>	<p>19.31.15.4 DURATION: April 1, 2019 through March 31, 2023. [19.31.15.4 NMAC - Rp, 19.31.15.4 NMAC, 4-1-19]</p> <p>19.31.15.5 EFFECTIVE DATE: April 1, 2019, unless a later date is cited at the end of a section. [19.31.15.5 NMAC - Rp, 19.31.15.5 NMAC, 4-1-19]</p>	<p>H. “Unlimited” shall mean there is no set limit on the number of licenses established for the described hunt areas except as allowed in 19.31.15.8 NMAC.</p> <p>I. “Web sale” shall refer to accessing the department’s internet address to initiate the process to purchase specific pronghorn hunting licenses as designated by the director annually.</p>
<p style="text-align: center;">GAME AND FISH, DEPARTMENT OF</p> <p>TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING PART 15 PRONGHORN ANTELOPE</p>	<p>19.31.15.6 OBJECTIVE: Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of pronghorn licenses by the department. [19.31.15.6 NMAC - Rp, 19.31.15.6 NMAC, 4-1-19]</p> <p>19.31.15.7 DEFINITIONS:</p> <p>A. “Department” shall mean the New Mexico department of game and fish.</p> <p>B. “Director” shall mean the director of the New Mexico department of game and fish.</p> <p>C. “Either sex” or “ES” shall mean any one pronghorn.</p> <p>D. “Female or immature pronghorn” or “F-IM” shall mean any female pronghorn or any pronghorn with both horns shorter than its ears.</p> <p>E. “Game management unit” or “GMU” shall mean those areas as described in 19.30.4 NMAC, Game Management Units.</p> <p>F. “Mature buck pronghorn” or “MB” shall mean a pronghorn with at least one horn longer than its ears.</p> <p>G. “Private land-only pronghorn license” shall mean the valid official document for hunting pronghorn on private deeded land during designated private land-only hunts.</p>	<p>J. “Wildlife management areas” or “WMAs” shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas. [19.31.15.7 NMAC - Rp, 19.31.15.7 NMAC, 4-1-19]</p> <p>19.31.15.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS AND HARVEST LIMITS: The director, with the verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits, or authorizations for pronghorn up or down to address significant changes in population levels or to address critical department management needs. This adjustment may be applied to any or all of the specific hunt codes for pronghorn, and may include a limit to the number of private land-only licenses by hunt code. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code. [19.31.15.8 NMAC - Rp, 19.31.15.8 NMAC, 4-1-19]</p>
<p>19.31.15.1 ISSUING AGENCY: New Mexico Department of Game and Fish. [19.31.15.1 NMAC - Rp, 19.31.15.1 NMAC, 4-1-19]</p> <p>19.31.15.2 SCOPE: Sportspersons interested in pronghorn antelope hunting and management. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC. [19.31.15.2 NMAC - Rp, 19.31.15.2 NMAC, 4-1-19]</p> <p>19.31.15.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish. [19.31.15.3 NMAC - Rp, 19.31.15.3 NMAC, 4-1-19]</p>		<p>19.31.15.9 PRONGHORN POPULATION MANAGEMENT HUNTS:</p> <p>A. The director or their designee may authorize population management hunts for</p>

pronghorn when justified in writing by department personnel.

B. The director or their designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses or permits to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department. [19.31.15.9 NMAC - Rp, 19.31.15.11 NMAC, 4-1-19]

19.31.15.10 SPECIAL PRONGHORN HUNTING OPPORTUNITIES

A. Pronghorn conservation recognition

program: Private landowners who are conducting and maintaining substantial habitat improvements and/or land management practices on their deeded lands that directly and significantly benefit pronghorn may be considered for special recognition. Only those projects as determined by the department to be relevant and beneficial to pronghorn will be considered. Landowners must submit an application and once approved, develop a pronghorn conservation and management plan in cooperation with the department. Upon approval of the plan the landowner may be granted alternative season dates as approved by the department. Landowners receiving special recognition are required to submit an update as directed by the department to be considered for continued

participation. The hunt code for any unique hunt season approved pursuant to this program shall be ANT-1-600.

B. Ranch-wide agreements: Properties consisting of deeded and leased public lands deemed by the department to have pronghorn hunting opportunities may enter into an agreement with the department to create a pronghorn hunting ranch. The boundaries would include both the deeded and leased public lands. The department will negotiate with the landowner the number of private licenses to be issued to landowners with ranch-wide agreements. These private licenses shall have access to the deeded and leased public land within the hunting ranch boundary during the respective pronghorn hunt. The landowner shall allow access to the deeded and leased public land to all legally licensed public draw hunters pursuant to Subsection A of Section 19.31.15.13 NMAC for the respective game management unit. Any ranch entered into such an agreement shall be issued one authorization valid for a free pronghorn license pursuant to 17-3-14 NMSA 1978.

[19.31.15.10 NMAC - N, 4-1-19]

19.31.15.11 PRONGHORN HUNTS:

Numbers of licenses are evaluated annually based upon population dynamics, weather conditions, sustainable harvest, and department management objectives.

A. Public land pronghorn hunts: Pronghorn draw hunts, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms type, number of licenses and bag limit shall be as indicated below. Pronghorn draw hunt licenses are valid on all open public lands and any private land the licensee has written permission to hunt within the GMU or area. All WMAs are open to pronghorn hunts in respective GMUs listed in this section unless specifically closed by rule.

Continued on the following page

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
2, 7, 9, 10	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-100	15	MB
2, 7, 9, 10: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-101	3	ES
2, 7, 9, 10	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-102	15	MB
12	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-103	10	MB
12: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-104	3	ES
12	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-105	10	MB
12: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-106	10	MB
12	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-107	10	MB
13	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-108	10	MB
13: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-109	2	ES
13	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-110	10	MB
13: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-111	10	MB
13	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-112	5	MB
15	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-113	20	MB
15: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-114	5	ES
15	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-115	5	MB
15	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-116	5	MB
15: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-117	3	MB
15	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-118	10	MB
16	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-119	20	MB
16: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-120	5	ES
16	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-121	10	MB
16	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-122	10	MB
16: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-123	3	MB
16	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-124	20	MB
17	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-125	20	MB
17: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-126	5	ES
17	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-127	5	MB
17	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-128	5	MB
17: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-129	3	MB
17	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-130	10	MB
18	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-131	25	MB

18	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-132	15	MB
18	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-133	15	MB
19: youth only	10/11-10/13	10/9-10/11	10/8-10/10	10/7-10/9	ANT-1-134	5	ES
20	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-135	10	MB
20: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-136	2	ES
20	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-137	10	MB
21, 24	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-138	25	MB
21, 24: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-139	10	ES
21, 24	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-140	5	MB
21, 24	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-141	10	MB
21, 24: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-142	8	MB
21, 24	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-143	15	MB
22, 23	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-144	10	MB
22, 23: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-145	5	ES
22, 23	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-146	5	MB
22, 23	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-147	10	MB
22, 23: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-148	3	MB
25, 26, 27	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-149	10	MB
25, 26, 27: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-150	5	ES
25, 26, 27	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-151	5	MB
25, 26, 27	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-152	10	MB
25, 26, 27: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-153	3	MB
28	9/7-9/8	9/5-9/6	9/4-9/5	9/3-9/4	ANT-3-154	5	MB
28: military only	9/7-9/8	9/5-9/6	9/4-9/5	9/3-9/4	ANT-3-155	10	MB
29: youth only	8/17-8/19	8/22-8/24	8/21-8/23	8/20-8/22	ANT-3-156	5	ES
29	8/17-8/19	8/22-8/24	8/21-8/23	8/20-8/22	ANT-3-157	15	MB
29	8/24-8/26	8/29-8/31	8/28-8/30	8/27-8/29	ANT-3-158	25	MB
30	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-159	25	MB
31 north of US 380	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-160	25	MB
31 north of US 380: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-161	5	ES
31 north of US 380	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-162	5	MB

31 north of US 380	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-163	10	MB
31 north of US 380: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-164	5	MB
31 north of US 380	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-165	15	MB
31 south of US 380	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-166	50	MB
31 south of US 380: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-167	5	ES
31 south of US 380	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-168	10	MB
31 south of US 380	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-169	10	MB
31 south of US 380: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-170	5	MB
31 south of US 380	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-171	20	MB
32 east of Pecos River	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-172	25	MB
32 east of Pecos River: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-173	5	ES
32 east of Pecos River	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-174	10	MB
32 east of Pecos River	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-175	5	MB
32 east of Pecos River: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-176	5	MB
32 east of Pecos River	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-177	15	MB
32 west of Pecos River	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-178	20	MB
32 west of Pecos River	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-179	15	MB
32 west of Pecos River	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-180	10	MB
32 west of Pecos River: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-181	5	MB
32 west of Pecos River	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-182	15	MB

32 (Roswell, portions of)	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15	ANT-1-183	15	F-IM
33	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-184	30	MB
33: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-185	5	ES
33	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-186	25	MB
33	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-187	20	MB
33: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-188	5	MB
33	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-189	25	MB
36, 37	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-190	20	MB
36, 37: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-191	5	ES
36, 37	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-192	10	MB
36, 37	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-193	10	MB
36, 37: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-194	5	MB
36, 37	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-195	15	MB
38	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-196	20	MB
38: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-197	10	ES
38	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-198	15	MB
38	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-199	20	MB
38: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-200	10	MB
38	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-201	30	MB
39	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-202	5	MB
39: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-203	5	ES
39	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-204	10	MB
39	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-205	10	MB
39: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-206	5	MB
39	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-207	10	MB
40	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-208	5	MB
40	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-209	10	MB
40: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-210	5	MB
40	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-211	10	MB
41	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-212	35	MB
41: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-213	5	ES
41	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-214	30	MB
41	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-215	30	MB
41: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-216	5	MB

41	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-217	35	MB
41, youth only	10/12-10/14	10/10-10/12	10/16-10/18	10/15-10/17	ANT-1-218	10	F-IM
42	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-219	5	MB
42: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-220	10	ES
42	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-221	10	MB
42	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-222	10	MB
8, 43	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-223	5	MB
8, 43	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-224	10	MB
47	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-225	10	MB
47: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-226	5	ES
47	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-227	25	MB
47	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-228	30	MB
47: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-229	5	MB
47	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-230	35	MB
47: youth only	10/12-10/14	10/10-10/12	10/16-10/18	10/15-10/17	ANT-1-231	20	F-IM
50, 52: youth only	8/3-8/5	8/1-8/3	8/7-8/9	8/6-8/8	ANT-3-232	40	ES
50, 52	8/6-8/14	8/4-8/12	8/10-8/18	8/9-8/17	ANT-2-233	20	MB
50, 52	8/17-8/19	8/15-8/17	8/21-8/23	8/20-8/22	ANT-3-234	40	MB
50, 52	8/24-8/26	8/22-8/24	8/28-8/30	8/27-8/29	ANT-3-235	40	MB
56	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-236	50	MB
56: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-237	50	ES
56	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-238	5	MB
56	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-239	45	MB
56: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-240	5	MB
56	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-241	50	MB
56: youth only	10/12-10/14	10/10-10/12	10/16-10/18	10/15-10/17	ANT-1-242	40	F-IM
57	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-243	10	MB
57: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-244	10	ES
57	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-245	10	MB
57: youth only	10/12-10/14	10/10-10/12	10/16-10/18	10/15-10/17	ANT-1-246	10	F-IM
58	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-247	35	MB
58: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-248	15	ES
58	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-249	25	MB
58	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-250	30	MB

58: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-251	5	MB
58	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-252	40	MB
58: youth only	10/12-10/14	10/10-10/12	10/16-10/18	10/15-10/17	ANT-1-253	30	F-IM
59	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-254	50	MB
59: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-255	45	ES
59	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-256	5	MB
59	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-257	40	MB
59: mobility impaired only	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-258	10	MB
59	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-259	50	MB
59: youth only	10/12-10/14	10/10-10/12	10/16-10/18	10/15-10/17	ANT-1-260	40	F-IM

B. Private land-only pronghorn hunts: Private land-only pronghorn licenses shall be restricted to the hunt dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the draw hunt code listed in Subsection A of Section 19.31.15.11 NMAC for the GMU where the private landowner's property lies. Private land-only pronghorn licenses shall be unlimited and available from any license vendor and the department's web site. These licenses are not valid for ranch-wide agreement properties as described in Subsection B of Section 19.31.15.10 NMAC. Private land-only pronghorn licenses are valid only on deeded private property where the licensee has written permission to hunt, and within the GMU or area allowed by hunt code, except ranch-wide agreement properties. Private land-only pronghorn licenses are not restricted to only one ranch or property. In those GMUs where there is no pronghorn draw hunt (GMUs 4, 14, 46, 48, 54, and 55), hunt dates, eligibility requirements or restrictions, sporting arms type, and bag limit will be:

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
4: youth only	8/3-8/5	8/1-8/3	8/7-8/9	8/6-8/8	ANT-3-300	unlimited	ES
4	8/6-8/14	8/4-8/12	8/10-8/18	8/9-8/17	ANT-2-301	unlimited	MB
4	8/17-8/19	8/15-8/17	8/21-8/23	8/20-8/22	ANT-3-302	unlimited	MB
4	8/24-8/26	8/22-8/24	8/28-8/30	8/27-8/29	ANT-3-303	unlimited	MB
14	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-304	unlimited	MB
14	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-305	unlimited	MB
14	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-306	unlimited	MB
14	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-307	unlimited	MB
46	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-308	unlimited	MB
46: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-309	unlimited	ES
46	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-310	unlimited	MB
46	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-311	unlimited	MB
46	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-312	unlimited	MB
48	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-313	unlimited	MB
48: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-314	unlimited	ES
48	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-315	unlimited	MB
48	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-316	unlimited	MB
48	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-317	unlimited	MB
54	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-318	unlimited	MB
54: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-319	unlimited	ES

54	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-320	unlimited	MB
54	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-321	unlimited	MB
54	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-322	unlimited	MB
55	8/4-8/12	8/4-8/12	8/4-8/12	8/4-8/12	ANT-2-323	unlimited	MB
55: youth only	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-324	unlimited	ES
55	8/17-8/19	8/15-8/17	8/14-8/16	8/13-8/15	ANT-1-325	unlimited	MB
55	8/24-8/26	8/22-8/24	8/21-8/23	8/20-8/22	ANT-1-326	unlimited	MB
55	8/27-8/29	8/25-8/27	8/24-8/26	8/23-8/25	ANT-1-327	unlimited	MB

C. Private land-only F-IM pronghorn hunts: The department will work with interested landowners with sufficient pronghorn populations to authorize F-IM hunts on private deeded land. Sporting arms type, hunt dates, eligibility requirements or restrictions and authorization numbers for private deeded land F-IM hunts will be negotiated to maintain appropriate harvest within the exterior boundaries of participating ranches.
[19.31.15.11 NMAC - Rp, 19.31.15.12 NMAC, 4-1-19]

HISTORY OF 19.31.15 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/67; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67; Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/68; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69;

Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/69; Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70; Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70; Regulation No. 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71; Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/71; Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/71; Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72; Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk,

Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/72; Regulation No. 542, Establishing A Season On Javelina, filed 12/1/72; Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73; Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73; Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/73; Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74; Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74; Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/74; Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75; Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/75; Regulation No. 568, Establishing

Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/75;

Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/76;

Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;

Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;

Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;

Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/80;

Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 3/17/81;

Regulation No. 614, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/82;

Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/83;

Regulation No. 628, Establishing Open Seasons On Deer, Turkey,

Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/84;

Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/85;

Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/86;

Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/87;

Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/87;

Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;

Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/89;

Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/89;

Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/91;

Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/92;

Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/93.

History of Repealed Material:

19.31.8 NMAC, Big Game, filed 3-1-2001 - duration expired 3-31-2003.

19.31.8 NMAC, Big Game and Turkey, filed 3-3-2003 - duration expired 3-31-2005.

19.31.8 NMAC, Big Game and Turkey, filed 12-15-2004 - duration expired 3-31-2007.

19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 12-1-2006 - duration expired 3-31-2009.

19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 3-13-2009 - duration expired 3-31-2011.

19.31.15 NMAC, Pronghorn Antelope, filed 8-15-2010 - duration expired 3-31-2015.

19.31.15 NMAC, Pronghorn Antelope, filed 3-17-2015, repealed 3-31-2016.

19.31.15 NMAC, Pronghorn Antelope, filed 2-29-2016 - duration expired 3-31-2019

GAME AND FISH, DEPARTMENT OF

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING PART 17 BIGHORN SHEEP

19.31.17.1 ISSUING

AGENCY: New Mexico Department of Game and Fish.

[19.31.17.1 NMAC - Rp, 19.31.17.1 NMAC, 4-1-19]

19.31.17.2 SCOPE:

Sportspersons interested in the management and hunting of bighorn sheep. Additional requirements may be found in Chapter 17 NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.31.17.2 NMAC - Rp, 19.31.17.2 NMAC, 4-1-19]

19.31.17.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.17.3 NMAC - Rp, 19.31.17.3 NMAC, 4-1-19]

19.31.17.4 DURATION: April 1, 2019 through March 31, 2023.

[19.31.17.4 NMAC - Rp, 19.31.17.4 NMAC, 4-1-19]

19.31.17.5 EFFECTIVE DATE: April 1, 2019 unless a later date is cited at the end of a section.

[19.31.17.5 NMAC - Rp, 19.31.17.5 NMAC, 4-1-19]

19.31.17.6 OBJECTIVE: Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of bighorn sheep licenses by the department.

[19.31.17.6 NMAC - Rp, 19.31.17.6 NMAC, 4-1-19]

19.31.17.7 DEFINITIONS:

A. "Bighorn enhancement program" as used herein, shall mean the department activity that allows the issuance of not more than four permits for the taking of one bighorn ram per permit with the purpose of raising funds for programs and projects to benefit bighorn sheep.

B. "Department" shall mean the New Mexico department of game and fish.

C. "Director" shall mean the director of the New Mexico

department of game and fish.

D. "Either sex" or "ES" shall mean any one animal of the species.

E. "Ewe" shall mean any female bighorn sheep.

F. "Game management unit" or "GMU" shall mean those areas as described in the rule 19.30.4 NMAC Boundary Descriptions for Game Management Units.

G. "Ram" shall mean any male bighorn sheep.

H. "Wildlife management areas" or "WMAs" shall mean those areas as described in rule 19.34.5 NMAC, Wildlife Management Areas.

[19.31.17.7 NMAC - Rp, 19.31.17.7 NMAC, 4-1-19]

19.31.17.8 ADJUSTMENT OF LICENSES: The director, with the verbal concurrence of the chairperson or their designee, may adjust the number of bighorn licenses to address significant changes in population levels or to address critical department management needs. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.17.8 NMAC - Rp, 19.31.17.8 NMAC, 4-1-19]

19.31.17.9 BIGHORN SHEEP LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. Rocky mountain bighorn sheep ram once-in-a-lifetime hunts: It shall be unlawful for anyone to apply for a Rocky mountain bighorn sheep ram license if one has previously held a license to hunt a Rocky mountain bighorn sheep ram in New Mexico, except those who have held a youth-only, private land-only (not obtained through the public draw), population management license for ram or ES that the director, with verbal concurrence of the chairperson or their designee, has decided does not qualify as once-in-a-

lifetime, auction, and/or raffle bighorn ram license(s). A person that has received the youth-only ram license is eligible for this hunt only once as a youth (under age 18), but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible.

B. Desert bighorn sheep ram once-in-a-lifetime hunts:

It shall be unlawful for anyone to apply for a desert bighorn sheep ram license if one has previously held a license to hunt a desert bighorn sheep ram in New Mexico, except those who have held a youth-only, private land-only (not obtained through the public draw), population management license for ram or ES that the director, with verbal concurrence of the chairperson or their designee, has decided does not qualify as once-in-a-lifetime, auction, and/or raffle bighorn ram license(s). A person that has received the youth-only ram license is eligible for this hunt only once as a youth (under age 18), but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible.

C. Rocky mountain bighorn sheep ewe hunts: This hunt is not a once-in-a-lifetime hunt. A person that has previously held a license to hunt Rocky mountain bighorn rams or ewes is eligible to apply for this hunt.

[19.31.17.9 NMAC - Rp, 19.31.17.9 NMAC, 4-1-19]

19.31.17.10 SEALING OF RAM HORNS: A seal shall be affixed to a horn of every bighorn sheep ram head taken in New Mexico, imported into New Mexico, or found in the field in New Mexico subsequent to August 17, 1973. Bighorn sheep heads found in the field within New Mexico shall remain the property of the state until disposed of by permit from the director. The seal shall authorize possession and transportation of the head within New Mexico.

A. Such sealing shall be done within ten days after the bighorn sheep ram head is taken, imported, or found in the field and

before the bighorn sheep head is exported from New Mexico. Bighorn sheep ram heads not so declared shall be seized. Only legally taken and possessed bighorn sheep ram heads shall be sealed.

B. Bighorn sheep ram heads legally sealed in other countries, states, tribal entities, provinces, and territories, and possessing a valid visible seal attached, are exempted.

C. It shall be unlawful to possess any bighorn sheep ram head which has not been sealed as described in this section.

[19.31.17.10 NMAC - Rp, 19.31.17.10 NMAC, 4-1-19]

19.31.17.11 BIGHORN SHEEP HUNTING SEASONS: The 2019-20 through 2022-23 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms, number of licenses, and bag limit. Additional eligibility requirements and restrictions are defined in Section 9 of 19.31.17 NMAC above.

A. Rocky mountain bighorn ram hunt for any legal sporting arms (BHS-1-201). Hunters applying for BHS-1-201 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-201 will be up to 60 with a bag limit of one ram.

open GMUs or areas for BHS-1-201	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
6	TBD	TBD	TBD	TBD
14, 18	TBD	TBD	TBD	TBD
16B, 22, 23, 24	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31
45	8/9-8/18	8/7-8/16	8/6-8/15	8/5-8/14
	8/23-9/1	8/21-8/30	8/20-8/29	8/19-8/28
45, youth only	8/23-9/1	8/21-8/30	8/20-8/29	8/19-8/28
53 south of NM 38 and east of NM 522	8/6-8/15	8/6-8/15	8/6-8/15	8/6-8/15
	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	8/9-8/18	8/7-8/16	8/6-8/15	8/5-8/14
	8/23-9/1	8/21-8/30	8/20-8/29	8/19-8/28
49, 50, 53 west of NM 522	8/10-8/24	8/10-8/24	8/10-8/24	8/10-8/24
	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
55 north of NM196/FS Rd 1950	8/15/2019-1/15/2020	8/15/2020-1/15/2021	8/15/2021-1/15/2022	8/15/2022-1/15/2023
58	8/15/2019-1/15/2020	8/15/2020-1/15/2021	8/15/2021-1/15/2022	8/15/2022-1/15/2023

B. Private land Rocky mountain bighorn ram hunt for any legal sporting arms. The number of licenses available will be up to 6 with a bag limit of one ram.

open GMUs	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
55 north of NM196/FS Rd 1950	8/15/2019-1/15/2020	8/15/2020-1/15/2021	8/15/2021-1/15/2022	8/15/2022-1/15/2023
58	8/15/2019-1/15/2020	8/15/2020-1/15/2021	8/15/2021-1/15/2022	8/15/2022-1/15/2023

C. Rocky mountain bighorn ewe hunt for any legal sporting arms (BHS-1-202). Hunters applying for BHS-1-202 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-202 will be up to 150 with a bag limit of one ewe.

open GMUs or areas for BHS-1-202	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
45	9/21-9/25	9/19-9/23	9/18-9/22	9/17-9/21
	10/5-10/9	10/3-10/7	10/2-10/6	10/1-10/5
45, youth only	10/5-10/9	10/3-10/7	10/2-10/6	10/1-10/5

49, 50, 53 west of NM 522	10/12-10/20	10/10-10/18	10/9-10/17	10/8-10/16
	11/9-11/17	11/14-11/22	11/13-11/21	11/12-11/20
	12/14-12/22	12/12-12/20	12/11-12/19	12/10-12/18
49, 50, 53 west of NM 522, youth only	11/9-11/17	11/14-11/22	11/13-11/21	11/12-11/20
53 south of NM 38 and east of NM 522	9/21-9/25	9/19-9/23	9/18-9/22	9/24-9/28
	10/5-10/9	10/3-10/7	10/2-10/6	10/8-10/12
53 south of NM 38 and east of NM 522, youth only	9/21-9/25	9/19-9/23	9/18-9/22	9/24-9/28
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	9/21-10/4	9/19-10/2	9/18-10/1	9/17-9/30
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, youth only	9/21-10/4	9/19-10/2	9/18-10/1	9/17-9/30

D. Rocky mountain bighorn ewe hunt for bow only (BHS-2-203). Hunters applying for BHS-2-203 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-2-203 will be up to 60 with a bag limit of one ewe.

open GMUs or areas for BHS-2-203	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
45	9/6-9/15	9/4-9/13	9/3-9/12	9/2-9/11
49, 50, 53 west of NM 522	9/16-9/30	9/16-9/30	9/16-9/30	9/16-9/30
53 south of NM 38 and east of NM 522	9/11-9/17	9/11-9/17	9/11-9/17	9/11-9/17
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	9/7-9/20	9/5-9/18	9/4-9/17	9/3-9/16
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, youth only	9/7-9/20	9/5-9/18	9/4-9/17	9/3-9/16

E. Desert bighorn ram hunt for any legal sporting arms (BHS-1-204). Hunters applying for BHS-1-204 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-204 will be up to 60 with a bag limit of one ram.

open GMUs or areas for BHS-1-204	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
13, 17	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31
19	12/14-12/21	12/14-12/21	12/14-12/21	12/14-12/21
	12/27/2019-1/3/2020	12/27/2020-1/3/2021	12/27/2021-1/3/2022	12/27/2022-1/3/2023
20: south of NM 51	11/16-11/30	11/16-11/30	11/16-11/30	11/16-11/30
	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15
20: north of NM 51	10/11-10/20	8/14-8/23	10/8-10/17	8/12-8/21
	2/16-2/29	3/5-3/14	2/16-2/28	3/3-3/12
20: north of NM 51, youth only	11/22-12/1	11/20-11/29	11/19-11/28	11/18-11/27
26	10/1-10/15	10/1-10/15	10/1-10/15	10/1-10/15
	10/16-10/31	10/16-10/31	10/16-10/31	10/16-10/31
27	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30

F. Private land desert bighorn ram hunt for any legal sporting arms. The number of licenses available will be up to 6 with a bag limit of one ram.

open GMUs	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
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20: north of NM 51	8/16-8/25	10/9-10/18	8/13-8/22	10/7-10/16
	3/6-3/15	2/16-2/28	3/4-3/13	2/16-2/28
20: north of NM 51, youth only	11/22-12/1	11/20-11/29	11/19-11/28	11/18-11/27

[19.31.17.11 NMAC - Rp, 19.31.17.11 NMAC, 4-1-19]

9.31.17.12 BIGHORN SHEEP ENHANCEMENT PROGRAM:

A. The director of the department shall collect all proceeds generated through auction and lottery of special bighorn sheep permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit bighorn sheep and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of bighorn sheep.

B. The state game commission shall authorize the director of the department to issue not more than four special bighorn sheep permits in any one license year to take one bighorn sheep ram per permit. The director shall allow the sale of two permits through auction to the highest bidders and two permits to persons selected through a random drawing for the holder of a lottery ticket by the department or by an incorporated, nonprofit organization dedicated to the conservation of wild sheep.

C. Proposals for auctioning two special bighorn sheep permits and the sale of lottery tickets to obtain two special bighorn sheep permits through a pair of random drawings shall be submitted to the director of the department prior to December 30 annually, preceding the license year when the permits may be legally used.

D. The proposals for auctioning two permits, and for the sale of lottery tickets and subsequent selection of recipients for two permits through random drawing(s) shall each contain and identify:

(1) the name

of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal;

(2) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasurer, or their equivalents.

E. The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform to the requirements of this section. In selecting a marketing organization, the director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organization's previous involvement with wild sheep management and its conservation objectives. The director may accept any proposals when it is in the best interest of bighorn sheep to do so.

F. The marketing organization must agree in writing to the following:

(1) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and

(2) to provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special bighorn sheep permits are issued.

G. The department and the marketing organization must agree

to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

H. Unless his or her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special bighorn auction permits or purchase lottery tickets in an attempt to be selected for the special bighorn lottery permits.

I. The special bighorn sheep permits issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

J. Special bighorn sheep permits granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' permits. A person is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he or she has previously held a license to hunt Rocky mountain or desert bighorn sheep in New Mexico.

K. Holders of the auction licenses (BHS-1-500) must declare their exclusive hunt area by June 30 annually to hunt the designated subspecies in one of the open hunt areas. Each holder of the raffle license (BHS-1-600) must declare their exclusive hunt area by July 20 annually to hunt the designated subspecies in one of the open hunt areas not declared by the auction hunter.

L. The remaining hunt units open to bighorn hunting not declared by the auction or raffle hunter as their exclusive hunt area, may be hunted by either the auction or raffle hunter.

M. The hunt dates for BHS-1-500 and BHS-1-600 shall be 8/1-12/31 annually except GMU 53 south of NM 38 and east of NM 522 is closed 8/16 to 8/31 annually to all

bighorn sheep hunters.
[19.31.17.12 NMAC - Rp,
19.31.17.12 NMAC, 4-1-19]

**19.31.17.13 BIGHORN
SHEEP POPULATION
MANAGEMENT HUNTS:**

A. The director, with verbal concurrence of the chairperson or their designee, may authorize population management hunts for bighorn sheep when justified in writing by department personnel and must be based on biological information or a potential to compromise population viability.

B. The director shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

E. The director, with verbal concurrence of the chairperson or their designee, may deem some ram or either sex population management licenses not once-in-a-lifetime; a person that has held a once-in-a-lifetime ram license(s) is not disqualified from this hunt.
[19.31.17.13 NMAC - Rp,
19.31.17.13 NMAC, 4-1-19]

HISTORY OF 19.31.17 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing

Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/67; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67; Regulation No. 489, Establishing Turkey Seasons For The Spring Of 1968, filed 3/1/68; Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/69; Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70; Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70; Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71; Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache

Indian Reservation, filed 3/9/71; Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/71; Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72; Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/72; Regulation No. 542, Establishing A Season On Javelina, filed 12/1/72; Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73; Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73; Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/73; Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74; Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74; Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/74; Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75; Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And

Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/75;
 Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/75;
 Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/76;
 Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;
 Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;
 Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;
 Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/80;
 Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 3/17/81;
 Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/82;
 Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1,

1983 through March 31, 1984, filed 3/9/83;
 Regulation No. 628, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/84;
 Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/85;
 Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/86;
 Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/87;
 Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/87;
 Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;
 Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/89;
 Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/89;
 Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary

Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/91;
 Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/92;
 Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/93.

History of Repealed Material:

19.31.8 NMAC, Big Game, filed 3-1-2001 - duration expired 3-31-2003.
 19.31.8 NMAC, Big Game and Turkey, filed 3-3-2003 - duration expired 3-31-2005.
 19.31.8 NMAC, Big Game and Turkey, filed 12-15-2004 - duration expired 3-31-2007.
 19.31.17 NMAC, Bighorn Sheep, filed 12-1-2006 - duration expired 3-31-2009.
 19.31.17 NMAC, Bighorn Sheep, filed 2-26-2009 - duration expired 3-31-2011.
 19.31.17 NMAC, Bighorn Sheep, filed 9-15-2010 - duration expired 3-31-2015.
 19.31.17 NMAC, Bighorn Sheep, filed 3-17-2015 - duration expired 3-31-2019.

GAME AND FISH, DEPARTMENT OF

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING PART 21 JAVELINA

19.31.21.1 ISSUING
AGENCY: New Mexico Department of Game and Fish.
 [19.31.21.1 NMAC - Rp, 19.31.21.1 NMAC, 4-1-19]

19.31.21.2 SCOPE:

Sportspersons interested in javelina hunting and management. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.
[19.31.21.2 NMAC - Rp, 19.31.21.2 NMAC, 4-1-19]

19.31.21.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.
[19.31.21.3 NMAC - Rp, 19.31.21.3 NMAC, 4-1-19]

19.31.21.4 DURATION: April 1, 2019 through March 31, 2023.
[19.31.21.4 NMAC - Rp, 19.31.21.4 NMAC, 4-1-19]

19.31.21.5 EFFECTIVE DATE: April 1, 2019, unless a later date is cited at the end of a section.
[19.31.21.5 NMAC - Rp, 19.31.21.5 NMAC, 4-1-19]

19.31.21.6 OBJECTIVE: Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of javelina licenses by the department.
[19.31.21.6 NMAC - Rp, 19.31.21.6 NMAC, 4-1-19]

19.31.21.7 DEFINITIONS:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Director" shall mean the director of the New Mexico department of game and fish.

C. "Either sex" or "ES" shall mean any one animal of the species.

D. "Game management unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC, Boundary Descriptions for Game Management Units.

E. "Web sale" shall refer to accessing the department's internet address to initiate the process to purchase specific javelina hunting licenses as designated by the director annually.

F. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas.
[19.31.21.7 NMAC - Rp, 19.31.21.7 NMAC, 4-1-19]

19.31.21.8 ADJUSTMENT OF LICENSES, AUTHORIZATIONS AND HARVEST LIMITS: The director, with the verbal concurrence of the chairperson or their designee, may adjust the number of licenses for javelina up or down by no more than twenty percent of the total licenses available in the area or GMU to address significant changes in population levels or habitat availability. The director may consider requests from organizations or private landowners working with children suffering from terminal illness or disease to change season dates, weapon types or bag limits to provide for special hunting situations on a case by case basis. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.21.8 NMAC - Rp, 19.31.21.8 NMAC, 4-1-19]

19.31.21.9 JAVELINA HUNTING SEASONS: Javelina hunts for the 2019-2020 through the 2022-2023 hunt seasons shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms, number of licenses, and bag limit. All WMAs shall remain closed to javelina hunting, except the prairie-chicken, Heart Bar, and Socorro-Escondida WMAs are open to javelina hunting.

Continued on the following page

A. Entry hunts:

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
Statewide except GMU 28, youth only	1/1-3/31	1/1-3/31	1/1-3/31	1/1-3/31	JAV-1-100	150	ES
GMUs 19, 23, 24, 25, 26 and 27	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	JAV-2-101	300	ES
	2/1-3/1	2/1-3/1	2/1-3/1	2/1-3/1	JAV-1-102	1000	ES
GMU 28 McGregor range, military only	12/28-12/29	1/2-1/3	1/1-1/2	12/31/2022-1/1/2023	JAV-1-105	5	ES
GMU 28 McGregor range	12/28-12/29	1/2-1/3	1/1-1/2	12/31/2022-1/1/2023	JAV-1-106	5	ES

B. Over-the-counter hunts: The hunt area shall be statewide except GMUs 19, 23, 24, 25, 26, 27 and 28.

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
Statewide except GMUs 19, 23, 24, 25, 26, 27 and 28	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	JAV-2-103	300	ES
	1/16-3/31	1/16-3/31	1/16-3/31	1/16-3/31	JAV-1-104	1000	ES

C. Properly licensed youth deer or elk hunters that possess JAV-1-100 may hunt javelina outside of the published javelina hunt dates but only during the same dates and in the same area as their deer or elk hunt. Properly licensed deer or elk hunters that possess JAV-2-103 and JAV-1-104 may hunt javelina outside of the published javelina hunt dates but only during the same dates and in the same area as their deer or elk hunt, except in GMUs 19, 23, 24, 25, 26, 27 and 28. Hunters must use the same weapon type listed on their respective deer or elk license.

[19.31.21.9 NMAC - Rp, 19.31.21.11 NMAC, 4-1-19]

HISTORY OF 19.31.21 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 482, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 5/31/67; Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67; Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/68; Regulation No. 491, Establishing Big

Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68; Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68; Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68; Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68; Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69; Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69; Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69; Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/69; Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70; Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70;

Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70; Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71; Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/71; Regulation No. 523, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/9/71; Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71; Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72; Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72; Regulation No. 536, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, filed 6/26/72; Regulation No. 542, Establishing A

Season On Javelina, filed 12/1/72;
 Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73;
 Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73;
 Regulation No. 547, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep And Bighorn Sheep, And Javelina, filed 5/31/73;
 Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74;
 Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74;
 Regulation No. 558, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex, filed 5/29/74;
 Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75;
 Regulation No. 567, Establishing 1975 Seasons On Deer, Bear, And Turkey On The Jicarilla Apache And Navajo Indian Reservations And On Elk On The Jicarilla Apache Indian Reservation, filed 3/24/75;
 Regulation No. 568, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 6/25/75;
 Regulation No. 573, Establishing Seasons On Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/76;
 Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;
 Regulation No. 590, Establishing

Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;
 Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;
 Regulation No. 603, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1980 through March 31, 1981, filed 2/22/80;
 Regulation No. 609, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1981 through March 31, 1982, filed 3/17/81;
 Regulation No. 614, Establishing Open Seasons On Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1982 through March 31, 1983, filed 3/10/82;
 Regulation No. 622, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1983 through March 31, 1984, filed 3/9/83;
 Regulation No. 628, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1984 through March 31, 1985, filed 4/2/84;
 Regulation No. 634, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1985 Through March 31, 1986, filed 4/18/85;
 Regulation No. 640, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1986 through March 31, 1987, filed 3/25/86;

Regulation No. 645, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1987 through March 31, 1988, filed 2/12/87;
 Regulation No. 653, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1988 through March 31, 1989, filed 12/18/87;
 Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;
 Regulation No. 664, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1989 through March 31, 1990, filed 3/20/89;
 Regulation No. 674, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex For The Period April 1, 1990 through March 31, 1991, filed 11/21/89;
 Regulation No. 683, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1991 through March 31, 1992, filed 2/8/91;
 Regulation No. 689, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1992 through March 31, 1993, filed 3/4/92;
 Regulation No. 700, Establishing Open Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, And Ibex For The Period April 1, 1993 through March 31, 1995, filed 3/11/93.

History of Repealed Material:

19.31.8 NMAC, Big Game, filed 3-1-2001 - duration expired 3-31-2003.
 19.31.8 NMAC, Big Game and

Turkey, filed 3-3-2003 - duration expired 3-31-2005.

19.31.8 NMAC, Big Game and Turkey, filed 12-15-2004 - duration expired 3-31-2007.

19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 12-1-2006 - duration expired 3-31-2009.

19.31.15 NMAC, Pronghorn Antelope and Javelina, filed 3-13-2009 - duration expired 3-31-2011.

19.31.21 NMAC, Javelina, filed 8-15-2010 - duration expired 3-31-2015.

19.31.21 NMAC, Javelina, filed 3-17-2015 - duration expired 3-31-2019.

HIGHER EDUCATION DEPARTMENT

The New Mexico Higher Education Department approved and adopted, on 05/30/2018, repeal of its rule 5.5.2 NMAC - Approval of New Graduate Programs, filed 02/26/1985, and replaced it with a new rule 5.5.2 NMAC - Approval of New Graduate Programs, effective 06/12/2018.

The New Mexico Higher Education Department approved and adopted, on 05/30/2018, to repeal its rule 5.5.3 NMAC, Transfer and Articulation (Filed 10/02/1991), effective 06/12/2018.

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST- SECONDARY EDUCATION CHAPTER 5 POST- SECONDARY EDUCATIONAL PROGRAMS PART 2 APPROVAL OF NEW GRADUATE PROGRAMS

5.5.2.1 ISSUING

AGENCY: New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400.

[5.5.2.1 NMAC - Rp, 5.5.2.1 NMAC, 06/12/2018]

5.5.2.2 STATUTORY AUTHORITY: Section 9-25-8

NMSA 1978, Section 21-2-5 NMSA 1978, Section 21-1-26 NMSA 1978, and Section 21-1-24 NMSA 1978. [5.5.2.2 NMAC - Rp, 5.5.2.2 NMAC, 06/12/2018]

5.5.2.3 SCOPE: All graduate programs offered by a public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution.

[5.5.2.3 NMAC - Rp, 5.5.2.3 NMAC, 06/12/2018]

5.5.2.4 DURATION: Permanent.

[5.5.2.4 NMAC - Rp, 5.5.2.4 NMAC, 06/12/2018]

5.5.2.5 EFFECTIVE DATE: June 12, 2018, unless a later date is cited at the end of a section. [5.5.2.5 NMAC - Rp, 5.5.2.5 NMAC, 06/12/2018]

5.5.2.6 OBJECTIVE: To provide a process for objective review of proposed graduate programs. Any public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution operating within and receiving financial support from the state of New Mexico shall follow the procedures set out by the department before creating a new graduate degree program. [5.5.2.6 NMAC - Rp, 5.5.2.6 NMAC, 06/12/2018]

5.5.2.7 DEFINITIONS:
A. "Department" means the New Mexico higher education department.

B. "Dormant programs" means degree programs that have not admitted new students for a period of three consecutive years.

C. "Graduate program" or "program" means a sequence of courses, activities or experiences in an academic discipline or sub-discipline which leads to award of any degree in the academic discipline or sub-discipline beyond

the baccalaureate degree, including a master's degree, doctoral degree, or professional degree in fields such as law, medicine or other professions.

D. "Institution"

means a public research or comprehensive higher education institution, as defined in Article XII, Section 11 of the New Mexico constitution operating within and receiving financial support from the state of New Mexico.

E. "Institutional review" means the process by which an institution conducts internal evaluation and approval of new courses, programs or any other matter related to curriculum. The required review process may differ between institutions and is set by each individual institution.

F. "New graduate program" means one that differs from currently approved programs at the proposing institution, in terms of degree level or academic discipline or sub-discipline.

G. "Post-baccalaureate certificate" means a program of study that is designed to develop or enhance a focused area of expertise, provide specific skill training and to enhance employability. [5.5.2.7 NMAC - Rp, 5.5.2.7 NMAC, 06/12/2018]

5.5.2.8 GENERAL REQUIREMENTS:

A. No graduate degree program established after the effective date of 5.5.2 NMAC, nor any student enrolled in that program, shall be eligible for inclusion in any of the department's funding recommendations unless the program has been approved by the department cabinet secretary and New Mexico state board of finance.

B. The department will maintain an inventory of graduate degree programs that are offered at each institution. The department shall update the degree inventory to include changes reported to the department by the institutions.

C. A program, option, concentration or specialization that has been prepared to meet a request

of a particular employer and that will be financially supported by that employer is not subject to approval by the department or the New Mexico state board of finance. However, such programs are considered restricted and do not receive state funding. Students enrolled in such programs are not eligible for any state support until the program is approved pursuant to 5.5.2 NMAC and the program becomes unrestricted.

D. Any change to an existing graduate program's curriculum that is equivalent to more than one-third of the program's degree requirements will be considered a new graduate program for the purposes of 5.5.2.9 NMAC.

