

NEW MEXICO 
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

New Mexico Register

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

Volume XXIX - Issue 12 - June 26, 2018

COPYRIGHT © 2018
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

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

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

New Mexico Register

Volume XXIX, Issue 12

June 26, 2018

Table of Contents

Notices of Rulemaking and Proposed Rules

ENVIRONMENTAL IMPROVEMENT BOARD

Notice of Public Hearing to Consider Proposed Amendments to 7.6.2 NMAC	
Food Service and Food Processing.....	688
Aviso de Audiencia Pública para Considerar las Enmiendas Propuestas a 7.6.2 NMAC	
Servicio De Alimentos y Procesamiento de Alimentos.....	689
Notice of Public Hearing to Consider Amendments to 20.4.1 NMAC	
Hazardous Waste Management.....	690
Adviso Audiencia Publica para Considerar Las Enmiendas al 20.4.1 NMAC	
Manejo de Residuos Peligrosos.....	692

AIR QUALITY BUREAU

Notice of Rulemaking Hearing.....	693
Notificación de Audiencia Pública de Reglamentación.....	694
Notice of Rulemaking Hearing.....	696
Aviso de Audiencia Sobre Reglamentación.....	697

REGULATION AND LICENSING DEPARTMENT

SECURITIES DIVISION

Notice of Proposed Rulemaking.....	698
------------------------------------	-----

TAXATION AND REVENUE DEPARTMENT

Notice of Hearing and Proposed Rules.....	699
-------------------------------------------	-----

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

ECONOMIC DEVELOPMENT DEPARTMENT

5.5.50 NMAC	R	Industrial Development Training Program.....	704
5.5.50 NMAC	N	Industrial Development Training Program.....	704

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

19.15.2 NMAC	A	General Provisions for Oil and Gas Operations.....	715
19.15.4 NMAC	A	Adjudication.....	724
19.15.14 NMAC	A	Drilling Permits.....	726
19.15.15 NMAC	A	Well Spacing and Location.....	727
19.15.16 NMAC	A	Drilling and Production.....	729

PUBLIC EDUCATION DEPARTMENT

6.65.3 NMAC	N	Educator Preparation Program Accountability.....	737
6.11.2 NMAC	A	Rights and Responsibilities of the Public Schools and Public School Students.....	742

REGULATION AND LICENSING DEPARTMENT

BARBERS AND COSMETOLOGISTS, BOARD OF

16.34.1 NMAC	A	Barbers and Cosmetologists - General Provisions.....	746
--------------	---	------------------------------------------------------	-----

16.34.2 NMAC	A	Licensing.....	749
16.34.3 NMAC	A	Examinations.....	750
16.34.4 NMAC	A	Special Licenses.....	751
16.34.5 NMAC	A	Regular Licenses.....	751
16.34.6 NMAC	A	Licensing by Reciprocity: Credit for Out-of-State Training.....	752
16.34.7 NMAC	A	Establishments and Enterprises.....	753
16.34.8 NMAC	A	Schools.....	758
16.34.10 NMAC	A	Investigations and Confidentiality.....	761
16.34.11 NMAC	A	Violations.....	762
16.34.13 NMAC	A	Administrative Procedures.....	762
16.34.14 NMAC	A	Fees.....	762
16.34.15 NMAC	A	Administrative Penalties and Fines.....	763
16.34.16 NMAC	A	Parental Responsibility Act Compliance.....	764
PHARMACY, BOARD OF			
16.19.20 NMAC	R	Controlled Substances.....	764
16.19.20 NMAC	N	Controlled Substances.....	764
16.19.12 NMAC	A	Pharmacists - Fees.....	785
SUPERINTENDENT OF INSURANCE, OFFICE OF			
13.14.8 NMAC	A	Endorsements.....	786
13.14.9 NMAC	A/E	General Rate Provisions.....	786
13.14.9 NMAC	A	General Rate Provisions.....	786
TAXATION AND REVENUE DEPARTMENT			
18.19.5 NMAC	A/E	Drivers License.....	788

Notices of Rulemaking and Proposed Rules

ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 7.6.2 NMAC - FOOD SERVICE AND FOOD PROCESSING

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on Friday, August 24, 2018, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 307, 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 check the EIB website: <http://www.env.nm.gov/eib/> prior to the hearing. The purpose of the hearing is to consider proposed amendments to the Food Service and Food Processing Rules, 7.6.2 NMAC (Rules). The New Mexico Environment Department (NMED) is the proponent of the amendments to the Rules.

The amendments proposed by NMED to 7.6.2 NMAC would modify requirements for food manager and food employee certification to handle and serve food, as well as adopting the latest versions of the federal model food code and shellfish regulations.

In addition, the proposed amendments include several other minor changes and clarifications to current definitions, regulations, and procedures. Please note that formatting and minor technical changes in the regulations other than those proposed by NMED may be proposed at the hearing. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

Section 74-1-8 NMSA 1978 directs the environmental improvement

board to promulgate regulations and standards for food protection. Section 74-1-9 NMSA 1978 directs the procedures for adoption. Section 25-1-4 delineates requirements of food service establishments to prepare and serve food in a manner safe for human consumption, free from adulteration, spoilage, contamination and unwholesomeness. Section 25-1-7 NMSA 1978 authorizes the department of environment to execute any provisions of the Food Service Sanitation Act (Chapter 25, Article 1 NMSA 1978.).

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room S-2100 Santa Fe, NM, 87505. In addition, a copy of the NMED proposed amendments is posted on the NMED website at http://www.env.nm.gov/fod/Food_Program/Regulation_Update.htm.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 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 who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to 20.1.1.302 NMAC, persons wishing to present technical testimony must file with the Board a written notice of intent to do so 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;
- 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, including any proposed statement of reasons for adoption of the rules.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board 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 18-03(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

Any person who wishes 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 18-03(R).

If any person requires assistance, an interpreter or auxiliary aid to

participate in this process, please contact Pam Castaneda, EIB Administrator by August 8, 2018, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico 87502, telephone (505) 827-2425 or e-mail 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 Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board 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 nondiscrimination 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/non-employee-discrimination-complaint->

[page/](#) to learn how and where to file a complaint of discrimination.

ENVIRONMENTAL IMPROVEMENT BOARD

AVISO DE AUDIENCIA PÚBLICA PARA CONSIDERAR LAS ENMIENDAS PROPUESTAS A 7.6.2 NMAC - SERVICIO DE ALIMENTOS Y PROCESAMIENTO DE ALIMENTOS

La Junta de Mejora Ambiental de Nuevo México (Junta) celebrará una audiencia pública a partir de las 9:00 de la mañana el viernes, 24 de agosto de 2018, y continuará según sea necesario en el edificio del Capitolio del Estado de Nuevo México, Sala 307, 490 Old Santa Fe Trail, Santa Fe, Nuevo México. El lugar indicado para la audiencia puede cambiar antes de la fecha de la audiencia, por lo que los interesados en asistir deben verificar esta información en el sitio web de EIB: <http://www.env.nm.gov/eib/> antes de la audiencia. El propósito de la audiencia es considerar las enmiendas propuestas a los Reglamentos de Procesamiento de Alimentos y Servicios de Alimentos, 7.6.2 NMAC (Reglamentos). El Departamento de Medio Ambiente de Nuevo México (NMED, por su sigla en inglés) es el defensor de las enmiendas a los Reglamentos.

Las enmiendas propuestas por NMED a 7.6.2 NMAC modificarían los requisitos de la certificación para gerentes de alimentos y empleados de alimentos para manejar y servir alimentos, así como para adoptar las últimas versiones del modelo federal de código de alimentos y reglamentos de mariscos.

Además, las enmiendas propuestas incluyen otros cambios menores y aclaraciones a definiciones, reglamentos y procedimientos actuales. Tenga en cuenta que el formato y cambios técnicos menores en los reglamentos que no sean los propuestos por NMED pueden ser

propuestos durante la audiencia. Además, la Junta puede hacer otros cambios según sea necesario para lograr el propósito de proporcionar salud y seguridad pública en respuesta a los comentarios públicos y la evidencia presentada en la audiencia.

La Sección 74-1-8 NMSA 1978 ordena a la Junta de Mejora Ambiental que promulgue reglamentos y estándares para la protección de los alimentos. La Sección 74-1-9 NMSA 1978 dirige los procedimientos para su adopción. La Sección 25-1-4 delinea los requisitos de los establecimientos de servicio de alimentos para preparar y servir alimentos de una manera segura para el consumo humano, libre de adulteración, deterioro, insalubridad, y contaminación. La Sección 25-1-7 NMSA 1978 autoriza al Departamento de Medio Ambiente para ejecutar cualquier disposición de la Ley de Saneamiento de Servicios de Alimentos (Capítulo 25, Artículo 1 NMSA 1978).

Los cambios propuestos pueden ser revisados durante el horario de atención al público en la oficina de la Junta de Mejora Ambiental ubicada en el edificio Harold Runnels, 1190 St. Francis Drive, Sala S-2100 Santa Fe, NM, 87505. Adicionalmente, una copia de las enmiendas propuestas por NMED se han publicado en el sitio web de NMED en http://www.env.nm.gov/fod/Food_Program/Regulation_Update.htm.

La audiencia se llevará a cabo en conformidad con 20.1.1 NMAC (Procedimientos de Reglamentación - Junta de Mejora Ambiental), la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978 y otros procedimientos aplicables.

A todas las personas interesadas se les dará una oportunidad razonable durante la audiencia para presentar, ya sea oralmente o por escrito, evidencias, datos, puntos de vista y argumentos relevantes, presentar documentos y objetos de pruebas, y para examinar a los testigos.

Cualquier persona que desee presentar una declaración escrita que no sea de carácter no 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 20.1.1.302 NMAC, las personas que deseen presentar testimonio de carácter técnico deben presentar ante la Junta un aviso por escrito de la intención de hacerlo antes de las 5:00 p.m., el 3 de agosto de 2018. El aviso de intención deberá:

- identificar a la persona o entidad para la cual testificará el testigo o los testigos;

- identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las cualificaciones del testigo, incluyendo una descripción de su historial académico y laboral;

- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;

- incluir el texto de cualquier modificación recomendada al cambio reglamentario propuesto; y

- hacer una lista y adjuntar todos los documentos y objetos de pruebas que se anticipa que esa persona va a presentar en la audiencia, incluyendo toda declaración propuesta de los motivos para la adopción de las reglas.

Los avisos de intención para la audiencia deben recibirse en la oficina de la Junta de Mejora Ambiental no más tarde de las 5:00 p.m., del 3 de agosto de 2018, y deben hacer referencia al nombre del reglamento, la fecha de la audiencia y el número de expediente EIB 18-03 (R). Los avisos de intención de presentar un testimonio de carácter técnico deben enviarse a:

Pam Castaneda, Administrator of
Boards and Commissions
Office of the Environmental
Improvement Board

Harold Runnels Building
P.O. box 5469
Santa Fe, NM 87502

Las personas interesadas podrán ofrecer comentarios públicos de carácter no técnico durante la audiencia, o enviar una declaración escrita de carácter no técnico en lugar de un testimonio oral antes o durante la audiencia. Los comentarios por escrito relativos a las revisiones propuestas pueden dirigirse a la Sra. Pam Castaneda, administradora de juntas y comisiones, a la dirección antes indicada y deben hacer referencia al número de expediente EIB 18-03 (R).

Si alguna persona necesita asistencia, un intérprete o ayuda auxiliar para participar en este proceso, comuníquese con Pam Castaneda, administradora de EIB, no más tarde del día 8 de agosto de 2018, en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, NM 87502, teléfono (505) 827-2425, correo electrónico pam.castaneda@state.nm.us. (Los usuarios de TDD o TTY pueden acceder al número a través de la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); los usuarios de TTY: 1-800-659-8331).

La Junta puede tomar una decisión sobre el cambio reglamentario propuesto al final de la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar que acción tomar respecto a la propuesta.

Aviso de No Discriminación

El Departamento de Medio Ambiente de Nuevo México (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 reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R., partes 5 y 7, incluido el Título VI de la

Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación 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/a con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una queja de discriminación.

ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO 20.4.1 NMAC - HAZARDOUS WASTE MANAGEMENT

The New Mexico Environmental Improvement Board ("Board" or "EIB") will hold a public hearing beginning at 9:30 a.m. on August 24, 2018, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 307, 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 check the EIB website: <http://www.env.nm.gov/eib> prior to the hearing. The purpose of the hearing is to consider proposed amendments to the Hazardous Waste Management Regulations, 20.4.1 NMAC (Regulations). The New Mexico

Environment Department (NMED) is the proponent of the proposed amendments.

The purpose of the amendments is to update the Hazardous Waste Management Regulations, 20.4.1 NMAC, to bring them into conformity with the federal regulations, so that the Department can obtain required authorizations from the U.S. Environmental Protection Agency for its Hazardous Waste Management Program. The current regulations adopt federal regulations through July 1, 2008. With amendments, the federal regulations would be adopted as they are modified or amended.