[5.5.2.8 NMAC - Rp, 5.5.2.8 NMAC, 06/12/2018]

5.5.2.9 SUBJECT TO APPROVAL: The following actions require the approval of the department cabinet secretary and the New Mexico state board of finance:

A. Addition of a new graduate program.

B. Addition of a doctoral degree in an academic discipline or sub-discipline in which a master's degree is already awarded.

C. Addition of a master's degree in an academic discipline or sub-discipline in which a doctoral degree is already awarded.

D. Addition or deletion of a program option, concentration or specialization that will result in a new degree level or academic discipline or sub-discipline. For example, the addition of a concentration or specialization in British literature to an existing master of arts in English would not be subject to 5.5.2 NMAC; however, the addition of an option of British literature in an English department that would result in a new master of arts in British literature would be subject to 5.5.2 NMAC.

F. Addition of a post-baccalaureate certificate that requires additional funding, faculty or facilities.

[5.5.2.9 NMAC - Rp, 5.5.2.9 NMAC, 06/12/2018]

5.5.2.10 ADVISORY REVIEW COMMITTEE:

A. The department shall convene an advisory review committee, chaired by the department cabinet secretary or designee, to evaluate applications submitted by institutions seeking approval of a new graduate program. The advisory committee shall make a recommendation to the department cabinet secretary. The authority to determine whether a program is submitted to the New Mexico state board of finance rests solely with the department cabinet secretary.

B. The advisory review committee shall be convened at the request of the department at least four times per year if there are programs to be reviewed.

C. The advisory review committee shall consist of:

(1) the cabinet secretary or designee of the New Mexico higher education department;

(2) the cabinet secretary or designee of the New Mexico department of workforce solutions;

(3) the cabinet secretary or designee of the New Mexico department of finance and administration;

(4) the cabinet secretary or designee of the New Mexico department of economic development;

(5) the director or designee of the New Mexico legislative finance committee;

(6) the chief academic officer from a two-year independent community college;

(7) the chief academic officer from a two-year branch community college;

(8) the chief academic officer from a four-year research university; and

(9) the chief academic officer from a four-year comprehensive college or university.

D. A chief academic officer serving on the advisory review committee shall recuse himself or herself from voting on any matters from his or her institution brought

before the advisory review committee. [5.5.2.10 NMAC - Rp, 5.5.2.10 NMAC, 06/12/2018]

5.5.2.11 APPROVAL BY THE DEPARTMENT:

A. Before submitting an application to create a new graduate program, an institution must have completed all institutional reviews required by the institution, including approval by the board of regents.

B. An institution must submit a completed application to the department, on a form provided by the department, by the deadline published by the department.

C. A completed application shall include approval by the New Mexico council of graduate deans. It is the sole responsibility of the institution to comply with all requirements of the council of graduate deans and seek approval within a timeframe that allows the institution to comply with all necessary deadlines set by the department.

D. The department shall conduct initial review of an application. The department may request additional information from the institution for use in its initial review. The department shall determine whether the application is correctly and fully completed. If the department determines that an application is not correctly and fully completed, the department shall return the application to the institution with recommendations as to how deficiencies may be remedied. An application shall not be presented to the advisory review committee until the department has completed its initial review and determines that the application is correctly and fully completed.

E. If the application is submitted on or before the deadline published by the department, consideration of the application shall be placed on the next advisory committee meeting agenda. If the institution submits the form after the published deadline, consideration of the application will be postponed until

the subsequent advisory committee meeting.

F. The department shall have a representative present during the advisory committee meeting to present the application. The department representative shall not be an advisory committee member.

G. A representative from the applicant institution shall be present during the advisory committee meeting and shall be prepared to respond to questions presented by the advisory committee. The institutional representative shall not be considered a member of the advisory committee and may not cast a vote on any matters before the committee.

H. The advisory committee may recommend to approve, disapprove, or return a proposal to the sponsoring institution, for modification.

I. After receiving a recommendation from the advisory review committee, the department cabinet secretary shall make the final written determination as to whether the new program shall be presented to the New Mexico state board of finance within 10 business days after the advisory review committee meeting.

J. At any point during the review process, the institution may withdraw its application.

K. If the department cabinet secretary determines the application for a new graduate program will not be presented to the New Mexico state board of finance, the institution may file an appeal to the department within 10 business days of issuance of the decision by the department cabinet secretary. The appeal must contain the institution's arguments for reversal of the decision, clearly labeled accordingly. The appeal must be mailed to the department cabinet secretary via certified mail. The department cabinet secretary will evaluate the merits of the appeal and consider the arguments of the institution. Upon review by the department cabinet secretary, a final written determination will be sent to the institution within 20 business days of receipt of the

appeal. While an appeal is pending, the institution and the department are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. The institution may withdraw an appeal at any time before the secretary reaches a final decision.

[5.5.2.11 NMAC - N, 06/12/2018]

5.5.2.12 APPROVAL BY THE NEW MEXICO STATE BOARD OF FINANCE:

A. If the department cabinet secretary determines that the proposed graduate program shall be presented to the New Mexico state board of finance, the department shall notify the institution of the date when the New Mexico state board of finance has scheduled its consideration of the proposal.

B. The department will submit a summary of the proposed program along with the recommendation of the department cabinet secretary to the New Mexico state board of finance by a deadline set by the New Mexico state board of finance. A representative of the applicant institution shall be present to answer questions, present information or provide justification of the proposal to the New Mexico state board of finance.

C. If the New Mexico state board of finance denies the request for a new program, the department will not reconsider the application. The institution must initiate a new application process addressing the concerns of the New Mexico state board of finance.

D. No new graduate program shall be effective unless approved by the New Mexico state board of finance.

E. New graduate programs shall not be included in institutional catalogs until the institution receives the approval of the New Mexico state board of finance.

[5.5.2.12 NMAC - N, 06/12/2018]

5.5.2.13 FACTORS CONSIDERED IN APPLICATION REVIEW:

The department and advisory committee will consider factors from both an institutional and statewide perspective when reviewing an application for a new graduate degree program. The department and advisory committee reserve the right to consider additional factors and to weigh factors differentially when reaching decisions that best meet the interests of the state of New Mexico. Factors that may be considered include, but are not limited to the following:

A. purpose that is consistent with the mission of the proposing institution;

B. curriculum;

C. state and regional needs met by the program;

D. duplication of existing programs and cooperative arrangements with other institutions;

E. enrollment and credit hour projections for the first five years;

F. the extent to which the institution is ready to initiate the program, citing the remaining needs and recognizing each of those needs in the cost analysis developed pursuant to Subsection H of 5.5.2.13 NMAC;

G. assessment for program effectiveness, including criteria and timeline; and

H. projected cost of the program and the sources of funding that will support it, completed in collaboration with the institution's financial office.

[5.5.2.13 NMAC - N, 06/12/2018]

5.5.2.14 REQUESTING A CLASSIFICATION INSTRUCTIONAL PROGRAMS CODE:

A. When a new graduate program is approved, the institution must submit a classification of instructional programs (CIP) code request form, provided by the department, and documentation of approval by the New Mexico state board of finance to the planning and research division of the department

within 30 business days of New Mexico state board of finance approval.

B. The planning and research division of the department will assign and approve the use of a new CIP code.

[5.5.2.14 NMAC - N, 06/12/2018]

5.5.2.15 REPORTING:

A. Institutions shall report to the department within 30 days of implementation:

- (1) new graduate programs;
- (2) new post-baccalaureate certificate programs; and
- (3) discontinued graduate programs.

B. Any items reported to the department in Subsection A of 5.5.2.15 NMAC shall include CIP code, curriculum, campus location, and program requirements.

C. Institutions shall annually report dormant programs to the department on a date set by the department.

HISTORY OF 5.5.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: BEF Rule 210, Graduate Programs - Approval of New, 2/26/1985. CHE Rule 210, Graduate Programs - Approval of New, 5/4/1990.

History of Repealed Material:

5.5.2 NMAC - Approval of New Graduate Programs, filed 2/26/1985 was Repealed and Replaced by 5.5.2 NMAC - Approval of New Graduate Programs, effective 06/12/2018.

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS

PART 6 APPROVAL OF NEW UNDERGRADUATE PROGRAMS

5.5.6.1 ISSUING

AGENCY: New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400.

[5.5.6.1 NMAC - N, 06/12/2018]

5.5.6.2 STATUTORY

AUTHORITY: Section 9-25-8 NMSA 1978, Section 21-2-5 NMSA 1978, Section 21-13-12 NMSA 1978, and Section 21-1-26 NMSA 1978.

[5.5.6.2 NMAC - N, 06/12/2018]

5.5.6.3 SCOPE: All undergraduate programs offered by any public higher education institution operating within and receiving financial support from the state of New Mexico.

[5.5.6.3 NMAC - N, 06/12/2018]

5.5.6.4 DURATION:

Permanent.

[5.5.6.4 NMAC - N, 06/12/2018]

5.5.6.5 EFFECTIVE

DATE: June 12, 2018, unless a later date is cited at the end of a section.

[5.5.6.5 NMAC - N, 06/12/2018]

5.5.6.6 OBJECTIVE: To provide a process for objective review of proposed undergraduate programs. Any public higher education institution operating within and receiving financial support from the state of New Mexico shall follow the procedures set out by the department before creating a new undergraduate program.

[5.5.6.6 NMAC - N, 06/12/2018]

5.5.6.7 DEFINITIONS:

A. "Certificate" means a program of study that is

designed to develop or enhance a focused area of expertise, provide specific skill training and to enhance employability.

B. "Department"

means the New Mexico higher education department.

C. "Dormant

programs" means programs that have not admitted new students for a period of three consecutive years

D. "Institution"

means a public higher education institution operating within and receiving financial support from the state of New Mexico.

E. "Institutional

review" means the process by which an institution conducts internal evaluation and approval of new courses, programs or any other matter related to curriculum. The required review process may differ between institutions and is set by each individual institution.

F. "New

undergraduate program" means a sequence of courses, activities or experiences which leads to the award of an associate's or bachelor's degree in a new academic discipline or sub-discipline or creates a new level of degree in a previously created academic discipline or sub-discipline that differs from currently approved programs at the proposing institution.

G. "Undergraduate program" or **"program"** means any sequence of courses, activities or experiences which leads to the award of an associate's or bachelor's degree.

[5.5.6.7 NMAC - N, 06/12/2018]

5.5.6.8 GENERAL REQUIREMENTS:

A. No new undergraduate program that initiates institutional review after August 1, 2018, nor any student enrolled in that program, shall be eligible for inclusion in any of the department's funding recommendations unless the program has been approved by the department cabinet secretary.

B. The department will maintain an inventory of undergraduate programs that are offered at each institution. The

department's staff shall update the degree inventory and list of degree requirements to include changes reported to the department by the institutions.

C. A program, option, concentration or specialization that has been prepared to meet a request of a particular employer and that will be financially supported by that employer is not subject to approval by the department. However, such programs are considered restricted and do not receive state funding. Students enrolled in such programs are not eligible for any state support until the program is approved pursuant to 5.5.6 NMAC and the program becomes unrestricted.

D. Proposed new undergraduate programs that initiate institutional review after August 1, 2018 are subject to 5.5.6 NMAC. Proposed new undergraduate programs that initiated institutional review prior to August 1, 2018 are not subject to 5.5.6 NMAC.
[5.5.6.8 NMAC - N, 06/12/2018]

5.5.6.9 SUBJECT TO APPROVAL: The following actions require the approval of the department cabinet secretary.

A. Addition of a new undergraduate program.

B. Addition of a bachelor's degree in an academic discipline or sub-discipline in which an associate's degree is already awarded.

C. Addition of an associate's degree in an academic discipline or sub-discipline in which a bachelor's degree is already awarded.

D. Addition or deletion of a program option, concentration or specialization that will result in a new degree level or academic discipline or sub-discipline. For example, the addition of a concentration or specialization in British literature to an existing bachelor of arts in English would not be subject to 5.5.6 NMAC; however, the addition of an option of British literature in an English department that would result in a new bachelor of arts in British literature would be subject to 5.5.6 NMAC.

E. Addition of an undergraduate program acquired from another institution.

F. Addition of a hybrid undergraduate program where two or more previously approved programs are combined to create a new degree level or academic discipline or sub-discipline.

[5.5.6.9 NMAC - N, 06/12/2018]

5.5.6.10 ADVISORY REVIEW COMMITTEE:

A. The department shall convene an advisory review committee, chaired by the department cabinet secretary or designee, to evaluate applications submitted by institutions seeking approval of a new undergraduate program. The advisory committee shall make a recommendation to the department cabinet secretary. The authority to determine whether a program is approved rests solely with the department cabinet secretary.

B. The advisory review committee shall be convened at the request of the department at least four times per year if there are programs to be reviewed.

C. The advisory review committee shall consist of:

(1) the cabinet secretary or designee of the New Mexico higher education department;

(2) the cabinet secretary or designee of the New Mexico department of workforce solutions;

(3) the cabinet secretary or designee of the New Mexico department of finance and administration;

(4) the cabinet secretary or designee of the New Mexico department of economic development;

(5) the director or designee of the New Mexico legislative finance committee;

(6) a chief academic officer from a two-year independent community college;

(7) a chief academic officer from a two-year branch community college;

(8) a chief

academic officer from a four-year research university; and

(9) a chief academic officer from a four-year comprehensive college or university.

D. A chief academic officer serving on the advisory review committee shall recuse himself or herself from voting on any matters from his or her institution brought before the advisory review committee.
[5.5.6.10 NMAC - N, 06/12/2018]

5.5.6.11 APPROVAL BY THE DEPARTMENT:

A. Before submitting an application to create a new undergraduate program, an institution must have initiated institutional review. It is the sole responsibility of the institution to comply with all requirements of the institution and seek approval within a timeframe that allows the institution to comply with all necessary deadlines set by the department. If any decision in the institutional review process affects the content of the application submitted to the department, the institution must re-submit the application to the department with updated information. Updates to the application by the institution may impact the timeline of review by the department.

B. An institution must submit a completed application to the department, on a form provided by the department, by the deadline published by the department.

C. The department shall conduct an initial review of a submitted application. The department may request additional information from the institution for use in its initial review. The department shall determine whether the application is correctly and fully completed. If the department determines that an application is not correctly and fully completed, the department shall return the application to the institution with recommendations as to how deficiencies may be remedied. An application shall not be presented to the advisory review committee until the department has completed initial review and determines that

the application is correctly and fully completed.

D. If the application is submitted on or before the deadline published by the department, consideration of the application shall be placed on the next advisory committee meeting agenda. If the institution submits the form after the published deadline, consideration of the application will be postponed until the subsequent advisory committee meeting.

E. The department shall have a representative present during the advisory committee meeting to present the application. The department representative shall not be an advisory committee member.

F. A representative from the applicant institution shall be present during the advisory committee meeting and shall be prepared to respond to questions presented by the advisory committee. The institutional representative shall not be considered a member of the advisory committee and may not cast a vote on any matters before the committee.

G. The advisory committee may recommend to approve, disapprove, or return a proposal to the sponsoring institution for modification.

H. After receiving a recommendation from the advisory committee, the department cabinet secretary shall make the final written determination as to whether the new undergraduate program shall be approved, disapproved, or returned to the sponsoring institution for modification. The final written determination shall be sent to the institution within 10 business days of the advisory committee meeting.

I. At any point during the review process, the institution may withdraw its application.

J. If the department cabinet secretary denies the application for a new undergraduate program the department shall issue a statement in writing to the institution detailing the reasons for denial. If the department cabinet secretary determines that the application

shall be returned to the sponsoring institution for modification, the department shall issue a statement in writing to the institution detailing the reasons.

K. If the institution receives a denial, the institution may file an appeal to the department within 10 business days of issuance by the department cabinet secretary. The appeal must contain the institution's arguments for reversal of the decision, clearly labeled. The appeal must be mailed to the department cabinet secretary via certified mail. The department cabinet secretary will evaluate the merits of the appeal and consider the arguments of the institution. Upon review by the department cabinet secretary, a final written determination will be sent to the institution within 20 business days of receipt of the appeal. While an appeal is pending, the institution and department are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. The institution may withdraw an appeal at any time before the secretary reaches a final decision.

L. If the department cabinet secretary denies the request for a new program, the department will not reconsider the same application. The institution must initiate a new application process addressing the concerns of the advisory committee or department cabinet secretary.

M. No new undergraduate program shall be effective unless approved by the department cabinet secretary. If the department cabinet secretary does not approve a new program, the program and any student enrolled in that program, shall not be eligible for inclusion in any of the department's funding recommendations.
[5.5.6.11 NMAC - N, 06/12/2018]

5.5.6.12 FACTORS CONSIDERED IN APPLICATION REVIEW: The department and advisory committee will consider factors from both an institutional

and statewide perspective when reviewing an application for a new undergraduate program. The department and advisory committee reserve the right to consider additional factors and to weigh factors differentially when reaching decisions that best meet the interests of the state of New Mexico. Factors that may be considered include, but are not limited to the following:

- A.** purpose that is consistent with the mission of the proposing institution;
 - B.** curriculum;
 - C.** state and regional needs met by the program;
 - D.** duplication of existing programs and cooperative arrangements with other institutions;
 - E.** enrollment and credit hour projections for the first five years;
 - F.** the extent to which the institution is ready to initiate the program, citing the remaining needs and recognizing each of those needs in the cost analysis developed pursuant to Subsection H of 5.5.6.12 NMAC;
 - G.** assessment for program effectiveness, including criteria and timeline; and
 - H.** projected cost of the program and the sources of funding that will support it, completed in collaboration with the institution's financial office.
- [5.5.6.12 NMAC - N, 06/12/2018]

5.5.6.13 REQUESTING A CLASSIFICATION OF INSTRUCTIONAL PROGRAMS CODE:

A. A classification of instructional programs (CIP) code will not be assigned nor approved by the department until department and institutional review have been completed.

B. When a new undergraduate program is approved, the institution must submit a CIP code request form and documentation of approval by the department cabinet secretary and the institution's governing board to the planning and research division of the department.

C. The planning and research division of the department will assign and approve the use of a new CIP code.
[5.5.6.13 NMAC - N, 06/12/2018]

5.5.6.14 REPORTING:

A. Institutions shall report to the department the following, in a manner determined by the department, within 30 business days of implementation:

- (1) new undergraduate programs;
- (2) new sub-baccalaureate certificate programs;
- (3) discontinued undergraduate programs; and
- (4) any change to the curriculum of an existing undergraduate program.

B. Any items reported to the department in Subsection A of 5.5.6.14 NMAC shall include CIP code, curriculum, location, and program requirements.

C. Institutions shall annually report dormant programs to the department on a date set by the department.
[5.5.6.14 NMAC - N, 06/12/2018]

HISTORY OF 5.5.6 NMAC: [RESERVED]

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST- SECONDARY EDUCATION CHAPTER 55 PUBLIC POST- SECONDARY EDUCATION GENERAL PROVISIONS PART 5 COMMON COURSE NUMBERING

5.55.5.1 ISSUING

AGENCY: State of New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400.
[5.55.5.1 NMAC - N, 06/12/2018]

5.55.5.2 SCOPE: The provisions of 5.55.5 NMAC apply to all public higher education institutions

operating within and receiving financial support from the state of New Mexico.
[5.55.5.2 NMAC - N, 06/12/2018]

5.55.5.3 STATUTORY

AUTHORITY: Section 9-25-8 NMSA 1978 and Section 21-1B-1 et seq. NMSA 1978.
[5.55.5.3 NMAC - N, 06/12/2018]

5.55.5.4 DURATION:

Permanent.
[5.55.5.4 NMAC - N, 06/12/2018]

5.55.5.5 EFFECTIVE

DATE: June 12, 2018, unless a later date is cited at the end of a section.
[5.55.5.5 NMAC - N, 06/12/2018]

5.55.5.6 OBJECTIVE:

A. Establish and maintain a statewide common course numbering system for all lower division courses.

B. Establish a process by which courses are added, deleted, or reclassified within the common course numbering system.

C. Establish a process by which approved common course descriptions and student learning outcomes are revised.
[5.55.5.6 NMAC - N, 06/12/2018]

5.55.5.7 DEFINITIONS:

A. "Crosswalk" means a table or database that shows an inventory of equivalent courses offered at multiple institutions.

B. "Department" means the New Mexico higher education department.

C. "Discipline" or "disciplines" means areas of study that have been included within the common course numbering system.

D. "Equivalent course" means a set of lower division courses offered at multiple institutions that have been identified as sharing at least eighty percent of their student learning outcomes and the institutions offering those courses have agreed to adopt the same four letter and four number designation, course title, and course description.

E. "Faculty" means

the current members of the faculty at the public higher education institutions operating within and receiving financial support from the state of New Mexico.

F. "Institution"

means a public higher education institution operating within and receiving financial support from the state of New Mexico.

G. "Institutional

review" means the process by which an institution conducts internal evaluation and approval of new courses, programs or any other matter related to curriculum. The required review process may differ between institutions and is set by each individual institution.

H. "New Mexico

common course numbering system" or "common course numbering system" or "NMCCNS" means a statewide numbering system for all lower division college-level courses offered at public higher education institutions in New Mexico.

I. "Unique course"

means a lower division course that does not meet the criteria of an equivalent course and is only offered at a single institution.
[5.55.5.7 NMAC - N, 06/12/2018]

5.55.5.8 GENERAL REQUIREMENTS:

A. All lower division academic courses offered by institutions shall be part of the New Mexico common course numbering system and shall be labeled as either equivalent courses or unique courses. New disciplines, including career technical disciplines, may be added to the common course numbering system after convening of discipline specific faculty to review and identify equivalent courses.

B. The NMCCNS will be available to students as an online crosswalk and each institution shall have a link to the crosswalk on its website beginning August 30, 2018.

C. Beginning August 1, 2019, each lower division course shall adopt a NMCCNS four letter and four number designation. For each commonly numbered course offered

by an institution, the common course designation, course description, and course student learning outcomes shall be implemented. Common courses shall be made available to students through course catalogs, student information systems, and websites by August 1, 2019.

D. Identified equivalent courses shall share the following:

- (1) a four letter and four number designation;
- (2) course title;
- (3) course description; and
- (4) agreed upon student learning outcomes.

E. The student learning outcomes agreed upon by the faculty committee shall make up at least eighty percent of the total student learning outcomes for each equivalent course. Each equivalent course may have up to twenty percent unique student learning outcomes.

F. A course that is only offered at a single institution shall be assigned a unique designation that is consistent with the NMCCNS that will be used only at the institution that offers the unique course.

G. New courses may be piloted for two semesters before applying for a New Mexico common course number. A pilot course will be assigned a New Mexico common course number that has been reserved for special topics courses.

H. The department shall maintain a database of all lower division college-level courses offered by all institutions. As part of the database, the department shall make available a list of all disciplines, courses, and the following information for each course:

- (1) the course four letter and four number designation;
- (2) course title;
- (3) course description; and
- (4) student learning outcomes of the course.

I. Any tribal college or tribal university may

participate within the common course numbering system upon execution of a memorandum of understanding with the department expressing its intent to implement the common course numbering system. If a tribal college or university has executed a memorandum of understanding with the department, the tribal college or tribal university shall be considered an institution for purposes of the Subsection F of 5.55.5.7 NMAC. [5.55.5.8 NMAC - N, 06/12/2018]

5.55.5.9 NEW MEXICO CURRICULUM AND ARTICULATION COMMITTEE:

The department will convene and chair, as a non-voting member, a statewide committee of faculty to advise the department on issues related to articulation and curriculum, such as common course numbering, general education curriculum, meta-majors, transfer modules, or any other matters related to curriculum.

A. The New Mexico curriculum and articulation committee (NMCAC) shall consist of at least one representative from each institution. The representative should also be a member of the institution's curriculum committee.

(1) Each institution will have one vote on matters brought before the committee. In case of a tie vote, the committee chair shall cast the tie-breaking vote.

(2) The NMCAC may form subcommittees upon the request of any committee member. Subcommittees may seek subject matter experts to review or study a specific matter. Subcommittees shall report findings and make recommendations to the NMCAC membership.

B. The NMCAC will meet at least four times during the academic year.

[5.55.5.9 NMAC - N, 06/12/2018]

5.55.5.10 CHANGES WITHIN THE NEW MEXICO COMMON COURSE NUMBERING SYSTEM:

A. The department shall create and make available

change forms to be used by institutions to request the following changes within the common course numbering system:

- (1) addition of a course;
- (2) removal of a course;
- (3) reclassification of a course;
- (4) change to course description; and
- (5) change to student learning outcomes.

B. The change forms shall be completed and submitted to the department by the institution's chief academic officer or designee only after receiving approval by the chief academic officer. It is the responsibility of the institution to complete all required institutional reviews.

C. If the change form is submitted on or before the deadline published by the department, consideration of the change form shall be placed on the next NMCAC meeting agenda. If the institution submits the change form after the published deadline, consideration of the change form will be postponed until the subsequent NMCAC meeting.

D. The department shall conduct an initial review of the change form to determine whether it has been correctly and fully completed. The department may request additional information from the institution for use in its initial review.

E. The department may determine that the change form does not need to go to the NMCAC. The following actions may be approved by the department and do not require approval by the NMCAC:

- (1) an institution proposes the addition of a course and agrees to adopt the four letter and four number designation, course title, course description, and student learning outcomes of an existing equivalent course; or
- (2) an institution proposes the addition of a unique course and the institution

reports the course title, course description, and learning outcomes of the new unique course to the department.

F. If the department determines that the change form has met the initial review criteria and is required to be reviewed by the NMCAC, the department shall submit the change form and all supporting material to the NMCAC and require that the change form be considered by NMCAC.

G. If the department determines that a change form is not correctly and fully completed, the department shall return the change form to the institution with recommendations as to how deficiencies may be remedied. A change form shall not be presented to the NMCAC until the department has completed initial review and determines that the change form is correctly and fully completed.

H. In reviewing the change form and supporting materials, the NMCAC may request more information from the institution. If additional information is requested, the institution shall submit the additional information by the deadline set by the department. If the additional information is not received by the deadline, consideration of the change form will be postponed to the subsequent NMCAC meeting.

I. The department shall have a representative present during the NMCAC meeting to present the change form. The department shall not make any recommendation to NMCAC regarding the change.

J. A representative from the applicant institution shall be present during the NMCAC meeting and shall be prepared to respond to questions presented by NMCAC members.

K. NMCAC shall consider the change form, any supporting materials, and information presented during its meeting. The chair shall conduct a roll call or written vote. Each institution shall cast a single vote. Based on the majority vote, NMCAC may approve,

deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the NMCAC decisions to all institutions within 10 business days of the meeting.

L. The department shall assign four letter and four number designations, in consultation with registrars from each of New Mexico's higher education sectors. If the department determines that a course is unique, the department shall assign a unique four letter and four number designation that is consistent with the New Mexico common course numbering system to the course without submission to the NMCAC. The department shall issue official notice of the new or reclassified course's designation to all institutions within 10 business days of assignment.

M. An institution must receive notice of the course's four letter and four number designation from the department before the institution publishes and makes new or reclassified courses available to students.

N. NMCAC approved changes to a course description or student learning outcomes shall be adopted and published in the next catalog printed by each institution.

O. Institutions shall notify the department if any approved commonly numbered course will no longer be offered at least 30 business days prior to the time the course will no longer be offered.

P. The department shall update the common course numbering system to reflect all changes.
[5.55.5.10 NMAC - N, 06/12/2018]

5.55.5.11 MAINTENANCE OF THE COMMON COURSE NUMBERING SYSTEM:

A. The department shall be responsible for regular updates to the common course numbering system. The department shall conduct regular maintenance and upkeep of the common course

numbering system to ensure the system accurately reflects course offerings.

B. The department shall convene committees of discipline specific faculty to review all of the lower division courses in the discipline on a rotating basis and based on a schedule set by the department, at least every five years. Each discipline committee shall review all of the lower division courses in the discipline and make recommendations to add new courses, remove old courses, reclassify existing courses, and revise the course descriptions and student learning outcomes.

C. Each discipline committee's recommendations will be sent to the NMCAC and chief academic officers with a request for comment from the appropriate faculty. Faculty comments will be forwarded to the committee to be considered. After the comments have been considered, revised discipline documents will be presented to the NMCAC for approval and sent to the chief academic officers for implementation.

D. Revised course descriptions and student learning outcomes shall be adopted by all institutions by the next publication of the institution's academic catalog.
[5.55.5.11 NMAC - N, 06/12/2018]

5.55.5.12 TRANSFER OF COMMONLY NUMBERED COURSES BETWEEN HIGHER EDUCATION INSTITUTIONS IN NEW MEXICO:

A. If a student completes a commonly numbered course at an institution and transfers to another institution, the receiving institution shall accept the course as equivalent to the course with the same number that is offered at the receiving institution.

B. Unique courses that have been assigned a number consistent with the NMCCNS are subject to the transfer policies of the receiving institution.

C. A commonly numbered course shall fulfill degree

requirements when it is accepted as an equivalent course that is part of the degree requirements at the receiving institution. A student who has completed commonly numbered courses that are not part of their chosen degree requirements is not exempted from courses requirements for their chosen degree.

[5.55.5.12 NMAC - N, 06/12/2018]

5.55.5.13 COMPLAINTS RELATED TO THE TRANSFER OF COMMONLY NUMBERED COURSES:

A. Institutions shall establish appropriate policies and practices for receiving and resolving complaints from students or other complainants regarding the transfer of commonly numbered courses. Such policies shall include at least the following components:

(1)

Complainants shall be required to first seek resolution of their complaint directly within the institution.

(2)

A time frame within which the institution will investigate the complaint and respond to the complainant shall be specified.

(3)

The institution shall assure that an impartial party will be involved in consideration of the complaint.

(4)

The institution shall assure that no adverse action will be taken against the student or complainant as a result of registering the complaint.

(5)

The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

B. When a student or other complainant contacts the department with a complaint, the department will require that the complaint be submitted in writing. The complaint must include a summary of the process followed by the complainant in an attempt to resolve the complaint through the institution's internal procedures.

C. Following receipt of a written complaint, the department will contact the relevant institution to

ascertain whether or not the complaint is bona fide, that is, whether or not the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

D. Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

E. Upon determination that the complaint is bona fide, the department will request a response to the complaint from the institution, summarizing its position and justification for its course of action. Such response shall be provided in writing to the department within 10 business days of receipt by the institution.

F. The department will conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis will be consistent with the general principles and other specifications of 5.55.5 NMAC.

G. The department will render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution.

[5.55.5.13 NMAC - N, 06/12/2018]

5.55.5.14 REPORTING:

A. An institution shall report annually to the department by August 31.

B. An institution shall report on a form provided by the department.

C. The department shall use the information and data provided by the institutions to prepare its annual report to the legislative

finance committee and the governor regarding the status of articulation and transfer, which includes common course numbering, general education, meta-majors, and transfer modules.

[5.55.5.14 NMAC - N, 06/12/2018]

HISTORY OF 5.55.5 NMAC:

History of Repealed Material:
[RESERVED]

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 55 PUBLIC POST-SECONDARY EDUCATION GENERAL PROVISIONS PART 6 GENERAL EDUCATION CURRICULUM

5.55.6.1 ISSUING

AGENCY: New Mexico Higher Education Department (NMHED).
[5.55.6.1 NMAC - N, 06/12/2018]

5.55.6.2 STATUTORY

AUTHORITY: Section 9-25-8 NMSA1978 and Section 21-1B-1 et seq. NMSA 1978.
[5.55.6.2 NMAC - N, 06/12/2018]

5.55.6.3 SCOPE: The provisions of 5.55.6 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico.

[5.55.6.3 NMAC - N, 06/12/2018]

5.55.6.4 DURATION:

Permanent.
[5.55.6.4 NMAC - N, 06/12/2018]

5.55.6.5 EFFECTIVE

DATE: June 12, 2018, unless a later date is cited at the end of a section.
[5.55.6.5 NMAC - N, 06/12/2018]

5.55.6.6 OBJECTIVE:

A. Establish and maintain a statewide general education curriculum that includes a comprehensive array of lower-division college-level courses

designed to provide a foundation for a well-rounded education.

B. Establish a process by which courses are submitted, reviewed and approved by the department to be included within the general education curriculum. [5.55.6.6 NMAC - N, 06/12/2018]

5.55.6.7 DEFINITIONS:

A. "Department"

means the New Mexico higher education department.

B. "Essential skills" means the transferable skills set by the department, in consultation with faculty, that are essential to success in education and the workforce.

C. "Faculty" means the current members of the faculty at the public post-secondary institutions operating within and receiving financial support from the state of New Mexico.

D. "Flexible nine" means the nine credit hours set by each public post-secondary institution to be included within the institution's general education requirements for all bachelor's degrees and all associate's degrees, other than associate's of applied science.

E. "Flexible three" means the three credit hours set by each public post-secondary institution to be included within the institution's general education requirements for all associate's of applied science degrees.

F. "General education course" means a course that has been approved by the New Mexico curriculum and articulation committee as fulfilling the requirements of a content area that is part of the general education curriculum.

G. "General education curriculum" or **"general education"** means a program that imparts knowledge to students and develops essential skills necessary for success in education and the workforce.

H. "Institution" means a public higher education institution operating within and receiving financial support from the state of New Mexico.

I. "New general education course" means a course that differs from currently approved courses at the proposing institution. [5.55.6.7 NMAC - N, 06/12/2018]

5.55.6.8 GENERAL REQUIREMENTS:

A. The department shall adopt a general education curriculum of at least 30 credit hours for all bachelor's degrees and all associate's degrees, other than associate's of applied science, that includes broad content areas of learning. The department shall adopt a general education curriculum of at least 15 credit hours for all associate's of applied science degrees that includes broad content areas of learning.

B. The department, in consultation with faculty, will develop and maintain the general education curriculum, which is designed to provide students with knowledge and the transferable essential skills that are essential to success.

C. The department shall maintain and publish a list of the courses approved to be part of the general education curriculum.

D. Each institution shall publish and make available to students the general education curriculum and approved courses it offers that fulfill the requirement of the general education curriculum.

E. Each institution shall have an assessment plan for its general education program on file with the department. The assessment plan shall outline the program's practices, intentions, and process for demonstrating institutional effectiveness.

F. A student shall only be required to fulfill the general education curriculum requirements specified in the catalog in effect at the time in which the student enrolls as a first-time freshman. If that catalog expires while the student is enrolled, the student shall follow institutional processes for selecting a new catalog. A student may elect to follow the requirements of any revisions to the general education curriculum that

occur after the student enrolls as a first-time freshman.

G. Students should consult advisors at their institution regarding which specific courses fulfill the general education curriculum and degree requirements. The general education curriculum may fulfill requirements of meta-majors or transfer modules, as defined in 5.55.7 NMAC.

H. A single course may fulfill both general education curriculum and degree requirements.

I. A student who has completed the general education curriculum is not exempted from courses that are required for their chosen degree that are also general education courses.

J. When a student completes the credit hours of the general education curriculum, a notation shall be made on the student's transcript that shows that the student has completed the general education curriculum.

K. Any tribal college or tribal university may participate in the general education curriculum, upon execution of a memorandum of understanding with the department expressing its intent to implement the general education curriculum. If a tribal college or university has executed a memorandum of understanding with the department, the tribal college or tribal university shall be considered an institution for purposes of the Subsection H of 5.55.6.7 NMAC.

[5.55.6.8 NMAC - N, 06/12/2018]

5.55.6.9 NEW MEXICO CURRICULUM AND ARTICULATION COMMITTEE:

The department will convene and chair, as a non-voting member, a statewide committee of faculty to advise the department on issues related to articulation and curriculum, such as common course numbering, general education curriculum, meta-majors, transfer modules, or any other matters related to curriculum.

A. The New Mexico curriculum and articulation committee (NMCAC) shall consist of at least

one representative from each institution. The representative should also be a member of the institution's curriculum committee.

(1) Each institution will have one vote on matters brought before the committee. In case of a tie vote, the committee chair shall cast the tie-breaking vote.

(2) The NMCAC may form subcommittees upon the request of any committee member. Subcommittees may seek subject matter experts to review or study a specific matter. Subcommittees shall report findings and make recommendations to the NMCAC membership.

B. The NMCAC will meet at least four times during the academic year.
[5.55.6.9 NMAC - N, 06/12/2018]

5.55.6.10 GENERAL EDUCATION CURRICULUM:

A. By August 1, 2019, each institution shall adopt the following 31 credit hour statewide general education curriculum for all bachelor's degrees and all associate's degrees, other than associate's of applied science:

(1) Fixed 22. At least 22 credit hours of courses in the following six content areas:

- (a) communications;
- (b) mathematics;
- (c) science;
- (d) social and behavioral science;
- (e) humanities; and
- (f) creative and fine arts.

(2) Flexible nine. Each institution shall develop a flexible nine which may be from:

- (a) the content areas listed in Paragraph (1) of Subsection A of 5.55.6.10, NMAC; or
- (b) other content areas such as foreign languages, interdisciplinary studies, business, engineering, information

technology or any other content area that the institution deems appropriate.

B. By August 1, 2019, each institution shall adopt the following 15 credit hour statewide general education curriculum for all associate's of applied science degrees:

(1) Fixed 12. At least 12 credit hours from four of the following six content areas:

- (a) communications;
- (b) mathematics;
- (c) science;
- (d) social and behavioral science;
- (e) humanities; and
- (f) creative and fine arts.

(2) Flexible three. Each institution shall develop a flexible three which may be from:

- (a) the content areas listed in Paragraph (1) of Subsection B of 5.55.6.10, NMAC; or
- (b) other content areas such as foreign languages, interdisciplinary studies, business, engineering, information technology or any other content area that the institution deems appropriate.

C. The general education curriculum, including content areas, essential skills, and courses, shall be reviewed every five years by the NMCAC. The NMCAC shall make recommendations to the department regarding any necessary revisions. The department shall make the final determination regarding any revisions to the general education curriculum.

[5.55.6.10 NMAC - N, 06/12/2018]

5.55.6.11 CERTIFICATION OF GENERAL EDUCATION COURSES:

A. The department shall create and make available a certification form to be used by institutions to request the certification of a new general education course.

B. Completed certification forms shall be submitted

to the department by the institution's chief academic officer or designee only after receiving approval by the chief academic officer.

C. If the certification form is submitted on or before the deadline published by the department, consideration of the certification form shall be placed on the next NMCAC meeting agenda. If the institution submits the certification form after the published deadline, consideration of the certification form will be postponed until the subsequent NMCAC meeting.

D. The department shall conduct an initial review of the certification form to determine whether it has been correctly and fully completed. The department may request additional information from the institution for use in its initial review. If the department determines that the certification form has met the initial review criteria, the department shall submit the certification form and all supporting material to the NMCAC and require that the certification form be considered by NMCAC. If the department determines that a certification form is not correctly and fully completed, the department shall return the certification form to the institution with recommendations as to how deficiencies may be remedied. A certification form shall not be presented to the NMCAC until the department has completed initial review and determines that the certification form is correctly and fully completed.

E. In reviewing the certification form and supporting materials, the NMCAC may request more information from the institution. If additional information is requested, the institution shall submit the additional information by the deadline set by the department. If the additional information is not received by the deadline, consideration of the certification form will be postponed to the subsequent NMCAC meeting.

F. The department shall have a representative present during the advisory committee meeting to present the certification

form. The department shall not make any recommendation to NMCAC regarding the certification.

G. A representative from the applicant institution shall be present during the NMCAC meeting and shall be prepared to respond to questions presented by NMCAC members.

H. NMCAC shall consider the certification form, any supporting materials, and information presented during its meeting. The chair shall conduct a roll call or written vote. Each institution shall cast a single vote. Based on the majority vote, NMCAC may approve, deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the NMCAC decision to the institution within 10 business days after the NMCAC meeting.

I. An institution must receive notice of the NMCAC decision from the department before the institution publishes and makes available to students the courses it offers that fulfill the requirements of the general education curriculum. Courses that are approved to be part of the general education curriculum shall be designated as general education by a notation in the course description in the institution's course catalog.

J. Institutions will notify the department if any approved general education courses will no longer be offered at least 30 business days prior to the time the course will no longer be offered.

K. The department shall update the general education curriculum inventory to reflect all changes.

[5.55.6.11 NMAC - N, 06/12/2018]

5.55.6.12 FACTORS CONSIDERED IN CERTIFICATION FORM REVIEW

A. Each institution shall have an assessment plan for its general education program on file with the department by August

1, 2019. The assessment plan must include the goals of the program, how the goals are addressed in the curriculum, student learning outcomes, and assessment methods.

B. Each institution shall articulate how the course integrates essential skills to achieve the student learning outcomes of the course.

C. Each course shall include at least three of the following essential skills:

- (1) communication;
- (2) critical thinking;
- (3) information and digital literacy;
- (4) quantitative reasoning; and
- (5) personal and social responsibility.

D. The certification form will be evaluated based on criteria published by the department. [5.55.6.12 NMAC - N, 06/12/2018]

5.55.6.13 TRANSFER OF GENERAL EDUCATION COURSES:

A. For each general education course approved by NMCAC, its credits shall transfer as fulfilling general education curriculum requirements at any institution to which they are transferred.

B. A student who has completed the 31 credit hours of the general education curriculum for an associate's or bachelor's degree and transfers to a different institution to continue an associate's or bachelor's degree shall have all previously completed general education courses accepted by the receiving institution as fulfilling the general education curriculum for an associate's or bachelor's degree.

C. A student who has completed the 15 credit hours of the general education curriculum for an associate's of applied science and transfers to a different institution to continue an associate's of applied science shall have all previously completed general education courses

accepted by the receiving institution as fulfilling the general education curriculum for an associate's of applied science.

D. If a student transfers and has not completed the 31 credit hours of the general education curriculum for an associate's degree, other than an associate's of applied science, or bachelor's degree, the courses taken as part of the general education and the content areas fulfilled shall be noted on the transcript.

(1) Courses that have been taken within the fixed 22 credit hours will transfer as fulfilling the content area for which they are approved.

(2) Courses taken within the flexible nine shall transfer as meeting the receiving institution's flexible nine general education requirement.

(3) Transfer students who have not completed the flexible nine will be subject to the receiving institution's flexible nine policy for the remaining credits that must be completed to fulfill the flexible nine.

E. If a student transfers and has not completed the 15 credit hours of the general education curriculum for an associate's of applied science degree, the courses taken as part of the general education and the content areas fulfilled shall be noted on the transcript.

(1) Courses that have been taken within the fixed 12 credit hours will transfer as fulfilling the content area for which they are approved.

(2) Courses taken within the flexible three shall transfer as meeting the receiving institution's flexible three general education requirement.

(3) Transfer students who have not completed the flexible three will be subject to the receiving institution's flexible three policy.

F. When making decisions affecting transfer students, receiving institutions should assure that transfer students are treated

equally to those students originating their post-secondary studies at the institution.

[5.55.6.13 NMAC - N, 06/12/2018]

**5.55.6.14 COMPLAINTS
RELATED TO THE TRANSFER
OF GENERAL EDUCATION
CURRICULUM:**

A. Institutions shall establish appropriate policies and practices for receiving and resolving complaints from students or other complainants regarding the transfer of general education curriculum. Such policies shall include at least the following components:

(1)

Complainants shall be required to first seek resolution of their complaint directly within the institution.

(2)

A time frame within which the institution will investigate the complaint and respond to the complainant shall be specified.

(3)

The institution shall assure that an impartial party will be involved in consideration of the complaint.

(4)

The institution shall assure that no adverse action will be taken against the student or complainant as a result of registering the complaint.

(5)

The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

B. When a student or other complainant contacts the department with a complaint, the department will require that the complaint be submitted in writing. The complaint must include a summary of the process followed by the complainant in an attempt to resolve the complaint through the institution's internal procedures.

C. Following receipt of a written complaint, the department will contact the relevant institution to ascertain whether or not the complaint is bona fide, that is, whether or not the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

D. Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

E. Upon determination that the complaint is bona fide, the department will request a response to the complaint from the institution, summarizing its position and justification for its course of action. Such response shall be provided in writing to the department within 10 business days of receipt by the institution.

F. The department will conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis will be consistent with the general principles and other specifications of 5.55.6 NMAC.

G. The department will render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution. [5.55.6.14 NMAC - N, 06/12/2018]

5.55.6.15 REPORTING:

A. An institution shall report annually to the department by August 31.

B. An institution shall report on a form provided by the department.

C. The department shall use the information and data provided by the institutions to prepare its annual report to the legislative finance committee and the governor regarding the status of articulation and transfer, which includes common course numbering, general education, meta-majors, and transfer modules. [5.55.6.15 NMAC - N, 06/12/2018]

**HISTORY OF 5.55.6 NMAC:
[RESERVED]**

**HIGHER EDUCATION
DEPARTMENT**

**TITLE 5 POST-
SECONDARY EDUCATION
CHAPTER 55 PUBLIC POST-
SECONDARY EDUCATION
GENERAL PROVISIONS
PART 7 META-MAJORS
AND TRANSFER MODULES**

5.55.7.1 ISSUING

AGENCY: State of New Mexico Higher Education Department, 2044 Galisteo Street, Suite 4, Santa Fe, New Mexico 87505, (505) 476-8400. [5.55.7.1 NMAC - N, 06/12/2018]

**5.55.7.2 STATUTORY
AUTHORITY:** Section 9-25-8 NMSA 1978 and Section 21-1B-1 et seq. NMSA 1978. [5.55.7.2 NMAC - N, 06/12/2018]

5.55.7.3 SCOPE: The provisions of 5.55.7 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico. [5.55.7.3 NMAC - N, 06/12/2018]

5.55.7.4 DURATION: Permanent. [5.55.7.4 NMAC - N, 06/12/2018]

**5.55.7.5 EFFECTIVE
DATE:** June 12, 2018, unless a later date is cited at the end of a section. [5.55.7.5 NMAC - N, 06/12/2018]

5.55.7.6 OBJECTIVE:
A. Establish a process to develop and approve statewide meta-majors and transfer modules.
B. Establish a process by which statewide meta-majors and transfer modules are maintained. [5.55.7.6 NMAC - N, 06/12/2018]

5.55.7.7 DEFINITIONS:
A. "Certificate" means a program of study that is designed to develop or enhance a

focused area of expertise, provide specific skill training and to enhance employability.

B. “Degree map”

means the sequence of courses required to complete an undergraduate program of study.

C. “Department”

means the New Mexico higher education department.

D. “Faculty”

means the current members of the faculty at the public post-secondary institutions operating within and receiving financial support from the state of New Mexico.

E. “Institution”

means a public higher education institution operating within and receiving financial support from the state of New Mexico.

F. “Meta-major”

means 15 credit hours of lower-division courses that include general education and prerequisite courses that can articulate to multiple degree programs.

G. “Transfer module”

means a list of lower-division courses that fulfill graduation requirements for a specific degree program.

H. “Undergraduate program” or “program” means any sequence of courses, activities or experiences which leads to the award of an associate’s or bachelor’s degree. [5.55.7.7 NMAC - N, 06/12/2018]

5.55.7.8 GENERAL REQUIREMENTS:

A. The department shall develop and maintain a statewide system of meta-majors and transfer modules. The meta-majors and transfer modules will be based on the requirements of current, approved undergraduate programs and certificate programs offered at institutions in New Mexico. The department shall utilize degree maps submitted by each institution in formulating statewide meta-majors and transfer modules.

B. A degree map provides college students with a clear and direct path to on-time completion. Degree maps shall include specific required courses listed by term.

C. A meta-major consists of lower division courses that articulate to multiple undergraduate programs in related disciplines. A meta-major will fulfill the first term degree map requirements of multiple similar disciplines that share common lower-division course requirements and are transferable between institutions. A meta-major or transfer module may include courses from the general education curriculum, as defined in 5.55.6 NMAC.

D. A transfer module consists of lower division courses that articulate to a specific bachelor’s degree program. A transfer module will fulfill the first four terms of degree map requirements of a bachelor’s degree and be transferable between institutions. A transfer module may be an associate’s degree or a certificate.

E. The department shall maintain and make available a listing of the statewide meta-majors, transfer modules, and certificate and degree programs offered by all institutions.

F. Each institution shall maintain and make available to students a listing of the meta-majors, transfer modules, and certificate and degree programs offered at the institution.

G. Any tribal college or tribal university may participate in the statewide meta-majors and transfer modules, upon execution of a memorandum of understanding with the department expressing its intent to implement statewide meta-majors and transfer modules. If a tribal college or university has executed a memorandum of understanding with the department, the tribal college or tribal university shall be considered an institution for purposes of the Subsection E of 5.55.7.7 NMAC.

H. The department may assess a fee for the actual cost of maintaining the degree mapping platform. [5.55.7.8 NMAC - N, 06/12/2018]

5.55.7.9 NEW MEXICO CURRICULUM AND ARTICULATION COMMITTEE:

The department will convene and chair, as a non-voting member, a statewide committee of faculty to advise the department on issues related to articulation and curriculum, such as common course numbering, general education curriculum, meta-majors, transfer modules, or any other matters related to curriculum.

A. The New Mexico curriculum and articulation committee (NMCAC) shall consist of at least one representative from each institution. The representative should also be a member of the institution’s curriculum committee.

(1) Each institution will have one vote on matters brought before the committee. In case of a tie vote, the committee chair shall cast the tie-breaking vote.

(2) The NMCAC may form subcommittees upon the request of any committee member. Subcommittees may seek subject matter experts to review or study a specific matter. Subcommittees shall report findings and make recommendations to the NMCAC membership.

B. The NMCAC will meet at least four times during the academic year. [5.55.7.9 NMAC - N, 06/12/2018]

5.55.7.10 DEVELOPMENT AND APPROVAL OF META-MAJORS AND TRANSFER MODULES:

A. Each institution shall report the following information to the department, in the format requested by the department:

(1) every course offered by the institution;
(2) institution structure; and
(3) degree or certificate requirements.

B. The department shall analyze the information collected from the institutions to determine proposed degree maps. The department shall submit the proposed degree map to the institution’s chief academic officer for review, comment, and revisions. The department shall collaborate with

each institution to develop degree maps for all programs offered.

C. The department shall analyze the completed degree maps to develop proposed statewide meta-majors and transfer modules. A meta-major or transfer module shall not be presented to the NMCAC until the department has completed its analysis and holds a period for institution comment.

D. Proposed statewide meta-majors and transfer modules shall be sent to the NMCAC and the chief academic officers with a request for review and comment from the appropriate faculty prior to its next meeting and placed on the agenda.

E. Comments collected by NMCAC and the chief academic officers shall be submitted by the deadline set by the department. If the comments are not received by the deadline, the comments will not be considered by the NMCAC when voting to approve the statewide meta-major or transfer modules. Comments will be forwarded to the NMCAC prior to its meeting for consideration.

F. After the comments have been considered, statewide meta-majors and transfer modules will be presented to the NMCAC for approval. The department shall have a representative present during the NMCAC meeting to present the statewide meta-major or transfer module.

G. NMCAC shall consider the proposed statewide meta-majors and transfer modules and comments during its meeting. The chair shall conduct a roll call or written vote. Each institution shall cast a single vote. Based on the majority vote, NMCAC may approve, deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the NMCAC decisions to all institutions within 10 business days.

H. Approved statewide meta-majors and transfer modules shall be adopted and published in the next catalog printed by each

institution.

I. The department shall update the inventory of statewide meta-majors and transfer modules to reflect all changes. [5.55.7.10 NMAC - N, 06/12/2018]

5.55.7.11 MAINTENANCE OF META-MAJORS AND TRANSFER MODULES:

A. Any change to the items previously reported to the department under Subsection A of 5.55.7.10 NMAC shall be reported to the department within 30 business days. The department will analyze the curricular change to determine if it affects one or more meta-majors or transfer modules.

B. If the change affects one or more meta-majors or transfer modules, the department shall notify the institution and any other institution that offers the meta-majors or transfer modules. Upon notification, the department will meet with representatives of the affected institutions to determine how to preserve the articulation of the affected meta-majors or transfer modules.

C. Proposed changes to the affected statewide meta-majors, and statewide transfer modules shall be approved through the process in Subsection D through Subsection H of 5.55.7.10 NMAC. [5.55.7.11 NMAC - N, 06/12/2018]

5.55.7.12 TRANSFER OF META-MAJORS AND TRANSFER MODULES: If an institution offers a degree program to which a meta-major or transfer module articulates, that institution shall accept transfer courses taken as part of the meta-major or transfer module as fulfilling the degree requirements for that program. [5.55.7.12 NMAC - N, 06/12/2018]

5.55.7.13 COMPLAINTS RELATED TO THE TRANSFER OF META-MAJORS AND TRANSFER MODULES:

A. Institutions shall establish appropriate policies and practices for receiving and resolving

complaints from students or other complainants regarding the transfer of meta-majors and transfer modules. Such policies shall include at least the following components:

(1)

Complainants shall be required to first seek resolution of their complaint directly within the institution.

(2)

A time frame within which the institution will investigate the complaint and respond to the complainant shall be specified.

(3)

The institution shall assure that an impartial party will be involved in consideration of the complaint.

(4)

The institution shall assure that no adverse action will be taken against the student or complainant as a result of registering the complaint.

(5)

The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

B. When a student or other complainant contacts the department with a complaint, the department will require that the complaint be submitted in writing. The complaint must include a summary of the process followed by the complainant in an attempt to resolve the complaint through the institution's internal procedures.

C. Following receipt of a written complaint, the department will contact the relevant institution to ascertain whether or not the complaint is bona fide, that is, whether or not the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

D. Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

E. Upon determination that the complaint is bona fide, the department will request a response to the complaint from the institution, summarizing its position and

justification for its course of action. Such response shall be provided in writing to the department within 10 business days of receipt by the institution.

F. The department will conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis will be consistent with the general principles and other specifications of 5.55.7 NMAC.

G. The department will render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution. [5.55.7.13 NMAC - N, 06/12/2018]

5.55.7.14 REPORTING:

A. An institution shall report annually to the department by August 31.

B. An institution shall report on a form provided by the department.

C. The department shall use the information and data provided by the institutions to prepare its annual report to the legislative finance committee and the governor regarding the status of articulation and transfer, which includes common course numbering, general education, meta-majors, and transfer modules. [5.55.7.14 NMAC - N, 06/12/2018]

HISTORY OF 5.55.7 NMAC: [RESERVED]

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.13.10 NMAC, Section 11, effective 06/12/2018.

1.13.10.11 STORAGE OF RECORDS WITH A FINITE RETENTION AT THE RECORDS CENTER:

A. The records management division provides storage to agencies for inactive public records. Non-record materials shall not be submitted for storage in the records center.

B. Records involved in pending litigation, an audit or investigation are not eligible for transfer to the records center.

C. Agencies shall submit storage transmittal form(s) electronically using a form approved by the administrator.

D. Each storage transmittal form shall contain records of one media type and designate one storage location.

E. Records will not be accepted for storage whose retention will be met within 36 months.

F. Barcode labels provided by the records center staff shall be affixed to the records storage boxes prior to delivery. The labels shall be placed two to three-inches below the handle side of the storage box.

G. The records custodian, the chief records officer and the records liaison officer shall be notified by the records management division when records in storage have met the legal retention period and are eligible for destruction.

H. If an agency does not respond to the authorization to destroy records by the established deadline, the administrator shall charge the custodial agency a storage fee for the storage of records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

I. A storage fee shall be charged for records that are eligible for destruction but are not destroyed at the request of the custodial agency. For information on the fee schedule, refer to 1.13.2 NMAC.

J. Destruction, returns and storage services will

be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.10.11 NMAC - Rp, 1.13.10.13 NMAC, 11/30/2015; A, 07/11/2017; A, 06/12/2018]

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.13.12 NMAC, Sections 9, 10 and 11 effective 06/12/2018.

1.13.12.9 DESIGNATED RECORDS CUSTODIAN:

If a statutory records custodian elects to designate an individual to serve on his or her behalf as a designated records custodian, the following requirements and responsibilities are assigned.

A. The designated records custodian shall be the individual responsible for satisfying all statutory requirements of the records custodian as delineated in the Public Records Act (14-3-1 NMSA, 1978).

B. All designated records custodians shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

C. Designated records custodians are required to attend the basic records management training once every three fiscal years.

[1.13.12.9 NMAC - N, 11/28/2017; A, 06/12/2018]

1.13.12.10 CHIEF

RECORDS OFFICER: If a chief records officer is designated by the records custodian, the following responsibilities are assigned.

A. The chief records officer shall be the individual with the authority to oversee the agency's records management program.

B. The chief records officer shall perform the following duties:

(1) coordinate the response to the disposition authorization (destruction and transfer to state archives);

(2) establish and maintain a centralized tracking system for the agency's storage containers (including the containers' indices, metadata and locators) and the disposition of records;

(3) disseminate information on any pending litigation, a discovery order, subpoena, government investigation or audit;

(4) ensure staff is adequately trained on proper records management practices; and

(5) develop policies and procedures pertaining to records management issues (i.e., handling confidential materials, new hire orientation, e-mail management, disposition of records when an employee leaves the agency, metadata development, etc.).

C. The chief records officer shall have the same authorities and responsibilities as a record liaison officer. The chief records officer shall have the authority to submit records for direct transfer to archives.

D. All chief records officers shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

E. Chief records officers are required to attend the basic records management training once every three fiscal years. [1.13.12.10 NMAC - Rp, 1.13.12.9, 11/28/2017; A, 06/12/2018]

1.13.12.11 RECORDS LIAISON OFFICER: If a record liaison officer is designated by the records custodian, the following responsibilities are assigned.

A. Records liaison officers shall be authorized to interact with the state commission of public records and the state records administrator for the purposes of storage, withdrawal, access or disposition of records.

B. All records liaison officers shall attend the required basic records management training offered by the state commission of

public records before they can store, withdraw, access or request the disposition of records.

C. Records liaison officers are required to attend the basic records management training once every three fiscal years. [1.13.12.11 NMAC - Rp, 1.13.12.10, 11/28/2017; A, 06/12/2018]

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.13.30 NMAC, amending Sections 11, 12 and 13 effective 06/12/2018.

1.13.30.11 ON-SITE DESTRUCTION OF RECORDS:

On-site destruction of records may occur at the custodial agency's location. For approval of on-site destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator or designee may inspect records prior to approval of on-site destruction.

C. [The state records administrator may order the transfer of records to the state archives for review and appraisal.

D. For legal and audit purposes, the agency shall retain a certificate of destruction as proof of the records destroyed. The certificate of destruction shall include but not limited to the following information:

(1) place and date of pick up;

(2) printed name and signature of employee(s) performing service;

(3) printed name and signature of witnesses;

(4) number of pounds destroyed/shredded (vendor) or number of boxes (agency certified);

(5) date of destruction/shredding;

(6) identification of company's authorizing agent by name and position;

(7) printed name and signature of official certifying the destruction (vendor or records liaison officer); and

(8) statement that shredded records cannot be read, interpreted, or reconstructed.] The state records administrator may suspend destruction of records determined to have historical value and, upon approval of the commission, transfer the records to the state archives.

D. For legal and audit purposes, the agency shall retain a certificate of destruction as proof of the records destroyed. The certificate of destruction shall include, at a minimum, the following information:

(1) For paper records:

(a) place and date of pick up;

(b) printed name and signature of employee(s) performing service;

(c) printed name and signature of witnesses;

(d) number of pounds destroyed/shredded (vendor) or number of boxes (agency certified);

(e) date of destruction/shredding;

(f) identification of company's authorizing agent by name and position;

(g) printed name and signature of official certifying the destruction (vendor or designated records management personnel); and

(h) statement that shredded records cannot be read, interpreted, or reconstructed.

(2) For electronic records:

(a) records classification;

(b) printed name and signature of

employee(s) performing destruction:

(c)

printed name and signature of record owner:

(d)

number of e-records destroyed:

(e)

date of destruction:

(f)

printed name and signature of official certifying the destruction (designated records management personnel); and

(g)

statement that destroyed records cannot be read, interpreted, or reconstructed.

E. Approved methods for on-site destruction of records are as follows:

(1) Records that contain confidential or sensitive information shall be destroyed through a bonded, insured, and national association for information destruction (NAID) AAA document recycling vendor by shredding in such a manner that the information cannot be read, interpreted or reconstructed.

(2) Records that do not contain confidential or sensitive information shall be destroyed by:

(a) recycling by a bonded document recycling vendor;

(b) shredding; or

(c) dumpsite burial.

(3) Records which have been contaminated may be destroyed by:

(a) any of the approved methods described above; or

(b) incineration.

(4) Agencies shall select from the following methods of destruction for electronic records:

(a) erasure from electronic media and all back up media;

(b) overwriting of reusable magnetic media multiple times as recommended by the United States

(U.S.) department of defense;

(c)

degaussing of the magnetic media; or

(d)

physical destruction of the media as recommended by the U.S. department of defense.

[1.13.30.11 NMAC - Rp, 1.13.30.11 NMAC, 11/28/2017; A, 06/12/2018]

1.13.30.12 RECORDS DELIVERED TO THE RECORDS CENTER FOR DESTRUCTION:

Agencies storing records at their location may deliver records that have met their retentions to the records center for destruction. For approval to deliver records to the records center for destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator or designee may inspect records prior to the acceptance of the shipment for destruction.

C. ~~[The state records administrator may order the transfer of records to the state archives for review and appraisal.]~~ The state records administrator may suspend destruction of records determined to be of historical value and, upon approval of the commission, transfer the records to the state archives.

D. The approved request for destruction shall match items delivered to the records center for destruction. When a discrepancy is found between what is listed on the approved request and what is delivered to the records center, the shipment shall be rejected and the agency shall remove the shipment from the records center.

E. Agencies utilizing the records centers for destruction services shall use boxes equivalent to 15" x 10" x 12" in size.

F. Records destroyed through the records center shall be assessed a fee per box. Agencies shall have a purchase order in place prior

to delivery of the shipment to the records center. For information on the fee schedule, refer to 1.13.2 NMAC.

G. Destruction,

returns and storage services will be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.30.12 NMAC - Rp, 1.13.30.12 NMAC, 11/28/2017; A, 06/12/2018]

1.13.30.13 DISPOSITION OF RECORDS STORED IN THE RECORDS CENTER:

A. Upon receiving a disposition authorization notice for records stored in the records center, only the custodial agency's records custodian or chief records officer shall review the report of records to be destroyed or transferred to archives and respond by the established deadline. Records liaison officers do not have authority to sign the disposition authorization notice for records stored at the records center.

B. Failure to return a completed disposition authorization notice by the established deadline shall result in a storage fee for records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

C. Records destroyed through the annual destruction process shall be assessed a fee per box. For information on the fee schedule, refer to 1.13.2 NMAC.

D. Destruction,
returns and storage services will be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.30.13 NMAC - Rp, 1.13.30.13 NMAC, 11/28/2017; A, 06/12/2018]

REGULATION AND LICENSING DEPARTMENT ANIMAL SHELTERING BOARD

The New Mexico Animal Sheltering Board, approved and adopted at its May 24, 2018 rule hearing, to repeal its rule 16.24.1 NMAC – General

Provisions; filed February 5, 2014, effective June 30, 2018.

The New Mexico Animal Sheltering Board, approved and adopted at its May 24, 2018 rule hearing, to repeal its rule 16.24.2 NMAC – Licensure and Certification; filed February 5, 2014, effective June 30, 2018.

The New Mexico Animal Sheltering Board, approved and adopted at its May 24, 2018 rule hearing, to repeal its rule 16.24.3 NMAC – Complaints, Enforcement and Disciplinary Action; filed February 5, 2014, effective June 30, 2018.

The New Mexico Animal Sheltering Board, approved and adopted at its May 24, 2018 rule hearing, to repeal its rule 16.24.4 NMAC – Complaints, Enforcement and Disciplinary Action; filed February 5, 2014, effective June 30, 2018.

The New Mexico Animal Sheltering Board, approved and adopted at its May 24, 2018 rule hearing, to repeal its rule 16.24.5 NMAC – Fees; filed February 5, 2014, effective June 30, 2018.

The New Mexico Animal Sheltering Board, approved and adopted at its May 24, 2018 rule hearing, to repeal its rule 16.24.6 NMAC – Formulary for Euthanasia Technicians; filed February 5, 2014, effective June 30, 2018.

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

The Board of Body Art Practitioners approved and adopted at its 5/07/2018 hearing, to repeal its rule 16.36.2 NMAC, Licensure Requirements - (filed 2/04/2016) and replace it with 16.36.2 NMAC, Licensure Requirements, and effective 06/21/2018.

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 36 BODY ARTISTS AND OPERATORS PART 2 LICENSURE REQUIREMENTS

16.36.2.1 ISSUING

AGENCY: Regulation and Licensing Department, Board of Body Art Practitioners.

[16.36.2.1 NMAC - Rp, 16.36.2.1 NMAC, 6/21/2018]

16.36.2.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.

[16.36.2.2 NMAC - Rp, 16.36.2.2 NMAC, 6/21/2018]

16.36.2.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5 NMSA 1978.

[16.36.2.3 NMAC - Rp, 16.36.2.3 NMAC, 6/21/2018]

16.36.2.4 DURATION:

Permanent

[16.36.2.4 NMAC - Rp, 16.36.2.4 NMAC, 6/21/2018]

16.36.2.5 EFFECTIVE

DATE: June 16, 2018, unless a later date is cited at the end of a section.

[16.36.2.5 NMAC - Rp, 16.36.2.5 NMAC, 6/21/2018]

16.36.2.6 OBJECTIVE:

To outline the application process, training and examination requirements and the renewal procedures.

[16.36.2.6 NMAC - Rp, 16.36.2.6 NMAC, 6/21/2018]

16.36.2.7 DEFINITIONS: [RESERVED]

16.36.2.8 APPRENTICE LICENSE APPLICATION FOR BODY ART TATTOO, PIERCING-SCARIFICATION, OR PERMANENT COSMETICS:

A. Application forms: (1)

Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications. All applications are valid for one year from date received.

(2)

Applications for apprentice licensure must include:

- (a)** non-refundable application fee;
 - (b)** completed and signed application;
 - (c)** applicant name;
 - (d)** social security number;
 - (e)** proof of age indicating applicant is at least 18 years of age (government-issued identification with a photo);
 - (f)** email
 - (g)** phone number;
 - (h)** name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be current upon receipt of application.
 - (i)** an apprentice sponsorship application which must be completed and signed by a body art practitioner who meets the requirements within 16.36.2.9 NMAC and is licensed in the kind of body art the applicant is seeking an apprenticeship license;
 - (j)** copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and
 - (k)** proof of current immunizations as defined in 16.36.2.12 NMAC.
- B. Photographs:**

Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

C. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or higher.

D. An apprentice must remain under the direct supervision of his or her sponsor until all requirements have been met or the apprentice license has been terminated by the board.

E. Renewal of a body art apprentice license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice sponsor;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be current upon receipt of application.

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and

(d) proof of current immunizations as defined in 16.36.2.12 NMAC

(5) Electronic signatures will be acceptable for renewals submitted pursuant to 16.36.1 through 16.36.6 NMAC. [16.36.2.8 NMAC - Rp, 16.36.2.8 NMAC, 6/21/2018]

16.36.2.9 SPONSOR LICENSE APPLICATION FOR BODY ART TATTOO, PIERCING-SCARIFICATION, OR PERMANENT COSMETICS:

A. A licensee may be approved to sponsor only one tattoo, body piercing-scarification, or permanent cosmetic apprentice at a time. Incomplete applications will be returned. All applications are valid for one year from date received. A complete application includes:

(1) non-refundable application fee;

(2) a current New Mexico tattoo, body piercing-scarification, or permanent cosmetic license;

(3) documentation of legally practicing tattooing, body piercing-scarification, or permanent cosmetics in New Mexico for at least five years without any disciplinary action;

(4) a curriculum as required in Sections 14, 15 and 16 of 16.36.2 NMAC to the board staff for approval; curriculum shall include references and resources to be used and methods of evaluation for each area covered; and

(5) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be active upon receipt of application;

B. Photographs: Applicants for sponsor licensure shall attach a recent passport size, color photograph, front-view of face.

C. Upon approval of application, a board approved log will be available to record progress during the apprenticeship. This log will serve as proof of completion of training program.

D. Upon completion of the apprenticeship program, the sponsor and apprentice shall sign and notarize the apprentice log. The notarized log shall be sent to the board within 30 days and shall include a statement from the sponsor stating the apprenticeship has been completed. The sponsor will give a copy of the notarized log and

statement to the apprentice.

E. The apprentice will then receive notification from the board stating the apprentice is eligible to take the national theory exam.

F. Renewal of body art apprentice sponsor license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice sponsor license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice; and

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be active upon receipt of application.

G. Electronic signatures will be acceptable for renewals submitted pursuant to 16.36.1 through 16.36.6 NMAC. [16.36.2.9 NMAC - Rp, 16.36.2.9 NMAC, 6/21/2018]

16.36.2.10 APPLICATION FOR BODY ART TATTOO, PIERCING-SCARIFICATION, OR PERMANENT COSMETICS PRACTITIONER LICENSE:

A. Application forms:

(1) Applications shall be made on the official form provided by the board. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) name;

social security number;	(c)	lip color;	(c)	16.36.2.11 APPLICATION FOR BODY ART OPERATOR ESTABLISHMENT LICENSE:
date of birth;	(d)	eyeliner/eyelash enhancer of eyes; and	(d)	A. Any establishment licensed by the board must be under the immediate supervision of a board licensed practitioner while licensed activity is being practiced therein. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.
proof of age indicating applicant is at least 18 years of age (government-issued identification with a photo);	(e)	C. The applicant shall take and pass a written examination approved by the board and the board approved jurisprudence examination. The applicant must pass the exams with a minimum score of seventy-five percent or higher.		B. The supervising licensee(s) must be licensed by the board in tattoo, piercing scarification, or permanent cosmetics.
establishment mailing address;	(f)	D. Renewal of a practitioner license:		C. Application forms:
phone number;	(g)	(1) License will expire one year after date of issue;		(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.
name, address and phone number of licensed establishment where services will be performed. Establishment license must be current upon receipt of application;	(h)	(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee;		(2) Applications for licensure must include:
copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;	(i)	(3) Licensees shall renew their license on or before the expiration date;		(a) a completed and signed application;
proof of current immunizations as defined in 16.36.2.12 NMAC;	(j)	(4) Renewal of license shall include the following information:		(b) name of the body art establishment;
proof of completion of tattoo, piercing-scarification, or permanent cosmetics training program and examination as defined in 16.36.2.14 NMAC.	(k)	(a) name and address of establishment. Establishment license must be current upon receipt of application;		(c) name of the operator of the establishment;
a recent passport size, color photograph; and	(l)	(b) name of establishment operator or supervisor;		(d) government-issued identification with a photo showing proof of age indicating applicant is at least 18 years old;
non-refundable application fee as required by the board.	(m)	(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and		(e) operator's social security number;
B. Photographs:		(d) proof of current immunizations as defined in 16.36.2.12 NMAC.		(f) establishment address;
(1) applicant for tattoo artist license must include a minimum of 10 original photographs of healed tattoos, which the applicant has personally performed.		E. Electronic signatures will be acceptable for renewals submitted pursuant to 16.36.1 through 16.36.6 NMAC.		(g) establishment phone number;
(2) applicant for body piercing must include a minimum of ten photographs of healed piercing the applicant has personally performed.		F. A permanent cosmetic professional applicant engaged in a state board approved apprenticeship training program prior to the effective date of July 1, 2018 shall have until August 31, 2018 to comply with apprenticeship requirements		(h) name(s) of the body art supervising practitioner(s) working at the establishment, each of whom must be currently licensed with the board at time of application;
(3) applicant for permanent cosmetic practitioner must submit a minimum of 10 photographs with at least two from the following areas:		[16.36.2.10 NMAC - Rp, 16.36.2.10 NMAC, 6/21/2018]		(i) a copy of current city or county business license;
eyebrow simulation;	(a)			(j) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;
lip liner;	(b)			

(k) proof of current immunizations as defined in 16.36.2.12 NMAC; and

(l) non-refundable application fee as required by the board.

D. Renewal of a body art operator establishment license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee; Failure to renew the license by the expiration date will result in a late fee;

(3) Licensees shall renew their license on or before the expiration date;

(4) Renewal of a body art operator establishment license shall include the following information:

(a) name(s) of the body art supervising practitioner(s) working at the establishment, must be currently licensed with the board at time of application;

(b) copy of current city or county business license;

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and

(d) proof of current immunizations as defined in 16.36.2.12 NMAC.

E. Electronic signatures will be acceptable for renewals submitted pursuant to 16.36.1 through 16.36.6 NMAC. [16.36.2.11 NMAC - Rp, 16.36.2.11 NMAC, 6/21/2018]

16.36.2.12 PROOF OF CURRENT IMMUNIZATIONS: Proof shall be provided upon request of the board or board representative that apprentice, practitioner, and permanent cosmetic practitioner licensee has either completed or declined, on a form provided by the board, the hepatitis B vaccination series. For those who decline the

hepatitis B vaccination series, an information brochure developed by the New Mexico department of health will be provided which explains the risks of hepatitis B and C. [16.36.2.12 NMAC - Rp, 16.36.2.12 NMAC, 6/21/2018]

16.36.2.13 PROOF OF COMPLETION OF TRAINING PROGRAM: Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a body artist apprentice, body artist practitioner, permanent cosmetic professional or body art operator. Such training must include:

A. a board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months prior to application and annually thereafter. The training may be obtained through any of the following:

(1) nationally accredited organization;
(2) local government sponsored;
(3) hospital sponsored;
(4) college sponsored;
(5) OSHA sponsored;
(6) red cross;
(7) board approved.

B. Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

(1) nationally accredited organization;
(2) local government sponsored;
(3) hospital sponsored;
(4) college

sponsored;

(5) OSHA (occupational safety and health administration) sponsored;

(6) red cross;
or

(7) board approved;

C. An applicant for a tattoo or body piercing-scarification apprenticeship shall file an apprentice agreement notarized by all parties that applicant shall complete the board required training requirements. [16.36.2.13 NMAC - Rp, 16.36.2.13 NMAC, 6/21/2018]

16.36.2.14 BODY PIERCING - SCARIFICATION APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS

A. Upon successful completion of apprenticeship program, an applicant for original piercing-scarification practitioner license shall provide proof, acceptable to the board or its designee, that applicant has completed an apprenticeship program under the direct supervision of a licensed practitioner with instruction and experience in the kind of body art for which the applicant seeks a body art practitioner license.

B. Proof of completing an apprentice program shall include:

(1) verification of completion of apprenticeship program on a log provided by the board;

(2) a minimum of 10 original photographs of healed piercings-scarifications which the artisan has personally performed and a minimum of three signed testaments from previous clients.

C. Body piercing apprenticeship curriculum: 1200 hours:

(1) Orientation - 100 hours:

(a) state laws and regulations;

(b) tax and business license requirements;

(c) OSHA blood borne pathogens

standard;		infection control;		parts and functions of skin;	
	(d)		(g)		(m)
the establishment's exposure control plan;		handwashing;		oral/facial anatomy as it pertains to piercing;	
	(e)		(h)		(n)
SDS sheets;		types of soaps and hand sanitizers;		knowledge and ability to avoid damage to underlying blood vessels and nerves;	
	(f)		(i)		(o)
paperwork and business documentation;		use of gloves and other personal protective equipment;		knowledge and recognition of disorders, anomalies and diseases of the skin;	
	(g)		(j)		(p)
HIPAA (Health Insurance Portability and Accountability Act of 1996 privacy rule);		how to recognize, prevent and remedy cross-contamination;		body anatomy as it pertains to piercing;	
	(h)		(k)		(q)
environment/appropriate studio set-up;		immunizations;		determining the appropriateness of a piercing;	
	(i)		(l)		(r)
professional image;		cleaning, disinfection and sterilization;		equipment;	
	(j)		(m)		(s)
appropriate communication with clients;		sterile chart;		disposable supplies;	
	(k)		(n)		(t)
ethics and legalities:		cleaning/appropriate procedures;		needles;	
	(i)		(o)		(u)
minors;		implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;		sharps disposal;	
	(ii)		(p)		(v)
drugs and alcohol;		disinfection/appropriate use and disposal of disinfecting solutions; and		reusable equipment;	
	(iii)		(q)		(w)
medical conditions/risk assessment;		sterilization/appropriate use and maintenance of autoclave sterilizers.		storage;	
	(iv)		(3)		(x)
personal boundaries;			Body	aftercare; and	
	(l)				(y)
dealing with emergencies:		piercing theory - 200 hours:		piercing guns (theory only).	
	(i)		(a)		(4)
blood spills;		jewelry;		Body	
	(ii)		(b)		
fainting;		standards and certifications;		piercing observation/practical - 800 hours:	
	(iii)		(c)		(a)
bleeding;		certified materials for new piercings;		proper use of safety procedures outlined in theory training;	
	(iv)		(d)		(b)
needlesticks; and		other appropriate materials for new piercings;		aseptic technique;	
	(v)		(e)		(c)
other exposures.		jewelry materials for healed piercings;		room set-up and break-down;	
	(2)		(f)		(d)
Sterilization, disinfection theory and practical - 100 hours:		jewelry to avoid;		skin preparation;	
	(a)		(g)		(e)
microbiology;		quality jewelry (things to look for);		client relations/relaxation techniques;	
	(b)		(h)		(f)
definitions;		jewelry styles;		pain management;	
	(c)		(i)		(g)
microorganisms of the skin;		cleaning, sterilization and storage of jewelry;		piercing techniques;	
	(d)		(j)		(h)
factors that influence the survival and growth of microorganisms;		anatomy;		dealing with mistakes;	
	(e)		(k)		(i)
breaking the chain of infection;		understanding of skin;		in order to be approved, curriculum for body piercing practitioner training shall include, at a minimum, 50	
	(f)		(l)		

practical body piercing procedures performed by the apprentice under sponsor supervision. The 50 supervised completed procedures shall consist of at least five completed procedures in each of the following areas:	16.36.2.15 TATTOO APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS:	appropriate communication with clients;
	A. Upon successful completion of apprenticeship program, an applicant for original tattoo practitioner license shall provide proof, acceptable to the board or its designee, that applicant has completed an apprenticeship program under the direct supervision of a licensed practitioner with instruction and experience in the kind of body art for which the applicant seeks a body art practitioner license.	(k) ethics and legalities;
(i) ears;		(i) minors;
(ii) nose;		(ii) drugs and alcohol;
(iii) tongue;		(iii) medical conditions/risk assessment; and
(iv) nipple;		(iv) personal boundaries.
(v) navel;	B. Proof of completing an apprentice program shall include:	(1) Dealing with emergencies:
(vi) eyebrow;	(1) verification	(i) blood spills;
(vii) lip/labret; and	of completion of apprenticeship program on a log provided by the board; and	(ii) fainting;
(viii) septum.	(2) a minimum	(iii) bleeding;
(j) Curriculum should include the following for each procedure:	of 10 original photographs of healed tattoos which the artisan has personally performed and a minimum of three signed testaments from previous clients.	(iv) needlesticks; and
(i) related anatomy;	C. Tattoo apprenticeship curriculum; 1400 hours	(v) other exposures.
(ii) appropriate placement;	(1) Orientation	(2) Sterilization, disinfection theory and practical - 100 hours:
(iii) skin preparation;	- 100 hours:	(a) microbiology;
(iv) implement selection and use;	(a) state laws and regulations;	(b) definitions;
(v) techniques; and	(b) tax and business license requirements;	(c) microorganisms of the skin;
(vi) healing and aftercare.	(c) OSHA blood borne pathogens standard;	(d) factors that influence the survival and growth of microorganisms;
An applicant for a body art piercing-scarification practitioner license shall take the tattoo or body piercing-scarification examination approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program. [16.36.2.14 NMAC - Rp, 16.36.2.14 NMAC, 6/21/2018]	(d) the establishment's exposure control plan;	(e) breaking the chain of infection;
	(e) SDS sheets;	(f) infection control;
	(f) paperwork and business documentation;	(g) handwashing;
	(g) HIPAA (Health Insurance Portability and Accountability Act of 1996 privacy rule);	(h) types of soaps and hand sanitizers;
	(h) environment/appropriate studio set-up;	(i) use of gloves and other personal protective equipment;
	(i) professional image;	(j) how to recognize, prevent and remedy cross-contamination;
	(j)	(k) immunizations;
		(l) cleaning, disinfection and sterilization;
		(m) sterile chart;

(n)	cleaning/appropriate procedures;	tattoo machine and its history;	purposes of determining qualifications for licensure under this rule.
(o)	implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;	(u)	Completed procedure means a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing and the client is released from service.
(p)	disinfection/appropriate use and disposal of disinfecting solutions; and	(v)	
(q)	sterilization/appropriate use and maintenance of autoclave sterilizers.	(w)	
(3)	Tattooing observation/theory - 200 hours:	(x)	
(a)	artistic development;	(y)	
(b)	drawing for clients;	(z)	
(c)	stencil making and application;	(aa)	
(d)	color theory/understanding the color wheel;	(bb)	
(e)	line quality and proportion;	(cc)	
(f)	shading and coloring technique;	(4)	Tattooing observation/practical - 1000 hours:
(g)	pigments and color mixing;	(a)	
(h)	portfolio construction and maintenance;	(b)	
(i)	anatomy;	(c)	
(j)	understanding of skin;	(d)	
(k)	parts and functions of skin;	(e)	
(l)	determining the appropriateness of a tattoo placement;	(f)	
(m)	equipment;	(g)	
(n)	disposable supplies;	(h)	
(o)	needles;	(i)	
(p)	sharps disposal;	(j)	
(q)	reusable equipment;	(k)	
(r)	storage;	(l)	
(s)	tattoo equipment maintenance;	(m)	
(t)	understanding the electromagnetic		

16.36.2.16 PERMANENT COSMETIC APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS:

A. Upon successful completion of an apprenticeship program, an applicant for an original permanent cosmetic practitioner license shall provide proof of having completed a 255 hour board approved curriculum, and shall perform under the direct supervision of a board approved sponsor. An approved basic fundamental curriculum shall include the following requirements:

B. A minimum of five of each of the following procedures: 60 hours

(1) eye brow simulation; microblading, hairstrokes, shading;

(2) lip liner;
(3) lip color;

and

(4) eye liner/eyelash enhancement.

C. Client records shall

be maintained by the practitioner applicant to verify that the minimum requirements for the procedures were completed.

D. The practitioner applicant shall submit 10 before and after photographs whereby the professional has personally performed one complete procedure for each of the following areas:

- (1) eye brow simulation;
- (2) lip liner;
- (3) lip color;
- (4) eye liner/eyelash enhancement.

E. Introduction to permanent cosmetics: 10 hours

- (1) History of tattooing as it applies to permanent makeup.

- (2) Overview of the different types of machines and devices.

F. Professional standards and client care: 20 hours

- (1) Client expectations.
- (2) Medical history.
- (3) Consent and disclosure form.
- (4) Record keeping.
- (5) HIPPA standards.

Photography.

G. Office set-up: 10 hours

- (1) Understanding establishment requirements.
- (2) General equipment.

- (3) Table, chair, work surface, lightening.

H. Disinfection and sterilization: 100 hours

- (1) Definition of terms.
- (2) Discuss acceptable forms of sterilization.
- (3) Proper use of chemical agents, antiseptics, disinfectations, and fumigants.
- (4) OSHA

and CDC guidelines regarding blood borne pathogens.

- (5) Hand washing stations.
- (6) Hepatitis B vaccination.
- (7) PPE, such as gloves and proper attire to avoid cross contamination.

- (8) Proper handling of devices, needles, and pigments.

- (9) Sanitary measures during procedure set-up, and clean-up.

I. Client preparation: 10 hours

- (1) Preparing the clients skin.

- (2) Ways of marking the skin.

- (3) Anesthetics used before, during, and after procedure.

J. Color and pigment theory: 10 hours

- (1) Knowledge of skin type and undertones.

- (2) Pigment care such as expiration, storage, and mixing.

- (3) Use of safety sheets.

K. Skin anatomy: 20 hours

- (1) Understanding of skin and layers.

- (2) Healing process of the skin and its care.

- (3) Diseases, disorders, and conditions such as; infection, herpes simplex, shingles, moles, warts, freckles, psoriasis, eczema, rosacea, and reactions.

L. Machine/Needle theory: 10 hours

- (1) Operation, maintenance, and instrument storage.

- (2) Proper needle handling and disposal.

- (3) Groups, numbers, and configurations.

- (4) Pre-sterilized, single use.

M. Business set-up: 5 hours

- (1) Basic business and social media guidelines.

(2) Legal requirements.

(3) Insurance/liability.

(4) New Mexico laws and regulations.

N. An applicant for permanent cosmetic professional license shall take an exam approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprenticeship program

O. A permanent cosmetic professional applicant engaged in a state board approved apprenticeship training program prior to the effective date of July 1, 2018 shall have until August 31, 2018 to comply with apprenticeship requirements.

[16.36.2.16 NMAC - N, 6/21/2018]

16.36.2.17 SPECIAL EVENT, MOBILE BODY ART AND GUEST LICENSE REQUIREMENTS:

A. Any licensee desiring to sponsor a special event must first obtain approval from the board office. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board office must be submitted at least 10 days prior to the event. Approval for the special events may be made administratively.

(1) The sponsor(s) and the establishment where the sponsor(s) is practicing must have a current license.