In addition, the proposed amendments include minor changes and clarifications to the regulations. Please note that formatting and minor technical changes in the regulations other than those proposed by NMED may be proposed at the hearing. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

The proposed amendments may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505. In addition, a copy of the NMED proposed amendments is posted on the NMED website at: <https://www.env.nm.gov/hazardous-waste/proposed-hazardous-waste-regulations/>

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Hazardous Waste Act, Chapter 74, Article 4 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 who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to 20.1.1.302 NMAC, persons wishing to present technical testimony must file with the Board a written notice of intent to do so 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;
- 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, including any proposed statement of reasons for adoption of the rule language being proposed.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board 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 18-02 (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

Any person who wishes 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 18-02 (R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, EIB Administrator by August 8, 2018, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico 87502, telephone (505) 827-2425 or e-mail 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 Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board 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 nondiscrimination 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/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

ENVIRONMENTAL IMPROVEMENT BOARD

AVISO DE AUDIENCIA PÚBLICA PARA CONSIDERAR LAS ENMIENDAS AL 20.4.1 NMAC - MANEJO DE RESIDUOS PELIGROSOS

La Junta de Mejora Ambiental de Nuevo México ("Junta" o "EIB" por su sigla en inglés) celebrará una audiencia pública a las 9:30 de la mañana el 24 de agosto de 2018, y continuará según sea necesario, en el Capitolio del Estado de Nuevo México, Sala 307, ubicada en 490 Old Santa Fe Trail, Santa Fe, Nuevo México. El lugar indicado para la audiencia podrá cambiar antes de la fecha de la audiencia, por lo que los interesados en asistir deberán verificar esta información en el sitio web de EIB: <http://www.env.nm.gov/eib> antes de la audiencia. El propósito de la audiencia es proponer enmiendas a los Reglamentos de Manejo de Residuos Peligrosos, 20.4.1 NMAC (Reglamentos). El Departamento de Medio Ambiente de Nuevo México (NMED, por su sigla en inglés) es el defensor de las enmiendas propuestas.

El propósito de las modificaciones es actualizar los Reglamentos de Manejo de Residuos Peligrosos, 20.4.1 NMAC, para ponerlos en conformidad con los reglamentos

federales, de modo que el Departamento pueda obtener las autorizaciones requeridas de la Agencia de Protección Ambiental de EE. UU. para su Programa de Residuos Peligrosos. Los reglamentos actuales adoptan reglamentos federales hasta el 1 de julio de 2008. Con las enmiendas, los reglamentos federales serán adoptados a medida que sean modificados o enmendados.

Adicionalmente, las enmiendas propuestas incluyen cambios menores y aclaraciones a los reglamentos. Por favor tenga en cuenta que el formato y cambios técnicos menores en los reglamentos que no sean los propuestos por NMED podrán ser propuestos durante la audiencia. Además, la Junta puede hacer otros cambios según sea necesario para lograr el propósito de proporcionar salud y seguridad pública en respuesta a los comentarios públicos y la evidencia presentada en la audiencia.

Las enmiendas propuestas pueden ser revisadas durante las horas hábiles en la oficina de la Junta de Mejora Ambiental ubicada en el Edificio Harold Runnels, 1190 South St. Francis Drive, Sala S-2102 Santa Fe, NM, 87505. Adicionalmente, una copia de las enmiendas propuestas por NMED han sido publicadas en el sitio web de NMED en: <https://www.env.nm.gov/hazardous-waste/proposed-hazardous-waste-regulations/>

La audiencia se llevará a cabo en conformidad con 20.1.1 NMAC (Procedimientos de Reglamentación - Junta de Mejora Ambiental), la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Residuos Peligrosos, Capítulo 74, Artículo 4 NMSA 1978 y otros procedimientos aplicables.

Todas las personas interesadas tendrán una oportunidad razonable durante la audiencia de presentar, oralmente o por escrito, evidencias, datos, puntos de vista y argumentos pertinentes, documentos y/u 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 una declaración oral, deberá presentar dicha declaración antes de la finalización de la audiencia.

En conformidad con 20.1.1 NMAC, aquellas personas interesadas en presentar una declaración de carácter técnico deberán presentar ante la Junta un aviso por escrito de su intención de presentar dicha declaración hasta las 5:00 de la tarde del 3 de agosto de 2018. El aviso de intención deberá:

- identificar a la persona o entidad para la cual testificará el testigo o los testigos;
- identificar a cada testigo técnico que la persona tenga la intención de presentar y establecer las cualificaciones de cada testigo, incluyendo una descripción de su historial educativo y laboral;
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa.
- incluir el texto de toda modificación recomendada para el cambio reglamentario propuesto; y
- hacer una lista y adjuntar todos los documentos y objetos de prueba que se anticipa que esa persona presentará en la audiencia, incluyendo cualquier declaración propuesta de motivos para la adopción del lenguaje de la regla propuesto.

Los avisos de intención para la audiencia deben llegar a la Oficina de la Junta de Mejora Ambiental no más tarde de las 5:00 p. m. del día 3 de agosto de 2018, y se debe incluir como referencia el nombre del reglamento, la fecha de la audiencia y el número de expediente EIB 18-02 (R). Los avisos de intención de presentar testimonio de carácter técnico deben enviarse a:

Pam Castaneda, Administrator of
Boards and Commissions

Office of the Environmental Improvement Board
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Las personas interesadas 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 una declaración oral, antes o durante la audiencia. Los comentarios escritos relativos a las revisiones propuestas podrán enviarse a la señora Pam Castaneda, administradora de Juntas y Comisiones, a la dirección antes indicada, y deben incluir como referencia el número de expediente EIB 18-02 (R).

Toda persona que necesite asistencia, un intérprete o ayuda auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, administradora de EIB, a más tardar el 8 de agosto 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 pueden acceder a ese número por medio de New Mexico Relay Network (Red de Transmisión de Nuevo México) llamando al 1-800-659-1779 (voz); los usuarios de TTY: 1-800-659-8331).

EIB podrá tomar una decisión acerca del cambio reglamentario 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 de 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, según lo exigido por las leyes y los reglamentos correspondientes. NMED es responsable de la coordinación de

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., partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; 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, política o procedimiento de no discriminación 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/a 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/nonemployee-discrimination-complaint-page/> para saber cómo y dónde presentar una queja por discriminación.

ENVIRONMENTAL IMPROVEMENT BOARD AIR QUALITY BUREAU

NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing on September 28, 2018, at 9:30 a.m., at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico. The purpose of the hearing is to consider the matter of EIB 18-05(R), the proposed adoption of an Air Quality Control Regulation to be codified in the New Mexico Administrative Code (NMAC) at 20.2.23 NMAC, Fugitive

Dust Control.

The proponent of this regulatory amendment is the New Mexico Environment Department (“NMED”) Air Quality Bureau.

The U.S. Environmental Protection Agency published revisions to the Exceptional Events Rule on October 3, 2016, requiring mitigation plans in certain areas with recurring exceptional events of the same type and pollutant. The proposed regulation is a supporting element of the dust mitigation plan required by the federal Exceptional Events Rule. The proposed regulation will apply to sources of fugitive dust that are not required to obtain a construction permit from the NMED and will be applicable in any area of the state that experiences recurring high wind dust events where the PM₁₀ and/or the PM_{2.5} NAAQS is exceeded. Currently this includes Luna County and the Anthony PM₁₀ nonattainment area in Doña Ana County.

The full text of NMED’s proposed regulation is available on the Air Quality Bureau’s web site at <https://www.env.nm.gov/air-quality/proposed-regs/> or by contacting Michael Baca at 575-915-1091 or michael.baca1@state.nm.us. The proposed regulation may also be examined during regular business hours at the Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

The hearing will be conducted in accordance with Board Rulemaking Procedures (20.1.1 NMAC); the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Air Quality Control Act, Section 74-2-6 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. Persons wishing

to present technical testimony must file with the Board a written Notice of Intent to do so. The Notice of Intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- (3) include a copy of the direct testimony of each technical witness in narrative form;
- (4) include the text of any recommended modifications to the proposed regulatory change; and
- (5) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of Intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on September 7, 2018, and should reference the docket number, EIB 18-05(R), and the date of the hearing. Notices of Intent to present technical testimony should be submitted to:

Pam Castañeda, Administrator for
Boards & Commissions
Environmental Improvement Board
c/o New Mexico Environment
Department
P. O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505)
827-1628
email: pam.castaneda@state.nm.us

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing

oral testimony at the hearing, shall file the written statement prior to the hearing to the above listed address, or submit it at the hearing.

Persons having a disability and requiring assistance, an interpreter, or an auxiliary aid or other service to participate in this hearing process should contact Pam Castañeda, Administrator for Boards & Commissions, at least ten days prior to the meeting or as soon as possible at the above address or e-mail pam.castaneda@state.nm.us. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation adoption 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 an NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at to <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

ENVIRONMENTAL IMPROVEMENT BOARD AIR QUALITY BUREAU

AVISO DE AUDIENCIA SOBRE REGLAMENTACIÓN

La Junta de Mejora Ambiental de Nuevo México ("Junta") celebrará una audiencia pública el 28 de septiembre de 2018, a las 9:30 a.m., en New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico. El propósito de la audiencia es examinar el asunto de BEI 18-05 (R), la adopción propuesta de la codificación del Reglamento de Control de Calidad del Aire en el Código Administrativo de Nuevo México (NMAC) en 20.2.23 NMAC, Control de Polvo Fugitivo.

El autor de esta enmienda regulatoria es la Oficina de Calidad del Aire del Departamento de Medio Ambiente de Nuevo México ("NMED", por su sigla en inglés).

La Agencia de Protección Ambiental de EE. UU. publicó revisiones al Reglamento de Eventos Excepcionales el 3 de octubre de 2016, que requieren planes de mitigación en ciertas áreas con eventos excepcionales recurrentes del mismo contaminante y tipo. La regulación propuesta es un elemento de apoyo del plan de mitigación de polvo requerido por el reglamento federal de eventos excepcionales. La regulación propuesta se aplicará a las fuentes de polvo fugitivo que no requieren la obtención de un permiso

de construcción de NMED y será aplicable en cualquier área del estado que experimente eventos recurrentes de polvo de vientos fuertes donde el PM10 y/o el PM2.5 NAAQS es rebasado. Actualmente esto incluye el condado de Luna y el área de no cumplimiento PM10 de Anthony, en el condado de Doña Ana.

El texto completo de la regulación propuesta por NMED está disponible en el sitio web de la Oficina de Calidad del Aire en <https://www.env.nm.gov/air-quality/proposed-regs/> o comunicándose con Michael Baca, por teléfono 575-915-1091 o por correo electrónico michael.baca1@state.nm.us. La regulación propuesta también puede ser examinada durante horas hábiles en la Oficina de Calidad del Aire, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de la Junta (20.1.1 NMAC); la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978; la Ley de Control de Calidad del Aire, Sección 74-2-6 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 evidencias, datos, puntos de vista y argumentos relevantes, oralmente o por escrito; presentar documentos y/u objetos de prueba; y examinar a los testigos. Las personas que deseen presentar un testimonio de carácter técnico deberán presentar por escrito a la Junta una Notificación de Intención de presentar dicho testimonio. La Notificación de Intención deberá:

- (1) identificar a la persona por la cual testificará el/los testigo/s;
- (2) identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las cualificaciones de cada testigo, incluida una descripción de su historial académico y laboral;

- (3) incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- (4) incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- (5) hacer una lista y adjuntar todos los documentos y/u objetos de pruebas que se anticipa que esa persona ofrecerá en la audiencia, incluyendo cualquier declaración propuesta de motivos para la adopción de las reglas.

Las Notificaciones de Intención para presentar testimonio técnico en la audiencia deberán recibirse en la oficina de la Junta no más tarde de las 5:00 p. m. del día 7 de septiembre de 2018, y deben incluir como referencia el número de expediente EIB 18-05 (R) y la fecha de la audiencia. Las Notificaciones de Intención para presentar un testimonio técnico deben enviarse a:

Pam Castañeda, Administrator for Boards & Commissions
Environmental Improvement Board
c/o New Mexico Environment Department
P. O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-1628
email: pam.castaneda@state.nm.us

Cualquier miembro del público puede testificar en la audiencia. No se requiere notificación previa para presentar un testimonio no técnico en la audiencia. Cualquiera de estos miembros también pueden ofrecer documentos y/u objetos de prueba que no sean de carácter técnico en relación con su testimonio, siempre y cuando los documentos y/u objetos de prueba no sean excesivamente repetitivos del testimonio.