(2) The sponsor shall apply for the license at least 30 days prior to the event.

B. All provisions of these regulations shall apply with the following exceptions.

(1) Hand wash facilities shall be easily accessible to each procedure area and designated

for use by artists only. Hand wash facilities or temporary hand wash facilities shall consist of antibacterial liquid soap, single-use paper towels, and adequate supply of potable water dispensed through a continuous flow spout. Wastewater shall be collected and disposed of in a sanitary manner.

(2) Body artists may bring pre-sterilized instruments or instruments that have been sterilized at another location with documentation showing a negative spore test result within the previous 30 days. On site sterilization units may be used and shall comply with 16.36.5 NMAC of these rules.

(3) After the last procedure is completed, all procedure areas shall be cleaned and disinfected.

C. A guest licensee is a body artist who is licensed in another jurisdiction or meets the requirements of licensure in New Mexico and shall practice 30 days or less in New Mexico. Registration is required before any person may act as a guest licensee. An applicant for registration as a guest licensee must:

(1) hold current licensure as a body artist in another jurisdiction or have the education or experience relating to the applicable type of New Mexico license requested; and

(2) be under the sponsorship of a New Mexico licensed body artist.

D. To be registered as a guest licensee the following must be submitted to the board:

(1) verification of sponsorship by a licensed body artist;

(2) a complete application;

(3) registration fee;

(4) proof of age indicating applicant is at least 18 years old (government-issued identification with a photo);

(5) copy of current CPR, first aid and blood borne pathogen training as defined within 16.36.2.13 NMAC.

(6) verification

of licensure in another jurisdiction.

E. Applicants not licensed in another jurisdiction must provide documentation of education and experience relating to the applicable type of New Mexico license requested.

F. Guest body art registration will expire 30 days from the date of issuance. A guest license shall not extend beyond 30 days unless the licensee petitions the board and provides documentation that licensee has not worked 30 days in New Mexico. A guest license shall not be granted more than three times within a 12 month period.

[16.36.2.17 NMAC - Rp, 16.36.2.18 NMAC, 6/21/2018]

16.36.2.18 EXPEDITED LICENSURE - MILITARY SERVICE MEMBERS, SPOUSES & VETERANS:

A. Applications shall be completed on a form provided by the board. All applications are valid for one year from date received. All fees are non-refundable.

B. The information shall include:

(1) Completed application and fee pursuant to 16.36.6.8 NMAC

(2) Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction and has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the license the applicant applies for pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

(3) Proof of honorable discharge (DD214), active duty military ID card, or proof of military spouse status.

C. Renewal for a license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance set forth in 16.36.2 NMAC and for the renewal of a license set forth in 16.36.2 NMAC pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

D. An applicant whose license has expired for more than five years shall re-enter an approved training program (apprenticeship), take the tattoo, body piercing-scarification or permanent cosmetic exam approved by the board with a passing minimum score approved by the board and take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

[16.36.2.18 NMAC - N, 6/21/2018]

16.36.2.19 EXPIRED LICENSE:

A. An applicant whose license has been expired for one year but less than two years shall submit an application, payment of all renewal fees to bring the license current, proof of completion of blood borne pathogens training within the prior 12 months, current CPR and first aid certification, and take and pass a board approved jurisprudence examination with a minimum score of seventy-five percent.

B. An applicant whose license has expired for more than two years shall take the tattoo, body piercing-scarification or permanent cosmetic written examination approved by the board with a passing minimum score approved by the board. Applicant must also take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

C. An operator whose establishment license has expired shall submit a reinstatement application, payment of reinstatement fee for each year the license has been expired; and name of licensed operator.

D. A practitioner whose license has been expired more than five years shall re-enter an approved training program (apprenticeship), take the tattoo, body piercing-scarification or permanent cosmetic exam approved by the board with a passing minimum score approved by the board and take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

[16.36.2.19 NMAC - N, 6/21/2018]

16.36.2.20 CROSSOVER

HOURS: Individuals who are licensed in one discipline may transfer 100 hours of orientation toward their apprenticeship in another discipline, if they have at least one year of full time, verified work experience in a licensed establishment and complete the remaining required hours for licensure.

[16.36.2.20 - N, 6/21/2018]

16.36.2.21 RECIPROCITY:

A. Submit an affidavit of licensure demonstrating proof of current license, which is active with no current or pending disciplinary action, as a tattoo artist, body piercing-scarification, permanent cosmetics. The licensing requirements in the other state-jurisdiction must be substantially equivalent to New Mexico licensing requirements.

B. If they are not substantially equivalent, the applicant must demonstrate to the satisfaction of the body art practitioners that the licensee has been employed or working as a tattoo artist, body artist, body piercing-scarification, permanent cosmetics full time for three years. Documentation includes employment-related documents such as paystubs, W-2 Forms, 1099 and federal tax forms.

[16.36.2.20 NMAC - N, 6/21/2018]

HISTORY OF 16.36.2 NMAC:

16.36.2 NMAC, Licensure Requirements, filed 2/4/2016 was Repealed and Replaced by Licensure Requirements, effective, 6/21/2018.

History of Repealed Material:

16.36.2 NMAC, Licensure Requirements, filed 3/12/2010 – Repealed effective, 2/4/2016.
16.36.2 NMAC, Licensure Requirements, filed 2/4/2016 – Repealed effective, 6/21/2018.

**REGULATION AND
LICENSING DEPARTMENT
BODY ART PRACTITIONERS,
BOARD OF**

This is an amendment to 16.36.1 NMAC, Sections 7, 8, 9 and 10, effective 6/21/2018.

16.36.1.7 DEFINITIONS:

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning.

A. “Aftercare” means written instructions given to the client, specific to the body piercing or tattooing procedure(s) rendered, on caring for the body piercing or tattoo and surrounding area.

B. “Antiseptic” means an agent that destroys disease-causing microorganisms on human skin or mucosa.

C. “Apprentice” means a person who works under the direct supervision of a licensed apprentice sponsor to learn a trade from someone who is already skilled at a job.

D. “Apprentice Sponsor” means a person who is an actively licensed, skilled professional in a profession, art, craft or trade for a minimum of five years and is someone who accepts responsibility to teach an apprentice one on one.

E. “Aseptic” means the state of being free from the living disease, fermentation, or putrefaction.

[E:] F. “Autoclave” means a piece of medical equipment that employs the steam under pressure method of sterilization.

[D:] G. “Board” means the board of body art practitioners.

[E:] H. “Body art” means tattooing, body piercing or scarification but does not include practices that are considered medical procedures by the New Mexico medical board.

[F:] I. “Body art establishment” means a fixed or mobile place where body art is administered on the premises.

[G:] J. “Body artist”

means a person who administers body piercing, tattooing or scarification.

[H:] K. “Body piercing” means to cut, stab or penetrate the skin to create a permanent hole or opening.

L. “Client” means an individual receiving any body art procedure(s).

M. “Direct Supervision” means the process under which an act is performed by another person with a licensed body artist or permanent makeup cosmetics professional practitioner licensed pursuant to the Body Art Safe Practices Act:

(1) Is physically present in the establishment throughout the performance of the act;
(2) orders, controls and accepts full professional responsibility for the act performed;
(3) evaluates and approves the procedure performed before the client departs the care setting; and

(4) Is capable of responding immediately if any emergency should arise.

[H:] N. “Equipment” means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances.

O. “Guest License” means a person temporary authorized to administer tattooing, body piercing-scarification, or permanent cosmetics for a period of 30 days from date license issued.

[F:] P. “Instruments used for body art” means hand pieces, needles, needle bars and other items that may come into contact with a person’s body during the administration of body art.

Q. “Jurisprudence Examination” means the examination given regarding the laws, rules and regulations, which relate to the practice of body art in the state of New Mexico.

R. “Military service”

member” means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

~~[K.]~~ **S. “Operator**” means the owner of a body art establishment.

T. “Permanent Cosmetics Practitioner” means a person who tattoos eyeliner, eyebrows, lip liner, full lip color, and repigmentation or camouflage on the face, using tattooing techniques of placing pigments under the skin.

~~[L.]~~ **“Scarification**” means cutting into the skin with a sharp instrument or branding the skin with a heated instrument to produce a permanent mark or design on the skin.]

U. “SDS” means safety data sheet(s) used to communicate the hazards of hazardous chemical products which may be found in a body art establishment.

~~[M.]~~ **V. “Sharps”** means any sterilized object that is used for the purpose of penetrating the skin or mucosa, including needles, scalpel blades and razor blades.

~~[N.]~~ **W. “Single use”** means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

X. “Special Event” means an event where procedures will be performed and will not be conducted at a licensed establishment.

~~[O.]~~ **Y. “Sterilization”** means destruction of all forms of macrobiotic life, including spores.

Z. “Supervising Licensee” means licensed practitioner who manages the licensed body art establishment. This may or may not be the operator.

~~[P.]~~ **AA. “Veteran”** means a person who has received an honorable discharge or separation from military service within the two years

immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

[16.36.1.7 NMAC - Rp, 16.36.1.7 NMAC, 2/4/2016; A, 6/21/2018]

16.36.1.8 CUSTODY AND ALTERATION OF LICENSES:

A. Licenses issued by the board are at all times the property of the board, and may remain in the custody of the licensee only as long as the licensee complies with the act and board rules.

B. Licenses shall not be altered in any way.

C. Inspectors or board designees may retrieve any license which is suspended, revoked, expired, altered or left by a licensee who is no longer employed at an establishment.

D. A current body art apprenticeship, practitioner or operator license is not transferable from one person to another.

[16.36.1.8 NMAC - Rp, 16.36.1.8 NMAC, 2/4/2016; A, 6/21/2018]

16.36.1.9 LICENSES POSTED:

A. All official board issued licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public [at all times] upon entry of the establishment.

B. Licensees must attach a recent passport size colored photograph to the board issued license and sign the license where indicated.

C. All licensees, who have been placed on probation, will be issued a license, which states the licensee is on disciplinary probation. [The license shall be posted where clearly visible to the public at all times.]

D. Licensees must present a driver’s license or other identification when requested by the public, the board or its authorized representative.

E. A special event license shall be posted where clearly visible to the public upon entry of the event.

[16.36.1.9 NMAC - Rp, 16.36.1.9

NMAC, 2/4/2016; A, 6/21/2018]

16.36.1.10 EXEMPTIONS:

A. A person who pierces only the outer perimeter of the ear, not including any cartilage, using a pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, is exempt from the requirements of the Body Art Safe Practices Act, Section 61-17B-1 NMSA 1978.

B. A member of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes is exempt from the requirements of the Body Art Safe Practices Act.

~~[C.]~~ Operators and body artists engaged in the body art business before the effective date of the Body Art Safe Practices Act shall have 180 days from May 16, 2008 to comply with license requirements.] [16.36.1.10 NMAC - Rp, 16.36.1.10 NMAC, 2/4/2016; A, 6/21/2018]

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

This is an amendment to 16.36.3 NMAC, Section 8, effective 6/21/2018.

16.36.3.8 REQUIREMENTS FOR ESTABLISHMENT:

A. All walls and floors of a body art establishment shall be washable and in good repair. Walls and floors shall be maintained in a clean condition. All surfaces, including client chairs and benches shall be of such construction as to be easily cleaned and sanitized after each client procedure. All body art establishments shall be completely separated [by solid partitions, or by walls extending from floor to ceiling, from any room used for human habitation, a food establishment or room where food is prepared, a hair salon, retail sales, or other such activity which may cause potential contamination of work surfaces] from

any other business or non-business using floor-to-ceiling walls and doors. Rooms where body art procedures occur shall be free from debris or any safety hazards and shall not be used for storage.

B. [Insects, vermin and rodents shall not be present in any part of the body art establishment, its appurtenances or appertaining premises.] Establishments located within or at a private residence must meet zoning requirements. An establishment located in or at a private residence shall meet establishment requirements as stated in 16.36.3.8 NMAC.

C. There shall be a minimum of 40 square feet of floor space for each procedure room. Each body art establishment shall have an area [which] that may be screened from public view for clients requesting privacy. Multiple procedure rooms shall be separated by [wipe-able] clean, non-porous and washable dividers, curtains or partitions, which shall be maintained with an EPA registered disinfectant.

D. The body art establishment shall be well-ventilated and provided adequate [with an] artificial light.[source equivalent to at least 20 foot candles three feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.]

E. No animals of any kind shall be allowed in [a procedure room] an establishment, except service animals used by persons with limitations as defined in the Americans with Disabilities Act. [Small animals confined to a cage or aquariums are allowed only outside a procedure room.] Aquariums are allowed, but not within a procedure room.

F. A separate, readily accessible, hand sink with hot and cold running water, under pressure, preferably equipped with wrist or foot operated controls and supplied with liquid antimicrobial soap and disposable paper towels shall be readily accessible within the body art

establishment. One hand sink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding any service sinks, and one toilet in a body art establishment.

G. At least one covered waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily and solid waste shall be removed from the premises at least weekly. Receptacles in the operator area shall either have a foot operated lid or a lid that can and shall remain open during body art procedures to prevent hand contact with the receptacle during a procedure. All refuse containers shall be cleanable and kept clean.

H. All instruments and supplies shall be stored in clean dry covered containers.

I. If reusable cloth items, including but not limited to lap-cloths, are used, they shall be mechanically washed after each client procedure. Reusable cloth items shall be mechanically washed with detergent and dried. The cloth items shall be stored in a clean dry environment.

J. The following information shall be kept on file on the premises of a body art establishment and available for inspection by the board:

(1) the full names of all employees in the establishment and their exact duties;

(2) the board-issued license with identification photograph;

(3) the body art establishment name and hours of operation;

(4) the name and address of the body art establishment owner;

(5) a complete description of all body art performed;

(6) maintenance of a material safety data sheet (MSDS) file containing pertinent information regarding products; and

(7) a copy of the Body Art Safe Practices Act and

current rules.

K. An operator shall notify the board in writing not less than 30 days before changing the location of a body art establishment. The notice shall include the street address of the new location.

[16.36.3.8 NMAC - Rp, 16.36.3.8 NMAC, 2/04/2016; A, 6/21/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 22 PSYCHOLOGISTS AND PSYCHOLOGIST ASSOCIATES PART 30 PRESCRIPTION MONITORING PROGRAM REQUIREMENTS

16.22.30.1 ISSUING

AGENCY: Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.30.1 NMAC - N, 7/1/2018]

16.22.30.2 SCOPE: This part applies to conditional prescribing and prescribing psychologists.

[16.22.30.2 NMAC - N, 7/1/2018]

16.22.30.3 STATUTORY

AUTHORITY: This part is adopted pursuant to the Professional Psychologist Act, Section 61-9-6 NMSA 1978; the Health Care Provider Act, Sections 61-7-1 through 61-7-12 NMSA 1978; and the Pain Relief Act, Sections 24-2D-1 through 24-2D-6 NMSA 1978.

[16.22.30.3 NMAC - N, 7/1/2018]

16.22.30.4 DURATION:

Permanent.

[16.22.30.4 NMAC - N, 7/1/2018]

16.22.30.5 EFFECTIVE

DATE: July 1, 2018, unless a later date is cited at the end of a section.

[16.22.30.5 NMAC - N, 7/1/2018]

16.22.30.6 OBJECTIVE: The

objective of Part 30 is to ensure that prescribing psychologists protect the public from unsafe use of controlled substances and harmful and illegal activities involving these substances. [16.22.30.6 NMAC - N, 7/1/2018]

16.22.30.7 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:

A. Any conditional prescribing or prescribing psychologist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall become a participant in the state's prescription monitoring program. Such participation requires registering with the board of pharmacy.

B. A conditional prescribing or prescribing psychologist may authorize non-licensed individuals under the psychologist's supervision to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. Individuals so authorized may obtain a report from the state's prescription monitoring program, with the requirement that the conditional prescribing or prescribing psychologist is solely responsible for reviewing the prescription monitoring report, and for documenting the receipt and review of such report in the patient's medical record.

C. A conditional prescribing or prescribing psychologist shall obtain a prescription monitoring report, in addition to contacting the patient's physician before prescribing a controlled substance for the first time or when the patient has been prescribed an opiate by the patient's physician. If there is a gap in prescribing the controlled substance for 30 days or more, the conditional prescribing or prescribing psychologist shall review a prescription monitoring report for the patient for the preceding 12 months. When made available, the conditional prescribing or prescribing psychologist shall review similar reports from other states. The

conditional prescribing or prescribing psychologist shall document the receipt and review of such reports in the patient's medical record.

D. A prescription monitoring report shall be reviewed a minimum of once every three months during a patient's continuous use of a controlled substance. The conditional prescribing or prescribing psychologist shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a conditional prescribing or prescribing psychologist from reviewing prescription monitoring reports with greater frequency than that required by this section.

E. A conditional prescribing or prescribing psychologist does not have to obtain and review a prescription monitoring report before prescribing,

- (1) for a patient in a nursing facility;
- (2) for a patient in hospice care;
- (3) for a patient in a licensed treatment facility; or

- (4) for a patient under 14 years of age.

F. Upon review of a prescription monitoring report for a patient, the conditional prescribing or prescribing psychologist shall identify, document, and attempt to remain current with regard to all prescriptions for any a patient known to be:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving more than one controlled substance analgesic;
- (4) receiving opioids totaling more than 90 morphine milligram equivalents per day; or
- (5) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as:

- (a)

over-utilization;

(b)

requests to fill early;

(c)

requests for specific opioids;

(d)

requests to pay cash when insurance is available; or

(e)

receives opioids from multiple pharmacies.

G. Upon recognizing any of the above conditions described in Subsection F, the conditional prescribing or prescribing psychologist, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve consultation with the primary prescribing physician, and utilization of the prescription monitoring program. The conditional prescribing or prescribing psychologist shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

[16.22.30.7 NMAC - N, 7/1/2018]

History of 16.22.30 NMAC:
[RESERVED]

**REGULATION AND LICENSING DEPARTMENT
PSYCHOLOGIST EXAMINERS,
BOARD OF**

This is an amendment to 16.22.1 NMAC, Sections 7, 8 and 9, effective 7/1/2018.

16.22.1.7 DEFINITIONS:

[~~A.~~] As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

[~~(H)~~] **A.** "Act"

means the Professional Psychologist Act, Section 61-9-1 through 61-9-19 NMSA 1978.

[~~(2)~~] **B.**

"Administrator" or "board administrator" means the staff

person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

(3) C. “Adult”
means all persons 18 years of age or older.

(4) D.
“**Applicant**” means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of his or her application by the board to advance him or her to candidacy for licensure.

E. “Approved supervision program” means a formal internship or program of postdoctoral supervised experience in New Mexico that is designed to prepare an applicant for licensure and that has been accredited by a nationally recognized accreditation body, or a program of training for licensure in New Mexico that has been formally approved in advance and in writing by the board as meeting the requirements for internship or postdoctoral supervised experience.

(5) “Board”
means the New Mexico state board of psychologist-examiners.

(6) F. “Board administrator” or “administrator”
means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

(7) G. “Board certified psychiatrist” means a physician licensed in New Mexico who has been certified by the American board of psychiatry and neurology in the specialty of psychiatry or the subspecialty of child and adolescent psychiatry.

(8) H. “Board regulations” or “regulations”
means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

(9) I.
“**Candidate**” is an applicant whose application has been approved by the board and is eligible to take the online jurisprudence examination.

(10) J. “Children/adolescents” mean all persons through 17 years of age (children two-12 years; adolescents 13-17 years).

(11) K. “Client”
means a person, corporate entity, patient or organization that is a recipient of psychological services. A corporate entity or other organization is a client when the purpose of the professional contract is to provide services of benefit primarily to the organization rather than to the individuals. In the case of individuals with legal guardians, including minors and legally incompetent adults, the legal guardian shall be the client for decision-making purposes, except that the individual receiving services shall be the client for:

(a) (1)
issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitative dual relationships; and

(b) (2)
issues specifically reserved to the individual, and agreed to by the guardian prior to rendering of services, such as confidential communication in a therapy relationship;

(c) (3)
all matters specifically designated to individuals in the Mental Health Code and Children’s Code, NMSA 1978.

(12) —
“**Collaborative relationship**” means a cooperative working relationship between a conditional prescribing or prescribing psychologist and a health-care practitioner in the provision of patient care, including cooperation in the management and delivery of physical and mental health care, to ensure optimal patient care.

(13) L.
“**Confidential information**” means information revealed by a patient or clients or otherwise obtained by a psychologist, as a result of a confidential relationship where there is reasonable expectation that the

information is not to be disclosed by the psychologist without the informed written consent of the patient or client in accordance with the Public Health Act, Section 24-1-20 NMSA 1978. A confidential relationship, as used here, results from:

(a) (1)
the relationship between the patient(s) or client(s) and the psychologist, or

(b) (2)
the circumstances under which the information was revealed or obtained; when such information is revealed or obtained through the psychologist’s interaction with an individual from within a client corporation or organization, and that interaction is the result of the professional contract between the psychologist and the client corporation or organization, the confidential relationship is between the psychologist and [the] that client corporation or organization, not between the psychologist and [an] a patient or other individual within the corporation or organization; in this instance, information obtained by the psychologist from [the] a patient or other individual shall be available to the organization unless such information was obtained in a separate professional relationship with that individual and is therefore subject to confidentiality requirements in itself.

(14) M.
“**Conditional prescribing psychologist**” means a licensed psychologist who holds a valid conditional prescription certificate.

(15) —
“**Conditional prescription certificate**” means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication under the supervision of a licensed physician pursuant to the act.

(16) N. “Conflict of interest” means any situation or relationship that compromises or impairs, or appears to compromise or impair, the neutrality, independence or objectivity of a psychologist, psychologist associate, supervising physician, or board member, including relationships or situations

that arise from past or present familial, social, fiduciary, business, financial, health care provider-patient relationship, agency, or other personal relationship. Paying or receiving an appropriate fee for supervisory services is not a conflict of interest. Conflict of interest includes dual relationships as provided herein at 16.22.2.9 NMAC. ~~[If a conflict of interest or dual relationship arises during the performance of the professional duties of a psychologist, psychologist associate, supervising physician, or board member, he shall immediately report the conflict of interest or dual relationship to the board and shall cease that professional relationship.]~~

~~[(17)]~~ **Q.**

“Consultant” means a licensed psychologist who provides professional advice or opinion to [a] another licensed psychologist and who has no professional relationship with the patient or client, has no authority over the case, or has no responsibility for the services performed for the patient or client or the welfare of the patient or client.

~~[(18)]~~ **P.**

“Continuing professional education” means educational opportunities beyond doctoral education and initial entry level training as a psychologist or psychologist associate for which hourly credit is earned. It is the process through which professional licensees review psychological concepts and techniques, acquire new knowledge or skills relevant to their work, and improve their competence in current skills. These activities are intended to supplement what has already been attained in training and practice. It is an ongoing process consisting of formal learning activities at the postgraduate level that are:

~~[(a)]~~ **(1)**

relevant to psychological practice, education, and science;

~~[(b)]~~ **(2)**

enable psychologists to keep pace with emerging issues and technologies; and

~~[(c)]~~ **(3)**

allow psychologists to maintain, develop and increase competencies in order to improve services to the public and enhance contributions to the profession.

~~[(19)]~~ **Q.**

“Controlled substance” means any drug, substance or immediate precursor enumerated in schedules I through V of the U.S. Drug Enforcement Administration, Controlled Substance Act and in Sections 30-31-6 thru 30-31-10 of the act.

~~[(20)]~~ **R.**

“Court order” means the written communication of a member of the judiciary, or other court magistrate or administrator, if such authority has been lawfully delegated to such magistrate or administrator that is under the authority of law.

~~[(21)]~~ **S.** **“Criminal**

Offender Employment Act”, Sections 28-2-1 thru 28-2-6 NMSA 1978 is the statutory provision regulating the relevance and weight to be given an applicant, candidate, or licensee’s criminal record, by the board, during the licensure or renewal process.

~~[(22)]~~ **T.** **“Cultural**

competence” means the ability and the will to respond to the unique needs of an individual patient that arise from the patient’s culture, and the ability to use aspects of the person’s culture as a resource or tool to assist with the intervention. Cultural competence includes being able to:

~~[(a)]~~ **(1)**

recognize and respond to health related beliefs and cultural values;

~~[(b)]~~ **(2)**

incorporate research about disease incidence and prevalence, and treatment efficacy; and

~~[(c)]~~ **(3)**

know when to seek consultation about the patient’s culture.

~~[(23)]~~ **U.**

“Currently enrolled” means enrolled as a student in a college or university.

~~[(24)]~~ **V.**

“Custodian” means the board administrator.

W. **“Designated as a**

doctoral program in psychology by a nationally recognized designation system” means listed as an approved doctoral program by the Association of State and Provincial Psychology Boards/National Register Designation Project prior to the termination of that project on June 1, 2018.

~~[(25)]~~ **“Doctoral**

program in psychology” includes programs whose degree specify a doctoral degree in counseling, clinical or school psychology, as well as those programs the board deems to be equivalent to the requirements contained in the Professional Psychologist Act, using the standards and guidelines set forth by the APA or the ASPPB as a guide.

~~[(26)]~~ **X.**

“Drug or substance” means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories.

~~[(27)]~~ **Y.**

“Electronic signatures” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

~~[(28)]~~ **Z.**

“Electronic transmission” means the sending of information through the telephone lines, cable or internet, as in e-mail or facsimile (fax).

~~[(29)]~~ **AA.**

“Ethno-pharmacology” means the basic and clinical sciences of treatment of specific mental illness with ethnically or culturally appropriate drugs.

~~[(30)]~~ **BB.**

“Filed with the board” means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

~~[(31)]~~ **CC.**

“Geriatric” means all persons 65 years of age and over.

~~[(32)]~~ **DD.**

“Good cause” means the inability

to comply because of illness, undue hardship, or extenuating circumstances that are not willful and are beyond the control of the person asserting good cause. The person asserting good cause shall have the burden to demonstrate good cause.

[(33)] EE.

“Governmental Conduct Act” 10-16-1 thru 10-16-18 NMSA 1978 is the statutory provision which sets forth standards of conduct and ethical principles for public service.

[(34)] ~~“Health~~

~~care practitioner”~~ means a licensed physician, osteopathic physician or nurse practitioner with independent, licensed prescribing privilege.

[(35)] FF.

“Inactive status” means a procedure of the board to affirm that a licensee is not engaged in active practice.

[(36)] GG.

“Initial application” means the initial application for licensure filed with the board by an applicant not previously or currently licensed in any jurisdiction.

HH. “In-person

supervision” is supervision of psychological services where the supervisor is physically present in the same room as the trainee.

[(37)] II.

“Inspection of Public Records Act”, 14-2-1 thru 14-2-12 NMSA 1978 is the statutory provision acknowledging the fundamental right of access to public records afforded citizens and media in a democracy, and governing the administration of that right.

[(38)] JJ.

“Licensed” means licensed or certified, registered, or any other term including temporary, provisional, emergency, unrestricted, active or inactive license or licensure, when such term identifies a person whose professional behavior is subject to regulation by the board by authority of the act.

[(39)] KK.

“Licensee” means a psychologist licensed pursuant to the provisions of the act and board regulations.

[(40)] LL.

“Licensee in good standing” means a licensed psychologist who is not the

subject of a pending investigation, adjudicatory proceeding, or petition on appeal or review, or whose license is not restricted, suspended, or revoked in New Mexico or any other state or licensing jurisdiction.

[(41)] MM.

“Medical supervision” means direct oversight of the psychologist trainee’s psychopharmacological practice by a qualified supervising physician approved by the board. Supervision may be on-site or off-site as specified in the rule.

[(42)] NN.

“Medical supervisor” means a qualified supervising physician approved by the board.

[(43)] OO.

“Member of the family” means a parent, spouse, child, stepchild, grandchild, grandparent, sibling, uncle, aunt, niece or nephew, or other relative by blood, marriage, or legal process with whom the supervisor or physician supervisor has or has had a close familial relationship.

[(44)] PP.

“Member of the household” means residing within the same dwelling unit, either continuously or intermittently, regardless of whether fee or rent is paid or received.

QQ. “Military service

member” means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

[(45)] RR.

“National certification exam” means an examination that evaluates the psychopharmacological knowledge base of the applicant, is developed with the intention to administer it to psychologists seeking certificates or licenses to prescribe psychotropic medication in any state with prescriptive authority for psychologists, and meets standards acceptable to the board and the medical board.

[(46)] SS.

“Nationwide criminal history record” means information concerning a person’s arrests, indictments, or other formal criminal

charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.”

[(47)] TT.

“Nationwide criminal history screening” means a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.”

[(48)] UU.

“New Mexico administrative code” or “NMAC”, Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

[(49)] VV.

“New Mexico statutes annotated 1978 or NMSA 1978” is the official compilation of state laws.

[(50)] WW.

“Non-licensed person” means a student, an applicant or postdoctoral person working under supervision in order to satisfy licensure requirements in psychology, and employees or staff of a licensed psychologist

[(51)] XX.

“Open Meetings Act”, 10-15 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

[(52)] YY.

“Outdated test” means a test for which a revision has been available for three or more years.

[(53)] ZZ.

“Out-of-state psychologist” means a psychologist licensed in another state,

a territorial possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or a Canadian province who is in good standing in his or her licensing jurisdiction(s).

[(54)] AAA.

“Patient” means a person who is treated, examined, assessed, or interviewed by a licensed psychologist or licensed psychologist associate or a non-licensed person working under supervision as provided in these regulations. In the case of minor patients or adult patients who are legally incompetent, the legal guardian shall represent the patient for decision-making purposes, except that the patient shall be directly consulted by the psychologist or psychologist associate for:

[(a)] (1)

issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitative dual relationships;

[(b)] (2)

issues specifically reserved to the individual, and agreed to by the guardian prior to rendering of services, such as confidential communication in a therapy relationship, and

[(c)] (3)

all matters specifically designated to individuals in the Mental Health and Developmental Disabilities Code (MHDDC), Section 43-1-19 NMSA 1978, and the Children’s Code, Section 32A-1-1 thru 32A-1-20 NMSA 1978.

[(55)] BBB.

“Physician” means an allopathic or osteopathic physician.

[(56)] —

“Practice of psychology” means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means

the rendering of such psychological services to individuals, families or groups, regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling; psychoanalysis, psychotherapy, psychopharmacotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of any mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability, and psycho-educational evaluation, therapy, remediation and consultation.

[(57)] CCC.

“Practicum” means a period of supervised clinical training and practice in which specific scientific and clinical techniques and diagnoses are learned.

[(58)] DDD.

“Prescribing applicant” means a licensed psychologist who has made application to the board for a conditional prescribing or prescribing certificate.

[(59)] —

“Prescribing psychologist” means a licensed psychologist who holds a valid prescription certificate.

[(60)] EEE.

“Prescription” means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a [practitioner] prescriber shall prescribe or write a prescription.

[(61)] —

“Prescription certificate” means a document issued by the board to a

licensed psychologist that permits the holder to prescribe psychotropic medication pursuant to the act.

[(62)] FFE.

“Primary treating health care practitioner” means the health care practitioner who is directly responsible for treating a specific illness or condition of a patient. The primary treating health care practitioner may be a primary care practitioner, or may be a medical specialist.

[(63)] GGG.

“Professional relationship” means a mutually agreed-upon relationship between a psychologist and a patient(s) or client(s) for the purpose of the patient(s) or client(s) obtaining the psychologist’s professional services.

[(64)] HHH.

“Professional service” means all actions of the psychologist in the context of a professional relationship with a client or patient.

[(65)] III.

“Properly made application” means a completed form for a psychologist or psychologist associate license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment, and other requirements except examination requirements for licensure as required by the act and these regulations.

[(66)] —

“Psychologist” means a person who engages in the practice of psychology or holds himself or herself out to the public by any title or description of services representing himself or herself as a psychologist, which incorporates the words “psychological”, “psychologist”, “psychology”, or when a person describes himself or herself as above and, under such title or description offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain.

[(67)] JJJ.

“Psychopharmacology” [[aka RxP]]

means the basic and clinical science of drugs used to treat mental illnesses.

[(68)] KKK.

“Psychopharmacotherapy”

means the application of pharmacotherapeutics to psychological problems. [A key principle is the assessment of a patient’s history that helps establish the appropriate role of drug therapy. Essential steps include evaluation, physical assessment, recognizing the disorder, adequate understanding of efficacy safety, pharmaco-kinetics, pharmaco-dynamics and application in the clinical setting.]

[(69)] —

“Psychotropic medication” means a controlled substance or dangerous drug that may not be dispensed or administered without a prescription, whose indication for use has been approved by the federal food and drug administration for the treatment of mental disorders and is listed as a psychotherapeutic agent in drug facts and comparisons or in the American hospital formulary service.]

LLL. “Recent Veteran”

means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

MMM. “Reciprocity”

means facilitation of licensure for individuals holding a license as a psychologist in another jurisdiction; reciprocity does not mean that other states accept New Mexico licensees on an equal basis but is an invitation that they do so.

[(70)] NNN.

“Public Health Act”, 24-1-1 thru 24-1-30 NMSA 1978, governs the confidentiality of patient or client record.

[(71)] OOO.

“Restricted license” means a psychologist who holds a temporary, provisional, emergency or inactive license.

[(72)] PPP.

“Rule” means board regulations.

[(73)] QQQ.

“Socio-cultural” means aspects of

mental illness related to social and cultural mores and traditions of varied social and cultural groups.

[(74)] “School”

means a college or a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved the American psychological association.

(75) —

“Sponsoring psychologist” means a licensed psychologist in New Mexico who agrees to provide adequate oversight of an out-of-state psychologist ordered by a court to perform an independent examination; the sponsoring psychologist remains responsible for the professional conduct of the out-of-state psychologist and the welfare of the patient or client.]

[(76)] RRR.

“State Rules Act”, Sections 14-4-1 thru 14-4-5 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

[(77)] SSS.

“Statute” means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and “statutory authority” means the boundaries of the board’s lawful responsibility as laid out by the statute that created it.

[(78)] —

“Substantial compliance” means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplishes the reasonable objectives of the statutes or rules.]

[(79)] TTT.

“Supervisee” means any person who functions under the authority of a licensed psychologist to provide psychological services as provided in the act or board regulations.

[(80)] UUU.

“Supervisor” means a licensed psychologist who agrees to provide adequate supervision over a student, applicant, employee, staff, or other

non-licensed person and who remains ultimately responsible for the professional conduct of the non-licensed person and the welfare of the patient.

[(81)] VVV.

“Supervisory plan” means a written document signed by an applicant for psychology license or a conditional prescribing certificate and the supervisor of the applicant that describes the nature of the supervisory relationship including but not limited to the number of hours of supervision, population served, and credentials of supervisor, and is presented to the board for approval.

WWW. “Telephonic

supervision” means the supervision of psychological services through telephone or other audio format where the supervisor is not in the same physical facility as the trainee.

XXX. “Telesupervision”

means the supervision of psychological services through synchronous audio and video format where the supervisor is not in the same physical facility as the trainee.

[(82)] “Uniform

Licensing Act”, Section 61-1-1 thru 61-1-33 NMSA 1978 is the statutory provision that governs the major duties of the board in areas of:

(a) —

procedures which must be followed to accord due process to applicants for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

(b) —

rule making procedures that the board shall follow in adopting valid regulations affecting psychologists and psychologist associates.]

[(83)] YYY.

“Unrestricted license” means a license in psychology with full privileges and responsibilities as described in these regulations but is renewed annually or biennially. It does not have a limitation of a provisional license, temporary license, emergency license or inactive license as described herein.

[(84)] ZZZ.

“Year of supervised experience” means 1500 hours of psychological work conducted under supervision satisfactory to the board. The 1500 hours may be accumulated in one or two consecutive calendar years in the case of an internship, three consecutive years in the case of [post-doctoral] postdoctoral experience, or over the course of graduate training in the case of [predoctoral] doctoral experience.

(85) AAAA.

“Doctoral training program” means the program from which the applicant received his or her doctoral degree to fulfill the educational requirements for licensure (NMAC)

[B.] Definitions in

Subsection B pertain to conditional-prescribing and prescribing-psychologists only:

(1) “Adults”

mean all persons over 18 years of age through 65 years of age.

(2) “Board”

means the New Mexico state board of psychologist examiners.

(3) “Children/

adolescents” mean all persons through 18 years of age (children, 2-12 years; adolescents 12-18 years):

(4)

“Collaborative relationship” means a cooperative working relationship between a conditional prescribing or prescribing psychologist and a health-care practitioner in the provision of patient care, including cooperation in the management and delivery of physical and mental health care, to ensure optimal patient care.

(5)

“Conditional prescribing psychologist” means a licensed psychologist who holds a valid conditional prescription certificate.

(6)

“Conditional prescription certificate” means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication under the supervision of a licensed physician pursuant to the Professional Psychologist Act.

(7) “Conflict

of interest” means past or present

familial, social, fiduciary, business, financial, health-care provider-patient relationship, agency, or other personal relationship that impairs or compromises or appears to impair or compromise the supervisor’s neutrality, independence or objectivity. Paying or receiving an appropriate fee for supervisory services is not a conflict of interest. Conflict of interest includes dual relationship. If a conflict of interest or dual relationship arises during the supervision, the supervisor shall immediately report the conflict of interest or dual relationship to the board and shall cease supervision of the supervised psychologist.

(8)

“Controlled substance” means any drug, substance or immediate precursor enumerated in schedules I through V of the Controlled Substance Act.

(9)

“Drug” or **“substance”** means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories.

(10)

“Ethno-pharmacology” means the basic and clinical sciences of treatment of specific mental illness with ethnically or culturally appropriate drugs.

(11)

“Geriatric” means all persons over 65 years of age.

(12)

“Health-care practitioner” means a licensed physician, osteopathic physician or nurse practitioner with independent, licensed prescribing privilege.

(13)

“Log” means a written record of patient examination and treatment that contains elements specified in the regulations and which is required as a basis for evaluation of the applicant for licensure.

(14)

“Member of the family” means a parent, spouse, child, stepchild, grandchild, grandparent, sibling, uncle, aunt,

niece or nephew, or other relative by blood, marriage, or legal process with whom the supervisor or physician-supervisor has or has had a close familial relationship.

(15) “Member

of the household” means residing within the same dwelling unit, either continuously or intermittently, regardless of whether fee or rent is paid or received.

(16) “National

certification exam” means an examination that evaluates the psychopharmacological knowledge-base of the applicant, is developed with the intention to administer it to psychologists seeking certificates or licenses to prescribe psychotropic medication in any state with prescriptive authority for psychologists, and meets standards acceptable to the board and the medical board.

(17)

“Physician” means an allopathic or osteopathic physician.

(18)

“Practice of psychology” means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of any mental and emotional disorder or disability,

alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability, and psycho-educational evaluation, therapy, remediation and consultation.

(19) —

“Practicum” means a period of supervised clinical training and practice in which specific scientific and clinical techniques and diagnoses are learned.

(20) —

“Prescribing psychologist” means a licensed psychologist who holds a valid prescription certificate.

(21) —

“Prescription” means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a practitioner shall prescribe or write a prescription.

(22) —

“Prescription certificate” means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication pursuant to the Professional Psychologist Act.

(23) —

“Primary treating health care practitioner” means the health care practitioner who is directly responsible for treating a specific illness or condition of a patient. The primary treating health care practitioner may be a primary care practitioner, or may be a medical specialist.

(24) —

“Psychologist” means a person who engages in the practice of psychology or holds himself out to the public by any title or description of services representing himself as a psychologist, which incorporates the words “psychological”, “psychologist”, “psychology”, or when a person describes himself as above and, under such title or

description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain.

(25) —

“Psychopharmacology” means the basic and clinical sciences of drugs used to treat mental illnesses.

(26) —

“Psychopharmacotherapy” means the application of pharmacotherapeutics to psychological problems. A key principle is the assessment of a patient’s history that helps establish the appropriate role of drug therapy. Essential steps include recognition of the disorder, adequate understanding of efficacy-safety, pharmaco-kinetics, pharmaco-dynamics and application in the clinical setting.

(27) —

“Psychotropic medication” means a controlled substance or dangerous drug that may not be dispensed or administered without a prescription, whose indication for use has been approved by the federal food and drug administration for the treatment of mental disorders and is listed as a psychotherapeutic agent in drug facts and comparisons or in the American hospital formulary service.

(28) —

“School” means a college or a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved by the American psychological association.

(29) —

“Socio-cultural” means aspects of mental illness related to social and cultural mores and traditions of varied social and cultural groups.

(30) —

“Supervision” means direct oversight of the psychologist trainee’s psychopharmacological practice by qualified supervising physician approved by the board. Supervision may be on or off site as specified in the rule.

(31) —

“Applicant” means a licensed psychologist who has made application to the board for a conditional prescribing or prescribing certificate.

(32) —

“Supervisor” means a qualified supervising physician approved by the board.]

[16.22.1.7 NMAC - Rp, 16.22.1.7 NMAC, 11/15/2006; A, 3/21/2009; A, 9/16/2010; A, 4/11/2012; A, 4/30/2015; A, 7/1/2018]

16.22.1.8 [ACRONYMS USED THROUGHOUT THESE REGULATIONS INCLUDE:

A. AUCC -

Association of universities and colleges of Canada.

B. ASPPB -

Association of state and provincial psychology boards.

C. CANA - Child

Abuse and Neglect Act.

D. CMHDDA -

-Children’s Mental Health and Development Disability Act.

E. CPE - continuing

professional education.

F. CPQ - certification

of professional qualification.

G. EPPP - examination

for professional practice in psychology.

H. GCA -

Governmental Code Act

I. HIPDB - healthcare

integrity and protection data bank.

J. IPRA - Inspection

of Public Records Act.

K. MHDDC - Mental

Health and Development Disabilities Code.

L. NMAC - New

Mexico administrative code.

M. NMSA - New

Mexico statutes annotated

N. NCA - notice of

contemplated action.

O. OMA - Open

Meetings Act.

P. PES - professional

examination service.

Q. RxP -

psychopharmacology.

R. RANA - Resident

Abuse and Neglect Act.

~~S. ULA - Uniform Licensing Act.] [RESERVED]~~
[16.22.1.8 NMAC - N, 11/15/06; Repealed 7/1/2018]

16.22.1.9 [BOARD MEMBERSHIP:

~~A. Number.~~ Board members under the provisions of Subsection A of 61-9-5 NMSA 1978, the board of psychologist examiners consists of eight members appointed by the governor who are bona fide residents of New Mexico and serve for three-year staggered terms.