Un miembro del público que desee presentar una declaración escrita para que conste en actas, en lugar de proporcionar una declaración oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia a la dirección mencionada anteriormente, o presentarla durante

la audiencia.

Las personas que tienen una discapacidad y requieren asistencia, un intérprete, un dispositivo un auxiliar u otro servicio para participar en este proceso de audiencia debe comunicarse con Pam Castañeda, Administradora de Juntas y Comisiones, al menos diez días antes de la reunión o tan pronto como sea posible a la dirección anterior o por correo electrónico pam.castaneda@state.nm.us. Los usuarios de TDY pueden acceder a su número a través de la Red de Retransmisión de Nuevo México (New Mexico Relay Network) llamando al 1-800-659-8331.

La Junta puede tomar una decisión sobre la adopción del reglamento propuesto al final de la audiencia, o puede convocar una reunión después de la audiencia para considerar la acción a tomar sobre la propuesta.

Aviso de No Discriminación

El Departamento de Medio Ambiente de Nuevo México (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 reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R., partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación 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/a con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una queja de discriminación.

ENVIRONMENTAL IMPROVEMENT BOARD AIR QUALITY BUREAU

NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on September 28, 2018, at 9:30 a.m., at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Rd., Las Cruces, New Mexico. The purpose of the hearing is to consider the matter of EIB 18-04(R), proposed revisions to the New Mexico State Implementation Plan ("SIP") regarding the Air Quality Control Regulation codified in the New Mexico Administrative Code (NMAC) at 20.2.3 NMAC, *Ambient Air Quality Standards*.

The proponent of this regulatory amendment is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED to repeal the New Mexico Ambient Air Quality Standards for total suspended particulate (TSP) contained in 20.2.3.109 NMAC. The U.S. Environmental Protection Agency replaced the national ambient air

quality standards (NAAQS) for TSP with PM₁₀ in 1987. The Air Quality Bureau ceased ambient monitoring for TSP in 1998. The Air Quality Bureau has conducted a thorough analysis of these standards and has concluded that the repeal of the standards will not result in a relaxation of emissions controls or an adverse effect on air quality, and is not necessary to maintain the NAAQS for particulate matter in New Mexico. If adopted by the Board, the repeal of 20.2.3.109 NMAC would be submitted to EPA for removal from New Mexico's SIP.

The full text of NMED's proposed regulation repeal is available on the Air Quality Bureau's web site at <https://www.env.nm.gov/air-quality/proposed-regs/> or by contacting Kerwin Singleton at 505-476-4350 or kerwin.singleton@state.nm.us. The proposed regulation repeal may also be examined during office hours at the Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

The hearing will be conducted in accordance with: 20.1.1 NMAC, *Rulemaking Procedures – Environmental Improvement Board*; the *Environmental Improvement Act*, NMSA 1978, Section 74-1-9; the *Air Quality Control Act*, NMSA 1978, Section 74-2-6; and other applicable procedures.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written Notice of Intent to do so. The Notice of Intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- (3) include a copy of the direct

testimony of each technical witness in narrative form;

- (4) include the text of any recommended modifications to the proposed regulatory change; and
- (5) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of Intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on September 7, 2018, and should reference the docket number, EIB 18-04 (R), and the date of the hearing. Notices of Intent to present technical testimony should be submitted to:

Pam Castañeda, Administrator for
Boards & Commissions
Environmental Improvement Board
c/o New Mexico Environment
Department
P. O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505)
827-1628
email: pam.castaneda@state.nm.us

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help to participate in this hearing process should contact Pam Castañeda, Administrator for Boards & Commissions, at least ten days prior to the meeting or as soon as possible at the above address or e-mail pam.castaneda@state.nm.us. TDY users please access her number

via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation repeal at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

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

**ENVIRONMENTAL
IMPROVEMENT BOARD
AIR QUALITY BUREAU**

**NOTIFICACIÓN DE
AUDIENCIA PÚBLICA DE
REGLAMENTACIÓN**

La Junta de Mejora Ambiental de Nuevo México (Junta) celebrará una audiencia pública el 28 de septiembre, 2018, a las 9:30 a.m., en New Mexico Farm and Ranch Heritage Muses, 4100 Dripping Springs Road, Las Cruces, New Mexico. El motivo de la audiencia pública es considerar el asunto del BEI 18-04 (R), revisiones propuestas al Plan de Implementación Estatal de Nuevo México (SIP, por su sigla en inglés) con respecto al Reglamento de Control de la Calidad del Aire codificado en el Código Administrativo de Nuevo México (NMAC, por su sigla en inglés), en 20.2.3 NMAC, Estándares de Calidad Ambiental del Aire.

El proponente de esta enmienda regulatoria es el Departamento de Medio Ambiente de Nuevo México (NMED, por su sigla en inglés).

El motivo de la audiencia pública es considerar y posiblemente tomar medidas en una petición de NMED para revocar los estándares de calidad ambiental del aire de Nuevo México para partículas suspendidas totales (TSP, por su sigla en inglés) contenidas en 20.2.3.109 NMAC. La Agencia de Protección Ambiental de EE. UU. reemplazó los estándares nacionales de calidad ambiental del aire (NAAQS, por su sigla en inglés) por TSP con PM10 en 1987. La Oficina de Calidad del Aire dejó de monitorear el ambiente para TSP en 1998. La Oficina de Calidad del Aire realizó un análisis exhaustivo de estos estándares y concluyó que la revocación de los estándares no dará como resultado una relajación de los controles de emisiones o un efecto adverso en la calidad del aire, y que no es necesario mantener los NAAQS para material particulado en Nuevo México. Si la Junta lo adopta, la revocación del 20.2.3.109

NMAC será presentada a EPA para su eliminación del SIP de Nuevo México.

El texto completo de la revocación del reglamento propuesto por NMED está disponible en el sitio web de la Oficina de Calidad del Aire en <https://www.env.nm.gov/air-quality/proposed-regs/> o comunicándose con Kerwin Singleton al 505-476-4350 o kerwin.singleton@state.nm.us. La revocación del reglamento propuesto también se puede examinar durante horas hábiles en Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

La audiencia se llevará a cabo en acordancia con: 20.1.1 NMAC, Procedimientos de Reglamentación - Junta de Mejora Ambiental; la Ley de Mejora Ambiental, NMSA 1978, Sección 74-1-9; la Ley de Control de Calidad del Aire, NMSA 1978, Sección 74-2-6; y otros procedimientos aplicables.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia pública para presentar pruebas, datos, puntos de vista y argumentos relevantes, oralmente o por escrito, para presentar pruebas y para examinar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta, por escrito, una Notificación de Intención de hacerlo. La Notificación de Intención deberá:

- (1) identificar a la persona para la cual testificará el/los testigo/s;
- (2) identificar a cada testigo técnico que la persona tiene la intención de presentar y declarar las calificaciones de ese testigo, incluida una descripción de su historial educativo y laboral;
- (3) incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- (4) incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- (5) hacer una lista y adjuntar todas las pruebas anticipadas que ofrecerá

esa persona en la audiencia, incluida cualquier declaración propuesta de motivos para la adopción de normas.

Las Notificaciones de Intención de presentar testimonio técnico en la audiencia deben ser recibidas en la Oficina del Consejo antes de las 5:00 p.m. del 7 de septiembre de 2018, y deben hacer referencia al número de expediente, EIB 18-04 (R), y la fecha de la audiencia. Las Notificaciones de Intención para presentar un testimonio técnico deben ser enviadas a:

Pam Castañeda, Administrator for
Boards & Commissions
Environmental Improvement Board
c/o New Mexico Environment
Department
P. O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505)
827-1628
email: pam.castaneda@state.nm.us

Cualquier miembro del público puede testificar en la audiencia. No se requiere notificación previa para presentar un testimonio no técnico en la audiencia. Cualquiera de estos miembros también pueden ofrecer pruebas no técnicas en relación con su testimonio, siempre y cuando las pruebas no sean excesivamente repetitivas del testimonio.

Un miembro del público que desee presentar una declaración escrita para el registro, en lugar de proporcionar un testimonio oral en la audiencia, deberá presentar la declaración escrita antes de la audiencia o presentarla durante la audiencia.

Las personas que tienen una discapacidad y necesitan ayuda para participar en este proceso deben comunicarse con Pam Castañeda, Administradora de Juntas y Comisiones, al menos diez días antes de la reunión o tan pronto como sea posible a la dirección anterior o enviar un correo electrónico a pam.castaneda@state.nm.us. Los usuarios de TDY pueden acceder a su número a través de la Red de Retransmisión de Nuevo México llamando al 1-800-

659-8331.

La Junta puede tomar una decisión sobre la revocación del reglamento propuesto al final de la audiencia, o la Junta puede convocar una reunión después de la audiencia para considerar acciones sobre la propuesta.

El Departamento de 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, según lo exigido por las leyes y los reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación 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/non-employee-discrimination-](https://www.env.nm.gov/non-employee-discrimination-complaint-page/)

[complaint-page/](#) para aprender cómo y dónde presentar una queja de discriminación..

REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Securities Division of the New Mexico Regulation and Licensing Department (Division, RLD, or department) will hold a public rulemaking hearing on August 17, 2018. The hearing will begin at 1:00 p.m. and will be held in the Rio Grande Conference Room, Second floor of the Toney Anaya Building, located at 2550 Cerrillos Rd, Santa Fe, NM 87505. The purpose of the rulemaking hearing is to take public comment regarding proposed adoption of new rule 12.11.18 NMAC – Training And Reporting Guidelines Under The Protecting Vulnerable Adults From Financial Exploitation Act.

Purpose:

The purpose of the proposed rule is to promulgate training guidelines that broker-dealers and investment advisers may use in order to comport to the training requirements of the Protecting Vulnerable Adults from Financial Exploitation Act, NMSA 1978, Section 58-13D-7.

Summary of proposed rule:

The proposed rule shall provide guidelines to broker-dealers and investment advisers who will provide trainings concerning financial exploitation to its employees who are required to be registered in New Mexico as agents or investment adviser representatives, who have contact with eligible adults within the meaning of Section 58-13D-2 NMSA 1978, and who have access to account information on a regular basis. The proposed rule includes the requirements that such trainings shall provide adequate detail and

explanation regarding the agencies to which disclosures must be made, key terminology, delaying disbursements and/or transactions, and immunity.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is available at RLD located at 5500 San Antonio Blvd. NE, Albuquerque, NM 87109, 2550 Cerrillos Rd., Third floor, Santa Fe, NM 87505, and 505 South Main St., Loretta Town Center, Las Cruces, NM 88001. The proposed rule is also posted on the Division's website and may be accessed at www.redflagsnm.com. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact Stephanie.varoz@state.nm.us or (505) 476-4576.

A public hearing will be held from 1:00 p.m. until 5:00 p.m. at RLD in the Rio Grande Conference Room, Second floor of the Toney Anaya Building, located at 2550 Cerrillos Rd, Santa Fe, NM 87505 on August 17, 2018. Any person who is or may be affected by this proposed rule may appear and testify. Interested persons may submit written comments to RLD at 5500 San Antonio Blvd. NE, Albuquerque, NM 87109, or P. O. Box 25101, Santa Fe, NM 87504, or Stephanie.varoz@state.nm.us. Written comments must be received no later than 5:00 p.m. on August 15, 2018. Please note that any written comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in NMSA 1978, Section 58-13C-605A, or NMSA 1978, Section 58-13D-7(b).

Any person with a disability who is in need of a reader, amplifier, qualified

sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-4576, or email Stephanie.varoz@state.nm.us ten (10) business days prior to the hearing.

TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Motor Vehicle Code, Section 66-5-9 NMSA 1978

18.19.5.15 NMAC - Proof of Identification Number, Identity, and Age for a Driving Authorization Card or Identification Card that is Not Acceptable for Federal Purposes

18.19.5.16 NMAC - Proof of New Mexico Residency

Motor Vehicle Code, Section 66-5-15.2 NMSA 1978

18.19.5.17 NMAC - Fingerprints and Criminal History Screening

The proposals were placed on file in the Office of the Secretary on June 14, 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 28, 2018.

A public hearing will be held on the proposals on Wednesday, August 1, 2018, at 10:00 a.m. in the in the ACD Classroom on the first floor of the Manual Lujan Building, 1200 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 August 1, 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.

18.19.5.15 - PROOF OF ~~IDENTIFICATION NUMBER,~~ IDENTITY, AND AGE FOR A DRIVING AUTHORIZATION CARD OR IDENTIFICATION CARD THAT IS NOT ACCEPTABLE FOR FEDERAL PURPOSES

A. Applicants for a New Mexico driving authorization card or identification card that is not acceptable for federal purposes must provide documentary proof of their [~~identification number~~] identity, age and residency.

B. An applicant who cannot establish lawful status and who does not hold a current, valid New Mexico driver's license or identification card must also submit fingerprints for a background check, as provided in 19.18.5.17 NMAC.