~~B. Appointments.~~ The members shall be appointed as follows:

~~(1) four~~ members shall be professional members who are psychologists licensed under the act, appointed by the governor from a list of names nominated by the New Mexico psychological association, the New Mexico school psychologist association and the New Mexico state psychologist association;

~~(2) one~~ member shall be an additional professional member who is licensed under the act as a psychologist or psychologist associate; and

~~(3) three~~ public members who are laymen and have no significant financial interest, direct or indirect, in the practice of psychology.

~~C. Successive appointments.~~ Each member shall be appointed for a term of three years and hold office until the expiration of his/her appointed term or until a successor is duly appointed. When the term of a member ends, the governor shall appoint that member's successor pursuant to Subsection B of 16.22.1.9 above, which was applicable to the expiring member's appointment.

~~D. Unexpired vacancy.~~ Any vacancy occurring in the board membership other than by expiration of term shall be filled by appointment by the governor for the unexpired term of the member.]

[RESERVED]
[16.22.1.9 NMAC - Rp, 16.22.1.8

NMAC, 11/15/06; Repealed 7/1/2018]

**REGULATION AND
LICENSING DEPARTMENT
PSYCHOLOGIST EXAMINERS,
BOARD OF**

This is an amendment to 16.22.2 NMAC, Sections 8, 9, 10, 14, 15 and 16, effective 7/1/2018.

**16.22.2.8 RULES OF
COMPETENCE:**

A. Limits on practice. The psychologist shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

B. Maintaining competency. The psychologist shall maintain current competency in the areas in which he practices, through continuing professional education, consultation, and/or other procedures, in conformance with current standards of scientific and professional knowledge.

C. Cultural competency. Psychologists with restricted and unrestricted licenses and psychologist associates shall complete eight hours of cultural competence coursework promulgated by the board during the first year of licensure; and also shall take four additional hours in cultural competence, as deemed satisfactory to the board, every two years as detailed in 16.22.9 NMAC.

D. Adding new services and techniques. The psychologist, when developing competency in a service or technique that is either new to the psychologist or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals, and shall seek appropriate education and training in the new area. The psychologist shall inform clients or patients of the innovative nature and the known risks and benefits associated with the services, so that the client or patient can exercise freedom of choice concerning such services.

E. Referral.

The psychologist shall make or recommend referral to professional, technical, or administrative, or public resources when such referral is clearly in the best interest of the clients or patient(s).

~~[F. Sufficient professional information.~~ A psychologist shall not render a formal professional opinion about a person or diagnose or treat a person without direct and substantial professional contact and a formal assessment of that person.]

F. Bases for Assessments. Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings except when:

(1) psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions;

(2) despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of their conclusions or recommendations; or

(3) psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

G. Maintenance and retention of records.

(1) The psychologist rendering professional services to a client or patient shall maintain professional records that include:

(a) the presenting problem(s) or the reason the client(s) or patient(s) sought the psychologist's services;

(b) diagnosis and/or clinical formulation;

(c) the fee arrangement;

(d) the date and substance of each billed contact or service;

(e) any test results or other evaluative results obtained and any basic test data from which they were derived;

(f) notation and results of formal consultations with other providers;

(g) a copy of all test or other evaluative reports prepared as part of the professional relationship;

(h) the date of termination of services.

(2) The psychologist shall ensure that all data entries in the professional records are maintained for a period of not less than five years after the last date that service was rendered. The psychologist shall comply with other legal requirements for record retention, even if longer periods of retention are required for other purposes.

(3) The psychologist shall store and dispose of written, electronic, and other records in a manner that protects confidentiality.

(4) For each person professionally supervised, the psychologist shall maintain for a period of not less than five years after the last date of supervision a record of the supervisory session that shall include, among other information, the type, place, and general content of the session.

(5) Upon request by the client, patient, or legal representative of the client or patient, the psychologist shall release records under his control, except as otherwise provided in these rules and regulations or state law. Lack of payment for services does not constitute grounds for refusing to

release client or patient records.

~~[H.] Continuity of care.~~ The psychologist shall make arrangements for another appropriate professional or professionals to deal with emergency needs of his clients, as appropriate, during periods of his foreseeable absences from professional availability.

[16.22.2.8 NMAC - Rp, 16.22.2.8 NMAC, 11/15/2006; A, 09/16/2010; A, 7/1/2018]

16.22.2.9 [IMPAIRED OBJECTIVITY AND] DUAL RELATIONSHIPS:

~~[A.] Impaired psychologist.~~ The psychologist shall not undertake or continue a professional relationship with a client when the psychologist is impaired due to mental, emotional, physiologic, pharmacologic, or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the psychologist shall terminate the relationship in an appropriate manner, shall notify the client in writing of the termination, and shall assist the client in obtaining services from another professional.

~~B. Prohibited dual relationships:~~

~~(1) A.~~ The psychologist shall not undertake or continue a professional relationship with a client or patient when the objectivity or competency of the psychologist is compromised because of the psychologist's present or previous familial, social, sexual, emotional, or legal relationship with the client or a relevant person associated with or related to the client.

~~(2) B.~~ The psychologist, in interacting with a current or former client or patient to whom the psychologist has at any time within the previous 12 months rendered counseling, psychotherapeutic, or other professional psychological services for treatment or amelioration of emotional distress or behavioral inadequacy, shall not:

~~(a) (1)~~ engage in any verbal or physical

behavior toward the client or patient which is sexually seductive, demeaning, or harassing; or

~~(b) (2)~~ engage in sexual intercourse, or sexual contact or other sexual intimacies with the client or patient; or

~~(c) (3)~~ enter into a business or financial (other than fees for professional services) or other potentially exploitative relationship with the client or patient.

~~(3) C.~~ The prohibitions set out in Paragraph (2) of Subsection B of 16.22.2.9 NMAC shall not be limited to the 12-month period but shall extend longer unless the psychologist can demonstrate that the client or patient is not vulnerable to exploitative influence by the psychologist. The psychologist who engages in such sexual or financial relationship after the 12 months following cessation or termination of treatment bears the burden of proving that there has been no exploitation, in light of all relevant factors, including:

~~(a) (1)~~ the amount of time that has passed since the therapy terminated;

~~(b) (2)~~ the nature and duration of the therapy;

~~(c) (3)~~ the circumstances of termination;

~~(d) (4)~~ the client or patient's personal history;

~~(e) (5)~~ the client or patient's mental status;

~~(f) (6)~~ the likelihood of adverse impact on the client or patient and others; and

~~(g) (7)~~

any statements or actions made by the psychologist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or other potentially exploitative relationship with the patient or client.

~~(4) D.~~ The psychologist shall not serve in varied capacities that confuse the role of the psychologist. Such confusion is most likely when the psychologist changes from one role to another and fails to make clear who is the client or patient. The psychologist

is responsible for taking appropriate precautions to avoid harmful dual relationships and is responsible for informing all affected individuals, preferably in writing, when such a change is necessary. Examples of situations requiring extra caution include:

(a) (1)

treating a person who is the family member of a current or former patient or client;

(b) (2)

treating a family as a unit after treating a family member or, conversely, treating a family member after treating the family as a unit;

(c) (3)

moving from a confidential role to a non-confidential one, such as from therapist or mediator to evaluator, arbitrator, or "wise-person"; and

(d) (4)

moving from a position of authority into a confidential role, such as from court-appointed evaluator to the role of therapist.

(5) E. If one family member is a minor, the psychologist shall ensure that the child understands how the role of the psychologist is changing (for example, moving from therapist for the child to therapist for the family) and shall explain the limits of confidentiality that result from this changed role.

(6) F. When a psychologist agrees to provide services to several persons who have a relationship (such as husband and wife or parents and children), the psychologist shall clarify at the outset:

(a) (1)

which of the individuals are patients or clients and

(b) (2)

the relationship the psychologist will have with each person; this clarification includes the role of the psychologist and the possible uses of services provided or information obtained.

(7) G. As soon as it becomes apparent that the psychologist may be called on to perform potentially conflicting roles (such as marital counselor to

husband and wife and then witness for one party in a divorce proceeding), the psychologist shall clarify and withdraw from or adjust roles, as appropriate.

[16.22.2.9 NMAC - Rp, 16.22.2.9 NMAC, 11/15/2006; A, 3/21/2009; A, 7/1/2018]

16.22.2.10 PATIENT WELFARE:

A. Informed consent for therapy and evaluation.

(1) The psychologist shall appropriately document and obtain appropriate informed consent for therapy or related procedures or evaluation. Informed consent means that the person:

(a)

has the capacity to consent;

(b)

has been informed of significant information concerning the therapy or evaluation in language that is understandable; and

(c)

has freely and without undue influence expressed consent.

(2) When persons are legally incapable of giving informed consent, the psychologist shall obtain informed consent from a legally authorized person, if such substitute consent is permitted by law.

(3) In addition, the psychologist shall:

(a)

inform those persons who are legally incapable of giving informed consent about the proposed interventions or evaluations in a manner commensurate with the persons' psychological capacities;

(b)

seek or obtain their assent to those interventions or evaluations; and

(c)

consider such person's preferences and best interests.

B. Limits of confidentiality in forensic, court-ordered, or child custody evaluations.

(1) The psychologist shall explain the limits

of confidentiality to parties at the outset, before the evaluation begins, and the explanation should be documented. The psychologist shall also clarify how the information will be used and which parties or entities will have access to the evaluation. The procedures of the evaluation and their purpose should be described to the parties.

(2) In the case of child custody evaluations, the limits of confidentiality shall be explained at the initial meeting with each parent and the children.

C. Terminating the professional relationship.

(1) The psychologist shall not abandon his clients or patients.

(2) The psychologist shall terminate a professional relationship when it becomes clear that the patient no longer needs the service, is not benefiting from the service, is being harmed by continued service, or if the psychologist is acting outside of his or her area of competence.

(3) Prior to termination, for whatever reason, except where precluded by circumstances outside of the control of the psychologist including the patient's conduct [(for example, the patient or client moves to another state without giving notice to the psychologist and the patient is not a danger to self or others)], or changes in administrative or financial arrangements, if possible, the psychologist shall discuss the patient's views and needs, provide appropriate pre-termination counseling, suggest alternative service providers as appropriate, and take other reasonable steps to facilitate transfer of responsibility to another provider, if the patient needs one immediately.

~~**D. Stereotyping.** The psychologist shall not impose any stereotypes, which would interfere with the psychologist's obligation to provide objective psychological services to the client or patient.~~

~~**E. Sexual or other dual relationship.** The psychologist~~

shall not enter into a sexual or other dual relationship, as specified in Subsection B of 16.22.2.9 NMAC of this code of conduct.]

D. Impaired

psychologist. The psychologist shall not undertake or continue a professional relationship with a client when the psychologist is impaired due to mental, emotional, physiologic, pharmacologic, or substance abuse conditions.

E. Continuity of

care. The psychologist shall make arrangements for another appropriate professional or professionals to deal with emergency needs of his clients, as appropriate, during periods of his foreseeable absences from professional availability. The psychologist shall also make advance arrangements for managing the transfer of care for his clients or the closure of his clients' cases upon his illness, incapacity or death.

F. Exploitative

relationships.

(1) The psychologist shall not exploit persons over whom the psychologist has supervisory, evaluative, or other authority such as applicants, supervisees, employees, research participants, and clients or patients.

(2) The psychologist shall not engage in sexual relationships with applicants, supervisees in training over whom the psychologist has evaluative or direct authority.

G. Solicitation

of business by patients. The psychologist shall not induce the patient to solicit business on behalf of the psychologist.

H. Referrals.

The psychologist providing services to a client or patient shall make an appropriate referral of the client or patient to another professional when requested to do so by the client or patient, when such a referral is in the best interest of the client or patient or when the client or patient presents symptoms or behaviors that are outside the psychologist's area of practice.

I. Consultations.

When consulting with colleagues, the psychologist:

(1) shall not share confidential information that could lead to the identification of a patient, client, research participant, or other person or organization without prior written consent; and

(2) shall share information only to the extent necessary to achieve the purposes of the consultation.

J. Avoiding harm.

Psychologists take reasonable steps to avoid harming their patients, research participants, applicants and others with whom they work, and minimize harm where it is foreseeable and unavoidable.

[16.22.2.10 NMAC - Rp, 16.22.2.10 NMAC, 11/15/2006; A, 7/1/2018]

16.22.2.14 FEES AND STATEMENTS:

A. Disclosure of charges for services. The psychologist shall provide complete and accurate information about the charge of professional services to the client or patient, a prospective client or patient, or third-party payor.

B. Accuracy in reports to payors and funding sources. In reports to payors for services or sources of research funding, the psychologist shall accurately state the nature of the research or services provided, the fees or charges, and, where applicable, the identity of the provider, the findings, and the diagnosis.

C. Referrals and fees.

When a psychologist pays, receives payment from, or divides fees with another professional other than in an employer-employee relationship, the payment to each shall be based on the services (clinical, consultative, administrative, or other) provided and shall not be based on the referral itself. Referral fees are prohibited.

D. Fees and financial arrangements. As early as is feasible in a professional or scientific relationship, the psychologist and the patient, or client, should reach an agreement specifying the compensation and the billing

arrangements.

(1) The psychologist shall not misrepresent his fees.

(2) If limitations to services can be anticipated because of the client or patient's finances, the psychologist should discuss such anticipated limitations with the patient or client.

(3) If the patient or client does not pay for services as agreed, and if the psychologist wishes to use collection agencies or legal measures to collect the fees, the psychologist shall first inform the patient or client that such measures will be taken and provide an opportunity for the patient or client to make prompt payment.

(4) Prior to conducting a custody evaluation, the psychologist shall clarify to the parties involved the charges, or estimation of costs, and the manner in which fees will be collected. A specific written fee agreement shall be signed by all parties.

~~[(5) A psychologist's fee shall include indirect costs of conducting a private practice (for example, secretarial fees, office supplies, durable materials, etc.) A psychologist shall not bill the client or patient for additional indirect costs beyond those included in the psychologist's fee.]~~

[16.22.2.14 NMAC - Rp, 16.22.2.14 NMAC, 11/15/2006; A, 7/1/2018]

16.22.2.15 ASSESSMENT PROCEDURES:

A. Confidential information. The psychologist shall treat the results of a psychological assessment as confidential information subject to the same rules and regulations as other patient information.

B. Use of assessment in general and with special populations. Psychologists who administer, score, interpret, or use assessment techniques shall be familiar with reliability, validity, standardization, comparative, and outcome studies of the techniques they use and with the proper

application and use of those techniques.

(1) The psychologist shall recognize limits of the confidence with which diagnoses, judgments, or predictions can be made about individuals.

(2) The psychologist shall identify situations in which particular assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation because of factors such as an individual's gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

C. Communication of results. The psychologist shall communicate results of the assessment to the client or patient, parents, legal guardians, or other agents of the client or patient in as clear and understandable a manner as reasonably possible and with respect for the client or patient.

D. Reservations concerning results. The psychologist shall include in the assessment report the results of any limitations of the assessment procedures as may apply to the reliability or validity of the assessment techniques or the interpretation of results.

(1) Issues of individual differences, such as language, ethnicity, culture, socioeconomic, religion, disability, and lifestyle differences, should be carefully considered and addressed whenever relevant.

(2) Any limitations of results derived from the factors in Paragraph (1) of Subsection D of 16.22.2.15 NMAC should be clearly stated in the psychological report. The psychological report of an individual on whom psychological tests are not normed or adequately normed should clearly indicate the limitations of the assessment and the need for caution in interpreting test results.

E. Information for professional users.

(1) The psychologist offering an assessment

procedure or automated interpretation service to non-psychologist professionals shall accompany this offering with information that fully describes:

(a) the development of the assessment procedure or service;

(b) evidence of validity and reliability; and

(c) characteristics of the normative population.

(2) The psychologist shall explicitly state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The psychologist shall ensure that advertisements for the assessment procedure or interpretive service are factual and accurately descriptive.

~~[F.] **Opinions about individuals who are not directly evaluated.** The psychologist shall not render public or professional opinions regarding the psychological functioning of any individual who has not been personally evaluated by that psychologist.]~~

~~[G.] **E. Assessing quality of parenting in child custody evaluations.** There may be situations in which one parent is unavailable for direct evaluation due to geographic distance, severe pathology, or refusal to participate. While the psychologist can assess the quality of parenting of the available parent, no comparison can be made in terms of which parent is better; nor can conclusions be derived about the fitness or level of psychological functioning of the unavailable parent.~~

~~[H.] **G. Collateral contacts in child custody evaluations.** The identification, extent, and purpose of collateral contacts made in the course of an evaluation shall be clearly explained early, even within the referral process. Collateral contacts include people who represent a major presence in the children and parents' environment.~~

~~[I.] **H. Test settings.** Clients or patients should take~~

standardized tests in a setting that will preserve the integrity of the tests and the information. When possible, all assessment procedures and techniques should be administered in a clinical setting.

~~[J.] **I. Single-test assessments.** A single-test assessment should not be the sole basis for major opinions or decisions.~~

~~[K.] **J. Outdated tests.** The psychologist shall not base assessments, decisions, or recommendations on outdated tests or test data as defined in Paragraph (49) of Subsection A of 16.22.1.7 NMAC. [16.22.2.15 NMAC - Rp, 16.22.2.15 NMAC, 11/15/2006; A, 7/1/2018]~~

16.22.2.16 TEST SECURITY:
A. Limits of

reproduction and description of test materials. The psychologist shall not reproduce or describe in public or in publications subject to general distribution any psychological tests or other assessment devices, the value of which depends in whole or in part on the naiveté of the subject, in ways that might invalidate the techniques. The psychologist shall limit access to such tests or devices to persons with professional interests who will safeguard their use.

B. Safeguarding test materials. The psychologist shall safeguard testing materials in accordance with the necessity to maintain test security. The psychologist should take ~~[a]]~~ reasonable measures to protect test manuals, testing stimuli, and raw test data from disclosure to those who are not qualified to properly appraise those materials. ~~[The psychologist is required to release such materials only to those licensed and qualified in the use and interpretation of psychological tests and testing materials. If test materials are sought by subpoena or discovery request, the psychologist shall seek a protective order from a court of competent jurisdiction in order to maintain test security. Thereafter, the psychologist shall comply with the court order.]~~ Appropriate measures to safeguard test materials include educating non-

psychologists about the professional duties of psychologists and the importance of safeguarding the tests, and asking that the materials be released only to qualified persons.
[16.22.2.16 NMAC - Rp, 16.22.2.16 NMAC, 11/15/2006; A, 7/1/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

This is an amendment to 16.22.3 NMAC, Part Name and Sections 2, 6, 9 and 10, effective 7/1/2018.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 22 PSYCHOLOGISTS AND PSYCHOLOGIST ASSOCIATES PART 3 ~~[NON-LICENSED PSYCHOLOGIST/APPLICANT WITH AN INDEPENDENT MENTAL HEALTH LICENSE]~~ NON-LICENSED DOCTORAL STUDENTS, PSYCHOLOGY INTERNS AND POST- DOCTORAL TRAINEES; NON LICENSED EMPLOYEES AND AGENTS

16.22.3.2 SCOPE: This part applies to the board, licensees, doctoral students in psychology, psychology interns, unlicensed individuals acquiring post-doctoral experience under supervision, applicants for licensure, non-licensed employees or agents of licensees, and the general public.
[16.22.3.2 NMAC - Rp, 16.22.3.2 NMAC, 11/15/2006; A, 7/1/2018]

16.22.3.6 OBJECTIVE: The objectives of this part are to:

A. set forth the limitations and conditions on the practice of psychology that apply to [applicants] students while supervised in a course of study at a school or college, non-licensed persons who practice under supervision in order to satisfy the requirements for licensure, and non-licensed staff or

employees of licensees; and ~~[non-licensed persons licensed in another jurisdiction who perform court-ordered evaluations in New Mexico, and]~~

B. establish the extent that licensees who supervise or sponsor non-licensed persons are responsible for the conduct of the non-licensed person.

[16.22.3.6 NMAC - Rp, 16.22.3.6 NMAC, 11/15/2006; A, 7/1/2018]

16.22.3.9 SUPERVISION OF NON LICENSED PERSONS:

A. **Responsibility of supervisors and violations.** The supervisor shall not assist a non-licensed person in the performance of any activity that constitutes the practice of psychology except as allowed by this part. A supervisor shall have functional authority over and professional responsibility for the work of the non-licensed person. A supervisor who assists a non-licensed person in the practice of psychology in violation of this part, by acts of omission or commission, or who provides inadequate supervision over a non-licensed person is subject to disciplinary action. The grounds for disciplinary action may include, without limitation, aiding and abetting the practice of psychology by a non-licensed person; incompetent practice of psychology; willful or negligent violation of the act; allowing the supervisor's name or license to be used in connection with a non-licensed person who performs psychological services outside of the area of the non-licensed person's training, experience, or competency; or abandonment of the patient or client.

B. **Qualifications of supervisors.** The supervisor shall be a licensed psychologist. The supervisor shall have training or experience in the specific area of practice being supervised. The supervisor may assign non-licensed persons to other qualified specialists under the supervisor's authority for specific skill training. The other specialist shall have a clearly established practice and shall possess demonstrable teaching skills. The

supervisor shall limit the number of non-licensed persons under supervision, taking into account the requirements of the supervisor's principal work or practice and clinical responsibilities, to ensure that the supervision provided and the practice are consistent with professional standards. The supervisor shall not supervise an applicant who is a member of the supervisor's immediate or extended family, who has a financial interest in the supervisor's business or practice, or with whom the supervisor has a dual relationship.

C. **Duties of the supervisor.** The supervisor has the following duties to his patients or clients, the non-licensed person, and the public.

(1) The supervisor has ultimate responsibility to the patient or client for all professional psychological services rendered, whether rendered by the supervisor or the non-licensed person.

(a) The supervisor shall ensure that the patient or client knows the supervisory status of the non-licensed person and that consent is obtained.

(b) The supervisor shall ensure that the patient or client understands the possibility that a third-party payor may not reimburse for services rendered by the non-licensed person.

(c) The supervisor shall ensure that the patient or client is aware of the non-licensed person's qualifications and functions.

(d) The supervisor shall be available to patients or clients, shall be available to the non-licensed person for professional guidance and direction and intervention as needed, and shall be responsible for proper record-keeping and proper documentation in the patient's or client's case file, progress notes, or medical record.

(2) Unless the applicant holds an independent mental health license issued by the New Mexico counseling and therapy practice board or is an independent social worker licensed by the

New Mexico board of social work examiners, the supervisor shall be responsible for billing for services and receipt or collection of payment. Bills, statements, invoices, or requests for payment in any form shall accurately and clearly identify the work performed and by whom.

(3) The supervisor maintains ultimate responsibility for and has an ongoing duty to actively supervise the non-licensed person's work performance and conduct to ensure adherence to the act and to board regulations.

(4) The supervisor shall ensure that a non-licensed person for whose work the supervisor is responsible does not engage in any activity, which, if engaged in by the supervisor, would constitute a violation of the act or the board regulations. The supervisor shall ensure, for example, that the non-licensed person:

(a) does not engage in a dual relationship;

(b) preserves the confidentiality of patient or client information;

(c) does not misrepresent his status, credentials, or qualifications to the patient or client or to others;

(d) does not mislead others or misrepresent his status to collect fees for services; and

(e) does not abuse drugs, substances, or alcohol to an extent or manner that endangers himself or another or impairs his ability to perform the duties required.

(5) The supervisor shall ensure that the non-licensed person works within his area of training, education, and competence.

(6) The supervisor shall adequately monitor the work of the non-licensed person to the extent necessary to protect the welfare of the patient or client. The supervisor shall ensure that the patient or client is properly evaluated and treated. The supervisor shall assess the skills and functioning of the

non-licensed person on an ongoing basis to ensure that the non-licensed person is acting within his area of training, education, and competence. The supervisor shall prepare and document the plan of supervision, if applicable.

D. Doctoral students [/~~applicants~~] under supervision.

Students [/~~applicants~~] enrolled in a graduate-level clinical counseling or school psychology training program who are rendering services under supervision and who have not applied for licensure are exempt from the act as specified under Section 61-9-16 NMSA 1978. Students [/~~applicants~~] shall not directly charge a patient or third-party payor a fee for the services performed. The supervisor shall accept [only] supervisory responsibility only over students [/~~applicants~~] currently enrolled in a graduate-level program, who are under the auspices of a bona fide [internship] practicum or externship program with a designated faculty advisor who shall be responsible for coordinating students [/~~applicants~~] services and training. Students [/~~applicants~~] shall not render any psychological services that are not supervised by a qualified supervisor as defined in this part.

E. Registered psychologist interns and post-doctoral psychology trainees.

(1) Psychology interns and post-doctoral psychology trainees doing their training in New Mexico and who are enrolled in an approved supervision program as defined in Subsection F of 16.22.1.7 NMAC must register with the board.

(2) Registered psychology interns and post-doctoral psychology trainees working under approved supervision are allowed to practice psychology as specified under Section 61-9-16 NMSA 1978.

(3) Individuals who are enrolled in a formal internship or program or a postdoctoral supervised experience that has been accredited by a nationally recognized accreditation body will be registered based

on documentation, in a manner satisfactory to the board, of enrollment in that approved training program.

(4) Psychology interns and post-doctoral trainees doing their training in New Mexico must apply for and receive formal approval of their training program unless they are in a formal internship program as described in Paragraph (3) of Subsection E of 16.22.3.9 NMAC and must register with the board.

(5) Interns and post-doctoral trainees shall not directly charge a patient or third-party payor a fee for the services performed.

(6) Registration as a psychology intern or post-doctoral trainee shall be for the term of the formal internship or traineeship not to exceed two years total or as approved by the board. [16.22.3.9 NMAC - Rp, 16.22.3.8 NMAC, 11/15/2006; A, 7/1/2018]

16.22.3.10 ~~[LIMITED PERMISSION TO LICENSEES FROM OTHER JURISDICTIONS TO PERFORM COURT-ORDERED INDEPENDENT EXAMINATION:~~

~~A. A licensed or certified psychologist from another state, a territorial possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico (an out-of-state psychologist) may conduct a court-ordered independent psychological examination, which shall be limited to performing psychological assessments, tests, or evaluations, only in accordance with the provisions of this subsection:~~

~~B. The out-of-state psychologist shall file with the board in writing a request for permission to conduct a court-ordered independent examination at least 30 days in advance of providing any professional psychological services in New Mexico. The out-of-state psychologist shall attach a copy of the court order, shall attach a copy of a current resume or curriculum~~

vitae, and shall identify a New Mexico-licensed psychologist in good standing who agrees to sponsor the out-of-state psychologist. The out-of-state psychologist shall be a licensee in good standing in each jurisdiction in which the psychologist holds a license. A \$150 fee will be assessed for the processing of the request.

C. The board will grant limited permission to conduct a court-ordered independent examination only if the out-of-state psychologist acknowledges and agrees to the following limitations and conditions:

(1) The psychologist shall agree to perform the court-ordered examination in accordance with applicable provisions of the act and board regulations.

(2) The psychologist shall agree that the psychological services shall be limited to only services reasonable and necessary to satisfy the requirements of a specific court-ordered examination in an individual cause of action. In no event shall the board grant permission to the out-of-state psychologist to render services for the purpose of preventing, eliminating, or treating symptomatic, maladaptive, or undesired behavior or for the purpose of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, or mental health.

(3) The psychologist shall agree to perform the services in New Mexico within the number of days specified by the board.

(4) The psychologist shall agree to claim no right, entitlement, or privilege to engage in the practice of psychology in the state of New Mexico except as allowed under the act and board regulations.

(5) The psychologist shall agree that the limited permission granted shall not be used or construed as a determination by the board that the psychologist qualifies for a license to practice psychology in New Mexico or that the psychologist is competent

to perform the court-ordered examination:

(6) The board may impose other limitations or conditions as necessary to ensure compliance with the provisions of the act or board regulations:

(7) If the out-of-state psychologist violates the conditions imposed by the board or violates the act or board regulations, the board shall file an official complaint in any jurisdiction in which the psychologist is licensed or certified alleging that the psychologist has willfully or negligently violated the New Mexico professional psychologist act.

(8) The sponsoring psychologist shall agree in writing to sponsor an out-of-state psychologist as provided in this part. The sponsor shall certify that (a) the sponsor has made reasonable inquiry regarding the out-of-state psychologist's qualifications and reputation; (b) to the sponsor's knowledge, the out-of-state psychologist is a licensee in good standing qualified by skill, education, and experience to conduct the court-ordered examination; and (c) the out-of-state psychologist has not used fraud or deception in requesting or obtaining permission from the board to conduct the court-ordered examination. The sponsor shall agree that willful or negligent certification or a violation by the out-of-state psychologist of the conditions imposed by the board or of the act or board regulations may be grounds for the board to take disciplinary action against the sponsor for aiding or abetting the practice of psychology by a person not licensed by the board.]

[RESERVED]

[16.22.3.10 NMAC - Rp, 16.22.3.8 NMAC, 11/15/06; Repealed 7/1/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

This is an amendment to 16.22.4 NMAC, Sections 2 and 8, effective

7/1/2018.

16.22.4.2 SCOPE: The provisions of Part 4 apply to all applicants for licensure except applicants applying for reciprocity (16.22.5.10 and 16.22.5.11 NMAC) and foreign trained individuals (16.22.5.15 NMAC).

[16.22.4.2 NMAC - Rp, 16.22.4.2 NMAC, 11/15/2006; A, 7/1/2018]

16.22.4.8 EDUCATIONAL REQUIREMENTS:

A. The board shall issue a license as a psychologist to an applicant, otherwise qualified, who furnishes evidence satisfactory to the board that the applicant is a graduate of a doctoral program that is designated as a doctoral program in psychology by [association of state and provincial psychology boards (ASPPB)] a nationally recognized designation system or that is accredited by a nationally recognized accreditation body and hold a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology.

B. It is the responsibility of the prospective applicant to provide evidence, at the time of application that the program from which he or she graduated [is in substantial compliance with] meets the requirements of the Professional Psychology Act.

[16.22.4.8 NMAC - Rp, 16.22.4.8 NMAC, 11/15/2006; A, 03/21/2009; A, 9/16/2010; A, 7/1/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

This is an amendment to 16.22.5 NMAC, Part Name and Sections 6, 8, 9, 10, 11, 12, 13, 14 and 15, effective 7/1/2018.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 22 PSYCHOLOGISTS

**AND PSYCHOLOGIST
ASSOCIATES****PART 5 PSYCHOLOGISTS:
APPLICATION
[REQUIREMENTS;]
PROCEDURES****16.22.5.6 OBJECTIVE:**

This part establishes ~~[requirements for eligibility to apply and establishes application procedures and supervisory requirements]~~ procedures for applying for licensure as a psychologist and demonstrating to the board one's qualifications for licensure.

[16.22.5.6 NMAC - Rp, 16.22.5.6 NMAC, 11/15/2006; A, 7/1/2018]

**16.22.5.8 APPLICATION;
EXAMINATION; PROCESS:**

A. A non-refundable application fee set by the board is due at the time of each initial application. Additional fees may be charged and will be collected by the board, as necessary, for the administration of examinations.

B. The applicant may be considered for licensure if ~~[he]~~ the applicant fulfills conditions of ~~[16.22.5.9, 16.22.5.10, 16.22.5.11, 16.22.5.12, 16.22.5.13, 16.22.5.14 or 16.22.5.15 NMAC;]~~ 16.22.4 NMAC, 16.22.6 NMAC, and 16.22.7 NMAC. The only exceptions to these requirements apply to reciprocity for licensure in another state as defined in 16.22.5.10 NMAC and 16.22.5.11 NMAC, and foreign trained individuals as defined in 16.22.5.15 NMAC.

C. Nationwide criminal history screening: All applicants for initial licensure in any category in New Mexico are subject to a national criminal history screening at their expense. All applicants must submit two full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

(1)

Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization

for criminal background screening and fee.

(2)

Applications will be processed pending the completion of the nationwide criminal background screening.

(3)

If the criminal background screening reveals a felony or a violation of the Psychologist Examiners Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.22.5.8 NMAC - Rp, 16.22.5.9 NMAC, 11/15/2006; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018]

**16.22.5.9 [APPLICATIONS
NOT PREVIOUSLY LICENSED
IN ANY JURISDICTION]
APPLICATION FOR
LICENSURE:**

A. ~~[Initial application procedure. To open an initial application file, the applicant]~~ All applicants shall submit the following to the satisfaction of the board or an agency designated by the board:

(1)

a completed and signed application;

(2)

~~verification of predoctoral internship and supervision as described in 16.22.5 NMAC;~~

(3)

~~(2)~~ the application fee as required by the board;

(4)

~~(3)~~ verification of educational requirements as described in 16.22.4 NMAC by official transcripts directly from the institution's office of the registrar;

(4)

~~verification of pre-doctoral and post-doctoral supervision as defined in 16.22.6 NMAC.~~

(5)

~~if the applicant chooses, a notarized letter from the graduate office of the degree-granting institution that documents the date of the doctoral degree; indicating (a) the date of completion of all requirements for the~~

doctoral degree, and (b) the specific psychology program that the applicant completed;

(6)

~~(5)~~ three letters of reference; dated within the last two years and two of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency and moral character;

(7)

~~verification of postdoctoral supervision as described in 16.22.6 NMAC;]~~

(6)

completion or application to complete examination requirements; either

(a)

for applicants licensed in another jurisdiction, verification of a passing score on the Examination for Professional Practice in Psychology (EPPP) as defined in 16.22.7 NMAC; or

(b)

for applicants who have not passed the EPPP, a request to be permitted to take the EPPP.

(7)

for individuals holding a certificate of professional qualification or national register health service provider in psychology credential, a verified or certified copy of the applicant's CPQ or national register HSPP credential as defined in 16.22.5.11 NMAC.

(8)

for applicants who are licensed in another jurisdiction and who are eligible for reciprocity as defined in 16.22.5.10 NMAC, verification of the documentation defined in that section.

B.

~~[The applicant must have all documents in the board office]~~ Applicants who have not taken and passed the EPPP must complete all requirements of Paragraphs 1 through 6 of Subsection A of 16.22.5.10 NMAC at least 60 days prior to taking the [examination for professional practice in psychology (EPPP)] EPPP.

C.

Complete applications will be reviewed by the board or its designee and a notification of approval, denial or need for additional information will be issued to the applicant.

[D.]

~~The written~~

examination for licensure is the EPPP, developed by the association of state and provincial psychology boards (ASPPB) and administered by the professional examination service (PES). An applicant shall be eligible to take the EPPP three times within the 18 months following the date the applicant was notified of the board's approval of their application.

~~(1)~~ If the applicant does not pass the EPPP any of the three times it is administered within 18 months, the applicant shall submit a new initial application.

~~(2)~~ Upon the submission of the new application, the rules and regulations in effect at the time the new initial application is received will be used to determine whether an applicant meets the requirements for licensure.

~~E.] D.~~ The applicant shall take and pass a jurisprudence examination as defined in 16.22.7 NMAC.

~~[F:] E.~~ During the first year of licensure an applicant shall furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

~~[G:] E.~~ When the applicant fulfills all the requirements of this section, a license will be issued. ~~[If postdoctoral supervised experience is incomplete, the applicant will be issued an 18-month provisional license. This is not subject to renewal or extension. The applicant will be issued an unrestricted license when the applicant has met the postdoctoral supervised experience as defined in 16.22.6 NMAC.]~~

~~H.~~ The applicant may request an additional 12 months to complete necessary supervisory hours in accordance with the act, but the applicant will be practicing under supervision and under the supervisor's license and can no longer hold a provisional license. This request will only be honored 1 time.]

[16.22.5.9 NMAC - Rp, 16.22.5.10 NMAC, 11/15/2006; A, 3/21/2009; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018]

16.22.5.10 APPLICANTS HOLDING A VALID LICENSE

IN ANOTHER STATE FOR TEN YEARS OR MORE SEEKING LICENSURE UNDER SECTION 61-9-10 - RECIPROCITY:

A. An applicant seeking licensure under this section may obtain a license pursuant to Section 61-9-10 of the act if the applicant fulfills the following conditions.

(1) At the time of application, the applicant shall possess a current license to practice psychology in another state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or ~~[other country]~~ Canadian Province.

(2) The applicant shall possess a doctoral degree in psychology or a degree that is substantially equivalent and is acceptable by the board.

(3) The applicant shall have no pending disciplinary actions, no formal disciplinary actions issued against the license in the last five years and no past suspensions or revocations.

(4) The applicant shall have been licensed for a minimum of 10 years.

~~(5)~~ The applicant shall have obtained a passing score on the EPPP as defined in 16.22.7 NMAC.

B. Application under this board regulation shall be made on a form approved by the board. The applicant shall ~~[submit the following to the satisfaction of the board:]~~ apply as specified in 16.22.5.9 NMAC.

~~(1)~~ completed and signed application;

~~(2)~~ application fee as required by the board; (for fee schedule, see 16.22.13.8 NMAC)

~~(3)~~ license verification from all jurisdictions in which the applicant is or has been granted a psychologist license;

~~(4)~~ official doctoral degree college or university transcripts; and

~~(5)~~ three current letters of reference; applicants under this section are not required to submit verification of predoctoral

internship and postgraduate experience:

~~C.~~ Applicant must take and pass a jurisprudence examination and during the first year of licensure furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.] [16.22.5.10 NMAC - Rp, 16.22.5.11 NMAC, 11/15/2006; A, 3/21/2009; A, 4/11/2012; A, 2/22/2013; A, 7/1/2018]

16.22.5.11 APPLICANTS HOLDING AN ASPPB CERTIFICATION OF PROFESSIONAL QUALIFICATION OR A NATIONAL REGISTER HEALTH SERVICE PROVIDER IN PSYCHOLOGY CREDENTIAL - RECIPROCITY:

A. **Eligibility.** A licensee in good standing for a minimum of five years in another jurisdiction is eligible for licensure pursuant to Section 61-9-10 of the act if the applicant holds current certification of professional qualification (CPQ) or holds a current national register (HSPP) credential at the doctoral level, pursuant to Subsection A of 16.22.4.8 NMAC. In addition, the applicant shall have passed the EPPP with a minimum score required for licensure as set forth in Paragraph (6) of Subsection A of Section 61-9-11 NMSA 1978 of the act, have no disciplinary actions within five years immediately preceding the date of application, and shall have no prior license suspensions or revocations in any jurisdiction in which the applicant is or has been licensed.

B. **Application procedure.** The applicant shall ~~[submit the following to the satisfaction of the board:]~~ apply as specified in 16.22.5.9 NMAC.

~~(1)~~ a verified or certified copy of the applicant's CPQ or national register HSPP credential or other evidence satisfactory to the board that the applicant holds a CPQ or national register HSPP credential;

~~(2)~~ a completed application on a form

approved by the board;

~~(3) license verification from any jurisdictions in which the applicant is or has been granted a psychologist license;~~

~~(4) verification of passing the EPPP with a minimum score required for licensure as defined in Paragraph (6) of Subsection A of Section 61-9-11 of the act; and~~

~~(5) the non-refundable application fee established by the board.~~

~~C. Examination.~~

~~Upon approval by the board or its designee, an applicant must take and pass a jurisprudence examination and during the first year of licensure furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.~~

~~D. Applicability of other provisions.~~ The provisions of Section 61-9-13 of the act shall apply to applications filed under this section. A psychologist licensed pursuant to this section is subject to all requirements and obligations applicable to licensees under the act and board regulations.]

[16.22.5.11 NMAC - Rp, 16.22.5.13 NMAC, 11/15/06; A, 3/21/09; A, 4/11/12; A, 7/1/2018]

16.22.5.12 [APPLICANTS LICENSED IN ANOTHER JURISDICTION WHO DO NOT QUALIFY UNDER SECTION 16.22.5.10, 16.22.5.11, 16.22.5.12, 16.22.5.13, 16.22.5.14 OR 16.22.5.15 NMAC:

~~A. Application procedure.~~ An applicant seeking licensure under this section may obtain a license pursuant to Section 61-9-12 of the act if the applicant submits the following conditions:

~~(1) a completed and signed application;~~

~~(2) the application fee as required by the board;~~

~~(3) official doctoral degree transcripts sent directly from the institution's office of the registrar;~~

~~(4) if the applicant chooses, a notarized letter~~

~~from the graduate office of the degree-granting institution that documents the date of the doctoral degree; the letter shall indicate (a) the date of completion of all requirements for the doctoral degree, and (b) the specific psychology program the applicant completed;~~

~~(5) license verification from all jurisdictions in which the applicant is or has been granted a psychologist license;~~

~~(6) three letters of reference dated within the last two years and two of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency and moral character;~~

~~(7) verification of predoctoral internship and supervision as defined in 16.22.6 NMAC;~~

~~(8) verification of postdoctoral supervised experience as defined in 16.22.6 NMAC; and~~

~~(9) verification of passing the EPPP as defined in 16.22.7.8 NMAC.~~

~~B.~~ Applicant must take and pass a jurisprudence examination with a score of seventy-five percent and during the first year of licensure furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures:]

~~[RESERVED]~~

[16.22.5.12 NMAC - Rp, 16.22.5.12 NMAC, 11/15/06; A, 3/21/09; A, 9/16/10; A, 4/11/12; Repealed 7/1/2018]

16.22.5.13 APPLICANTS SEEKING A TEMPORARY LICENSE:

A. A temporary six month license may be issued to a psychologist who meets the following conditions:

(1) the applicant is licensed as a psychologist in another jurisdiction and is in good standing [; and the out-of-state license meets current licensing criteria for New Mexico;

(2) the applicant qualifies under 16.22.5.10, 16.22.5.11, 16.22.5.12 or 16.22.5.15-

NMAC of this part];

~~[(3)] (2) the applicant completes a form approved by the board that includes required information and [the appropriate fees set by the board] states the reason for seeking a temporary license, including court-ordered evaluation or providing services during a federally declared natural disaster;~~

~~(3) the board will set the appropriate fees for obtaining a temporary license;~~

~~(4) the temporary license will expire in six months; and~~

~~(5) the temporary license may be extended at the discretion of the board with a written request thirty days prior to the expiration, stating the reason for extension.~~

~~(6) the board shall expedite the licensure process for obtaining a temporary license under this section but may not waive the specific licensing requirements.~~

B. Nothing in this section should be construed to prevent an applicant with a temporary license from applying for an unrestricted license. The applicant may apply for an unrestricted license by completing a form approved by the board, remitting appropriate fees, and taking and passing the online jurisprudence examination.