C. [~~An applicant who chooses to provide a social security number must present his or her social security administration (SSA) account number card. If a SSA account card is not available, the person shall present one the following documents, provided that the document bears the applicant's social security number:~~

~~(1) a W-2 form;~~

~~(2) a SSA-1099 form;~~

~~(3) a non-~~

SSA-1099 form; or

(4) a pay stub with the applicant's name and social security number on it.

D. Applicants can use the following documents to provide documentary proof of their identification number or documentary proof of their identity, but one document cannot be used for proof of both their identification number and identity:

(1) a passport or passport card from the applicant's country of citizenship if verified through systematic alien verification for entitlements system (SAVE);

(2) a certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;

(3) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(4) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

(5) an identification card issued by the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico, or such other foreign consulate with which the New Mexico motor vehicle division has established a reliable method of verifying the authenticity of the identification card;

(6) an individual tax identification number;

(7) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;

(8) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;

(9) certified copy of foreign birth certificate issued by the applicant's place of birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

(10) affidavit of Indian birth;

(11) a state-issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(12) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(13) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(14) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(15) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

(16) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;

(17) a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2);

(18) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

(19) N560 certificate of citizenship if verified in SAVE;

(20) N550 certificate of naturalization if verified in SAVE;

(21) a valid permanent resident card issued by the United States government if verified

in SAVE;

(22) a valid I-551 resident alien card issued since 1997 if verified in SAVE; or

(23) a valid New Mexico license or identification card;

(24) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

(25) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

(26) a social security card;

(27) a medical insurance card or documentation of medical insurance coverage of eligibility that contains an identification number;

(28) military discharge/separation papers (DD-214);

(29) selective service card.] Applicants can use one of the following documents if it contains the applicant's name and date of birth, to provide documentary proof of their identity and age.

If the document does not contain the applicant's name and date of birth, two of the following documents will be required:

(1) an original or certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;

(2) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

(3) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

(4) an identification card issued by the consulate of Mexico in El Paso,

Texas, or Albuquerque, New Mexico, or such other foreign consulate;
(5) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;
(6) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;
(7) certified copy of foreign birth certificate issued by the applicant's place of birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;
(8) affidavit of Indian birth;
(9) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;
(10) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;
(11) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;
(12) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;
(13) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;
(14) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;
(15) a valid

United States active duty/retiree/reservist military identification card (DOD ID DD-2);
(16) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;
(17) N560 certificate of citizenship if verified in SAVE;
(18) N550 certificate of naturalization if verified in SAVE;
(19) a valid permanent resident card issued by the United States government if verified in SAVE;
(20) a valid I-551 resident alien card issued since 1997 if verified in SAVE;
(21) a valid New Mexico license or identification card;
(22) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;
(23) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;
(24) a social security card;
(25) military discharge/separation papers (DD 214);
(26) selective service card;
(27) an I-94 form presented without a passport if it contains the applicant's photo;
(28) a military dependent identification card that includes the applicant's photo;
(29) a medical insurance card or documentation of medical insurance coverage or eligibility containing an insurance identification number including a Medicaid or Medicare card;
(30) a passport or passport card from the applicant's

country of citizenship;
(31) a passport or passport card from the United States if verified through systematic alien verification for entitlements system (SAVE);
(32) individual tax identification number (ITIN);
(33) a medical record less than one year old that is not from a visit to an emergency room or urgent care facility;
(34) proof of eligibility for and receipt of welfare benefits, including general assistance, temporary assistance for needy families and the supplemental nutrition assistance program with a copy of the human services department eligibility profile page dated with the last year.
 [18.19.5.15 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, xx/xx/20xx]

18.19.5.16 - PROOF OF NEW MEXICO RESIDENCY

A. All applicants for a REAL ID Act of 2005 compliant New Mexico identification card, driving permit, provisional driver's license, or driver's license, other than a commercial driver's license, and all applicants for a driving authorization card or identification card not acceptable for federal purposes must provide documentary evidence demonstrating New Mexico residency.

B. Applicants must provide two of the following documents, showing the applicant's name or the name of applicant's spouse in combination with a certificate of marriage and a New Mexico residential address for the applicant, as proof that the applicant lives in New Mexico.

(1) a current real property rental agreement or purchase agreement;
(2) a utility bill dated within 60 days, such as water, gas, electric, waste, telephone, cable or satellite bill, but not a bill for a cell phone;
(3) an insurance bill, card or binder, dated within the past 6 months;

(4) a bank or credit card statement dated within 60 days;

(5) an employment pay stub that contains the applicant's name and address, dated within 60 days;

(6) a current, local property tax statement or mortgage documents;

(7) a document from an education institution, such as a transcript, report card or enrollment confirmation, provided it is dated within 60 days;

(8) original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant is a New Mexico resident;

(9) a New Mexico medical assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;

(10) a New Mexico public assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;

(11) documents indicating membership in a New Mexico religious organization, provided that the applicant is less than 18 years of age; or

(12) documents indicating membership in a New Mexico sports organization, provided that the applicant is less than 18 years of age;

(13) ~~[if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian.]~~ a New Mexico medical or public assistance card, profile printout or a letter from the issuing agency;

(14) if the

applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian; and

(15) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501(c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.

C. Applicants for an identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection B of 18.19.5.16 NMAC may provide an affidavit or a notarized letter from [in the manner required by the department from] a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services *in lieu of* the documents required in Subsection B of 18.19.5.16 NMAC.

[18.19.5.16 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, xx/xx/20xx]

18.19.5.17 - FINGERPRINTS AND CRIMINAL HISTORY SCREENING

A. **Authority; use of criminal history information:** The taxation and revenue department (TRD) is authorized to obtain the criminal history records of applicants for driving authorization cards and TRD is authorized to obtain criminal history records of applicants for identification cards that are not acceptable for federal agencies for federal purposes, provided that the applicant does not possess a valid New Mexico license or identification

card and that the applicant does not provide proof of lawful status.

B. Procedure for applicants:

(1)

If an applicant otherwise meets the application and eligibility requirements, then TRD shall take a full-face or front-view photograph and fingerprints of the applicant and shall submit the same to the New Mexico department of public safety (DPS) for the purpose of obtaining a current criminal history screening through the national crime information center as well as a criminal history screening through the records of DPS.

(2) An

applicant shall provide to TRD a criminal background screening request, fingerprints, and supporting documentation including an authorization for release of information to TRD in accordance with the procedures of DPS.

(3) DPS

will review state records and also transmit the fingerprints to the federal bureau of investigation for a national screening. The results of the screening will be transmitted to TRD for review.

(4)

Applicants and licensees shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to ~~[TRD. TRD shall timely submit the fees to DPS.]~~ DPS or designee of DPS. Fees cannot be waived by TRD.

(5) TRD

shall comply with applicable confidentiality requirements of the DPS and the federal bureau of investigation regarding the handling and dissemination of criminal history information.

C. TRD review of criminal history information:

(1) TRD shall

review the results and shall not issue a driving authorization card if the results show that the applicant has an outstanding criminal arrest warrant for a felony or a misdemeanor charge in any state or country or if the results show that the applicant's fingerprints are associated with any name, date of

birth or social security number other than those provided when the person applied for the driving authorization card.

(2) TRD shall notify the person if the application is denied, including the reason for the denial, and the person's right to a hearing.

(3) TRD shall destroy the results of the screening after it has completed its review and issued the driving authorization card, or one year from the date of the denial, whichever occurs sooner.

D. Evidence of

eligibility: A person whose application for a driving authorization has been denied shall become eligible upon submitting evidence that the basis for ineligibility was resolved. Such evidence may include:

(1) documents that demonstrate that the criminal arrest warrant was quashed, withdrawn, or resolved;

(2) documents that demonstrate that there is not a conflict with the name, date of birth or social security number; or

(3) other documents as approved by the director of the motor vehicle division.
[18.19.5.17 NMAC - N, 11/15/2016; A/E, 6/26/2018; A, xx/xx/20xx]

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

Adopted Rules

Effective Date and Validity of Rule Filings

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

ECONOMIC DEVELOPMENT DEPARTMENT

These Industrial Training Board of the Economic Development Department, approved, at its 5/10/2018 hearing, to repeal its rule 5.5.50 NMAC, Post-Secondary Education Programs-Industrial Development Training Program (filed 3/15/06) and replace it with 5.5.50 NMAC, Post-Secondary Education Programs-Industrial Development Training Program, (adopted on 6/8/18) and effective 7/1/18.

ECONOMIC DEVELOPMENT DEPARTMENT

**TITLE 5 POST-
SECONDARY EDUCATION
CHAPTER 5 POST-
SECONDARY EDUCATION
PROGRAMS
PART 50 INDUSTRIAL
DEVELOPMENT TRAINING
PROGRAM**

5.5.50.1 ISSUING
AGENCY: Economic Development Department.
[5.5.50.1 NMAC - Rp, 5.5.50.1 NMAC, 06-26-2018]

5.5.50.2 SCOPE: The rules apply to New Mexico residents.
[5.5.50.2 NMAC - Rp, 5.5.50.2 NMAC, 06-26-2018]

5.5.50.3 STATUTORY
AUTHORITY: General management of the industrial development training program shall be the responsibility of the industrial training board as prescribed by governing legislation (Section 21-19-7, NMSA 1978).

[5.5.50.3 NMAC - Rp, 5.5.50.3 NMAC, 06-26-2018]

5.5.50.4 DURATION:
Permanent.
[5.5.50.4 NMAC - Rp, 5.5.50.4 NMAC, 06-26-2018]

5.5.50.5 EFFECTIVE
DATE: June 26, 2018, unless a later date is cited at the end of a section.
[5.5.50.5 NMAC - Rp, 5.5.50.5 NMAC, 06-26-2018]

5.5.50.6 OBJECTIVE:
The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves.

A. Company eligibility: Companies that increase the economic base of New Mexico are eligible to be considered for JTIP funds. They are broken out into two broad categories: manufacturers and companies that provide services that are non-retail in nature and export at least fifty percent of the services to a customer base outside New Mexico.

The company must be creating new jobs as a result of expansion, startup, or relocation to the State of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP.

B. Job eligibility:
Jobs eligible for funding through JTIP must be newly created, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program.

Eligible positions must directly support the primary mission of the business and include those directly related to the creation of the product or service provided by the company to its customers. Other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to twenty percent of the total number of jobs applied for in the proposal. Rural companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications. Jobs must also meet a wage requirement to be eligible for funding. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. In urban areas, companies that apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least fifty percent of the premium for employees who elect coverage.

C. Trainee eligibility:
To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to

employment, unless they graduated or completed a HSE (high-school equivalency). The one-year residency requirement may not apply to a trainee hired into an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide “quick response” training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to seventy-five percent for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(2) Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC.

(3) Companies that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional five percent wage reimbursement above the standard rates.

(4) Companies that hire trainees who have graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution

of higher education may be eligible for an additional five percent wage reimbursement above the standard rates.

(5) Companies that hire trainees who are U.S. veterans may be eligible for an additional five percent wage reimbursement above the standard rates.

(6) Companies may combine the additional five percent wage reimbursement for high-wage jobs with any one of the conditions described in paragraphs (3), (4) or (5) above, for a total additional wage reimbursement not to exceed ten percent above the standard rates.

(7) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed one hundred percent.

E. Program management and administration: General management of the job training incentive program is the responsibility of the industrial training board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program’s management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board’s determination of the qualifications of the business. The board may elect to implement measures to conserve funds when available funds become limited.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 06-26-2018]

5.5.50.7 DEFINITIONS:
[RESERVED]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements:

The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies that manufacture a product in New Mexico and certain non-retail service providers. Manufacturing businesses are typically included in sectors 31-33 of the North American industry classification system (NAICS). Manufacturing includes all intermediate processes required for the production and integration of a product’s components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). A company whose employees are compensated solely on piecework is not eligible. Other types of companies that may be eligible under the manufacturing category are listed below:

(a) Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere. Start-ups and early-stage manufacturing companies. The company must be adequately capitalized to reach first production and be able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(b) Renewable power generators.

(c) Film post-production companies, and film digital production companies (such as animation and video game production companies).

(d)

Non-traditional agricultural entities may be eligible under the manufacturing category provided that the operation is a year-round, value-added production facility in a controlled and enclosed environment. Such operations may have mechanized processes, require a specialized workforce or may be involved with research and development or technology transfer.

(e)

Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible.

(f)

Start-ups and early-stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(2) Non-

retail service businesses provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public. Eligible non-retail service businesses must demonstrate that at least fifty percent of their revenues come from a customer base outside New Mexico. Businesses that may be eligible as non-retail service providers may include:

(a)

Companies that exist for the sole purpose of producing, installing, or integrating environmentally sustainable products (see definition of green industries in glossary). Companies that meet the green industry criteria are not required to generate out-of-state revenues.

(b)

Service companies that provide a non-retail service to government agencies may be eligible provided at least fifty percent of revenue is from a customer base outside New Mexico. Revenue derived from contracts with national research laboratories or military bases located in New Mexico is not

considered out-of-state. National research laboratories in New Mexico or companies that operate national research laboratories in New Mexico are not eligible.

(c)

Logistics companies that provide inbound and outbound transportation management, fleet management, warehousing, materials handling, order fulfillment, logistics network design, inventory management, supply and demand planning, third-party logistics management, and other support services. Logistics services are involved at all levels in the planning and execution of the movement of goods and information from point of origin to point of consumption for the purpose of conforming to customer requirements. Distribution and transloading services are included within the logistics category

(d)

Aviation maintenance, repair and overhaul (MRO) operations may be eligible. MRO's provide airframe, engine and component services to the aviation industry, including aircraft such as planes, jets and helicopters in need of regular maintenance, repair and adjustments to keep in working order according to federal regulations. A contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service.

(e)

Start-ups and early-stage companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(f)

Business operations that do not generate gross receipts within New Mexico may be eligible if at least fifty percent of the customer-base is outside New Mexico and service is provided to customers who are not physically present at the New Mexico facility. Companies in this category may be part of a multi-state entity or corporation that have a location in New Mexico and whose revenues flow to the New Mexico business

operation, which in turn pay the wages of the New Mexico employees and contribute to the New Mexico tax base in the form of corporate and payroll taxes. Businesses that may be eligible under this category may include:

(i)

Headquarters operations: The center of operations of a business where corporate staff employees are physically employed; centralized functions are performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; from which final authority over regional or sub-regional offices, operating facilities and any other offices of the business are issued; and including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters.

(ii)

Shared services centers: The entity within a corporation responsible for the execution and the handling of specific operational tasks, such as accounting, human resources, payroll, IT, legal, compliance, purchasing, for a regional or national division.

(iii)

Customer support centers. Customer support centers must service a customer who is not physically present at the facility. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions that require outbound sales, solicitation, collections, or telemarketing are not eligible for JTIP funds, unless they are in response to inbound requests and existing clients, or business to business. Contract-based customer support centers must meet special requirements. Contract-

based customer support centers are outsourcing vendors that provide information to customers of their clients on behalf of those clients. Contract-based customer support centers do not have a core expertise; rather they communicate information provided to them by their clients. Contract-based customer support centers must provide evidence of a minimum five-year lease or purchase of a facility in New Mexico; offer employees and their dependents health insurance coverage; and contribute at least fifty percent of the premium for healthcare insurance for those employees who choose to enroll. Eligibility as an expanding company is determined by peak employment over the four prior years. For first-time applicants, peak employment is based on the employment average from four previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past four years in order to be considered an expanding company and eligible for JTIP. Contract-based customer support centers that have been funded in the past four years must be expanding beyond the peak employment count achieved with previous JTIP funds.

(3) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. An expanding company is defined as an existing business that requires additional employees or workforce due to a market or product expansion. Eligibility as an expanding company is determined by peak employment over the two prior years. For first-time applicants, peak employment is based on the employment average from two previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies that have been funded by the program within the past two years, the number

of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels. A company may be allowed to exclude JTIP intern positions when calculating the two-year average headcount.

(4) If a company hires twenty or more trainees in a municipality with a population of more than 40,000 according to the most recent decennial census or in a class H county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM insurance code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(5) Companies are required to submit three years of financial statements (profit and loss, balance sheets, statements of cash flow, and financing term sheets) as part of the application process. Year-to-date financials may also be requested. Start-ups and early-stage companies that do not have three years of financials are required to submit financials for the period for which they are available. Other documentation that may be requested may include but is not limited to tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, pro forma financial statements and sales projections which would substantiate their business expansion. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(6) Training

programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(7) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within one year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) that were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP reimbursement exceeds \$100,000. The board will require a refund of funds within 90 days of notification.

(8) Layoff is defined as a strategic and organized event of separation of employees from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(9) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for the remaining training hours.

(10) Businesses that are not eligible include but are not limited to retail, construction, traditional agriculture and farming, mining and extractive industries, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the North American industry classification system (NAICS) as a general guideline to establish industry classification and eligibility.

(11) Companies

must be in good standing with the economic development department in order to be considered for participation in JTIP.

B. Position qualifications and requirements:

The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which may be eligible for the high wage job tax credit. These levels are \$60,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$40,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of twenty percent of the total number of jobs for which funding is requested, and may include non-executive, professional support positions. Rural companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions may only include

professional support, non-executive positions.

(5) Intern positions may be eligible provided the trainee is enrolled in, or has graduated within the past 12 months from, a training or academic program and meets JTIP eligibility requirements. Intern positions may be part-time (less than 32 hours per week). The intern position must be relevant to the post-secondary training or academic program in which the trainee is enrolled, or from which the trainee has graduated, but is not required to be production or service related. Companies will be reimbursed upon evidence of direct full-time employment offered within 90 days of completion of the internship and graduation from the training or education program, or within 90 days of completion of the internship by a recent graduate.

C. Trainee qualifications and requirements:

The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have been previously employed by or have worked as contractors to the company are not eligible to be hired under JTIP in the same or similar position as the one previously occupied or contracted. JTIP staff determines eligibility of these positions and trainees on a case by case basis, and if deemed eligible, training hours may be reduced. The vacancy left by an existing employee moving in to a JTIP position must be filled by the end of the project period. Individuals who have been employed temporarily in a position classified as intern in order to gain

practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training. The one-year residency requirement may not apply to a trainee hired in to an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. All trainees must currently be domiciled in New Mexico.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or HSE (high-school equivalency) certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or industrial development training program are not eligible to participate again with the same company, unless the trainee has participated in the JTIP internship program.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a)

The trainee must be hired by the company as a regular/permanent full-time employee before the end of the JTIP contract period.

(b)

The trainee must receive the same wages and major medical benefits while working as a temporary employee that permanent employees of the company receive.

(c)

The staffing agency must disclose wages paid to the temporary employee to the company.

(d)

The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(e)

Companies are reimbursed for wages as each trainee completes the approved training hours and after s/he has been converted to a regular/permanent full-time employee of the JTIP contracted company.

(f)

The trainee must not have worked at the company in a temporary position through a staffing agency prior to the board approval date.

(10) Employees

hired by a company through a professional employer organization (PEO) may be eligible for funding provided the PEO agrees to comply with all JTIP requirements for the compliance and final auditor's reviews as outlined in Subsection K of 5.5.50.12 NMAC and in the JTIP project closeout guide.

(11) Companies

are reimbursed for wages as each trainee completes the approved training hours.

(12) If a

trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete

training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 06-26-2018]

5.5.50.9 ELIGIBLE TRAINING PROGRAMS:

A. The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

B. The types of training projects eligible under the job training incentive program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

C. On-the-job

training: Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) or "hands-on" skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O*NET job description, and training units. Each unit will include core

content or objectives, methods and materials, methods of evaluation and requested hours. The training plan must cover the entire period for which reimbursement is requested. A more detailed description of the training plan requirements is included in the JTIP online application and proposal guide.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation.

D. Custom training provided by a New Mexico post-secondary public educational

institution: Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP trainees are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Reimbursement for classroom training will be at a maximum rate of \$35 per hour of training per trainee with a cap of \$1,000 per employee. Tuition reimbursement and industry certification programs are not eligible for JTIP funding.

(5) Facilities rental outside a public educational institution and equipment rental or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation. [5.5.50.9 NMAC - Rp, 5.5.50.9 NMAC, 06-26-2018]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages for up to six months of initial training.

(2) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

(3) A percentage of intern wages for up to 640 training hours.

B. Standard reimbursement rates for wages range up to seventy-five percent. Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above

the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has taken the WorkKeys® assessments as part of the hiring/recruitment process.

(2) Trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran.

Companies may combine any one of the three conditions above with the additional five percent wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

C. The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of standard reimbursement ranges up to seventy-five percent, depending on the business location.

(2) The number of hours eligible for reimbursement varies by position, up to 1,040 hours (six months). The number of hours eligible for reimbursement for each position is

based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetonline.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

Continued on the following page

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	11.00	9.50	40	8
2a	Some preparation needed	4.0 to < 6.0	480	12.50	10.00	60	12
2	Some preparation needed	4.0 to < 6.0	640	14.00	10.50	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	15.50	12.00	100	20
3	Medium preparation needed	6.0 to < 7.0	960	17.00	13.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	20.00	14.00	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Companies located in urban areas (cities with population above 60,000 in the most recent federal decennial census) and Class H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to seventy-five percent reimbursement.

(f) Companies located in federally designated colonias in New Mexico are eligible

for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of \$60,000 or higher in an urban or class H county and a hiring salary of \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

(7) Companies that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional five percent reimbursement.

(8) JTIP eligible positions filled by trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.

(9) JTIP eligible positions filled by U.S. veterans may be eligible for an additional five percent reimbursement.

(10) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed 1,040 hours per trainee (six months) based on the company's scheduled workweek, not to exceed 40 hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime,

commission and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f) Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4: 1) the trainee has taken the WorkKeys® assessments as part of the hiring process; 2) the trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education; 3) the trainee is a U.S. veteran. High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above the standard rate.

E. Reimbursement for custom classroom training:

Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational

institution may include course development, instructional salaries, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds.

[5.5.50.10 NMAC - Rp, 5.5.50.10 NMAC, 06-26-2018]

5.5.50.11 REQUIREMENTS FOR FUNDING REQUEST:

A. A company must submit a written proposal to the JTIP staff one month before the board meeting to be considered for funding. The JTIP online application and supporting documentation are what make up the complete proposal. Information and documentation which must be included in the proposal is explained in detail in the JTIP online application and proposal guide, which describes the requirements for initial applications for funding and for companies which are submitting subsequent requests.

B. The board considers a number of factors when evaluating proposals. These include:

- (1) being a corporate or established industry leader;
- (2) quality of jobs with respect to wages and benefits; companies are encouraged to pay at levels which may be eligible for the high wage job tax credit (\$60,000 in urban locations and \$40,000 in other locations);
- (3) return on investment, including impact on local and state economies; factors include number of jobs, impact on average wage and household earnings; increase in per capita income; annual local purchases impacting local/state sales taxes; dollar amount of new construction; environmental impact; and overall economic support to the community;
- (4) the company's financial strength should indicate a capacity for long-term employment for JTIP trainees;
- (5) charitable and community contributions;

(6) current on NM CRS-1 and UI reporting and payment obligations.

(7) any other factors the board deems relevant. [5.5.50.11 NMAC - Rp, 5.5.50.11 NMAC, 06-26-2018]

5.5.50.12 PROCEDURAL OVERVIEW: The procedures for completing a funding proposal and the administration of a project are explained in detail in the JTIP online application and proposal guide and the JTIP policy and procedures manual.

A. Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding.

B The contract start date is the date of the board meeting at which funding was approved.

C. Eligible job openings must be registered with the New Mexico workforce connection.

D. The company must hire trainees within six months of the contract start date.

E. The company must submit an online hiring report at the end of the six month hiring period.

F. Claims for reimbursement should be submitted as trainees complete training.

G. Each project is subject to compliance reviews throughout the term of the contract.

H. The company must arrange for an agreed upon procedure in accordance with generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training.

I. The final claim for reimbursement should be submitted with the completed agreed upon procedures report.

J. Yearly follow-ups may be conducted to show effectiveness of the program,

including surveys to address company retention, wage rates of program trainees and business and industry needs for industry recognized certifications and credentials by the economic development department, the department of workforce solutions and the public education department.

K. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

L. Companies that are not in good standing with other economic development department programs may not be eligible for JTIP. [5.5.50.12 NMAC - Rp, 5.5.50.12 NMAC, 06-26-2018]

5.5.50.13 AMENDMENTS:

A. Amendments to the contract may be allowed in special circumstances. Procedures for submitting amendment applications are explained in detail in the JTIP policy and procedures manual and the online application and procedure guide.

B. All project amendment requests must be submitted in writing through the JTIP online application one month prior to the board meeting.

[5.5.50.13 NMAC - Rp, 5.5.50.13 NMAC, 06-26-2018]

5.5.50.14 [RESERVED]

[5.5.50.14 NMAC, Repealed, 06-26-2018]

5.5.50.15 GLOSSARY:

A. Agriculture (traditional)/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

B. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of

persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

C. Distribution: A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer or customer.

D. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for seventy-five percent reimbursement. To receive a seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

E. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

F. Film and multimedia post production: Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated

imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

G. Frontier: A

frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

H. Green industries:

Those that exist for the sole purpose of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

I. High wage job

tax credit: The high wage job tax credit provides a tax credit of ten percent of the wages and benefits paid for each new economic-based job created on or after July 1, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$40,000 per year in a community with a population of less than 60,000 and \$60,000 per year in a community

with a population of 60,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

J. Manufacturing:

Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10D NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

K. NAICS:

North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/cgi-bin/sssd/naics/naicsrch.