[16.22.5.13 NMAC - N, 11/15/2006; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018]

16.22.5.14 [APPLICANTS FROM FEDERAL DISASTER AREAS SEEKING A FOUR-MONTH EMERGENCY LICENSE-RECIPROCITY:

A. An emergency license may be issued to a psychologist who is from a state in which a federal disaster has been declared, holds that state's active unrestricted license, and is in good standing or otherwise meets requirements for New Mexico licensure. This applicant may obtain a New Mexico license for a period of four months following the declared disaster, at no cost and upon satisfying

the following requirements:

~~(1)~~ the board received a completed, signed and notarized application accompanied by proof of identity in the form of a copy of a driver's license, passport or other photo identification issued by a governmental entity;

~~(2)~~ the applicant qualifies for a license as set forth in 16.22.5.10, 16.22.5.11, 16.22.5.12 or 16.22.5.15 NMAC of this part;

~~(3)~~ the board may waive the specific forms required under the immediately preceding section if the applicant is unable to obtain documentation from the federally declared disaster area;

~~(4)~~ nothing in this paragraph shall constitute a waiver of licensure requirements set forth in 16.22.5.8 NMAC above; and

~~(5)~~ a license issued under this emergency provision shall expire four months after issuance, unless a renewal application is received and approved by the board or its designee in a timely fashion; a renewal application shall commence no later than three months after the issuance date in order to allow at least one month for renewal process and avoid a late renewal fee set by the board (see fee schedule in 16.22.13.8 NMAC of these regulations); the board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving emergency license renewal.

B. The emergency license shall terminate upon:

~~(1)~~ four months from issuance date, if not renewed;

~~(2)~~ the issuance of an unrestricted license as set forth in 16.22.5.8 NMAC above;

~~(3)~~ proof that the emergency license holder has not engaged in fraud, deceit or misrepresentation in procuring or attempting to procure a license under 16.22.5.14 NMAC; and

~~(4)~~ termination of an emergency license shall not

preclude application for unrestricted licensure.] **[RESERVED]**

[16.22.5.14 NMAC - N, 11/15/06; A, 3/21/09; Repealed 7/1/2018]

16.22.5.15 APPLICANTS WHO ARE GRADUATES FROM PROGRAMS OUTSIDE THE UNITED STATES AND CANADA:

A. Graduates of programs outside the United States and Canada shall be evaluated according to the following criteria for New Mexico licensure:

~~[(1)]~~ applicants shall meet the requirements set forth in Subsection A of 16.22.4.8 NMAC of these regulations; "substantial equivalencies" of professional schools in the United States, Canada, or any other jurisdiction under ASPPB shall meet the requirements set forth in 16.22.4 NMAC;

~~(2)]~~ **(1)** applicants for licensure whose applications are based on graduation from universities outside the United States and Canada shall provide the board with such documents and evidence to establish that their formal education is a doctoral degree and is equivalent to a doctoral program [in psychology granted by a United States university that is regionally accredited; equivalency will be reviewed by a board approved agency specializing in the credentialing of foreign graduates; such documents and evidence include:] that is designated as a doctoral program in psychology by a nationally recognized designation system or that is accredited by a nationally recognized accreditation body;

~~[(a)]~~ an original diploma or other certificate of graduation which will be returned, and a photocopy of such a document which will be retained;

~~(b)]~~ an official transcript or comparable document of all course work completed;

~~(c)]~~ a certified translation of all documents submitted in a language other than English;

~~(d)]~~

satisfactory evidence of supervised experience; and

~~(e)]~~ a statement prepared by the applicant listing studies and research based on documents referenced in this section in a format as comparable as possible to a transcript issued by a United States university.]

(2) equivalency will be reviewed by a board approved agency specializing in the credentialing of foreign graduates.

B. After evaluation and acceptance by the board, the applicant shall take and pass the EPPP and an online jurisprudence examination to obtain licensure.

[16.22.5.15 NMAC - N, 11/15/2006; A, 9/16/2010; A, 2/22/2013; A, 7/1/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

This is an amendment to 16.22.6 NMAC, Part name and Sections 7, 8, 9 and 10, effective 7/1/2018.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 22 PSYCHOLOGISTS AND PSYCHOLOGIST ASSOCIATES PART 6 PSYCHOLOGISTS: [PREDOCTORAL] PRACTICUM, DOCTORAL INTERNSHIP AND POSTDOCTORAL SUPERVISED EXPERIENCE

16.22.6.7 DEFINITIONS:

~~[A.]~~ **"Year of supervised experience"** means 1500 hours of psychological work conducted under supervision satisfactory to the board. The 1500 hours may be accumulated in one or two consecutive calendar years in the case of an internship, three consecutive years in the case of post-doctoral experience, or over the course of graduate training in the case of predoctoral experience.

B. **"Doctoral training**

program means the program from which the applicant received his or her doctoral degree to fulfill the educational requirements for licensure. **[RESERVED]**

**16.22.6.8 [PREDOCTORAL/]
PRACTICUM, DOCTORAL
INTERNSHIP, AND
POSTDOCTORAL SUPERVISED
EXPERIENCE:**

**A. Supervised
experience leading toward
licensure:**

(1) two years (3,000 hours) of supervised experience are required for licensure;

(a) up to one year (1500 hours) of the supervised experience may be obtained in [predoctoral] practicum hours overseen by the doctoral training program and consistent with the guidelines on practicum experience for licensure promulgated by the association of state and provincial psychology board; and

(b) up to one year (1500 hours) of the supervised experience may be obtained in a [predoctoral] doctoral internship approved by the American psychological association; or

(c) up to one-half year (750 hours) of the supervised experience may be obtained in a [predoctoral] doctoral internship not approved by the American psychological association; and

(d) after totaling approved [predoctoral] doctoral practicum hours and allowed hours for [predoctoral] doctoral internship, the remainder of the (3000 hours) supervised experience must be obtained in supervised postdoctoral psychological work.

(2) [predoctoral] Doctoral and postdoctoral experience from all supervisors shall be documented on forms provided by the board.

**B. [Predoctoral-
practicum] Practicum experience.** [Predoctoral practicum] Practicum training is an organized, sequential series of supervised experiences of

increasing complexity, serving to prepare the student for internship and partially meeting the requirements for licensure. Training experiences shall follow appropriate academic preparation and shall be overseen by the doctoral training program. Not all supervised experience accumulated during graduate training may count toward licensure. The board requires that all [predoctoral] practicum experiences counting toward licensure be of high quality and carefully approved and monitored by the doctoral training program. In particular, these experiences should advance the doctoral student's role and identity as a psychologist. All experiences counting toward licensure must be supervised one hour per week by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state. The director of clinical training of the doctoral training program, or designee of that program's chair, shall certify, in a form satisfactory to the board, that the hours meet the following specifications of type of clinical activity and supervision:

(1) The practicum setting was approved by, integrated with and monitored by the doctoral training program;

(2) The hours were obtained in the course of an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and partially meeting the requirements for licensure.

(3) Supervised practicum experience occurred in psychological service settings that had, as part of the organizational mission, a goal of training professional psychologists.

(4) Each practicum setting had an identified, licensed psychologist who was responsible for maintaining the integrity and quality of the experience for each trainee. The doctoral training program shall assign a licensed psychologist to serve in this role if none is available on site.

(5) Telesupervision or telephonic supervision did not account for more than fifty percent of the total supervision at a given practicum site. The doctoral training program shall have a formal policy addressing its utilization of telesupervision or telephonic supervision that includes:

(a) an explicit rationale for using telesupervision or telephonic supervision;

(b) how and when telesupervision or telephonic supervision is utilized in clinical training;

(c) how it is determined which trainees can participate in telesupervision or telephonic supervision;

(d) how an off-site supervisor maintains full professional responsibility of clinical cases;

(e) how non-scheduled consultation and crisis coverage are managed; and

(f) how privacy and confidentiality of the client and trainees are assured.

[(5)] (6) All supervisors were qualified by education, licensure and experience to provide supervision of doctoral students.

[(6)] (7) Where experiences counted for licensure were obtained in various settings, each setting was an appropriate experience in itself, the particular student was academically prepared for that experience and the combination of experiences was appropriate to the student's training needs.

[(7)] (8) The following clinical experiences and supervision were present across settings:

(a) At least fifty percent of the total hours of supervised experience were in service-related activities, defined as treatment/intervention, assessment, interviews, report-writing, case presentations, and consultations.

(b) At least twenty-five percent of the

total hours were face-to-face patient/client contact.

(c)

Supervision by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state was at least one hour for each day (eight hours including the supervision; 12 and a half percent of total) of supervised experience for experienced students. The doctoral training program shall assure that higher levels of supervision are provided for less experienced students. All supervision time, whether individual or group, including additional supervision beyond that may be counted as part of the total supervised experience.

~~[(8)]~~ (9) The

board requires that all predoctoral practicum experiences counting toward licensure be of high quality and carefully approved and monitored by the doctoral training program. In particular, these experiences should advance the doctoral student's role and identity as a psychologist. ~~[All experiences counting toward licensure must be supervised one hour per week by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state.]~~

~~[(9)]~~ (10)

The board may, at its discretion, require documentation that above system of training was in place for the applicant. Possible forms of documentation include but are not limited to:

(a)

individual written training plans between the doctoral training program and each practicum training cite;

(b)

policies and procedures of the doctoral training program designating the expectations for practicum training sequences;

(c)

program descriptions or self-study documents submitted for program approval to the American psychological association or the American association of state and provincial psychology boards.

C. Internship or

fellowship accredited by ~~[the APA:]~~ a nationally recognized accreditation body. If the ~~[predoctoral]~~ doctoral or postdoctoral experience is obtained in an internship or fellowship accredited by ~~[the APA:]~~ a nationally recognized accreditation body, a board form completed by the director of training will satisfy the requirement of certifying all supervision received during the internship or fellowship.

D. Internship

not accredited by ~~[the APA:]~~ a nationally recognized accreditation body. If the predoctoral experience is obtained in an internship that is not accredited by ~~[the APA:]~~ a nationally recognized accreditation body, it will be counted for 750 hours of the required 3,000 hours if it meets the following criteria:

(1)

the agency or institution offers internship education and training in psychology, one goal of which is to prepare applicants for the practice of professional psychology;

(2) the

internship program is sponsored by an institution or agency, which has among its primary functions the provision of service to a population of recipients sufficient in number and variability to provide interns with adequate experiential exposure to meet its training purposes, goals, and objectives;

(3) the

internship is completed within 24 consecutive months at a minimum of 20 hours per week:

(a)

an internship that involves more than one agency, organization, or institution will be accepted if the primary supervisor and the applicant can demonstrate that the internship program is organized under a unifying or coordinating structure (e.g. a consortium with a core clinical faculty) and central leadership (e.g., one director of training or central supervisor overseeing the entire internship program and the supervision of the intern);

(b)

internships consisting of less than 20

hours per week will not be accepted;

(4) the director

of clinical training of the applicant's doctoral training program certifies in a manner acceptable to the board that the internship was approved as part of the degree requirements for obtaining the doctoral degree.

E. Postdoctoral

supervised practice leading toward licensure.

(1)

The applicant may complete a ~~[predoctoral]~~ doctoral supervised practicum up to 1500 hours and a ~~[predoctoral]~~ doctoral internship up to 1500 hours before completing the doctorate. Depending on the number of hours of ~~[predoctoral]~~ doctoral supervised experience, the applicant shall complete the remainder of the required 3,000 hours through postdoctoral supervision.

(2) If the

applicant ~~[chooses, the applicant may]~~ is completing postdoctoral hours in New Mexico, the applicant shall submit a postdoctoral supervisory plan to the board for review before beginning supervised practice. Once a plan for supervision is submitted to the board, the board or a designated board member will respond in writing to the acceptability of such a plan within 60 days. If the plan is found unacceptable, the board or a designated board member will specify the areas of deficiency based on the guidelines specified in Part 3. If the board approves the plan, the applicant will be assured that postdoctoral experience, if completed according to the plan, will meet the postdoctoral requirements and the applicant will be registered as participating in an approved supervision program.

(3) If the

applicant is completing postdoctoral hours outside New Mexico, a supervisory plan is optional.

~~[(3)]~~ (4) If the

applicant does not obtain a board-approved postdoctoral supervisory plan, the applicant shall submit documentation of the postdoctoral supervised practice after its completion. However, if the board does not approve this experience, part

or all of the postdoctoral supervised experience shall be repeated. In this case, the board will require the applicant to submit a supervisory plan, and the supervisory plan must be approved by the board before the applicant's supervised practice begins. [16.22.6.8 NMAC - Rp, 16.22.6.8 NMAC, 11/15/2006; A, 4/11/2012; A, 7/1/2018]

16.22.6.9 CONDITIONS OF POSTDOCTORAL SUPERVISION:

A. Primary supervisors.

(1) One licensed psychologist who serves as a primary supervisor shall be responsible for the overall supervision of the supervisee's professional growth. Specific skill training may be assigned to other licensed specialists, under the authority of the supervising psychologist. The other licensed specialists shall have clearly established practice and teaching skills demonstrable to the satisfaction of both the primary supervisor and the supervisee.

(2) The primary supervisor shall limit the number of applicants supervised to the number that the supervisor's work position and clinical responsibilities reasonably permit, so as to maintain a level of supervision and practice consistent with professional standards and ensure the welfare of the supervisees and their clients or patients.

(3) The supervisor shall not be a member of the supervisee's immediate family or in a dual relationship that would compromise the supervisor's objectivity.

B. Supervisory contact.

(1) ~~[The applicant shall have on-site supervision. The on-site supervisor may be either the primary supervisor or a licensed specialist designated by the primary supervisor.]~~ In-person supervision must account for at least fifty percent of any postdoctoral supervision used toward the required

3,000 hours of supervised experience for licensure. Telesupervision or telephonic supervision may account for no more than fifty percent of postdoctoral supervision hours. The supervisor must have a formal policy addressing the utilization of telesupervision or telephonic supervision as specified in Paragraph 5 of Subsection B of 16.22.6.8 NMAC.

(2) At a minimum, supervision by the primary supervisor shall be provided on a one-to-one basis for one hour per week for a total at least 46 hours of one-to-one supervision per year. ~~[If the primary supervisor is more than 100 miles from the site, in-person supervision shall be at least two hours per month and telephonic or videoconference may be substituted for the rest of this supervision requirement. The applicant and supervisor must arrange on-site supervision by a licensed psychiatrist, social worker, professional clinical mental health counselor, or marriage and family therapist. The on-site licensed mental health professional shall provide supervision to the applicant on a one-to-one basis for one hour per week and shall be available to the applicant whenever decisions about patients are made.]~~

C. Conduct of supervision.

(1) The board recognizes that variability in preparation for practice of the applicant will require individually tailored supervision. The specific content of the supervision procedures shall be worked out between the primary supervisor and the applicant.

(2) The primary supervisor who provides supervision for the applicant for licensure shall have clinical and professional responsibility for the work of the applicant.

(3) A supervisor, either primary or designated, shall be available to the applicant whenever decisions about clients or patients are made.

(4) The primary supervisor shall be

responsible for the delivery of services, the representation to the public of services, and the supervisor/applicant relationship. This responsibility includes, but is not limited to, the following requirements.

(a) All clients or patients shall be informed of the availability or possible necessity of meetings with the primary supervisor at the request of the client or patient, the applicant, or the psychologist. The supervisor shall be available for emergency consultation or intervention.

(b) All written communication shall clearly identify the primary supervisor as clinically and professionally responsible for all psychological services provided. Public announcement of services and fees and contact with the public or professional community shall be offered in the name of the primary supervisor, business, or agency. Both the primary supervisor and the applicant shall inform the client or patient, to whatever extent is necessary for the client or patient to understand, of the supervisory status and other specific information as to the applicant's qualifications and functions.

(c) The primary supervisor shall oversee the maintenance of information and files relevant to the client or patient during the supervisory period.

(d) The primary supervisor shall not be a member of the applicant's extended or immediate family or be involved in a dual relationship.

(e) The supervision shall not be delivered in an agency or business in which the applicant has a financial interest.

D. Inappropriate representation. In the event ~~[the applicant publicly represents himself]~~ applicants publicly represent themselves inappropriately, or supervision is not conducted according to Subsection C of 16.22.6.9 NMAC, conduct of supervision, any experience gained under such circumstances does

not comply with these rules and regulations and will not be accepted as experience toward licensure. Any psychologist providing supervision under such circumstances is in violation of these rules and regulations and may be subject to disciplinary action.

[16.22.6.9 NMAC - Rp, 16.22.6.9 NMAC, 11/15/2006; A, 4/11/2012; A, 7/1/2018]

16.22.6.10 POSTDOCTORAL SUPERVISORY PLAN:

A. Evaluation of the supervisory plan. The supervisory plan shall include the following information and shall be signed by both the primary supervisor and the applicant:

- (1) name of applicant;
- (2) name of primary supervisor, address, license number, and state in which the license was granted; area of specialization;
- (3) names of additional licensed specialists, if applicable;
- (4) dates of practice covered by the plan;
- (5) number of practice hours during the period covered by the plan;
- (6) number of one-on-one supervisory hour per week;
- (7) amount of any telesupervision or telephonic supervision provided;

(8) the setting(s) in which the applicant will practice and the hours per week worked at each setting;

(9) the applicant's duties;

(10) the clinical and professional responsibilities of the applicant;

(11) the location where the supervision will take place;

(12) the areas in which the primary supervisor has specialized skills to render competent supervision and, if applicable, whether specific training will be assigned to other specialists;

if non-psychologist specialists are assigned, their practice and teaching skills as they pertain to supervision of the applicant and their degrees and licenses;

(13) the number of applicants the primary supervisor will supervise during this time period;

(14) the way in which the primary supervisor will demonstrate clinical and professional responsibility for the applicant's work;

(15) the way in which the applicant will be represented to the public, and the way in which all written communications and public announcements will identify the primary supervisor as clinically and professionally responsible for all psychological services;

(16) other information necessary to clarify the nature and scope of supervision.

B. As listed in this part, the board or a designated board member will respond in writing to the acceptability of such plan within 60 days.

[16.22.6.10 NMAC - Rp, 16.22.6.10 NMAC, 11/15/2006; A, 7/1/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

This is an amendment to 16.22.7 NMAC, Section 8, effective 7/1/2018.

16.22.7.8 DEMONSTRATION OF COMPETENCE:

A. Examinations.
(1) To qualify for licensure, an applicant must demonstrate professional competence by taking and passing ~~a written examination called the EPPP~~ the Examination for Professional Practice in Psychology (EPPP), promulgated by ~~[ASPPB]~~ the Association of State and Provincial Psychology Boards (ASPPB). The passing score on the EPPP taken before January 1, 1993 is

140 (seventy percent) or taken after January 1, 1993 is the score equal to or greater than the passing score recommended by ASPPB.

(2) All persons applying for licensure shall take and pass an online jurisprudence examination on ethical standards, New Mexico laws, and board regulations as they apply to psychologists and their clients or patients. The passing score will be determined by the board.

(3) If the score of either the EPPP or jurisprudence examination meets the requirements for licensure as a psychologist but the other score does not, the examination passed will not have to be retaken.

(4) Re-examination. An applicant may retake the EPPP or jurisprudence examination and pay the appropriate examination fee as required by the board. Such fee is nonrefundable and due at the time of the request.

B. An applicant shall furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.
[16.22.7.8 NMAC - Rp, 16.22.7.8 NMAC, 11/15/2006; A, 3/21/2009; A, 7/1/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

This is an amendment to 16.22.8 NMAC, Sections 8, 10 and 11, effective 07/01/2018.

16.22.8.8 LICENSE RENEWAL: Licensees shall renew their licenses to practice psychology biennially on or before July 1 of alternate years by remitting to the board office ~~[a renewal fee of six hundred dollars (\$600)]~~ the biennial renewal active status fee specified in Paragraph 2 of Subsection C of 16.22.13.8 NMAC with the renewal application form provided by the board. Continuing education hours shall be documented every two years at the time of license renewal as

described in Part 9. Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.

A. All renewal applications will be subject to a one time nationwide criminal history screening. Renewal applications will be processed pending the completion of the criminal history screening.

B. If the nationwide criminal background screening reveals a felony or a violation of the Psychologist Examiners Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. [16.22.8.8 NMAC - Rp, 16.22.8.8 NMAC, 11/15/2006; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018]

16.22.8.10 LICENSE RENEWAL NOTICES: Renewal [~~post-card notices will be mailed~~] notification will be given to each current licensee prior to the expiration date of the license. [16.22.8.10 NMAC - Rp, 16.22.8.10 NMAC, 11/15/2006; A, 9/16/2010; A, 7/1/2018]

16.22.8.11 LICENSEE RESPONSIBILITY: Renewal application notices will be [~~mailed~~] delivered to the last known address on file with the board. It is the responsibility of the licensee to keep the board informed of any changes in address and phone numbers. Failure to receive the renewal application notice shall not relieve the licensee of the responsibility of renewing his license before the expiration date. [16.22.8.11 NMAC - Rp, 16.22.8.11 NMAC, 11/15/2006; A, 7/1/2018]

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

This is an amendment to 16.22.12 NMAC, Section 8, effective

7/1/2018.

16.22.12.8 CONDITIONS OF PRACTICE FOR PSYCHOLOGIST ASSOCIATES:

A. Supervision by a licensed psychologist or board- certified psychiatrist.

(1)

Psychologist associates who engage in the practice of psychology shall be supervised by a licensed psychologist or a board-certified psychiatrist, except in the area of psychological or cognitive testing. The supervising psychologist must be licensed in New Mexico as a psychologist with the New Mexico board of psychologist examiners, be in good standing and have no history of rule violations. If the psychologist associate conducts psychological and/or cognitive testing, the psychologist associate shall be supervised in this area of practice by a licensed psychologist. The psychologist shall explicitly agree to supervise the psychologist associate.

(2) The supervisor shall assume professional and ethical responsibility for the work of the psychologist associate performed in the course of their professional relationship.

(3) The supervisor shall provide supervision only in those areas of practice in which the supervisor is qualified to render services.

(4) The supervisor shall not provide supervision to one who is the supervisor's administrative superior(s) or is a member of his or her family.

(5) The supervisor shall keep records of supervision. Such records shall be kept separately from the client's records and shall include dates of supervision, without reference to the client's name. Such records shall be submitted to the board on an annual basis as a condition of the renewal process.

(6) The supervisor shall not exploit the psychologist associate for financial gain or with excessive work demands.

The supervisor shall make every effort to avoid exploitation of the psychologist associate by an agency with which the supervisor and psychologist associate are affiliated.

(7) Financial arrangements between the supervisor and the psychologist associate shall be clear and shall not interfere with or compromise the ethical, professional, and legal responsibilities each party has to the client or patient and to each other. Psychologist associates may bill clients or patients independently from the supervisor, provided that this arrangement does not interfere with or compromise those responsibilities.

B. Nature of supervision from licensed supervisor.

(1)

Supervision of a psychologist associate shall cover all aspects of the psychologist associate's work and shall include at least two hours a month of one-to-one supervision between the psychologist associate and the supervisor. If the psychologist associate who is supervised by a board-certified psychiatrist also conducts psychological or cognitive testing in his practice, the psychologist associate must be supervised by a licensed psychologist at least two additional hours per month in this area of practice.

(2) The client or patient shall always be informed about the nature of the professional relationship that exists between the supervisor and the psychologist associate. The client shall be informed of his/her right to meet with the supervisor upon request and that the supervision of the psychologist associate by the supervisor may involve a review of the content of the evaluation documents and intervention plans.

C. Supervisory agreement with licensed supervision.

(1) The psychologist associate and his supervisor shall file a notarized letter of agreement signed by all parties setting forth the terms of

the supervisory arrangements. This agreement shall be updated and provided to the board as a condition of the yearly renewal of the psychologist associate's license. If there is no change in the agreement, a letter informing the board that there is no change, signed by both parties, shall accompany the yearly renewal of the psychologist associate's license.

(2) Both

the supervisor and the psychologist associate shall notify the board in writing within 30 days of termination if the supervisory agreement is terminated or the supervisory relationship ends for any reason. Most importantly, termination of the supervisory relationship shall be accomplished in a context of primary concern for the clients receiving care.

D. Ethical

responsibilities of psychologist associates.

(1) The

psychologist associate shall assume legal, ethical, and professional responsibility for the welfare of the client or patient, including client or patient diagnosis, intervention, and outcome of intervention.

(2) The

psychologist associate shall provide services only in those areas of practice for which he is qualified.

E. Disclosure

requirements. Any person licensed as a psychologist associate who advertises or solicits services to the general public shall specifically state: "Licensed psychologist associate - supervised practice."

[16.22.12.8 NMAC - Rp, 16.22.12.8 NMAC, 11/15/2006; A, 7/1/2018]

**REGULATION AND
LICENSING DEPARTMENT
PSYCHOLOGIST EXAMINERS,
BOARD OF**

This is an amendment to 16.22.13 NMAC, Section 8, effective 7/1/2018.

16.22.13.8 FEE SCHEDULE:

A. All fees payable to the board are non-refundable.

The fees for the (EPPP), and the (PEP) are in addition to the fees described below, and determined by the professional examination service offering the examination on behalf of the board. Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.

B. Application

fees. (psychologists, psychologist associates, conditional prescribing and prescribing psychologists):

(1) initial

application fee- (initial application fee expires 24 months from the date application is received in the board office) [~~\$300~~] \$125.

(2)

jurisprudence examination: \$75.

(3) re-

examination fee for jurisprudence exam: \$75.

(4) application

for an out of state psychologist to conduct court-ordered independent examination (per case): \$150.

(5) initial

conditional prescription certificate: \$75.

(6) 60 day

extension of conditional prescription: \$100.

(7) second-

year conditional prescription certificate: \$75.

(8)

prescription certificate: \$75.

(9) temporary

license fee: \$300.

C. Biennial/annual

renewal fees psychologists, psychologist associates, conditional prescribing and prescribing psychologists:

(1) one-time

annual renewal by psychologists and psychologist associates meeting first-year New Mexico licensure requirements: [~~\$300~~] \$250.

(2) biennial

renewal active status psychologists and psychologist associates: [~~\$600~~] \$500.

(3) biennial

renewal active status (conditional

prescribing and prescribing psychologists): [~~\$150~~] \$125.

(4) annual

renewal inactive status: [~~\$150~~] \$50.

(5) late fee

(received after July 1 and within 1 year of suspension): active status (psychologists, psychologist associates, conditional prescribing and prescribing psychologist): \$100.

(6)

reinstatement fee from inactive to active status: \$300.

D. Other miscellaneous charges

(1) duplicate/

replacement wall certificate: \$25.

(2) licensee

lists: \$100.

(3) licensee

labels: \$150.

(4) per page

copy fee for public information request: \$.25 cents.

(5) license

verification fee: \$15.

[16.22.13.8 NMAC - Rp, 16.22.13.8 NMAC, 11/15/2006; A, 3/21/2009; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018]

**REGULATION AND
LICENSING DEPARTMENT
PSYCHOLOGIST EXAMINERS,
BOARD OF**

This is an amendment to 16.22.14 NMAC, Sections 7, 8, 9, and 10, effective 7/1/2018.

16.22.14.7 DEFINITIONS:

[A. ~~"Military service member"~~ means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. ~~"Recent Veteran"~~ means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.] **[RESERVED]**

[16.22.14.7 NMAC - N, 04/30/15; Repealed 7/1/2018]

16.22.14.8 APPLICATION REQUIREMENTS:

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

B. The information shall include:

(1) Completed application and fee.

(2) Satisfactory evidence that the applicant holds a license as a doctoral level psychologist that is current and in good standing, issued by another jurisdiction, ~~[including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 2 through 34 NMSA 1978;]~~ provided that the educational requirements and supervised experience requirements of that jurisdiction meet or exceed those of 16.22.4 NMAC and 16.22.6 NMAC and that the requirement for examination includes a passing score on the examination for professional practice in psychology (EPPP) that meets or exceeds the requirements set in Paragraph 1 of Subsection A of 16.22.7.8 NMAC. Other requirements for licensure are waived until the first license renewal.

(3) The board will develop, approve and maintain a list of American and Canadian jurisdictions whose requirements of education, supervised experience and EPPP passing score meet or exceed those of 16.22.4 NMAC, 16.22.6 NMAC and Paragraph 1 of Subsection A of 16.22.7.8 NMAC.

C. Electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.
[16.22.14.8 NMAC - N, 4/30/2015; A, 7/1/2018]

16.22.14.9 [FEES:]

A. The fee for application registration is three hundred dollars (\$300).

B. The fee for renewal of registration is six hundred dollars (\$600). **[RESERVED]**
[16.22.14.9 NMAC - N, 4/30/15; Repealed 7/1/2018]

16.22.14.10 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

B. The licensee must submit the following documents at the time of renewal:

(1) official doctoral degree transcripts sent directly from the institution's office of the registrar;

(2) license verification from all jurisdictions in which the applicant is or has been granted a psychologist license;

(3) three letters of reference dated within the last two years and two of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency and moral character;

(4) verification of ~~[pre-doctoral internship and supervision]~~ doctoral and post-doctoral supervised experience as defined in 16.22.6 NMAC; and

(5) verification of passing the examination for professional practice in ~~[psychologist]~~ psychology (EPPP) as defined in 16.22.7.8 NMAC.

C. Licensee must take and pass a jurisprudence examination with a score of seventy-five percent.

D. Prior to the expiration of the license, all licensed psychologists shall apply for registration renewal and shall pay the renewal fee as set forth in 16.22.13 NMAC.

[16.22.14.10 NMAC - N, 4/30/2015; A, 7/1/2018]

TRANSPORTATION, DEPARTMENT OF

This is an amendment to 18.27.2 NMAC, Sections 3, 6, 7 and 8, effective 1/1/2019.

18.27.2.3 STATUTORY AUTHORITY:

[NMSA 1978, Sections 67-3-43, 13-1-99, 13-1-170 and 13-1-174] Sections 9-5-1, 13-1-99, 13-1-170, 13-1-174, 67-3-8, 67-3-11 and 67-3-43, NMSA 1978.

[18.27.2.3 NMAC - Rp, 18.27.2.3 NMAC, 5/31/2013; A, 1/1/2019]

18.27.2.6 OBJECTIVE:

The purpose of this regulation, Division 100-General Provisions Standard Specifications for Highway and Bridge Construction, is to implement and enforce Division 100 of the *New Mexico department of transportation* ~~[2013]~~ 2019 standard specifications for highway and bridge construction as replacement to the [2007] 2013 edition of the standard specifications for highway and bridge construction, and shall be controlling for all projects advertised and all contracts executed after the date this rule is promulgated by the New Mexico department of transportation and duly filed in the state records center.

[18.27.2.6 NMAC - Rp, 18.27.2.6 NMAC, 5/31/2013; A, 1/1/2019]

18.27.2.7 DEFINITIONS: [RESERVED]

[18.27.2.7 NMAC - Rp, 18.27.2.7 NMAC, 5/31/2013; Rp, 1/1/2019]

18.27.2.8 ADOPTION OF THE NEW MEXICO DEPARTMENT OF TRANSPORTATION [2013] 2019 STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION:

This rule adopts by reference Division 100-General Provisions of the *New Mexico department of transportation* ~~[2013]~~ 2019 standard specifications for highway and bridge construction as replacement to the [2007] 2013 edition of standard specifications for highway and bridge construction.

[18.27.2.8 NMAC - Rp, 18.27.2.8

NMAC, 5/31/2013; A, 1/1/2019]

WORKFORCE SOLUTIONS, DEPARTMENT OF

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.4 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Local, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.5 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment One-Stop Delivery System, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.6 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Memorandum of Understanding, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.7 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Service Integration, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.8 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Eligibility determination and Documentation, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.9 NMAC entitled Labor and Workers

Compensation; Job Training; Workforce Investment Act Adult and Dislocated Worker Services, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.10 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Participation and Co-Enrollment, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.11 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Individual Training Accounts, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.12 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act On-the-job Training, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.13 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Customized Training, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.14 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Youth Activities, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.15 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Youth

Councils, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.16 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Supportive Services, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.19 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Oversight and Monitoring, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.20 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Incentives, Sanctions and Technical Assistance, adopted May 16, 2018 and effective July 1, 2018.

At its public hearing on May 1, 2018, the Department of Workforce Solutions repealed its rule 11.2.21 NMAC entitled Labor and Workers Compensation; Job Training; Workforce Investment Act Grievance and Complaint Resolution, adopted May 16, 2018 and effective July 1, 2018.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 4 WORKFORCE INNOVATION AND OPPORTUNITY ACT LOCAL GOVERNANCE

11.2.4.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.4.1 NMAC - N, 7/1/2018]

11.2.4.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.
[11.2.4.2 NMAC - N, 7/1/2018]

11.2.4.3 STATUTORY AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I, and NMSA 1978, Section 50-14-1 *et seq.*
[11.2.4.3 NMAC - N, 7/1/2018]

11.2.4.4 DURATION: Permanent.
[11.2.4.4 NMAC - N, 7/1/2018]

11.2.4.5 EFFECTIVE DATE: July 1, 2018, unless a later date is cited at the end of a section.
[11.2.4.5 NMAC - N, 7/1/2018]

11.2.4.6 OBJECTIVE: This policy outlines the local guidance structure in New Mexico as required by WIOA, to administer the implementation of workforce development activities in the local areas. This policy also provides guidance on the appointment of local boards and outlines the roles, responsibilities, and authority of the CEOs and the local boards in regard to the local workforce system.
[11.2.4.6 NMAC - N, 7/1/2018]

11.2.4.7 DEFINITIONS:

A. Chief elected official (CEO) is the chief elected executive officer of a unit of general local government in a local area; and in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement described in WIOA Section 107

B. Lead chief elected official is the individual selected by the participating chief elected officials who may act on behalf of the other chief elected officials in a given local

workforce development area (local area).

C. Local administrative entity means the entity designated by the local board for the administration of WIOA in the local area.

D. Local area means a workforce development area assigned to a region by the governor for the administration of workforce development activities; and the area within which local boards oversee their functions.

E. Local board grant agreement means the grant agreement between the recipient of WIOA funding (DWS), and the sub-recipient of WIOA funding (local board), to fund and direct the administration of WIOA in the local area.

F. Local workforce development board (state local board) means the state workforce development board established by the governor under WIOA section 107.

G. One-stop delivery system means a one-stop delivery system, as described in WIOA section 121.

H. One-stop operator means a public, private, or nonprofit entity, or a consortium of entities designated or certified under WIOA section 121.

I. One-stop partner means an entity described in WIOA section 121 that is participating in the operation of a one-stop delivery system.

J. State workforce development board (state board) means the state workforce development board established by the governor under WIOA section 101.

K. Technical assistance guidance means technical advisories issued by state or federal government authorities to aid in the implementation of WIOA.

L. Unit of general local government means any general purpose political subdivision of a state that has the power to levy taxes and spend funds, as well as general corporate and police powers.

M. Workforce connection center means a physical one-stop center within the one-stop

delivery system, as described in WIOA section 121, and partner of the American job center network.

N. Workforce solutions department means the state administrative agency designated by the governor for the administration of WIOA in New Mexico, commonly referred to as the department of workforce solutions (DWS). DWS is also the agency designated by the governor as the pass-through entity for WIOA funding.
[11.2.4.7 NMAC - N, 7/1/2018]

11.2.4.8 BACKGROUND: The purpose of WIOA Title I includes:

A. Increasing access to, and opportunities for, individuals to receive the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on those individuals with disabilities or other barriers to employment including out of school youth with the goal of improving their outcomes;

B. Enhancing the strategic role for states and elected officials, and local boards in the public workforce system by increasing flexibility to tailor services to meet employer and worker needs at state, regional and local levels;

C. Streamlining service delivery across multiple programs by requiring co-location, coordination, and integration of activities and information to make the system understandable and accessible for individuals, including individuals with disabilities and those with other barriers to employment, and businesses;

D. Supporting the alignment of the workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system at the federal, state, and local levels;

E. Improving the quality and labor market relevance of workforce investment, education, and economic development efforts by promoting the use of industry and

sector partnerships, career pathways, and regional service delivery strategies in order to both provide America's workers with the skills and credentials that will enable them to secure and advance in employment with family-sustaining wages, and to provide America's employers with the skilled workers the employers need to succeed in a global economy;

F. Promoting accountability using core indicators of performance measured across all WIOA authorized programs, sanctions, and high quality evaluations to improve the structure and delivery of services through the workforce development system to address and improve the employment and skill needs of workers, job seekers, and employers;

G. Increasing the prosperity and economic growth of workers, employers, communities, regions, and states; and

H. Providing workforce development activities through statewide and local workforce development systems to increase employment, retention, and earnings of participants and to increase industry-recognized postsecondary credential attainment to improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.
[11.2.4.8 NMAC - N, 7/1/2018]

11.2.4.9 CEO

AGREEMENT: Per WIOA section 107, if a local area includes more than one unit of general local, the CEOs of such units must execute a written agreement that specifies the respective roles and liability of the individual CEOs. If the CEOs are unable to reach agreement after reasonable effort, the governor may appoint the members of the local board from individuals nominated or recommended.

A. Required inclusions. CEOs must enter into an agreement with each other that, at a minimum, includes the following sections:

(1) Liability of funds. The agreement must acknowledge financial liability per WIOA section 107, and outline the process for determining each CEO's share of responsibility as laid out in the CEO agreement. This determination could be based on allocation, population, expenditures, and other criteria determined by the CEOs.

(2) Grant recipient and signatory. The agreement must acknowledge the CEOs are the grant recipient for all local WIOA funds or have designated grant recipient authority to the local board. If the CEOs will serve as the grant recipient, they must outline the process they will use to sign contracts and enter into agreements related to WIOA. This may be accomplished by designating signatory authority to a lead CEO.

(3) Fiscal agent designation. To assist in the administration of the grant funds, the CEOs may designate an entity to serve as a local fiscal agent and describe the process for designating a local fiscal agent within the guidelines required by state and local procurement laws and policies.

(4) Local board budget approval. The agreement must describe the process for reviewing and approving the local board annual budget.

(5) Participating CEOs. The agreement must contain the name, representation, contact information, and signature of each participating CEO in the local area.

(6) Election of a new CEO. Within 120 days of when a new CEO is elected within the local area, either participating as a signatory on the agreement or as a participating CEO, the local board must ensure the individual submits to the local board a written statement acknowledging that he or she:

(a) has read, understands, and will comply with the current CEO agreement; and

(b)

reserves the option to request negotiations to amend the CEO agreement at any time during the official's tenure as a CEO.

(c) Amendment or change to the CEO agreement. The agreement must outline the process that will be used for amendments or changes to the CEO agreement. All amendments or changes must be maintained at the local administrative entity office and available for monitoring by DWS.

B. Recommended inclusions. To improve the coordination and functionality of the local workforce system, CEOs should also address the following items in their agreement:

(1) Designation of a lead CEO. CEOs are liable for all WIOA funds in the local area and are required by WIOA to approve or provide guidance on a number of local board activities. DWS encourages CEOs to select a lead CEO who will act on behalf of the other CEOs. If a lead CEO is appointed, the following information must be sent to the local administrative entity and kept on file for review by DWS:

(a) appointment process and term of lead CEO;

(b) designation of the lead CEO to serve as the signatory for the CEOs;

(c) outline of decisions that may be made by the lead on behalf of the CEOs; and

(d) inclusion of the name, title, and contact information of the appointed lead CEO.

(2) Local board member representation. The agreement should outline how CEOs will ensure local board representation is fair and equitable across the local area.

(3) Communication. The agreement should describe how the CEOs will communicate with each other regarding local board activities, determining how many times a year

the CEOs will meet, and how often a joint meeting with the local board will be held. CEOs should meet at least once a year just as CEOs and once a year with the local board.
[11.2.4.9 NMAC - N, 7/1/2018]

11.2.4.10 CEO AND LOCAL BOARD PARTNERSHIP AGREEMENT:

A. To ensure the criteria established by the state are acknowledged by both the CEOs and the members of the local board, a partnership agreement is required. The partnership agreement must establish roles and responsibilities of the CEOs and the local board along with a description of the partnership and specific responsibilities. The local board and CEOs must enter into a partnership agreement that at a minimum, addresses the following sections:

- (1) describes the respective roles and responsibilities of the respective parties;
- (2) acknowledged the authority of the CEOs to appoint the members of the local board in accordance with the criteria established under WIOA section 107, and in accordance with the required criteria in state technical assistance guidance;
- (3) describes how the local plan will be developed in partnership between the CEOs and the local board;
- (4) describes how the local board will develop the local area budget and the process for obtaining the CEO's approval, per WIOA section 107;
- (5) establishes the guidelines that will be followed by the local board for selection of a one-stop operator, including the process for getting CEO agreement on the selection;
- (6) describes the process for approving local workforce policy;
- (7) describes the process for demonstrating the CEO agreement on the memoranda of understanding between workforce

system partners and the board;

(8) describes the process for demonstrating agreement between the CEOs and the local board on the methods for funding the infrastructure costs of workforce connection centers in the local area;

(9) describes the process for demonstrating agreement between the CEOs and the local board on local performance indicators; and

(10) describes the process for demonstrating CEO agreement on the appropriate use of funds and oversight of adult, dislocated worker, and youth workforce development activities, and the entire one-stop delivery system in the local area; and the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA section 116.

B. The partnership agreement must be signed by the current CEOs that have been identified as participating in the CEO agreement and by the local board chair at the time of signing.

C. Any amendment or change to the partnership agreement, notice of an election of a new CEO, or notice of an election of a new local board chair must be maintained at the local administrative entity office and available for monitoring by DWS. If a new CEO or local board chair is elected within the local area, the newly elected individual must submit to the local board a written statement acknowledging the following:

- (1) the individual has read, understands, and will comply with the current partnership agreement; and
- (2) the individual reserves the option to request negotiations to amend the partnership agreement at any time during the individual's tenure.

D. The partnership agreement should establish requirements for informing the CEOs on a regular basis regarding activities, performance outcomes, and budgets with at least one joint meeting held annually between the CEOs and the

local board.

[11.2.4.10 NMAC - N, 7/1/2018]

11.2.4.11 LOCAL BOARD MEMBERSHIP: The local board is appointed by the CEOs in each local area every two years. All members must be individuals with optimum policy-making authority within the entities they represent. An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation; however, individuals representing more than one category must have the optimum policy-making authority within each of the entities they are representing. All required local board members must have voting privileges. The CEO may convey voting privileges to non-required members. The local board must elect a chairperson from among the business representatives on the local board.

A. Representatives of business. The majority (fifty-one percent) of the members of the local board must be representatives of business in the local area. At a minimum, two members must represent small business as defined by the US small business administration. Business representatives serving on local boards may also serve on the state board. Each business representative must meet the following criteria:

- (1) be an owner, chief executive officer, chief operating officer, or other individual with optimum policymaking or hiring authority;
- (2) provide employment opportunities in in-demand industry sectors or occupations, as those terms are defined in WIOA section 3, and provide high-quality, work-relevant training and development opportunities to its workforce or to the workforce of others; and
- (3) are appointed from among individuals nominated by local business organizations and business trade associations.

B. Representatives

of the workforce. Not less than twenty percent of the members of the local board must be workforce representatives. These representatives:

(1) must include two or more representatives of labor organizations, where such organizations exist in a local area. Where labor organizations do not exist, representatives must be selected from other employee representatives; and

(2) must include one or more representatives of a joint labor-management or union affiliated, registered apprenticeship program within the area who must be a training director or a member of a labor organization. If no union affiliated registered apprenticeship programs exist in the area, a representative of a registered apprenticeship program with no union affiliation must be appointed, if one exists.

(3) In addition to the above representatives, the board may also include the following to contribute to the twenty percent requirement:

(a) one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment training or education needs of individuals with barriers to employment including organizations that serve veterans or provide or support competitive integrated employment for individuals with disabilities; and

(b) one or more representatives of organizations with demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

C. Representatives of education and training. The balance of local board membership must include:

(1) at least one eligible provider administering adult

education and literacy activities under WIOA Title II;

(2) at least one representative from an institution of higher education providing workforce investment activities, including community colleges; and

(3) may include representatives of local educational agencies, and of community-based organizations with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment.

D. Representatives of governmental and economic and community development entities. Each local board must include at least one appropriate representative from:

(1) economic and community development entities;

(2) the state employment service office under the Wagner-Peyser Act (29 USC 49 et seq.) serving the local area;

(3) the programs carried out under title I of the Rehabilitation Act of 1973, other than section 112 or part C of that title, serving the local area; and

(4) may include representatives from:

(a) agencies or entities administering programs serving the local area relating to transportation, housing, and public assistance;

(b) philanthropic organizations serving the local area; and

(c) other appropriate individuals deemed appropriate by the CEO.

[11.2.4.11 NMAC - N, 7/1/2018]

11.2.4.12 LOCAL BOARD ROLES AND RESPONSIBILITIES:

The local board must perform the following functions per WIOA section 107 and must describe the implementation of these functions in the agreement with its CEOs, including:

A. develop and submit a four-year local plan for the local area, in partnership with the CEO per WIOA section 108;

B. conduct workforce research and regional labor market analysis to include:

(1) analyses and regular updates of economic conditions, needed knowledge and skills, workforce and workforce development, including:

(a) education and training activities;

(b) strengths and weaknesses; and

(c) the capacity to provide services to address the identified education and skill needs of the workforce and the employment needs of employers.

(2) assistance to DWS in developing the statewide workforce and labor market information system under the Wagner-Peyser Act for the region; and

(3) other research, data collection, and analysis related to the workforce needs of the regional economy after receiving input from a wide array of stakeholders, as necessary.

C. convene local workforce development system stakeholders to assist in the development of the local plan and in identifying non-federal expertise and resources to leverage support for workforce development activities. Such stakeholders may assist the local board and standing committees in carrying out the convening, brokering, and leveraging functions at the direction of the local board;

D. lead efforts to engage with a diverse range of employers and other entities in the region to:

(1) promote business representation on the local board;

(2) develop effective linkages, including the use of intermediaries, with employers in the region to support employer utilization of the local workforce development system and to support local workforce activities;

(3) ensure workforce investment activities meet the needs of employers and support economic growth in the

region by enhancing communication, coordination, and collaboration among employers, economic development entities and service providers; and

(4) develop and implement proven or promising strategies for meeting the employment and skill needs of workers and employers, such as the establishment of industry and sector partnerships, that provide the skilled workforce needed by employers in the region and that expand employment and career advancement opportunities for workforce development system participants in in-demand industry sectors or occupations.

E. with representatives of secondary and postsecondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment;

F. lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers and job seekers, and identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs;

G. develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and job seekers by:

(1) facilitating connections among the intake and case management information systems of the one-stop partner programs to support a comprehensive workforce development system in the local area;

(2) facilitating access to services provided through the one-stop delivery system involved, including access in remote areas;

(3) identifying strategies for better meeting the needs of individuals with barriers to

employment, including strategies that augment traditional service delivery, and increase access to services and programs of the one-stop delivery system, such as improving access in remote areas;

(4) leveraging resources and capacity within the local workforce development system, including resources and capacity for services for individuals with barriers to employment.

H. in partnership with the CEOs for the local area:

(1) conduct oversight of youth workforce investment activities authorized under WIOA section 129, adult and dislocated worker employment and training activities under WIOA section 134, and the entire one-stop delivery system in the local area;

(2) ensure the appropriate use and management of the funds provided under WIOA Title I for the youth, adult, and dislocated worker activities and one-stop delivery system in the local area; and

(3) ensure the appropriate use, management, and investment of funds to maximize performance outcomes under WIOA section 116.

I. negotiate and reach agreement on local performance indicators with the CEO and DWS;

J. negotiate with CEOs and required partners on the methods for funding the infrastructure costs of one-stop centers in the local area or must notify DWS if they fail to reach agreement at the local level and will use a state infrastructure funding mechanism;

K. select the following providers in the local area, and where appropriate terminate such providers:

(1) providers of youth workforce investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such a committee is established); however, if the local board determined there is an insufficient number of eligible training providers in the local area, the local board may award contracts

on a sole-source basis as per WIOA section 123;

(2) providers of training services consistent with the criteria and information requirements established per WIOA section 122;

(3) providers of career services through the award of contracts, if the one-stop operator does not provide such services; and

(4) one-stop operators.

L. work with the state to ensure there are sufficient numbers and types of providers of career services and training services serving the local area and providing the services in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities per WIOA section 107;

M. coordinate activities with education and training providers in the local area, including:

(1) reviewing applications to provide adult education and literacy activities under WIOA Title II, for the local area to determine whether such applications are consistent with the local plan;

(2) making recommendations to the eligible agency to promote alignment with such plan; and

(3) replicating and implementing cooperative agreements to enhance the provision of services to individuals with disabilities and other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination;

N. develop a budget for the activities of the local board, with the approval of CEOs and consistent with the local plan and the duties of the local board;

O. assess on an annual basis, the physical and programmatic accessibility of all one-stop centers in the local area per WIOA section 188, if applicable, and applicable provisions of the Americans with

Disabilities Act of 1990 (42 USC 12101 et seq.);

P. certify one-stop centers;

Q. produce an annual report that must be submitted to the state administrative entity, per guidelines established by the state administrative entity;

R. promote workforce connection center programs and activities; and

S. conduct business in an open manner by making available to the public information about the activities of the local board.
[11.2.4.12 NMAC - N, 7/1/2018]

11.2.4.13 BYLAWS: The local board must establish bylaws that include, at a minimum, the following sections:

A. Establishment.
Acknowledge that the local board is established in accordance with WIOA section 107;

B. Name. Identify the name of the local board.

C. Purpose.
Acknowledge the establishment of the local board consistent with WIOA sections 107;

D. Duties and responsibilities. Acknowledge the duties and responsibilities as outlined in WIOA and in the partnership agreement between the CEOs and the local board.

E. Membership.
Include a description of membership as outlined in WIOA section 107 and in the CEO agreement, as required by this rule.

F. Local board chair election. Describe the process used to elect a local board chair, including term details.

G. Election of officers.
Outline officer positions, the process used to elect officers, officer terms, removal of officers, and specific officer roles and responsibilities.

H. Meetings.
(1)
Information on how often local board and committee meetings will be held.

(2)
Acknowledgement of open meeting

requirements and compliance.

(3) Description
of the process of announcing regular and special meetings.

(4)
Acknowledgement that a quorum shall consist of at least a simple majority of the currently appointed membership.

(5)
Clarification as to whether phone and web-based meetings will be permitted.

I. Delegation of local board duties. Acknowledge that local board members will not be permitted to delegate any local board duties to proxies or alternates.

J. Committees.
Include a list of standing committees including the descriptions for each and composition, and description of the process for having ad hoc committees.

K. Conflict of interest.
Acknowledge that local board members shall adhere to the following in regard to conflict of interest:

(1) A local board member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, or on matters of the provision of services by the member or the entity the member represents.

(2) A local board member shall avoid even the appearance of a conflict of interest. Prior to taking office, local board members shall provide to the local board chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations that have received, currently receive, or are likely to receive contracts or funding from the local board. Such declarations shall be updated annually or within 30 days to reflect any changes in such business interests or relationships. The local board shall appoint an individual to timely review the disclosure information and advise the local board chair and appropriate members of potential conflicts.

(3) Prior to

a discussion, vote, or decision on any matter before a local board, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization, or property that would be affected by any official local board action, the member shall disclose the nature and extent of the interest or relationship and shall abstain from discussion and voting on or in any other way participating in the decision on the matter. All abstentions shall be recorded in the minutes of the local board meeting and be maintained as part of the official record.

(4) It is the responsibility of the local board members to monitor potential conflict of interest and bring it to the local board's attention in the event a member does not make a self-declaration.

(5) In order to avoid a conflict of interest, a local board shall ensure that the local board's workforce service providers shall not employ or otherwise compensate a current or former local board member or local board employee who was employed or compensated by the local board or its administrative entity, fiscal agent, or grant recipient anytime during the previous 12 months.

(6) Local board members or their organizations may receive services as a customer of a local workforce service provider or workforce system partner. To avoid conflict of interest, a local board shall ensure that the local board, its members, or its administrative staff do not directly control the daily activities of its workforce service providers, workforce system partners or contractors.

L. Compensation and reimbursement of expenses.
A description of the policy on compensating local board members and reimbursing expenses shall be included.

M. Amendment.
Include a description of the process for amending the bylaws.

N. Compliance with

law.

(1)

Acknowledgement stating, in execution of its business, the local board shall comply with all applicable New Mexico statutes and regulations including, but not limited to, the state Procurement Code, the state Open Meetings Act, NMSA 1978 Compilation, and the state Mileage and Per Diem Act.

(2)

Acknowledgement stating, in execution of its business, the local board shall comply with WIOA and related regulations as well as state policies and directives.

[11.2.4.13 NMAC - N, 7/1/2018]

11.2.4.14 LOCAL BOARD CERTIFICATION:

A. Initial certification.

DWS must certify the composition of each local board in the state.

B. Subsequent certification. Upon completion of initial certification, DWS must recertify local boards every two years.

C. Certification criteria.

(1)

Initial certification criteria. Initial certification shall be based on criteria established under WIOA section 107, including compliance with membership, appointment process, chairmanship, and standing committee requirements.

(2) Subsequent

certification criteria. Subsequent certification shall be based on the initial certification criteria, as well as the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the corresponding performance accountability measures and achieved sustained fiscal integrity, as defined in WIOA section 106, and as outlined in the local board grant agreement.

(a)

If a local board meets all membership requirements, but fails to meet performance measures and outcomes, certification will be granted for only a one-year review period, instead of a two-year period.

(b)

At the end of the one-year review period, the recertification process will be repeated with an updated review of performance and membership composition. If this review shows the local board is meeting all performance measures and outcomes, a two-year certification will be granted.

(c)

During the two-year certification period, if more than ten percent of the local board membership is removed for cause, a recertification shall occur to ensure membership compliance and board stability.

D. Decertification.

(1) Conditions

for decertification. A local board is subject to decertification under the following conditions:

(a)

failure to meet all local board certification requirements;

(b)

failure to carry out required functions of the local board;

(c)

fraud; or

(d)

abuse.

(2)

Performance and decertification. If a local board has already been placed on a one-year review period due to lack of meeting performance measures and outcomes, and fails to meet performance measures and outcomes for a second year, the local board may be decertified.

(3) Notice

and comment. A written notice and opportunity for comment will be provided prior to decertification.

(4)

Reorganization plan. Per WIOA section 107, if a local board is decertified, DWS, acting on behalf of the governor, may require a new local board be appointed and certified for the local area pursuant to a reorganization plan developed by DWS, in consultation with the CEOs in the local area and in accordance with the certification criteria referred to in this policy.

[11.2.4.14 NMAC - N, 7/1/2018]

HISTORY OF 11.2.4 NMAC:

History of Repealed Material:

11.2.4 NMAC, Workforce Investment Act (WIA) Policy/Program Issuance and State Information Notice (SIN) System, filed 6-16-2000 - Repealed effective 7-1-2003.

11.2.4 NMAC, Workforce Investment Act (WIA) Program Policies and State Technical Assistance Guide (STAG) System, filed 6-13-2003 - Repealed effective 12-31-2005.

11.2.4 NMAC, Workforce Investment Act (WIA) Rulemaking Procedures, filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.4 NMAC, Workforce Investment (WIA) Act Local Boards, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.4 NMAC, Workforce Investment Act Local Governance, filed 8-15-2012 - Repealed effective 7-1-2018.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 5 WORKFORCE INNOVATION AND OPPORTUNITY ACT ONE STOP SYSTEM AND PARTNERSHIPS

11.2.5.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions (DWS) [11.2.5.1 NMAC - N, 7/1/2018]

11.2.5.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners. [11.2.5.2 NMAC - N, 7/1/2018]

11.2.5.3 STATUTORY

AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I, and 1978

NMSA Section 50-14-1 *et seq.*
[11.2.5.3 NMAC - N, 7/1/2018]

11.2.5.4 DURATION:

Permanent.

[11.2.5.4 NMAC - N, 7/1/2018]

11.2.5.5 EFFECTIVE

DATE: July 1, 2018, unless a later date is cited at the end of a section.

[11.2.5.5 NMAC - N, 7/1/2018]

11.2.5.6 OBJECTIVE:

To provide guidance to local boards and one-stop partners and operators regarding required and appropriate partnering strategies within the one-stop delivery system.

[11.2.5.6 NMAC - N, 7/1/2018]

11.2.5.7 DEFINITIONS:

A. Infrastructure funding agreement (IFA) is an agreement on shared infrastructure costs negotiated among local boards, one-stop partners, and chief elected officials. IFAs are a mandatory component of the local memorandum of understanding, described in WIOA Sections 121(c), 20 CFR 678.500 and 678.755, 34 CFR 361.500 and 361.755, and 34 CFR 463.500 and 463.755. The IFA contains the infrastructure costs budget, which is an integral component of the overall one-stop operating budget.

B. Workforce connection online system is a common management information system DWS makes available to support business outreach and job seeker services. The system is utilized for all data collection, performance monitoring, and reporting of all workforce development activities.

[11.2.5.7 NMAC - N, 7/1/2018]

11.2.5.8 DESCRIPTION OF THE ONE-STOP SYSTEM:

The one-stop delivery system brings together required partner agencies and organizations to collaboratively implement a seamless, customer-focused approach to delivering workforce development, education, and other related workforce development programs. Together

these partners determine strategies to best meet this mission, such as through co-location, shared case management, coordinated and integrated communications and information, training and educational activities, business services, and other means.

A. Each local area is required to establish at least one comprehensive center that includes access to all of the required partners.

B. Non-comprehensive sites, or affiliate sites, where one or more of the required programs are available, are permissible, as long as clear opportunities exist for connecting partners, customers, and businesses to ensure coordination across programs.

C. Under WIOA Title I, stand-alone sites offering only Wagner-Peyser employment services-funded services, are prohibited.

[11.2.5.8 NMAC - N, 7/1/2018]

11.2.5.9 ONE-STOP PARTNERS AND PARTNER RESPONSIBILITIES:

WIOA establishes goals for the integration of workforce development programs. These goals are intended to maximize the value and benefits to customers of services available to them under federally-funded workforce development programs. Planning and coordinating services among all federally-funded workforce development partners is necessary in order to achieve the level of integrated services delivery required by WIOA. This means that all federally-funded workforce development programs must work in partnership to optimize the quality of services provided. Successful integration is directly related to coordinated and joint use of resources.

A. These required partners are entities responsible for administering the following workforce development programs and activities in the local area:

(1) Title I Programs (Adult, dislocated worker, youth, Job Corps, YouthBuild, Native American and migrant and seasonal farmworker programs);

(2) Wagner-Peyser Act employment service program authorized under the Wagner-Peyser Act (29 USC 49, et seq), as amended;

(3) Vocational Rehabilitation program authorized under Title I of the Rehabilitation Act of 1973 (29 USC 720, et seq), as amended by WIOA Title IV;

(4) Adult Education and Family Literacy Act programs under Title II of WIOA.

(5) Senior community service employment program (SCSEP) authorized under Title V of the Older Americans Act of 1965 (42 USC 3056, et seq);

(6) Career and technical education programs at the postsecondary level, authorized under Carl D. Perkins Career and Technical Education Act of 2006(20 USC 2301, et seq.);

(7) Trade Adjustment Assistance authorized under Chapter 2 of Title II of the Trade Act of 1974 (19 USC 2271, et seq);

(8) Jobs for veterans state grants programs authorized under Chapter 41 of Title 38, USC;

(9) Employment and training activities carried out under the Community Services Block Grant (42 USC 9901, et seq);

(10) Employment and training activities carried out by the department of housing and urban development;

(11) Programs authorized under state unemployment compensation laws under 1978 NMSA 51-1-1, et seq (in accordance with applicable federal law);

(12) Reentry employment opportunities (REO) (formerly known as ex-offender programs) authorized under Section 212 of the Second Chance Act of 2007 (42 USC 17532); and

(13) Temporary assistance to needy families (TANF) authorized under the Social Security Act, unless exempted by the governor.

(14) Other

entities that carry out a workforce development program, including federal, state or local programs, and programs in the private sector, may serve as additional partners in the one-stop delivery system if the local board and chief elected officials approve the entity's participation, in accordance with 20 CFR 678.410.

B. Each required partner must provide its workforce development programs or activities through the one-stop delivery system.

C. Each local board is mandated to establish a memorandum of understanding (MOU) with each of the required one-stop partners in that local area that describes their programmatic and fiscal contributions for infrastructure, and additional costs necessary to support the one-stop delivery system.

D. WIOA and related regulations outline the requirements for federally-funded workforce development partners to contribute to infrastructure funding of the one-stop system in each local area. Partner programs and additional partners that carry out a program in the local area are required to share infrastructure costs and certain additional costs. When two or more grant recipients or contractors of a required partner program carry out a program in a local area, these entities are considered one-stop partners, and they must reach out to the local board to assist in carrying out the roles and responsibilities of the workforce connection centers, including negotiating their share of the infrastructure costs.

E. When one or more required partners is the recipient of multiple federal grant awards, each grant or contract recipient carrying out the workforce development program in that local area must contribute towards the infrastructure costs. Contributions must be based on the proportionate use and relative benefit received by those partners from the workforce connection centers. As required one-stop partners, Native American programs are strongly encouraged to contribute to infrastructure costs, but they are

not required to contribute. Any agreement or contribution or non-contribution to infrastructure costs by Native American programs must be documented in the MOU carried out by the US department of housing and urban development;
[11.2.5.9 NMAC - N, 7/1/2018]

11.2.5.10 MEMORANDUM OF UNDERSTANDING (MOU):

The MOU is the functional tool, as well as the visionary plan for how the local boards and one-stop partners will work together to create and execute a unified service delivery system that meets the needs of their shared customers. The following additional requirements for MOUs apply:

A. Local boards may develop a single "umbrella" MOU that addresses overarching issues for the local board, chief elected officials, and required one-stop partners as they relate to the local one-stop delivery system. Alternatively, they may choose to enter into a separate MOU with each individual partner, or group of partners;

B. Each required one-stop partner entering into the MOU development and negotiation process designates a specific individual with authority to commit financially and programmatically on behalf of the required partner. This individual may be staff from a state agency's central, regional, or local office or a local representative providing services for a state-level entity through a contract, grant, or similar agreement.

C. MOUs must identify and detail how each required partner will contribute its proportionate share of infrastructure costs for the one-stop system.

D. The local board must report failure to execute any MOU with a required one-stop partner to DWS. If DWS cannot assist the local board to resolve the impasse, the failure to resolve the impasse will be reported to the US Secretary of Labor and the head of any other agency with responsibility for oversight of the required partner's program.

[11.2.5.10 NMAC - N, 7/1/2018]

11.2.5.11 ONE-STOP OPERATING COSTS:

WIOA requires all one-stop partners to contribute to infrastructure funding, which includes both facility and shared costs needed to maintain operation of the one-stop delivery system.

A. Contributions by required one-stop partners to the facility funding costs of a comprehensive workforce connection must be monetary.

B. Contributions by both required and other partners for shared costs may be in cash, or in a fairly evaluated in-kind contribution. However, said contributions must demonstrate the contribution impacts and benefits all partners and the overall one-stop delivery system.

C. Each local board is required to establish an MOU with each partner in that local area that includes how infrastructure funding will be allocated and contributed.

D. DWS is responsible for providing ongoing technical assistance and written guidance describing the required workforce system partners, example tables, and funding structures to aid in the overall planning and development of the infrastructure funding agreements (IFAs). DWS is also responsible for advocacy and communication with state partner organizations and agencies as needed to support local board negotiations.

E. If consensus cannot be reached when developing the IFA, local boards are required to notify DWS at least 60 days prior to the deadline set by DWS. DWS will then assume responsibility for reviewing negotiated costs and processes used to determine the IFA, providing further guidance to local boards and the partners. The funding mechanism imposed by DWS is a last resort effort. The local board and the required partners are required to continue to negotiate in good faith to avoid a funding mechanism imposed by DWS.

[11.2.5.11 NMAC - N, 7/1/2018]

11.2.5.12 ONE-STOP OPERATORS:

A. At a minimum, the one-stop operator (operator) must coordinate the service delivery of required one-stop partners. The operator works with all the required workforce development partners to coordinate effective strategies and systems necessary to build and sustain a cohesive, seamless one-stop delivery system that engages all the partners in planning, goal setting, and implementing activities. The operator is primarily responsible for organizing and facilitating partner discussions surrounding the MOU, IFA, and shared work responsibilities needed to implement and sustain a customer-centered approach focused on improving employment outcomes for job seekers and business outreach to employers. Additionally, the operator must oversee implementation and compliance of these activities to ensure effective programmatic and physical access at each of the workforce connection centers to ensure they are in compliance with WIOA regulations, and state and local policies related to nondiscrimination and equal opportunity.

B. The following requirements apply to the local board and operator:

(1) WIOA requires each local board to issue a competitive process for the selection of the operator for the local area on a regular basis.

(2) A sole source selection option is allowed, but only after an attempt to competitively procure does not result in a responsive or reasonable offer. A local board may also be selected as an operator through sole source procurement, but only with an agreement of the chief elected officials in the local area and DWS. In instances where the local board is selected as the operator, sufficient conflict of interest policies and procedures must be established by the local board and these policies and procedures must be approved by DWS.

(3) An operator may be a single public, private, or nonprofit entity, or

a consortium of entities. If a consortium of entities is used, it must include a minimum of three of the required one-stop partners.

(4) Elementary schools and secondary schools are not eligible as operators, except that a non-traditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected. [11.2.5.12 NMAC - N, 7/1/2018]

11.2.5.13 ONE-STOP CERTIFICATION: Local boards must certify their workforce connection centers at least once every three years.

A. The state workforce development board, in consultation with chief elected officials and the local board must establish objective criteria and procedures for the local board to use when certifying the workforce connection centers.

B. Local boards must develop and include in their local plan, a certification policy and procedure that contains the criteria for assessing each workforce connection center and the one-stop delivery system.

C. Local board certification policies must be consistent with the criteria for assessing each local workforce connection center and one-stop delivery system. This must include an evaluation of the workforce connection centers and one-stop delivery system for effectiveness, physical and programmatic accessibility, and continuous quality improvement, as well as any additional criteria as determined by the local board.

D. Local boards must submit their certification policies to DWS for review and approval. These certification policies will be incorporated into the compliance review and audit procedures conducted by state monitors.

E. In cases where a local board is selected to act as the operator, DWS must review the assessment and make the certification determination for those workforce

connection centers and the one-stop delivery system.

F. If local board certification is not completed within the timeframes set by DWS, the workforce connection centers and the one-stop system become ineligible to receive infrastructure funding from partners or the state funds for those areas that rely on state infrastructure funding. [11.2.5.13 NMAC - N, 7/1/2018]

11.2.5.14 COMMON IDENTIFIER: In accordance with WIOA and 20 CFR, 678.900, the US Department of Labor's Employment and Training Administration, Education's Office of Career, Technical and Adult Education, Office of Special Education and Rehabilitative Services' Administration, and Health and Human Services Administration for Children and Families established the "American Job Center" network as a unifying name and brand that identifies online and in-person workforce development services as part of a single network of publicly funded services. The one-stop delivery system must use either that common identifier as its name, or use a tag line phrase, "a proud partner of the American Job Center network". As such, DWS has adopted the tag line phrase, "a proud partner of the American Job Center network". All New Mexico workforce connection centers are required to:

A. adopt the new logo and branding practices with timeframes and procedures established in accordance with state technical assistance guidance;

B. replace existing logos and incorporate the tagline phrase;

C. adhere to the logo and branding practices for all printed materials that are copied and distributed for specific events and meeting, and all related publications and handouts which include references to the workforce connection centers in New Mexico;

D. adhere to state technical assistance guidance

regarding the common identifier.
[11.2.5.14 NMAC - N, 7/1/2018]

11.2.5.15 DWS

RESPONSIBILITIES: DWS, under the direction of the governor and the state workforce development board, is designated as the state administrative entity responsible for the implementation and oversight of WIOA in New Mexico. DWS's responsibilities include, but are not limited to:

A. developing statewide policies and written guidance letters;

B. ensuring each local board develops and maintains a single umbrella or individual partner memorandum of understanding;

C. ensuring each local board develops an infrastructure funding agreement with the WIOA required partners that is monitored, reviewed, and updated at least quarterly;

D. reviewing and approving local board workforce development plans;

E. preparing New Mexico's WIOA state plan and submitting it to the US department of labor (USDOL), as directed

F. preparing an annual report in coordination with the state workforce development board on workforce system activity and performance;

G. negotiating statewide performance measures with the USDOL, and subsequently negotiating local area performance measures with local boards;

H. providing oversight and administration for the eligible training provider certification system;

I. preparing and initiating grant agreements with each local board;

J. monitoring and evaluating the one-stop delivery system to ensure compliance with state and federal policies and directives;

K. providing or contracting for technical assistance and training to ensure performance measures and outcomes are met;

L. ensuring the one-stop delivery system includes all required partners, and that continuous quality improvement activities are developed and implemented;

M. requiring corrective action or imposing sanctions on a local board or other WIOA sub-recipient for significant inability or failure to perform as required;

N. evaluating the effectiveness of the one-stop delivery system, including qualitative and quantitative program analysis of program goals, performance success indicators, outcomes, cost-efficiencies, seamless service delivery, partner contribution and collaboration, and customer satisfaction; and

O. compiling and submitting data and reports on program outcomes and performance of the one-stop delivery systems as required by the USDOL, which may also include compilation of data and reports related to common performance measures and outcomes related to WIOA core partners.
[11.2.5.15 NMAC - N, 7/1/2018]

11.2.5.16 COMMON INFORMATON AND MANAGEMENT SYSTEM:

Local boards and their sub-recipients are required to use the workforce connection online system, which tracks participants and individual services and is used to track and monitor performance outcomes. Partners co-located in the comprehensive and affiliate centers, or partners engaged in shared case management and referral, may enter into data sharing agreements with DWS to support access to this system, and its related data, in accordance with the provisions of a data sharing agreement.
[11.2.5.16 NMAC - N, 7/1/2018]

HISTORY OF 11.2.5 NMAC: History of Repealed Material:

11.2.5 NMAC, Workforce Investment Act (WIA) State Workforce Development Board, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.6 NMAC, Workforce Investment Act (WIA) One-Stop Delivery

System, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.5 NMAC, Workforce Investment Act (WIA) One-Stop Delivery System, filed 8-15-2012 - Repealed effective 8-1-2018.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 8 WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA) TITLE I, ADULT, DISLOCATED WORKER, AND YOUTH PROGRAM SERVICE DELIVERY

11.2.8.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.8.1 NMAC - N, 7/1/2018]

11.2.8.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.
[11.2.8.2 NMAC - N, 7/1/2018]

11.2.8.3 STATUTORY

AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I; and NMSA 1978 50-14-1 *et seq.*
[11.2.8.3 NMAC - N, 7/1/2018]

11.2.8.4 DURATION:

Permanent.
[11.2.8.4 NMAC - N, 7/1/2018]

11.2.8.5 EFFECTIVE

DATE: July 1, 2018, unless a later date is cited at the end of a section.
[11.2.8.2 NMAC - N, 7/1/2018]

11.2.8.6 OBJECTIVE: To provide guidance to local boards and

other WIOA sub-recipients regarding the appropriate selection of service providers, participant eligibility, provision of career and training services for eligible adults, dislocated workers, and youth, appropriate use of training accounts, provisions of work-based training, incumbent worker training, supportive services, priority of service, co-enrollment and performance.

[11.2.8.6 NMAC - N, 7/1/2018]

11.2.8.7 DEFINITIONS:

A. Eligible training provider. Training services must be provided by an eligible training provider in accordance with WIOA Section 122(d). Training is available through a state eligible training provider and program list comprised of entities determined eligible to receive funds through WIOA Title I, Subtitle B, according to DWS's established eligibility criteria and procedure. The purpose of this list is to ensure the accountability, quality and labor-market relevance of programs, and to ensure informed customer choice for individuals eligible for training.

B. Out of school youth according to Section 20 CFR 681.210, must be aged 16-24, not attending any school, and meet one or more additional conditions, which could include: school dropout; within age of compulsory attendance but has not attended for at least the most recent complete school year calendar quarter; holds a secondary school diploma or recognized equivalent and is low-income and is basic skills deficient or an English language learner; subject to the juvenile or adult justice system; homeless, runaway, in foster care or aged out of the foster care system, eligible for assistance under Section 477, Social Security Act, or in out-of-home placement; pregnant or parenting; an individual with a disability; low income person who requires additional assistance to enter or complete an educational program or to secure and hold employment.

C. In-school youth according to Section CFR 681.220,

must be aged 14-21, attending school low income, and meet one or more additional conditions, which could include: basic skills deficient; English language learner; an offender; homeless, runaway, in foster care, or aged out of the foster care system; pregnant or parenting; an individual with a disability; person who requires additional assistance to enter or to complete an educational program or to secure and hold employment.

D. Training contract.

Individual training accounts (ITAs) are the primary method to be used for procuring training services under WIOA. However, in certain circumstances, a training contract may be used to provide services, instead of an ITA. These circumstances are referred to as the "training exceptions" or "contract exceptions", as governed by WIOA Section 134(c) (3)(G)(ii) and consistent with Sections 20 CFR 680.320, 680.340, and 680.530. Additionally, the local board must have fulfilled the consumer choice requirements of Section 20 CFR 680.340.

E. Work-based training. Allowed types of work-based training include registered apprenticeships, on-the-job training (OJT), and customized training. Sections 20 CFR 680.700 through 680.840 govern work-based training.

F. Incumbent worker training is designed to meet the needs of an employer or group of employers to retrain a skilled workforce or avert layoffs, as governed by Sections 20 CFR 680.780 through 680.820.

G. Supportive service are designed to provide a participant with the resources necessary to enable their participation in career and training services, and are governed by Section 20 CFR 680.900 through 680.970. Supportive services can include services such as transportation assistance, child care and dependent care assistance, housing assistance, and needs-related payments. Needs-related payments are only available to individuals enrolled in training services and must be consistent with Sections 20 CFR 680.930, 680.940, 680.950, 680.960, and 680.970.

H. Basis career services include universally accessible services, such as eligibility determinations, initial skill assessments, labor exchange services, provisions of information on programs and services, and program referrals, that must be made available in at least one comprehensive workforce connection center per local area to all individuals seeking employment and training services. These services may be provided by both the adult and dislocated worker programs, as well as by the Wagoner-Peyser employment services.

I. Individual career services include services, such as specialized assessments, developing an individual employment plan, counseling, work experiences, which must be provided to participants after workforce connections center staff determine that such services are required to retain or obtain employment, consistent with any applicable statutory priorities.

J. Training services are described in WIOA, Section 134(c)(3). Training services are governed by Sections 20 CFR 680.200 through 680.230 and 20 CFR 680.300 through 680.350. Workforce connection center staff may determine training services are appropriate, regardless of whether the individual has received basic or individualized career services first, and there is no sequence of service requirement. Training services, when determined appropriate, must be provided either through a training contract, such as an ITA.

K. Follow-up services must be provided for adults and dislocated worker participants who are placed in unsubsidized employment, for up to 12 months after the first day of employment and local areas must establish policies that define what are considered to be appropriate follow-up services, as well as policies for identifying when to provide follow-up services to participants.

L. Basic skills deficient means an individual:

(1) who

is a youth, that the individual has an English reading, writing, or computing skills at or below the eighth grade level on a generally accepted standardized test; or

(2) who is a youth or adult, and the individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.

[11.2.8.7 NMAC - N, 7/1/2018]

11.2.8.8 SELECTION OF SERVICE PROVIDERS: Local boards must select the following providers in the local area, and where appropriate, terminate such providers in accordance with Section 2 CFR 200:

A. Providers of youth services. Providers of youth workforce investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such committee is established), in accordance with WIOA Section 107(d)(10)(E), and local area grant agreements. The local board may implement a WIOA pay-for-performance contract strategy for youth program elements described in 20 CFR 681.460, for which the local board may reserve and use not more than ten percent of the total funds allocated to the local area under WIOA Section 128(b).

B. Providers of adult and dislocated worker services. Providers of WIOA Title I adult and dislocated worker career services through the award of contracts in accordance with local board grant agreements. [11.2.8.8 NMAC - N, 7/1/2018]

11.2.8.9 ELIGIBLE TRAINING PROVIDERS. DWS, in partnership with local boards, identifies eligible training providers and programs that are qualified to receive WIOA Title I-B funds to train adults, dislocated workers and out-of-school youth ages 16-24, including those with disabilities.

DWS administers and provides access to the eligible training provider list in accordance with WIOA Sections 116, 122, and 134, and Sections 20 CFR 677.230, 679.370-380, 680.400-530, and 683.630. This state-approved list identifies appropriate providers and programs for eligible WIOA participants in the local areas who are seeking training, as well as cost and program performance information for each of the providers' programs, to allow participants to make informed consumer choices. DWS administers the application procedure for training providers and programs to maintain their eligibility.

[11.2.8.9 NMAC - N, 7/1/2018]

11.2.8.10 WIOA PARTICIPANT ELIGIBILITY:

Local boards are required to establish and formally approve a local policy for making eligibility determinations for the three WIOA finding streams under Title I - adult, dislocated worker, and youth. Local board policy must also include guidance on the use of self-attestation as a last resort when other documentation cannot be found or accessed.

A. Adult and dislocated worker eligibility.

Eligibility criteria vary according to each type of career or training service, in accordance with Sections 20 CFR 680.120, 680.130, and 680.210.

(1) To be eligible to receive career services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older, and meet the criteria of Section 680.120.

(2) To be eligible for any dislocated worker program, an eligible adult must meet the criteria of section 20 CFR 680.130.

(3) Eligibility criteria for training services are found at Sections 20 CFR 680.210 and 680.220.

B. Youth eligibility. Section 20 CFR 681, Part B governs eligibility criteria for youth activities under WIOA Title I. In order to be a participant in the WIOA youth program an eligibility determination

must be made including the provision of an objective assessment, development of an individual service strategy, and participation in any of the 14 WIOA youth program elements discussed in section 11.2.8.13 of this rule.

(1) Both in-school and out-of-school youth are eligible for youth services, in accordance with definitions in Sections 20 CFR 681.210-220.

(2) Applicable state law governs the definition for "attending" or "not attending" school for the purposes of determining in-school youth and out-of-school youth eligibility for WIOA-funded service. These definitions are based on the department of public education's rules in 6.10.4 NMAC and described in the WIOA state plan.

(3) Applicable state law for secondary and postsecondary institutions defines "school", however, for the purposes of WIOA, some additional eligibility restrictions apply, in accordance with Section 20 CFR 681.230.

(4) Sections 20 CFR 681.250-270 address how certain eligibility criteria are to be applied including low-income and disability determinations.

(5) Local boards must establish a policy in their local plans to govern how "basic skills deficient" criteria are to be applied in making eligibility determinations, in accordance with Section 20 CFR 681.290 and the WIOA state plan.

(6) For in-school and out-of-school youth, local boards may establish definitions and eligibility documentation requirements for the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion of Sections 20 CFR 681.210(c)(9) and 681.220(d)(8). Local boards who wish to apply this criterion must establish a policy in their local plans that aligns with state policy as stated in the WIOA state plan and that local policy must establish definitions and eligibility documentation requirements for the

“requires additional assistance to complete an educational program to secure and hold employment”.

(7) Per WIOA Section 129(3)(B), local areas are not allowed to assist more than five percent of in-school youth who are eligible under “individual who requires additional assistance” to complete an educational program or to secure or hold employment.

(8) Per WIOA Section 129(3)(A)(ii), local areas are not allowed to assist more than five percent of in-school youth who are not low-income.
[11.2.8.10 NMAC - N, 7/1/2018]

11.2.8.11 ADULT AND DISLOCATED WORKER

SERVICES: WIOA Title I formula funds allocated to local areas for adults and dislocated workers must be used to provide career and training services through the one-stop delivery system, in accordance with Section 20 CFR 680.

A. Career services.

Career services consist of three categories, including basic career services, individualized career services, and follow-up services. Local boards determine the mix of these services but both types must be available for eligible adults and dislocated workers. Requirements on who may provide career services for adults and dislocated workers and how those services are to be provided are located in Section 20 CFR 680.160.

(1) **Basic career services.** At a minimum, all of the basic career services described in WIOA Sections 134(c)(2)(A)(i)-(ix) and 20 CFR 678.430(a) must be provided in each local area through the one-stop delivery system.

(2) **Individualized career services.** Individualized career services described in WIOA Section 134(c)(2)(A)(xii) and Section 20 CFR 678.430(b) must be made available, if determined appropriate in order for an individual to obtain or retain employment.

(3) Follow-

up services. Follow-up services, as described in WIOA Sections 134(c)(2)(A)(xiii) and 20 CFR 678.430(c) must be made available, as determined appropriate by the local board for a minimum of 12 months following the first day of employment, to participants who are placed in unsubsidized employment.

B. Training services.

The types of training services that may be provided to eligible adults and dislocated workers are provided in WIOA Section 134(c)(3)(D), and include but are not limited to, work-based training and incumbent worker training. Local boards must adhere to criteria for funding training in Section 20 CFR 680.230.

C. Additional

services. WIOA Title I funds may also be used to provide additional services, as described in WIOA Section 134(d), including:

(1) job seeker services, including but not limited to, customer support for individuals with barriers to employment, such as individuals with disabilities and veterans, as well as supportive services;

(2) employer services, including but not limited to, customized employment-related services to employers on a fee-for-service basis; and

(3) coordination activities, including but not limited to, employment and training activities in coordination with child support enforcement activities, activities to facilitate remote access to services provided through the workforce connection centers, and economic development activities within the local area.
[11.2.8.11 NMAC - N, 7/1/2018]

11.2.8.12 PRIORITY AND SPECIAL POPULATIONS:

According to WIOA Section 134(c)(3)(E), local boards must establish a policy with criteria by which the workforce connection center will apply the priority of service in assisting individuals. Requirements governing priority of service, including the order in which priority

is given, are located in Sections 20 CFR 680.600-660, local board grant agreements and the WIOA state plan.

A. Priority for individualized career services and training services funded with WIOA Title I adult funds must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient in the local area.

B. Veterans, as defined under WIOA Section (3)(63) and 38 USC 101, and eligible spouses receive priority of service in all US department of labor-funded training programs, in accordance with Sections 20 CFR 680.650-660.
[11.2.8.12 NMAC - N, 7/1/2018]

11.2.8.13 YOUTH SERVICES:

A. **Youth program design.** Section 20 CFR 681.420 describes the design framework services of local youth programs that must be met, including but not limited to, objective assessments, individual service strategies, case management, local plan content requirements, linkages to appropriate entities, and referral requirements. Program design requirements are also agreed to in the local board grant agreements. Local youth programs must provide services to a participant for the amount of time necessary to ensure successful preparation to enter postsecondary education or unsubsidized employment. Programs must link participation to the individual service strategy and not the timing of youth service provider contracts or program years.

B. **Youth elements.** Local programs must make each of the 14 youth services available to youth participants as described in Section CFR 681.460, which include:

(1) tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent or for a recognized postsecondary credential;
(2) alternative

secondary school services, or dropout recovery services;

(3) paid and unpaid work experiences that have as a component academic and occupational educational;

(4) occupational skills training;

(5) education offered concurrently with and in the same context as workforce preparation activities and training for specific occupational cluster;

(6) leadership developmental opportunities;

(7) supportive services;

(8) adult mentoring;

(9) follow-up services;

(10) comprehensive guidance and counseling;

(11) financial literacy education;

(12) entrepreneurial skills training;

(13) services that provide labor market and employment information about in demand industry sectors or occupations available in the local area; and

(14) activities that help youth prepare for and transition to postsecondary education and training.

C. Out-of-school youth expenditures. Criteria for expending youth funds to provide services to out-of-school youth in Section 20 CFR 681.410 must also be met. At least seventy-five percent of the total amount of youth formula funds allocated to the local workforce area must be used to provide activities to out-of-school youth, in accordance with the eligibility section of this rule, 11.2.8.10 NMAC, as agreed to in the local board grant agreements, and described in the state plan.

D. Work experience expenditures. Criteria for expending youth funds to provide work experiences to youth, in accordance with Section 20 CFR 681.590 must also be met. Local youth programs

must expend not less than twenty percent of the funds allocated to them to provide in-school and out-of-school youth with paid and unpaid work experiences that fall under the categories listed in Section CFR 681.460(a)(3), and further defined in Section 20 CFR 681.600, such as summer employment opportunities, pre-apprenticeship programs, internships and on-the-job training.