L. Native American

crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names

and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

M. New company:

A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID when applying for JTIP funds.

N. Non-retail service

sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export fifty percent of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public and is provided to customers who are not physically present at the New Mexico facility. Non-retail service businesses which meet the JTIP criteria for green industry are exceptions to the requirement that at least fifty percent of the customer base be located outside New Mexico.

O. O*NET:

The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at <http://onetonline.org>.

P. Peak employment:

First time JTIP applicants: Peak employment will be based on the employment average from two previous years or the present

employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

Q. Peak employment:

Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

R. Retail trade:

Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise, such as installation. Retailers may operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers, or use other forms of sales techniques, including the sale of goods through the internet, online catalogs, portable stalls, and infomercials. Retail trade is usually the final step in the production and distribution of goods and usually sells small amounts of a product to individuals.

S. Renewable energy:

is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

T. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

U. Transloading services: The process of transferring a shipment from one mode of transportation to another in order

to have goods reach their final destination. It is most commonly employed when it is physically impossible or is not economically efficient to transport goods to a final destination using only one mode of transportation. Companies that ship goods internationally are likely to use multiple methods of transport, especially if both the shipping point and the destination are located inland.

V. Urban

communities: An urban community is defined as a municipality with a population of sixty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947). Class H counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

W. Metropolitan

statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Tarrant counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

X. Rural: Any area located outside communities defined as urban in the JTIP policy.

Y. Veteran: A New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable.

Z. Intern:

A student or recent graduate (within one year) of an academic or training program who works at a trade or occupation in order to gain work experience. [5.5.50.15 NMAC - Rp, 5.5.50.15 NMAC, 06-26-2018]

HISTORY OF 5.5.50 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

5 NMAC 5.50, Industrial Development Training Program, filed 11-01-1999 - Repealed effective 04-30-2002.

5.5.50 NMAC, Industrial Development Training Program, filed 04-16-2002 - Repealed effective 03-15-2006.

5.5.50 NMAC, Industrial Development Training Program, filed 03-15-2006 - Repealed effective 06-26-2018.

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

This is an amendment to 19.15.2 NMAC, amending Sections 1, 3, 6 and 7, effective 6/26/2018.

19.15.2.1 ISSUING

AGENCY: [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.

[19.15.2.1 NMAC - Rp, 19.15.1.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.3 STATUTORY

AUTHORITY: 19.15.2 NMAC is adopted pursuant to the Oil and Gas Act, [~~NMSA 1978;~~] Sections 70-2-1 through 70-2-38 NMSA 1978, which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash [~~as a result~~] because of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations.

[19.15.2.3 NMAC - Rp, 19.15.1.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.6 OBJECTIVE:

To set forth general provisions and definitions pertaining to the authority of the oil conservation division and the oil conservation commission pursuant to the Oil and Gas Act, [NMSA 1978,] Sections 70-2-1 through 70-2-38 NMSA 1978.

[19.15.2.6 NMAC - Rp, 19.15.1.6 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.7 DEFINITIONS:

These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

A. Definitions beginning with the letter “A”.

(1) “Abate”

means to investigate, contain, remove or mitigate water pollution.

(2)

“**Abatement**” means the investigation, containment, removal or other mitigation of water pollution.

(3)

“**Abatement plan**” means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution’s prevention, investigation and abatement.

(4) “ACT”

means automatic custody transfer.

(5)

“**Adjoining spacing units**” mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.

(6) “Adjusted allowable”

means the allowable production a well or proration unit receives after all adjustments are made.

(7) “AFE”

means authorization for expenditure.

(8) “Affected persons”

means the following persons owning interests in a spacing unit or other identified tract:

(a)

the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;

(b)

in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

(c)

as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

(d)

if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

(e) if

the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

[~~(8)~~ (9) “Allocated pool”

means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

[~~(9)~~ (10)

“**Allowable production**” means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

[~~(10)~~ (11)

“**APD**” means application for permit to drill.

[~~(11)~~ (12)

“**API**” means the American petroleum institute.

[~~(12)~~ (13)

“**Approved temporary abandonment**” means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and [~~is in compliance~~] complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

[~~(13)~~ (14)

“**Aquifer**” means a geological formation, group of formations or a part of a formation that [~~is capable of yielding~~] can yield a significant amount of water to a well or spring.

[~~(14)~~ (15)

“**ASTM**” means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions

beginning with the letter “B”.

(1) “Back allowable”

means the authorization for production of an underproduction resulting from pipeline proration.

(2)

“**Background**” means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person’s facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

(3) “Barrel”

means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) “Barrel of oil”

means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) “Below-grade tank”

means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank’s sidewalls is below the surrounding ground surface’s elevation. Below-grade tank does not include an above ground storage

tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(6) **"Berm"**

means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

(7) **"Biopile",**

also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through [the use of] biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

(8) **"BLM"**

means the United States department of the interior, bureau of land management.

(9) **"Bottom**

hole pressure" means the gauge pressure in psi under conditions existing at or near the producing horizon.

(10)

"Bradenhead gas well" means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

(11) **"BS&W"**

means basic sediments and water.

(12) **"BTEX"**

means benzene, toluene, ethylbenzene and xylene.

C. Definitions

beginning with the letter "C".

(1) **"Carbon**

dioxide gas" means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2)

"Casinghead gas" means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) **"Cm/sec"**

means centimeters per second.

(4) **"CPD"**

means central point delivery.

(5)

"Combination multiple completion"

means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(6)

"Commission" means the oil conservation commission.

(7)

"Commission clerk" means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(8) **"Common**

purchaser for gas" means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(9)

"Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(10) **"Common**

source of supply". See pool.

(11)

"Condensate" means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(12)

"Contiguous" means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(13)

"Conventional completion"

means a well completion in which the production string of casing has an outside diameter [in excess of]

exceeding 2.875 inches.

(14)

"Conventional multiple

completion" means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(15)

"Correlative rights" means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(16) **"Cubic**

feet of gas or cubic foot of gas"

means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions

beginning with the letter "D".

(1) **"Deep**

pool" means a common source of supply that is situated 5000 feet or more below the surface.

(2) **"Depth**

bracket allowable" means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) **"Director"**

means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) **"Division"**

means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) **“Division clerk”** means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6) **“Downstream facility”** means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) **“DRO”** means diesel range organics.

E. Definitions beginning with the letter “E”.

(1) **“EC”** means electrical conductivity.

(2) **“Enhanced oil recovery project”** means the use or the expanded use of a process for the displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) **“EOR project”** means an enhanced oil recovery project.

(4) **“EPA”** means the United States environmental protection agency.

(5) **“Exempted aquifer”** means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location that makes the recovery of water for drinking water purposes economically or technologically impractical; or

(c) it is so contaminated that it would be economically or technologically

impractical to render that water fit for human consumption.

(6) **“Exempt waste”** means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) **“Existing spacing unit”** means a spacing unit containing a producing well.

F. Definitions beginning with the letter “F”.

(1) **“Facility”** means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) **“Field”** means the general area that at least one pool [~~underlays~~] underlies or appears to [~~underlay~~] underlie; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) **“Fresh water”** to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

G. Definitions beginning with the letter “G”.

(1) **“Gas”**, also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.

(2) **“Gas lift”** means a method of lifting liquid to the surface by injecting gas into a well

from which oil production is obtained.

(3) **“Gas-oil ratio”** means the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(4) **“Gas-oil ratio adjustment”** means the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(5) **“Gas transportation facility”** means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.

(6) **“Gas well”** means a well producing gas from a gas pool, or a well with a gas-oil ratio [~~in excess of~~] exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(7) **“Geomembrane”** means an impermeable polymeric sheet material that is impervious to liquid and gas [~~as long as~~] if it maintains its integrity, and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(8) **“Geotextile”** means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(9) **“GRO”** means gasoline range organics.

(10) **“Ground water”** means interstitial water that occurs in saturated earth material and [~~is capable of entering~~] can enter a well in sufficient amounts to be used

as a water supply.

(11) **“Ground water sensitive area”** means an area the division specifically designates after evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if contaminants were introduced into the environment.

H. Definitions

beginning with the letter “H”.

(1) **“Hardship gas well”** means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

(2) **“Hazard to public health”** exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(3) **“Hazardous waste”** means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) **“HDPE”** means high-density polyethylene.

(5) **“High gas-oil ratio proration unit”** means a unit with at least one producing oil well with a gas-oil ratio [~~in excess of~~] exceeding the limiting gas-oil ratio for the pool in which the unit is located.

(6) **“H₂S”** means hydrogen sulfide.

I. Definitions beginning with the letter “I”.

(1) **“Illegal gas”** means gas produced from a gas well [~~in excess of~~] exceeding the division-determined allowable.

(2) **“Illegal oil”** means oil produced [~~in excess of~~] exceeding the allowable the division fixes.

(3) **“Illegal product”** means a product of illegal gas or illegal oil.

(4) **“Inactive well”** means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) **“Injection well”** means a well used for the injection of air, gas, water or other fluids into an underground stratum.

J. Definitions beginning with the letter “J”.
[RESERVED]

K. Definitions beginning with the letter “K”.
“Knowingly and willfully”, for [~~the purpose of~~] assessing civil penalties, means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct’s knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of statutes, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct’s knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

L. Definitions beginning with the letter “L”.

(1) **“Limiting gas-oil ratio”** means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

(2) **“Liner”** means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) **“LLDPE”** means linear low-density polyethylene.

(4) **“Load oil”** means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) **“Log”** means a systematic detailed and correct record of formations encountered in drilling a well.

M. Definitions beginning with the letter “M”.

(1) **“Marginal unit”** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) **“Market demand percentage factor”** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool’s top proration unit allowable.

(3) **“MCF”** means a thousand cubic feet.

(4) **“MCFD”** means a thousand cubic feet per day.

(5) **“MCFGPD”** means a thousand cubic feet of gas per day.

(6) **“Mg/l”** means milligrams per liter.

(7) **“Mg/kg”** means milligrams per kilogram.

(8) **“Mineral estate”** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

(9) **“Mineral interest [owners] owner”** means [owners of an interest in the executive rights, which are the rights to explore and develop, including oil and gas lessees (*i.e.*, “working interest owners”) and mineral interest owners who have not signed an oil and gas lease] a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

(10) **“Minimum allowable”** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

(11) **“Miscellaneous hydrocarbons”** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

N. Definitions beginning with the letter “N”.

(1) **“Non-aqueous phase liquid”** means an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

(2) **“Non-exempt waste”** means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(3) **“Non-hazardous waste”** means non-exempt oil field waste that is not hazardous waste.

(4) **“Non-marginal unit”** means a proration unit that [~~is capable of producing~~] can produce the top proration unit allowable for the pool in which it is located, and to which the division

assigns a top proration unit allowable.

(5) **“NORM”** means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

O. Definitions beginning with the letter “O”.

(1) **“Official gas-oil ratio test”** means the periodic gas-oil ratio test the operator performs pursuant to division order by the method and in the manner the division prescribes.

(2) **“Oil”** means petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

(3) **“Oil field waste”** means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) **“Oil well”** means a well capable of producing oil and that is not a gas well as defined in Paragraph (6) of Subsection G of 19.15.2.7 NMAC.

(5) **“Operator”** means a person who, duly authorized, [~~is in charge of~~] manages a lease’s development or a producing property’s operation, or who [~~is in charge of~~] manages a facility’s operation [~~or management~~].

(6) **“Overproduction”** means the amount of oil or gas produced during

a proration period [~~in excess of~~] exceeding the amount authorized on the proration schedule.

(7) **“Owner”** means the person who has the right to drill into and to produce from a pool, and to appropriate the production either for the person or for the person and another.

P. Definitions beginning with the letter “P”.

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

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

(3) **“Pit”** means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

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

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

(6) **“Potential”**

means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) **"Ppm"**

means parts per million by volume.

(8) **"PQL"**

means practical quantitation limit.

(9) **"Pressure**

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

(10) **"Produced**

water" means water that is an incidental byproduct from drilling for or the production of oil and gas.

(11)

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

(12) **"Product"**

means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) **"Proration**

day" consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14)

"Proration month" means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15)

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

(16) **"Proration**

schedule" means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of

oil or of gas in allocated pools.

(17) **"Proration**

unit" means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool. [~~A proration unit shall be the same size and shape as a spacing unit. All proration units are spacing units but not all spacing units are proration units.~~]

(18)

"Prospective spacing unit" means a hypothetical spacing unit that does not yet have a producing well.

(19) **"PVC"**

means poly vinyl chloride.

(20) **"Psi"**

means pounds per square inch.

Q. Definitions

beginning with the letter "Q".

[RESERVED]

R. Definitions

beginning with the letter "R".

(1) **"RCRA"**

means the federal Resource Recovery and Conservation Act.

(2)

"Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(3)

"Regulated NORM" means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(4) **"Release"**

means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.

(5)

"Remediation plan" means a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk

demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report's submittal.

(6)

"Responsible person" means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

(7) **"Royalty**

interest owner" means the owner of an interest in [~~the non-executive-rights]~~ oil and gas that does not presently entitle the owner to explore, drill or otherwise develop those minerals, including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

(8) **"Run-on"**

means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.

S. Definitions

beginning with the letter "S".

(1) **"SAR"**

means the sodium adsorption ratio.

(2)

"Secondary recovery" means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(3) **"Sediment**

oil" means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.

(4) **"Shallow**

pool" means a pool that has a depth range from zero to 5000 feet.

(5) **"Shut-in"**

means the status of a production well or an injection well that is temporarily closed [~~down~~], whether by closing a valve or disconnection or other physical means.

(6) **"Shut-in**

pressure" means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.

(7)

"Significant modification of an abatement plan" means a change

in the abatement technology used excluding design and operational parameters, or relocation of twenty five percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.

(8) "Soil"

means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.

(9) "Spacing unit"

means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, Paragraph (10) of Subsection B of Section 70-2-12 NMSA 1978, the commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil conservation comm'n*, 87 NM 286 (1975). This is the area designated on form C-102.

(10)

"Subsurface water" means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) "Surface waste management facility"

means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a)

a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b)

a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c)

a temporary pit as defined in 19.15.17 NMAC;

(d)

a below-grade tank or pit that receives

oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e)

a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f)

a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g)

a facility operating pursuant to a division emergency order;

(h)

a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i)

a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

T. Definitions

beginning with the letter "T".

(1) "Tank bottoms"

means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains [~~in excess of~~] more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) "TDS"

means total dissolved solids.

(3)

"Temporary abandonment" means the status of a well that is inactive.

(4) "Top proration unit allowable for gas"

means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

(5) "Top proration unit allowable for oil"

means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(6) "TPH"

means total petroleum hydrocarbons.

(7) "Treating plant"

means a plant constructed for [~~the purpose of~~] wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

(8) "Tribal lands"

means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

(9) "Tribal leases"

means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(10) "Tribal minerals"

means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(11)

"Tubingless completion" means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

(12)

“Tubingless multiple completion” means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common wellbore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

U. Definitions

beginning with the letter “U”.

(1)

“Underground source of drinking water” means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

(2)

“Underproduction” means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

(3) **“Unit**

of proration for gas” consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

(4) **“Unit of**

proration for oil” consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

(5)

“Unorthodox well location” means a location that does not conform to the spacing requirements division rules establish.

(6) **“Unstable**

area” means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all [of] a division-approved facility’s structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed [as a result] because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes,

sinking streams, caves, large springs and blind valleys.

(7)

“Upstream facility” means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. Definitions

beginning with the letter “V”.

“Vadose zone” means unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions

beginning with the letter “W”.

(1) **“Waste”**,

in addition to its ordinary meaning, includes:

(a)

underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b)

surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c)

oil production in this state in excess of the reasonable market demand for the oil; the excess production causes

or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d)

the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

(e)

the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words “reasonable market demand”, as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) **“Water”**

means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) **“Water**

contaminant” means a substance that could alter if released or spilled water’s physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) **“Watercourse”** means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(5) **“Water pollution”** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **“Well blowout”** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **“Well bore”** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **“Wellhead protection area”** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) **“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) **“Working**

interest owner” means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) **“WQCC”** means the New Mexico water quality control commission.
[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

This is an amendment to 19.15.4 NMAC, amending Sections 1, 3 and 12, effective 6/26/2018.

19.15.4.1 ISSUING AGENCY: [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.

[19.15.4.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.4.3 STATUTORY AUTHORITY: 19.15.4 NMAC is adopted pursuant to the Oil and Gas Act, [~~NMSA 1978,~~] Section 70-2-6 NMSA 1978, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and [~~NMSA 1978,~~] Section 70-2-7 NMSA 1978, which provides that the division shall prescribe by rule its hearing procedures.

[19.15.4.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.4.12 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applications for the following adjudicatory hearings

before the division or commission, in addition to that 19.15.14.9 NMAC requires, as follows:

(1) **Compulsory pooling and statutory unitization.**

(a) The applicant shall give notice to [~~an~~] each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause). An applicant seeking compulsory pooling of a standard horizontal spacing unit need not give notice to affected persons in adjoining spacing units or tracts unless the division so directs.

(b) When the applicant has given notice as required in Subsection A of 19.15.4.9 NMAC, of a compulsory pooling application, [~~the proposed unit is not larger in size than provided in 19.15.15 NMAC or applicable special pool orders,~~] and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:

(i) a statement that the applicant expects no opposition including the reasons why;

(ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well’s location;

(iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;

(iv) the names of the formations and pools to be pooled;

(v) a statement as to whether the pooled unit is for gas or oil production or both;

(vi) written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence;

(vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

(viii) the location and proposed depth of the well to be drilled on the pooled units; and

(ix) a copy of the AFE the applicant, if appointed operator, will submit to the well's interest owners.

(c) Applicants shall provide with all submittals sworn and notarized statements by those persons who prepared submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) The division shall set unopposed pooling applications for hearing. If the division finds the application complete, the information submitted with the application shall constitute the record in the case, and the division shall issue an order based on the record.

(e) At an interested person's request or upon the division's own initiative, the division shall set a pooling application for full hearing with oral testimony by the applicant.

(2)

Unorthodox well locations.

(a) Affected persons are the following persons owning interests in the adjoining spacing units:

(i) the division-designated operator;

(ii) in the absence of an operator, a lessee whose interest is evidenced by a

written conveyance document either of record or known to the applicant as of the date he files the application; and

(iii) _____ in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application.

(b) _____
In the event the proposed unorthodox well's operator is also the operator of an existing, adjoining spacing unit, and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then affected persons include working interest owners in that spacing unit.]

(c) If the proposed well location is unorthodox by being located closer to the spacing unit's outer boundary than 19.15.15 NMAC, 19.15.16 NMAC or applicable special pool orders permit, the applicant shall notify the affected persons in [the adjoining spacing units towards which the unorthodox location encroaches] each adjoining spacing unit in the same pool or formation located closer to the unorthodox well location than the minimum distance prescribed by the applicable rule or order. If an adjoining tract is not included in a spacing unit in the same pool or formation in which the well may be completed, then for such tract the applicant shall notify affected persons in the same pool or formation in any adjoining quarter-quarter section (if the proposed well will be completed in a pool where the standard spacing unit is 40 acres), or any adjoining quarter section (if the proposed well will be completed in a pool where the standard spacing unit is greater than 40 acres), that is located closer to the unorthodox well location than the minimum setback distance prescribed by the applicable rule or order.

(d) If the proposed well location is unorthodox by [being located in] being in a different quarter-quarter

section or quarter section than Subsection B of 19.15.15.10 NMAC or special pool orders provide, the applicant shall notify affected persons in all spacing units or tracts in the same pool or formation that adjoin the proposed well's spacing unit.

(3) **Non-standard proration unit.** The applicant shall notify all owners of [interest] interests in the mineral estate, including mineral interest owners and royalty owners, to be excluded from the proration unit in the quarter-quarter section for 40-acre pools or formations, the one-half quarter section for 80-acre pools or formations, the quarter section for 160-acre pools for formations, the half section for 320-acre pools or formations or section for 640-acre pools or formations in which the non-standard unit is located and to such other persons as the division requires. This requirement shall not apply to applications for non-standard horizontal spacing units pursuant to Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(4) **Special pool orders regulating or affecting a specific pool.**

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

(5) **Special**

orders regarding any division-designated potash area. The applicant shall notify potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area.

(6) Downhole commingling. The applicant shall notify owners of interests in the mineral estate in the spacing unit if ownership is not common for commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. The applicant shall notify surface owners within one-half mile of the site.

(8) Surface commingling. The applicant shall give notice as Subsection C of 19.15.12.10 NMAC prescribes.

(9) Adjudications not listed above. The applicant shall give notice as the division requires.

B. Type and content of notice. The applicant shall send a notice 19.15.4.9 NMAC requires by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application's scheduled hearing date and shall include a copy of the application; the hearing's date, time and place; and ~~[the means by which]~~ how protests may be made. When an applicant has been unable to locate persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication, and submit proof of publication at the hearing. Such proof shall consist of a copy of a legal advertisement that was published at least 10 business days before the hearing in a newspaper of general circulation in the county or counties in which the property is located, or if the application's effect is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit, that the applicant or its authorized

representative has signed, that the applicant has:

- (1)** complied with notice provisions of 19.15.4.9 NMAC;
- (2)** conducted a good-faith diligent effort to find the correct addresses of persons entitled to notice; and
- (3)** given notice at that correct address as 19.15.4.9 NMAC requires; in addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as 19.15.4.9 NMAC requires may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the hearing's date, time and place. No further notice is required. [19.15.4.12 NMAC - Rp, 19.15.14.1210 NMAC, 12/1/2008; A, 6/26/2018]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

This is an amendment to 19.15.14 NMAC, amending Sections 1 and 8, effective 6/26/2018.

19.15.14.1 ISSUING AGENCY: ~~[Energy, Minerals and Natural Resources Department, Oil Conservation Division]~~ Oil Conservation Commission. [19.15.14.1 NMAC - N, 12/1/2008; A, 6/26/2018]

19.15.14.8 PERMIT TO DRILL, DEEPEN OR PLUG BACK:

- A. Permit required.**

An operator is required to obtain a permit approved by the division prior to commencing drilling, deepening or re-entry operations, commencing an additional lateral, plugging a well back to a different pool, or completing or re-completing a well in an additional pool.

B. ~~[Mineral owner or lessee consent required. An operator shall not file an application for permit to drill nor commence drilling operations until the operator has either:~~

~~**(1)** received the consent of at least one lessee or owner of an unleased mineral interest at the proposed bottom hole location; or~~

~~**(2)** obtained a compulsory pooling order from the division. In addition, an operator filing an application for permit to drill for a horizontal or directional well shall comply with Subsection A of 19.15.16.15 NMAC.]~~ **Mineral owner or working interest owner consent required.**

(1) An operator shall not file an application for permit to drill nor commence drilling operations until the operator has either:

(a) received the consent of at least one working interest owner or owner of an unleased mineral interest at the proposed bottom hole location; or

(b) obtained a compulsory pooling order from the division.

(2) In addition, an operator filing an application for permit to drill a horizontal well shall comply with Paragraph (1) of Subsection A of 19.15.16.15 NMAC. [19.15.14.8 NMAC - Rp, 19.15.3.102 NMAC, 12/1/2008; A, 2/15/2012; A, 4/16/2012; A, 6/26/2018]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

This is an amendment to 19.15.15 NMAC, Sections 1, 3, 11, 12, 13, 15 and 16, effective 6/26/2018.

19.15.15.1 ISSUING

AGENCY: [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission. [19.15.15.1 NMAC - N, 12/1/2008; A, 6/26/2018]

19.15.15.3 STATUTORY

AUTHORITY: 19.15.15 NMAC is adopted pursuant to the Oil and Gas Act, [~~NMSA 1978;~~] Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978, which authorizes the division to establish well spacing. [19.15.15.3 NMAC - N, 12/1/2008; A, 6/26/2018]

19.15.15.11 ACREAGE ASSIGNMENT:

A. Well tests and classification. The operator of a wildcat or development gas well to which more than 40 acres has been dedicated shall conduct a potential test within 30 days following the well's completion and file the test with the division within [~~10~~] 45 days following the test's completion. (See 19.15.19.8 NMAC.)

(1) The completion date for a gas well is the date of the conclusion of active completion work on the well.

(2) If the division determines that a well should not be classified as a gas well, the division shall reduce the acreage dedicated to the well to the standard acreage for an oil well.

(3) The operator's failure to file the test within the specified time subjects the well to the acreage reduction.

B. Non-standard spacing units. An operator shall not produce a well that does not have the required amount of acreage dedicated

to it for the pool or formation in which it is completed until the division has formed and dedicated a standard spacing unit for the well or approved a non-standard spacing unit.

(1) Division district offices may approve non-standard spacing units without notice when the unorthodox size or shape is necessitated by a variation in the legal subdivision of the United States public land surveys or consists of an entire governmental section, and the non-standard spacing unit is not less than seventy percent or more than one hundred-thirty percent of a standard spacing unit. The operator shall obtain division approval of form C-102 showing the proposed non-standard spacing unit and the acreage contained in the unit.