E. Follow-up services for youth. Follow-up services are critical services provided following a youth's exit from the program to help ensure the youth is successful in employment or postsecondary education and training. Follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted. Follow-up services may include regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise. Section 20 CFR 681.580 addresses the types of follow-up services for youth. [11.2.8.13 NMAC - N, 7/1/2018]

11.2.8.14 INDIVIDUAL TRAINING ACCOUNTS (ITAs): Training services for eligible individuals are typically provided by training providers who receive payment for their services through an ITA. The criteria for establishing an ITA, including how these services are provided, limitations on the duration and amounts of ITAs, under what circumstances mechanisms other than ITAs may be used to provide training, coordination of ITAs with grant assistance, the appropriate use of ITAs and supportive services related to registered apprenticeships, and requirements around consumer choice and in-demand occupations, are located in Section 20 CFR 680.300-330, and further discussed in federal and state technical assistance guidance. Additionally, WIOA ITAs are allowable for out-of-school youth, ages 16-24 using WIOA youth funds when appropriate, to enhance individual participant choice in

their education and training plans and provide flexibility to service providers. Local boards must establish a policy on the use of ITAs based on the criteria in state technical assistance guidance. [11.2.8.14 NMAC - N, 7/1/2018]

11.2.8.15 SUPPORTIVE SERVICES: Local boards, in consultation with the one-stop partners and other community service providers, must develop policies on supportive services, payments, and other compensation that ensures resource and service coordination in the local area for participating youth, adults, and dislocated workers. The supportive service policies, at a minimum, must address the following in accordance with 20 CFR 680, subpart G:

A. coordination with partners and other entities to ensure non-duplication of resources and services;

B. define the types of WIOA-funded supportive services that may be made available to eligible participants;

C. establish or provide the workforce connection centers with the authority to establish limits on the amount and duration of funding to be made available for participants, including any procedures for granting exceptions to these limits;

D. provision of needs-related payments, which may only be provided to participants enrolled in training, requires verification of any unemployment insurance claim and benefits status, and must adhere to the requirements of Section 20 CFR 680.930-970, and federal and state technical assistance guidance; and

E. procedures for referral to supportive services, including how they will be funded and what documentation will be required to indicate no other resources are available. The need for supportive services must be documented in the individual employment plan or individual service strategy prior to the provision of WIOA-funded supportive services.

F. Awards of

incentives to youth, in accordance with Sections 20 CFR 681.640 and 20 CFR part 200, for recognition and achievement directly tied to training activities and work experiences, as well as to the goals of the specific program.

[11.2.8.15 NMAC - N, 7/1/2018]

11.2.8.16 CO-ENROLLMENT AND COORDINATED SERVICE DELIVERY:

WIOA provides a significant opportunity for coordination across all of the core programs, and any coordination or co-enrollment activities must adhere to the service delivery provisions of federal regulations, Sections 20 CFR 651, 652, 653, 358, and 680.

A. Coordination between adult dislocated worker and youth programs. Individuals aged 18-24 may be eligible for both the WIOA youth and adult programs and can be co-enrolled in the two programs.

B. Coordination with Wagner-Peyser employment services. Universal access to basic career services must be achieved through close integration of Wagoner-Peyser, WIOA programs, and other partners in the New Mexico workforce connection centers. Basic career services offered by the WIOA programs must be made available by the Wagoner-Peyser program in coordination with other workforce connection center partners.

C. Coordination with adult education. Individuals who meet the respective program eligibility requirements for WIOA youth Title I and Title II may participate in Title I and Title II concurrently. WIOA Sections 134(c) (2) authorizes career services to be provided with Title I adult and dislocated worker funds.

D. Coordination with vocational rehabilitation. Individuals with disabilities are identified as individuals with barriers to employment under WIOA, and should be able to access all workforce connection center services. Funds allocated to a local area for adult and

dislocated worker activities may be used to improve coordination between employment and training programs carried out in the local area for individuals with disabilities through the workforce connection centers.

E. Coordination with trade adjustment assistance (TAA). TAA eligible workers can be co-enrolled with the WIOA dislocated worker or adult programs to allow for the timely provision of individualized services through the workforce connection center network. The Trade Act, as amended, contains provisions allowing the costs of a training program approved under the Trade Adjustment Act to be paid by TAA funds or from other sources, but does not allow duplication of payment in training costs. Those authorities and restrictions are governed by Section 20 CFR 617.25(b).

[11.2.8.16 NMAC - N, 7/1/2018]

11.2.8.17 PERFORMANCE:

In order to achieve the vision of WIOA, align service delivery across the core WIOA programs, and ensure a comprehensive approach across all partners, the US departments of labor and education have developed common measures and reporting elements. DWS is required to measure the success and overall effectiveness of the WIOA Title I adult, dislocated worker and youth programs.

A. Performance indicators: Each local area under WIOA Title I is subject to the same primary performance indicators of performance for the core programs under 20 CFR 677.155(a)(1) and (c). In addition to these indicators, DWS may apply additional indicators of performance to local areas.

B. Performance levels. Performance levels are established through a negotiation process between DWS and local areas, in accordance with Section 20 CFR 210, as agreed to in local board grant agreements. In establishing performance expectations, local boards must, through the local planning process, consider the overall goals of the programs and how the

WIOA-funded activities will lead to outcomes that contribute to these goals.

C. Performance monitoring. Through the grant agreements, local areas are directed to work with their service providers to monitor performance and report outcomes to DWS, in accordance with Section 20 CFR 677, Subpart C, as well as per their grant agreements. The local board grant agreements serve as a basis for monitoring the attainment of the performance outcomes of each local board. Refer to 11.2.19 NMAC, oversight and monitoring, for further information on monitoring requirements.

[11.2.8.17 NMAC - N, 7/1/2018]

HISTORY OF 11.2.8 NMAC:

History of Repealed Material:

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 6-16-2000 - Repealed effective 12-31-2005.

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 5-17-2001 - Repealed effective 7-1-2003.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 5-13-2003 - Repealed effective 8-15-2012.

11.2.13 NMAC, Workforce Investment Act (WIA) Participant Eligibility, filed 8-15-2012 - Repealed effective 7-1-2018.

WORKFORCE SOLUTIONS, DEPARTMENT OF

**TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 19 WORKFORCE INNOVATION AND OPPORTUNITY ACT
OVERSIGHT AND MONITORING**

11.2.19.1 ISSUING

AGENCY: New Mexico
Department of Workforce Solutions
(DWS)
[11.2.19.1 NMAC - N, 7/1/2018]

11.2.19.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients and workforce system partners.
[11.2.19.2 NMAC - N, 7/1/2018]

11.2.19.3 STATUTORY

AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I; and NMSA 1978, Section 50-14-1 *et seq.*
[11.2.19.3 NMAC - N, 7/1/2018]

11.2.19.4 DURATION:

Permanent.
[11.2.19.4 NMAC - N, 7/1/2018]

11.2.19.5 EFFECTIVE

DATE: July 1, 2018, unless a later date is cited at the end of a section.
[11.2.19.5 NMAC - N, 7/1/2018]

11.2.19.6 OBJECTIVE: To provide comprehensive guidelines for local boards, sub-recipients, and contract service providers, on the monitoring and procedures to be used by DWS to oversee the appropriate administration of WIOA formula funds in New Mexico, including roles and responsibilities of affected entities.
[11.2.19.6 NMAC - N, 7/1/2018]

11.2.19.7 STATE MONITORING AUTHORITY, PURPOSE, AND COMPLIANCE

A. Purpose. The purpose of monitoring activities is to identify strengths and weaknesses in the program operations and minimize risk for local boards. Monitoring also serves as a way to provide technical assistance and resources to the local boards as they are held accountable

for the appropriate and effective expenditure of funds, as well as the scope of activities associated with the implementation of WIOA.

B. Oversight roles and responsibilities. Recipients and sub-recipients of federal financial assistance awarded under Title I of WIOA and the Wagner-Peyser Act must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act programs and those of its sub-recipients and contractors as required under Title I of WIOA and the Wagner-Peyser Act, as well as under Section 2 CFR 200, including 2 CFR 200.327, 200.328, 200.330, 200.331, and 2 CFR 2900, in order to:

(1) determine that expenditures have been made within the proper cost categories and within the cost limitations specified in WIOA and related federal regulations;

(2) determine whether there is compliance with WIOA provisions, related federal regulation, and other applicable laws and regulations;

(3) assure compliance with Section 2 CFR 200; and

(4) determine compliance with the nondiscrimination, disability, and equal opportunity requirements of Section 188 of WIOA, including the Assistive Technology Act of 1998 (USC 3003).

C. State monitoring authority. DWS is required to monitor the fiscal and program activities of sub-recipients, which include the local boards, as well as their contractors, i.e. service providers and one-stop operators to ensure the integrity and compliance with WIOA, and related federal regulations.

D. Compliance requirements. Sub-recipients and contract service providers shall comply with all required program and fiscal monitoring activities including site visits, document review, requests for information, and any other information necessary in order to determine sub-recipient and contract service provider compliance or performance. Failure to comply

with this requirement will result in corrective action and possible sanctions pursuant to 11.2.20 NMAC.

E. Access to records and personnel.

(1) Access to records. DWS, or its authorized representative, has the right of timely access to any hard copy or electronic document or communication, or any other record of sub-recipients or contract service providers that are pertinent to the receipt and use of any funds administered by DWS. DWS, or its authorized representative, is also permitted to make any necessary copies, transcripts, etc. in accordance with its monitoring activities.

(2) Access to personnel. The right of access also includes timely access to sub-recipient and contract service provider personnel for the purpose of interview and discussion related to such documents.

(3) Record retention. In accordance with Section 29 CFR 97.42, the right of access is not limited to any required retention period but will last as long as the records are retained. Electronic or hard copy documents obtained during a monitoring review will be secured appropriately. All monitoring records shall be retained for a period of three years or, in cases of any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records shall be retained until completion of the action and resolution of all issues which arise.

[11.2.19.7 NMAC - N, 7/1/2018]

11.2.19.8 LOCAL BOARD SELF-MONITORING:

Sub-recipients are also required to monitor their own grant-supported activities to include the development of local-level monitoring plans, tools, and processes.

A. Written procedures. Sub-recipients under WIOA Title I, must have written monitoring and resolution procedures in place that are consistent with Section 2 CFR part 200 to be used in

monitoring both program and fiscal operations. In addition, sub-recipients and contract service providers shall develop their own local-level monitoring plan that includes:

(1) the schedule or timetable for monitoring WIOA funded activities; and

(2) identification of the type of review planned, such as on-site review, comparative financial analysis, desk review, staff analysis, or other type of appropriate review.

B. Monitoring

Controls. To ensure comprehensive and effective monitoring, sub-recipients and contract service providers must adhere to the following:

(1) require periodic reports from their contract service providers outlining monitoring reviews, noncompliance issues, and the status of corrective actions;

(2) ensure that a briefing regarding monitoring activities and findings is provided to the local board or appropriate local board subcommittee at regularly scheduled meetings and that this briefing is documented; and

(3) perform an annual evaluation of the monitoring function to determine its effectiveness.

C. Reporting and resolution requirements. Sub-recipients and contract service providers shall ensure monitoring reports identify instances of noncompliance with applicable federal, state, and local laws, regulations, contract provisions or grant agreements, policies, and official directives, and provide recommendations for corrective action and program quality enhancements. Sub-recipients and contract service providers shall ensure that timelines are established for the completion of corrective action based on the severity of the deficiency, and shall work with the contract service providers to ensure implementation of corrective action. Timelines shall support prompt correction of any instances of noncompliance.

Sub-recipients and contract service providers shall ensure that a copy of all monitoring reports are made available to all local board members. [11.2.19.8 NMAC - N, 7/1/2018]

11.2.19.9 MONITORING REVIEW ELEMENTS:

A. Self and risk assessments. The monitoring process begins with an assessment of the overall health of the WIOA program to assist DWS in determining each local board's level of risk and serves as guidance for setting monitoring focus and priorities.

B. Monitoring reviews. The types of reviews that can be conducted include annual onsite monitoring reviews and quarterly desk reviews, both fiscal and programmatic with timeframes set by DWS.

(1) Annual onsite monitoring reviews. State monitors may conduct two kinds of onsite monitoring reviews of each local board annually at the mid program-year mark, which includes an annual fiscal review and an annual programmatic review. The purpose of these reviews is to identify the strengths and weaknesses of local board implementation of WIOA.

(2) Desk Reviews. State monitors may conduct two kinds of desk reviews of local boards, which includes a quarterly fiscal review and a quarterly programmatic review. The reviews are designed to identify any issues with the local board's fiscal or administrative controls, programmatic operations, and are intended to ensure that these issues are addressed timely.

C. Monitoring reports. When preparing for and performing monitoring reviews, monitors will use a set of monitoring tools to guide their review work activities. Upon completion of monitoring activities, the monitor will begin work on, and issue, a detailed monitoring report which will be sent electronically to the appropriate local elected official(s) and administrator(s) within 30 days of the completion of the evaluation period. The report will

identify issues, policies, or practices that are noncompliant with program standards or other WIOA-related regulations. These observations are risk areas (i.e. areas of concern or findings) that if not corrected, could lead to an area of noncompliance in future monitoring reviews. Findings will include citations for laws, rules, or policies that are out of compliance, and the corresponding corrective actions and recommendations that are required. The report will also include any local board strengths identified by the monitor worth noting, as well as any best practices or technical assistance information the monitor determines may be beneficial to the local board.

D. State monitoring outcomes. Findings can result in the development of a detailed corrective action plan, the provision of technical assistance, or other means by which the deficiencies identified during the evaluation and monitoring period shall be addressed. The requirements for corrective action can be found pursuant to Section 20 CFR 683 and 11.2.20 NMAC. Likewise, exceptional performance, as determined by DWS, can lead to incentives as noted in 11.2.20 NMAC.

E. Review follow-ups. State monitors will conduct follow-ups to verify the completion of required or recommended corrective action activities within the timeframes communicated through the state monitoring manual. This will ensure that any lingering monitoring findings throughout the program year have been resolved, or that a robust corrective action plan is in place for the resolution of those items as appropriate. Follow-up reviews revealing failed compliance will be documented in a formal report to DWS for determination of appropriate sanctions.

[11.2.19.9 NMAC - N, 7/1/2018]

11.2.19.10 TECHNICAL ASSISTANCE: Technical assistance is an ongoing activity vital to addressing performance and encouraging an environment of continuous improvement. DWS

will proactively assist local boards by issuing policy guidance, sharing of best practices, and will work to resolve operational issues as they arise. DWS will also provide guidance and assistance to highlight areas that are working well. Monitors will also be offering technical assistance as a part of the annual onsite monitoring review process, as needed.

[11.2.19.10 NMAC - N, 7/1/2018]

11.2.19.11 INCENTIVES:

Clean monitoring reports (i.e. no findings), exceptional performance outcomes (i.e. more than one hundred percent of the local negotiated performance level), or demonstrated tangible positive outcomes of innovative service strategies, as determined by DWS, can result in the local board's receipt of an incentive award. Incentives will emphasize accountability, high performance, seamlessness and continuous improvement, supporting New Mexico in achieving its workforce development goals. DWS will annually determine the total amount of funds to be awarded from funds available. State technical guidance will be used to address the process for the administration of incentive awards in accordance with WIOA and federal regulations.

[11.2.19.11 NMAC - N, 7/1/2018]

HISTORY OF 11.2.19 NMAC: History of Repealed Material:

11.2.10 NMAC, Workforce Investment Act (WIA) Oversight and Monitoring, filed 6-16-2000 - Repealed effective 8-15-2012.

11.2.19 NMAC, Workforce Investment Act (WIA) On-the-Job Training, filed 12-15-2005 - Repealed effective 8-15-2012.

11.2.19 NMAC, Workforce Investment Act (WIA) On-the-Job Training, filed 8-15-2012 - Repealed effective 7-1-2018.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 20 WORKFORCE INNOVATION AND OPPORTUNITY ACT CORRECTIVE ACTIONS, PENALTIES AND SANCTIONS

11.2.20.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions (DWS)

[11.2.20.1 NMAC - N, 7/1/2018]

11.2.20.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients, and workforce system partners.

[11.2.20.2 NMAC - N, 7/1/2018]

11.2.20.3 STATUTORY

AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. Chapter 32, Subchapter I; and 50-14-1 *et seq.* 1978 NMSA.

[11.2.20.3 NMAC - N, 7/1/2018]

11.2.20.4 DURATION:

Permanent.

[11.2.20.4 NMAC - N, 7/1/2018]

11.2.20.5 EFFECTIVE

DATE: July 1, 2018, unless a later date is cited at the end of a section.

[11.2.20.5 NMAC - N, 7/1/2018]

11.2.20.6 OBJECTIVE:

To provide comprehensive guidelines for local boards, sub-recipients, and contract service providers on corrective actions, technical assistance, incentives, sanctions, and appeal policies and procedures to be used by DWS in overseeing and monitoring the administration of WIOA formula funds in New Mexico, including roles and responsibilities of

affected entities.

[11.2.20.6 NMAC - N, 7/1/2018]

11.2.20.7 CORRECTIVE ACTION AND PENALTIES:

A. General. Failure to ensure compliance with one or more contracted performance measures, grant agreement provisions, federal or state law, federal regulations, or federal or state technical assistance guidance, is considered a sanctionable act or acts. DWS may assess corrective action or penalties based on the totality of the circumstances surrounding the occurrence of a sanctionable act or acts, including the severity, nature, duration, and extent, including previous occurrences of sanctionable acts. In determining corrective action or penalties, DWS may consider efforts by the local board or sub-recipient to prevent the occurrence of the sanctionable act, such as efforts to obtain technical assistance or training, as well as resolved monitoring findings.

B. Types of corrective action and penalties. To assist the local board or sub-recipient in correcting any deficiencies, DWS may assess, for each occurrence of a sanctionable act, one or more of the following corrective action activities or penalties:

(1)

participation in technical and quality assurance activities, including mandatory participation in training;

(2) on-site

visits by DWS, or its designee, to monitor and assist with daily operations of a local board, local board's contractor, or sub-recipient;

(3) corrective

action plan developed by DWS and implemented by the local board to address the identified weaknesses, including strict timelines for completion;

(4)

submission of additional or more detailed financial or performance documentation or reports;

(5)

designation as a high-risk local board or sub-recipient requiring additional monitoring visits;

(6) requirement for the local administrative entity, or the sub-recipient to report on activities and progress at state board meetings until performance is satisfactory;

(7) DWS meetings with the local area's chief elected official(s), local board chair, local board members, local board's executive director, or the sub-recipient to check in on progress on corrective action;

(8) DWS oversight or management of local board operations, such as the appointment of a steward.

(9) DWS approval of specified actions (i.e. prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval from DWS);

(10) prohibiting the use of designated service providers or one-stop operators;

(11) payment restrictions, such as payment by reimbursement only with required supporting documentation;

(12) delay, suspension, or denial of contract payments;

(13) requirement of a local board or its sub-recipient(s) to reimburse DWS any costs it deems disallowed in accordance with federal or state law, or regulations;

(14) issuance of a notice of intent to cease immediately reimbursement of local program costs;

(15) designation of local board as ineligible for additional discretionary funding, incentives, or other funds;

(16) contract cancellation or termination;

(17) issuance of notice to revoke approval of all or part of the local plan affected;

(18) imposition of a local area reorganization plan;

(19) other actions deemed appropriate by DWS to secure compliance.

C. Penalties for

nonattainment of performance goals:

(1) **First-year nonperformance.** If a local board fails to meet one or more local negotiated performance levels in a single program year based on annual performance outcomes, the local board shall develop a performance improvement plan within 45 days of the final performance outcome reported in the New Mexico WIOA annual report. DWS may also require the local board to modify its local plan or take other action designed to improve the local board's performance.

(2) **Second-year nonperformance.** If a local board failed to meet one or more local negotiated performance levels for the same performance measure(s) for a second consecutive program year, DWS will review the performance deficiencies and may make a recommendation to the governor to impose a reorganization plan for the local area. DWS's recommendation to the governor for reorganization of a local area may include the imposition of one or more of the following penalties:

- (a) requiring modification of the local board's local plan;
- (b) issuing a notice of intent to revoke all or part of the affected local plan;
- (c) restructuring the local board, including decertification of the current local board and a plan for appointment and certification of a new local board;
- (d) selection of an alternate entity to administer the WIOA for the local area; or
- (e) merging of the local area into one or more other local areas.

D. Corrective action plans. If a corrective action plan is required, the local board must submit the plan in writing to DWS within 45 days of receipt of the final monitoring report. The corrective action plan must identify actions the

board will take to correct the finding and a timeline for completion of the corrective action. The local board may be required to provide a monthly progress report each month that a corrective action plan is pending. In the event a finding is repeated in subsequent monitoring reviews, monitors will inform DWS who will make the determination of appropriate sanctions.

E. Performance Improvement Plans. If a performance improvement plan is required, the local board must submit the plan in writing to DWS within 45 days of the final performance outcome reported in the New Mexico WIOA annual report, and the plan shall be fully implemented by the end of the current program year (June 30). The performance improvement plan for addressing the failure to meet performance shall include, at a minimum, the following:

- (1) list of the performance measures for which the local board failed to achieve at least 80 percent of the negotiated performance level;
- (2) detailed analysis and explanation of why the local board failed to achieve at least 80 percent of the negotiated performance level;
- (3) description of the corrective action to be taken, and the timeline for such actions, to address performance deficiencies in subsequent program years;
- (4) identification of the technical assistance needed to support successful performance, including the source and type of assistance; and
- (5) local board monitoring plan of its sub-recipients with timelines for evaluating effectiveness of the corrective action plan.

F. Intent to sanction. DWS may, but is not required to, issue a notice of intent to sanction to the local board prior to DWS placing a local board in sanction status. This formal notification is intended to communicate expectations, such as corrective action or performance

improvement plans, for resolution of local board findings, to prevent escalation into sanction status. [11.2.20.7 NMAC - N, 7/1/2018]

11.2.20.8 SANCTIONS:

A. Sanction Status.

The purpose of imposing sanctions is to ensure accountability of local boards and other sub-recipients in meeting the needs of employers and job seekers, ensure performance in reaching outcome measures, ensure adequate return on New Mexico investments, and support New Mexico in achieving its goals. There are three levels of sanction status that may be assigned by DWS to a local board, or other sub-recipient, for failure to ensure compliance with one or more contracted performance measures, grant agreement provisions, federal or state laws, and related regulations.

(1) Level one

sanction status: A level one sanction status is assigned for significant inability or failure to perform as determined by DWS. A level one sanction status may be associated with the assessment of one or more corrective actions or penalties as referenced in the corrective actions and penalties section of this rule. Sanctionable acts that occur during or after the program, grant, fiscal, contract, or calendar year, include but are not limited to the following:

(a)

failure to submit timely and accurate required financial or performance reports;

(b)

failure to take corrective action to resolve findings identified during monitoring, investigative or program reviews, including failing to comply with a performance improvement plan;

(c)

failure to resolve all independent audit findings or questioned costs within required time frames;

(d)

failure to submit the annual audit required by WIOA federal regulations;

(e)

breach of administrative and service

contract requirements;

(f)

failure to retain required service delivery and financial records; and

(g)

failure to meet one or more local negotiated performance levels in a single program year based on annual performance outcomes.

(2) Level two

sanction status: A level two sanction status is a higher sanction status than level one and is assigned for severe inability or failure to perform as determined by DWS. A level two sanction may be associated with the assessment of more severe penalties than those assessed to a local board or sub-recipient in level one sanction status. Sanctionable acts that occur during or after the program, grant, fiscal, contract, or calendar year include, but are not limited to the following:

(a)

failure to resolve or implement corrective action on a level one sanction within 180 days of notice.

(b)

committing the same violation a second time within an 18 month period.

(c)

failure to meet negotiated performance levels for the same performance measure(s) for two consecutive program years.

(3) Level

three sanction status: This is the highest sanction status assigned for extreme inability or failure to perform as determined by DWS. A level three sanction may be associated with the assessment of the most severe penalties being assessed against the local board or sub-recipient. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to the following:

(a)

failure to resolve or implement corrective action on a level one sanction within 360 days of notice.

(b)

failure to resolve or implement corrective action on a level two sanction within 180 days of notice.

(c)

committing the same violation three or more times within a 36 month period.

B. Sanction

Determination. If the local board remains in noncompliance after the prescribed timeline for completion of the corrective action, or performance improvement plan has passed, DWS on behalf of the governor, must determine whether it is appropriate to place a local board or sub-recipient in sanction status. DWS must officially notify the non-compliant local board or sub-recipient by sending the appropriate local administrative entity a sanction determination letterA via certified mail and return receipt requested at least 10 working ways in advance of the effective date of the sanction. The sanction determination letter must include the following:

(1) the

sanctionable act upon which the sanction was based;

(2) the

sanction status level in which the local board of sub-recipient is placed and the conditions upon which the local board or sub-recipient may be removed from sanction status;

(3) the penalty

and the effective date of the penalty;

(4) the

corrective action required, including the timeline for completing the corrective action; and

(5) the

technical assistance requested from DWS or other entity to assist in completing the corrective action.

[11.2.20.8 NMAC - N, 7/1/2018]

11.2.20.9 APPEALS:

A. Final

determination appeals. All final determinations issued by DWS may be appealed pursuant to the process provided in Subpart F of Section 20 CFR 683. A local board or sub-recipient may appeal a sanction determination by filing a written request with the DWS cabinet secretary for appeal of a sanction determination within 10 working days following the receipt of the sanction determination by the local board

administrative entity. The DWS cabinet secretary has 30 days to issue a decision to uphold, revoke, or revise the original final determination. If the DWS cabinet secretary takes no action within the 30 day time period, the original final determination becomes the final administrative decision on the appeal.

B. Other appeals. A local area which has been found in substantial violation of WIOA Title I, and has received notice from DWS, on behalf of the governor, that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the secretary of the United States department of labor under WIOA Section 184(b) and that appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization, pursuant to Section 20 CFR 683.650.
[11.2.20.9 NMAC - N, 7/1/2018]

HISTORY OF 11.2.20 NMAC:

History of Repealed Material:

11.2.7 NMAC, Workforce Investment Act (WIA) Performance Accountability Requirements, filed 6-16-2000 - Repealed effective 8-15-2012.
11.2.9 NMAC, Workforce Investment Act (WIA) Sanctions and Corrective Actions and Liability, filed 6-16-2000 - Repealed effective 8-15-2012.
11.2.21 NMAC, WIA Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 12-15-2005 - Repealed effective 8-15-2012.
11.2.21 NMAC, WIA Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 8-15-2012 - Repealed effective 7-1-2018.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 21 WORKFORCE INNOVATION AND OPPORTUNITY ACT GRIEVANCE AND COMPLAINT RESOLUTION PROCEDURES

11.2.21.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions (DWS)
[11.2.21.1 NMAC - N, 7/1/2018]

11.2.21.2 SCOPE: State workforce development board (state board), department of workforce solutions (DWS), chief elected officials (CEOs), local workforce development boards (local boards), local workforce system administrative entities (local administrative entities), workforce system sub-recipients, and workforce system partners.
[11.2.21.2 NMAC - N, 7/1/2018]

11.2.21.3 STATUTORY

AUTHORITY: Title I of the Workforce Innovation and Opportunity Act (WIOA) 29 USC Subchapter I of Chapter 32, and 50-14-1 *et seq.* 1978 NMSA.
[11.2.21.3 NMAC - N, 7/1/2018]

11.2.21.4 DURATION:

Permanent.
[11.2.21.4 NMAC - N, 7/1/2018]

11.2.21.5 EFFECTIVE

DATE: July 1, 2018, unless a later date is cited at the end of a section.
[11.2.21.5 NMAC - N, 7/1/2018]

11.2.21.6 OBJECTIVE: To establish procedures for processing grievances and complaints as required by WIOA. These procedures apply to all levels of the New Mexico workforce system and covers equal opportunity (EO) requirements, discrimination EO grievances, state and local WIOA complaints, and criminal fraud and abuse.
[11.2.21.6 NMAC - N, 7/1/2018]

11.2.21.7 DEFINITIONS:

29 C.F.R. Section 37.4 contains the definitions of the terms used in the implementation of nondiscrimination and equal opportunity requirements of WIOA. For convenience, some of the definitions found in that section are listed below. If a conflict exists between terminology, as defined in this policy and 29 C.F.R. Section 38.4, the definition in 29 C.F.R. Part 38.4 is controlling.

A. Applicant. An individual who is interested in being considered for any WIOA Title I-financially assisted aid, benefit, service, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by a recipient.

B. Participant. An individual who has been determined to be eligible to participate in and who is receiving aid, benefit, service, or training under a program or activity financially assisted in whole or in part under Title I of WIOA. "Participant" includes, but is not limited to, individuals receiving any service(s) or benefit(s) under state unemployment insurance programs.

C. Recipient. An entity to which financial assistance under WIOA Title I is extended, directly from DWS, or through the governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. In instances in which a governor operates a program or activity, either directly or through a state agency, using discretionary funds apportioned to the governor under WIOA Title I (rather than disbursing the funds to another recipient), the governor is also a recipient. In addition, for the purposes of this part, one-stop partners, as defined in Section 121(b) of WIOA, are treated as "recipients", and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the one-stop delivery system. Recipients are listed in 29 CFR 38.44(zz).

D. Retaliation.

Retaliation means discharging, intimidating, threatening, coercing, or discriminating against any individual because the individual has:

(1) filed a complaint alleging a violation of Section 188 of WIOA or 29 CFR Part 38;

(2) opposed a practice prohibited by nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38;

(3) furnished information to, or assisted or participated in any manner, in an investigation, review, hearing, or any other activity related to the following:

(a) Administration of the nondiscrimination and equal opportunity provisions of WIOA, 29 CFR Part 38, or 11.2.21.1 NMAC et seq;

(b) Exercise of authority under those provisions;

(c) Exercise of privilege secured by those provisions; or

(d) Otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 38. [11.2.21.7 NMAC - N, 7/1/2018]

11.2.21.8 BACKGROUND:

Section 188 of WIOA prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief or, for any beneficiaries, applicants, and participants only, on the basis of citizenship status as a lawfully admitted immigrant authorized to work in the United States or for participation in a WIOA Title I financially assisted program or activity. The federal regulations (29 C.F.R. Part 38) clarify the application of the nondiscrimination and equal opportunity provisions of WIOA and provide uniform procedures for implementing them. Examples of discriminatory acts specifically prohibited, other than

those based on a disability, are set forth in 29 C.F.R. Sections 37.6. The regulatory requirements associated with employment practices and communications with individuals with disabilities are set forth in 29 C.F.R. Sections 38.12 through 38.17. [11.2.21.8 NMAC - N, 7/1/2018]

11.2.21.9 EQUAL OPPORTUNITY

REQUIREMENTS: References include the following: Workforce Innovation and Opportunity Act (WIOA), 29 CFR, Part 38, 20 CFR Section 667.275, 20 CFR Section 667.600(g)(1)(2) and Training and Employment Information Notice (TEIN) No. 16-99.

A. Recipient requirements. Recipients of WIOA Title I federal financial assistance have basic requirements which are summarized as follows.

(1) designate an equal employment opportunity officer;

(2) communicate equal employment opportunity policy and train staff to carry it out;

(3) review all contracts, plans, and agreements for equal opportunity;

(4) make efforts to provide equitable services among substantial segments of the eligible population;

(5) ensure program and site access to individuals with disabilities;

(6) collect and maintain data to examine discrimination;

(7) monitor recipients for compliance;

(8) receive and process discrimination complaints; and

(9) obtain corrective action or apply sanctions for violating nondiscrimination requirements.

B. Annual self-appraisal. All WIOA recipients shall perform an annual self-appraisal to ensure and document compliance with the above listed requirements. This

will include completion by each local board and service providers of the five accessibility checklists, set forth in USDOL training and information notice no. 16-99, available on the web at: www.doleta.gov/directives. [11.2.21.9 NMAC - N, 7/1/2018]

11.2.21.10 DISCRIMINATION AND EQUAL OPPORTUNITY GRIEVANCE:

A. Equal opportunity complaints.

(1) WIOA prohibits discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries, applicants, and participants only, on the basis of either citizenship status or participation in any program or activity that received financial assistance under WIOA Title or 29 CFR Part 38. Sexual harassment is a prohibited form of sex discrimination.

(2) Any person who believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination or retaliation prohibited by WIOA or its implementing regulations may file a written complaint, either individually or through an authorized representative.

(3) The discrimination complaint processing procedures shall be completed and a written notice of final action issued within 90 calendar days from the date the complaint was filed.

(4) To the extent possible and permitted by law, the confidentiality of information obtained as a result of the processing or investigation of a complaint will be maintained and will only be provided to those persons who have a legitimate need to know in order to achieve a timely resolution of the complaint. Even if an individual who makes an initial report of suspected discrimination or harassment ultimately decides to not file a formal

complaint, it may still be necessary for the state or local administrative entity, service provider, one-stop operator, the state-level EO officer or the local area EO officer to investigate the matter in order to protect other applicants or participants from discrimination and harassment.

(5)

Reprisal or retaliation against any individual for making a complaint of unlawful discrimination or for using, cooperating, or participating in the complaint process, including serving as a witness, is prohibited. Any person or persons engaging in retaliation are subject to disciplinary action, up to and including termination from employment.

(6)

Both the complainant and respondent have the right to be represented by an attorney or other individual of their choice at their own expense throughout the complaint process.

B. Time and place for filing complaint.

(1)

Discrimination complaints shall be filed with a state or local administrative entity, service provider, one-stop operator, the state-level EO officer, a local area EO officer, or with the Director of the Civil Rights Center (CRC), USDOL, 200 Constitution Ave NW, Room N-4123, Washington, DC 20210.

(2)

Discrimination complaints shall be filed within 180 days of the alleged discrimination. However, a complainant may petition the director of the civil rights center for an extension of the filing time.

(3)

The date of filing of any discrimination complaint shall be:

(a)

if the complaint is sent by mail, the postmark date on the envelope in which the complaint is mailed;

(b)

if the complaint is sent via commercial courier service, the date on which the courier service records that it received the complaint;

(c)

if the complaint is sent by fax, the

transmittal date recorded on the complaint;

(d)

if the complaint is sent by electronic mail, the date that it is date stamped on the e-mail; or

(e)

in the absence of any of the above, the date on which the complaint is received by the state or local administrative entity, service provider, one-stop operator, state-level EO officer, or local area EO officer.

C. Complaint

requirements: Each complaint must be in writing and contain the following information:

(1) The

complainant's name, mailing address, telephone number (if any), and e-mail address (if available);

(2) The

identity of the respondent, i.e. the individual or entity that the complainant alleges is responsible for the discrimination;

(3) A

description of the complainant's allegations. This description must include enough detail to allow the recipient or the CRC director, as applicable, to determine whether:

(a)

the CRC or the recipient, as applicable, has jurisdiction over the complaint;

(b)

the complaint was filed in time; and

(c)

the complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate a violation of the nondiscrimination and equal opportunity provisions of Title I of WIOA or 29 CFR Part 38.

(4) The

signature of the complainant or complainant's representative.

D. Initial complaint processing procedures.

(1) **Logging of**

complaints. All complaints shall be logged.

(a)

For complaints filed with a service provider, one-stop operator or local area EO officer, it shall be the local

area EO officer's responsibility to log the complaint.

(b)

For complaints filed DWS, or the state-level EO officer, it shall be the state-level EO officer's responsibility to log the complaint;

(c)

All equal opportunity complaint logs shall include the following information: the name and address of the complainant; the basis of the complaint; a description of the disposition of the complaint; and any other pertinent information.

(d)

Each local EO officer shall transmit copies of its equal opportunity logs for their corresponding local workforce development area to the state-level EO officer on a monthly basis and shall do so no later than 10 calendar days after the last day of the month the log covers.

(e)

The state-level EO officer will compile and maintain copies of all complaint logs submitted in order to carry out the recordkeeping and monitoring activities required under WIOA and 29 CFR Part 38.

(2)

Determining jurisdiction.

Jurisdiction must be determined within five business days of the date the complaint is received. In order for a recipient to have jurisdiction to process a discrimination complaint, each of the following elements must be met:

(a)

the respondent against whom the complaint was filed must be a WIOA recipient;

(b)

the complaint must allege a basis for discrimination that is prohibited by WIOA, including unlawful retaliation; and

(c)

the complaint was filed within 180 calendar days of the alleged discrimination.

(3) **Who**

determines jurisdiction.

(a)

if the complaint is filed with the local

administrative entity, service provider, one-stop operator, or local area EO officer, then the local area EO officer is responsible for determining jurisdiction.

(b)

if the complaint is filed with DWS or the state-level EO officer, then the state-level EO officer is responsible for determining jurisdiction.

(4) Notice

of lack of jurisdiction. If a determination is made that there is no jurisdiction to process the complaint, the EO officer (state-level or local area) making the determination shall send a written notice of lack of jurisdiction to the complainant that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with the civil rights center within 30 calendar days from receipt of the notice of lack of jurisdiction. The written notice of lack of jurisdiction must be sent within five business days of the date that the complaint is received.

(5) Joint

jurisdiction. Where the complaint alleges discrimination by a WIOA recipient, or service provider on a basis that is prohibited by both WIOA and by a civil rights law independently enforced by that WIOA recipient or service provider, the complaint shall be referred to that WIOA recipient or service provider for processing under their procedures. For example, WIOA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIOA recipient or service provider and they are also prohibited from discriminating on the basis of national origin, then the complaint will be referred to them for processing according to their own procedures. The state-level or local area EO officer making the determination that joint jurisdiction exists is responsible for making written referral of the complaint to the WIOA recipient or service provider and sending written notice of the referral to the complainant within five business days of the date that the complaint is

received.

(6) Sole

jurisdiction. Where the complaint alleges discrimination by a WIOA recipient or service provider on a basis that is prohibited by WIOA and is not covered by a civil rights law independently enforced by that WIOA recipient or service provider (e.g., political affiliation or belief, citizenship or participation in WIOA Title I), the complaint shall be processed by that WIOA recipient or service provider under these procedures. When it is determined that WIOA has sole jurisdiction over the discrimination complaint, the complaint will be referred to the state-level EO officer within five business days of the date that the complaint is received.

(7) Within

10 business days of the date that the complaint was filed, the state-level EO officer shall conduct an initial review of the complaint and issue an initial notice in writing to the complainant containing the following information:

(a) an

acknowledgement that the recipient has received the complaint;

(b)

notice that the complaint process shall be completed and a written notice of final action issued within 90 calendar days from the date the complaint was filed;

(c)

notice that the complainant has the right to be represented in the complaint process;

(d) a

copy of the "equal opportunity is the law" statement;

(e)

notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into non-English languages upon the complainant's request;

(f) a

list of issues raised in the complaint;

(g)

for each issue raised in the complaint, a statement whether the recipient will

accept the issue for investigation or reject the issue, and the reasons for the rejection;

(h)

a statement that the complainant has the right to elect resolution of their complaint through alternative dispute resolution (ADR), at the complainant's sole option;

(i)

a statement that, if the complainant does not desire to use ADR, he or she must notify the state-level officer of that fact within 10 business days of the issuance of the state-level EO officer's initial letter acknowledging receipt of the complaint; and

(j) a

statement that retaliation against any individual for filing a complaint or cooperating with an investigation is unlawful and prohibited.

(8)

Alternative Dispute Resolution

(ADR). The complainant may, but is not required to, attempt to resolve their complaint through ADR.

(a)

the choice whether to use ADR rests with the complainant;

(b)

the complainant must notify the state-level EO officer of his or her election to use ADR within 10 business days of the issuance of the state-level EO officer's initial letter acknowledging receipt of the complaint;

(c)

if the complainant requests to use ADR for resolving the complaint, the state-level EO officer will request a mediator and monitor the processing of the complaint. The mediator will schedule mediation by written notice, mailed to all interested parties at least 7 calendar days prior to the first mediation session. The notice will include the date, time, and place of the mediation. The mediation process shall be concluded within 45 calendar days from the date the complaint was filed. The complaint is considered resolved when all parties to the complaint enter into a written agreement resolving the issues raised in the complaint. The written agreement shall give notice that if the terms of the agreement are breached,

the non-breaching party may file a complaint with the director of the CRC within 30 calendar days of the date the non-breaching party learns of the breach.

(d) if the parties do not reach an agreement, the state-level EO officer will proceed to investigate the circumstances underlying the complaint under these procedures.

(9) Fact-finding and investigation.

(a) Unless the complainant has notified the state-level EO officer that the complainant desires to attempt a resolution of their complaint through ADR, the state-level EO officer shall investigate the circumstances underlying the complaint. The investigation may include, but is not limited to, interviewing the complainant, the respondent, and any witnesses included in the complaint or who become known through the investigation process; reviewing documents and other evidence; and conducting site visits.

(b) The state-level EO officer has the power to make written request of any entity to which financial assistance under WIOA Title I is extended to produce records or documents that are potentially relevant to the investigation of the complaint.

(c) The entity to which financial assistance under WIOA Title I is extended shall produce such records or documents requested by the state-level EO officer within 10 days of the request. Failure by the entity to comply with the state-level EO officer's request for records could negatively impact its eligibility for financial assistance under WIOA Title I in future grant cycles.

(d) If at any stage in the investigation the state-level EO officer investigating the complaint has a reasonable belief that immediate action is necessary to protect any involved parties from harm, the appropriate members of management shall be notified and actions deemed appropriate will be

taken.

(e) Within 90 days of the date that the complaint was filed, the state-level EO officer shall complete his or her investigation and issue a notice of final action.

(f) If at any time during the processing of a complaint it becomes apparent the state-level EO officer has a conflict of interest with respect to the complaint which would make it improper for him or her to conduct or participate in the investigation, the cabinet secretary of DWS, as the governor's designee with respect to enforcement of nondiscrimination and equal opportunity provisions of WIOA, shall appoint an alternate qualified individual to process, investigate and make a determination on the complaint.

(10) Notice of final action. The notice of final action shall contain the following information:

(a) For each issue raised in the complaint, a statement of either: the decision on the issue and an explanation of the reasons underlying the decision based on the findings of the investigation or; if the parties elected to use ADR to resolve the complaint, a description of the way the parties resolved the issue; and

(b) Notice that the complainant has a right to file a complaint with the director of the CRC within 30 days of the date in which the notice of final action is received if the complainant is dissatisfied with the notice of final action.

(c) The notice of final action shall be sent to: the complainant; DWS; and in the case of a complaint involving a recipient, service provider, one-stop operator or other entity under the jurisdiction of a local workforce development board, the local workforce development board, which shall treat all information related to the complaint or contained in the notice of final action with utmost confidentiality.

[11.2.21.10 NMAC - N, 7/1/2018]

HISTORY OF 11.2.21 NMAC:

History of Repealed Material:

11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed 6-23-2000 - Repealed effective 12-31-2005.
11.2.21 NMAC, WIA Technical Assistance and Corrective Action - Local Workforce Development Board Failure to Meet Performance, filed 12-15-2005 - Repealed effective 8-15-2012.
11.2.26 NMAC, WIA Program Complaint Resolution Procedures and Procedures for Reporting Criminal Fraud and Abuse, filed 12-15-2005 - Repealed effective 8-15-2012.
11.2.27 NMAC, WIA Equal Opportunity Requirements and Discrimination Complaint Resolution Procedures, filed 12-15-2005 - Repealed effective 8-15-2012.
11.2.27 NMAC, WIA Equal Opportunity Requirements and Discrimination Complaint Resolution Procedures, filed 8-15-2012 - Repealed effective 7-1-2018.

END OF ADOPTED RULES

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