(2) The director may approve administratively an application for non-standard spacing units after notice and opportunity for hearing when the unorthodox size or shape is necessitated by a variation in the legal subdivision of the United States public land surveys or the following facts exist:

(a) the non-standard spacing unit consists of a single quarter-quarter section or lot or quarter-quarter sections or lots joined by a common side; and

(b) the non-standard spacing unit lies wholly within a single quarter section if the well is completed in a pool or formation for which 40, 80 or 160 acres is the standard spacing unit size; a single half section if the well is completed in a pool or formation for which 320 acres is the standard spacing unit size; or a single section if the well is completed in a pool or formation for which 640 acres is the standard spacing unit size.

(3) An operator shall file an application for administrative approval of a non-standard spacing [~~units~~] unit pursuant to Paragraph (2) of Subsection B of 19.15.15.11 NMAC or Paragraph (5) of Subsection B of 19.15.16.15 NMAC, with the division's Santa Fe office that is accompanied by:

(a) a plat showing the spacing unit and an applicable standard spacing unit for that pool or formation, the proposed well dedications and all adjoining spacing units;

(b) a list of affected persons [~~as defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC~~] entitled to notice of the application; and

(c) a statement discussing the reasons for the formation of the non-standard spacing unit.

(4) The applicant shall submit a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, notified the affected persons identified on the list described in Paragraph (3) of Subsection B of 19.15.15.11 NMAC by sending a copy of the application, including a copy of the plat described in Paragraph (3) of Subsection B of 19.15.15.11 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they must file the objection in writing with the division within 20 days from the date the division receives the application. The director may approve the application without hearing upon receipt of waivers from all the notified persons or if no person has filed an objection within the 20-day period.

(5) The director may set for hearing an application for administrative approval.

C. Exceptions to number of wells per spacing unit. The director may permit exceptions to 19.15.15 NMAC or special pool orders concerning the number of wells allowed per spacing unit only after notice and opportunity for hearing. An applicant for an exception shall notify all affected persons [~~defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC~~] in adjoining spacing units in the same pool or in adjoining tracts not included in such spacing units. [19.15.15.11 NMAC - Rp,

19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.12 SPECIAL RULES FOR MULTIPLE OPERATORS WITHIN A SPACING UNIT:

A. Allowable production. If an operator completes a well in an oil pool or prorated gas pool, located within a proration unit containing an existing well or wells producing from that pool and operated by a different operator, unless all operators of wells producing from that proration unit agree, the allowable production from the newly completed well shall not exceed the difference between the allowable production for the proration unit and the actual production from the pool of the existing well or wells within the proration unit. The division may authorize exceptions to Subsection A of 19.15.15.12 NMAC after hearing following appropriate notice.

B. Notice requirements.

(1) An operator who intends to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall, prior to filing the application for permit to drill, deepen or plug back for the well, furnish written notification of its intent to the operator of each existing well, and, if the unit includes state, federal or tribal minerals, to the state land office or BLM, as applicable; provided that separate notification to the BLM is not required if the operator will file the application with the BLM pursuant to 19.15.7.11 NMAC.

(2) The operator shall send the notices by certified mail, return receipt requested, and shall specify the proposed well's location and depth.

(3) The applicant shall submit with its application for permit to drill, deepen or plug back either

(a) a statement attesting that, at least 20 days before the date that the application was submitted to the division, the applicant sent notices

to the designated parties, by certified mail, return receipt requested, advising them that if they have an objection they must deliver a written statement of objection to the proposing operator within 20 days of the date the operator mailed the notice, and that it has received no such objection; or

(b) written waivers from all persons required to be notified (the BLM's approval of the application being deemed equivalent to waiver by that agency); in event of objection, the division may approve the application only after hearing.

C. Transfer of wells. If an operator transfers operation of less than all [of] its wells located within a spacing or proration unit to another operator, and the spacing unit includes state, federal or tribal minerals, the operator shall, prior to filing form C-145 to effectuate the transfer, notify in writing the state land office or BLM, as applicable, of the transfer.

D. Compulsory pooled units. No provision of 19.15.15 NMAC authorizes the operation of a producing well within a unit described in an existing compulsory pooling order by an operator other than the operator designated in the order.

E. Federal or state exploratory units. No provision of 19.15.15 NMAC authorizes a producing well's operation within a federal exploratory unit or state exploratory unit by an operator other than the unit's designated operator except as provided by BLM regulations or state land office rules applicable to the unit.

[19.15.15.12 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.13 UNORTHODOX LOCATIONS:

A. Well locations within a secondary recovery, tertiary recovery or pressure maintenance project for producing wells or injection wells that are unorthodox based on 19.15.15.9 NMAC's

requirements and are necessary for an efficient production and injection pattern are authorized, provided that the unorthodox location within the project is no closer than the required minimum distance to the outer boundary of the lease or unitized area, and no closer than 10 feet to a quarter-quarter section line or subdivision inner boundary. These locations only require such prior approvals as are necessary for an orthodox location.

B. The director may grant an exception to the well location requirements of 19.15.15.9 NMAC, [and] 19.15.15.10 NMAC and 19.15.16.15 NMAC or special pool orders after notice and opportunity for hearing when the exception is necessary to prevent waste or protect correlative rights.

C. The operator shall submit applications for administrative approval pursuant to Subsection B of 19.15.15.13 NMAC to the division's Santa Fe office accompanied by a plat showing the spacing unit, the proposed unorthodox well location and the adjoining spacing units and wells; a list of affected persons [as defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC] entitled to notice pursuant to Paragraph (2) of Subsection A of 19.15.4.12 NMAC; and information evidencing the need for the exception. The division shall give notice as required in 19.15.4.9 NMAC and the operator shall give notice as required by Paragraph (2) of Subsection A of 19.15.4.12 NMAC.

D. The applicant shall submit a statement attesting that the applicant, on or before the date that the applicant submitted the application to the division, sent notification to the affected persons by furnishing a copy of the application, including a copy of the plat described in Subsection C of 19.15.15.13 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they shall file it in writing with the division within 20 days from the date the division receives the application. The director may approve the unorthodox location upon receipt of waivers from all the affected persons or if no

affected person has filed an objection within the 20-day period.

E. The director may set for hearing an application for administrative approval of an unorthodox location.

F. Whenever the division approves an unorthodox location, it may order any action necessary to offset an advantage of the unorthodox location.
[19.15.15.13 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.15 DIVISION-INITIATED EXCEPTIONS: ~~[To order to]~~ To prevent waste, the division may, after hearing, set different spacing requirements and require different acreage for drilling tracts in a defined oil or gas pool.
[19.15.15.15 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.16 POOLING OR COMMUNITIZATION OF SMALL OIL LOTS:

A. The division may approve the pooling or communitization of fractional oil lots of 20.49 acres or less with a contiguous oil spacing unit when the ownership is common and the tracts are part of the same lease with the same royalty interests if the following requirements are satisfied:

(1) the operator ~~[submits an application for administrative approval]~~ applies to the division's Santa Fe office for administrative approval with an application accompanied by:

(a) a plat showing the dimensions and acreage involved, the acreage's ownership, the location of existing and proposed wells and adjoining spacing units;

(b) a list of affected persons ~~[as defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC]~~ in the oil lots and the contiguous spacing unit to be pooled or communitized; and

(c) a statement discussing the reasons for

the pooling or communitization; and

(2) the applicant submits a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, sent notification to the affected persons by submitting a copy of the application, including a copy of the plat described in Paragraph (1) of Subsection A of 19.15.15.16 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they must file it in writing with the division within 20 days from the date the division receives the application.

B. The director may approve the application upon receipt of waivers from all the notified persons or if no person has filed an objection within the 20-day period.

C. The director may set for hearing an application for administrative approval.

D. The division may consider the common ownership and common lease requirements met if the applicant furnishes with the application a copy of an executed pooling agreement communitizing the tracts involved.

[19.15.15.16 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION**

This is an amendment to 19.15.16 NMAC, amending Sections 1, 3, 7, 14, 15 and 20 effective 6/26/2018.

19.15.16.1 ISSUING AGENCY: ~~[Energy, Minerals and Natural Resources Department, Oil Conservation Division]~~ Oil Conservation Commission.

[19.15.16.1 NMAC - Rp, 19.15.3.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.16.3 STATUTORY AUTHORITY: 19.15.16 NMAC is adopted pursuant to the Oil and Gas Act, ~~[NMSA 1978;]~~ Section 70-2-6,

Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.16.3 NMAC - Rp, 19.15.3.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.16.7 DEFINITIONS:

These definitions apply specifically to 19.15.16 NMAC. For additional definitions that may apply see 19.15.2 NMAC.

A. "Azimuth" means the deviation in the horizontal plane of a well bore expressed in terms of compass degrees.

B. "Completed interval" means that portion of a well bore or lateral that is:

(1) cased, cemented and perforated;

(2) an open hole; or

(3) isolated by a packer or other non-permeable means and open to the formation.

C. "Deviated well" means a well bore that is intentionally deviated from vertical but not with an intentional azimuth.

D. "Directional well" means a well bore that is intentionally deviated from vertical with an intentional azimuth but is not a horizontal well.

E. "First take point" means the shallowest measured depth of the well bore where the completed interval starts.

F. "Horizontal spacing unit" means the spacing unit dedicated to a horizontal well.

~~[E:]~~ **G. "Horizontal well"** means a ~~[directional]~~ well bore with one or more laterals that extend a minimum of 100 feet ~~[horizontally]~~ laterally in the target zone. A well with multiple laterals from a common well bore in the same or different target zones or formations shall be considered one well.

H. "Infill horizontal well" means a horizontal well the completed interval or intervals of which are located wholly within the horizontal spacing unit dedicated to a previously drilled or proposed horizontal well in the same pool and that the operator designates as an infill horizontal well on form C-102.

For the purposes of this definition, "proposed" means that an APD has been submitted to a regulatory agency.

[F:] L. "Kick-off point" means the point at which a directional or horizontal well is intentionally deviated from the vertical.

J. "Last take point" means the deepest measured depth of the well bore where the completed interval ends.

[G:] K. "Lateral" means [a] the portion of a directional or horizontal well past the point where the well bore has been intentionally deviated from the vertical.

L. "Multi-lateral well" means a horizontal well with multiple laterals from a common well bore in the same or different target zones or formations.

H. "Non-standard project area" means a project area that is not a standard project area.

[I:] M. "Open hole" means that portion of a well bore or lateral that is:

- (1) not cased,
- (2) cased, but the casing is not cemented in place, and is not otherwise isolated from the formation.

J. "Penetration point" means the beginning of the completed interval of a horizontal or other directional well or lateral.

K. "Producing area" means the portion of a project area that lies within a window formed by plotting the measured distance from the project area's outer boundaries, inside of which a well bore can be drilled and produced in conformity with the setback requirements from the outer boundary of a standard spacing unit for the applicable pool.

L. "Project area" means an area the operator designates on form C-102, well location and acreage dedication plat that comprises;

- (1) one or more complete, contiguous spacing units (in one section or in more than one section) that are developed by the horizontal well; or
- (2) an entire

voluntary or statutory unit for an approved enhanced recovery or pressure maintenance project, an approved state exploratory unit, or a participating area in a federal unit.

M. "Standard project area" means a project area that;

- (1) is described in Paragraph (2) of Subsection L of 19.15.16.7 NMAC;
- (2) consists of a single spacing unit;
- (3) consists of two or more spacing units within a single section that collectively comprise:

(a) the entire section, a half-section or half-section equivalent, or a quarter section or quarter-section equivalent; or

(b) the north, south, east or west half of a half-section or half-section equivalent or of a quarter section or quarter-section equivalent; or

(4) consists of a combination of two or more otherwise standard project areas, if the resulting area is substantially in the form of a rectangle; provided that a project area consisting of three 40-acre units within a single section and excluding the fourth spacing unit is not a standard project area.]

N. "Terminus" means the farthest point [attained] drilled along the well bore or lateral.

O. "Tract" means a legal subdivision of the United States public survey substantially in the form of a square or rectangle.

P. "Unitized area" means any area where ownership of production from the relevant pool or formation is consolidated pursuant to an agreement, whether voluntary and filed in the county land records, or approved by federal or state authority, including but not limited to a statutory unit, an approved enhanced recovery unit, a participating area in a federal exploratory unit, a federal unit which does not provide for participating areas, a state exploratory unit or a communitized unit if all interests in the communitized unit are committed to the communitization agreement.

[O:] Q. "Vertical well" means a well that does not have an intentional departure or course deviation from the vertical. [19.15.16.7 NMAC - Rp, 19.15.3.111 NMAC, 12/1/2008; A, 2/15/2012; A, 6/26/2018]

19.15.16.14 [DEVIATION TESTS; DEVIATED, DIRECTIONAL AND HORIZONTAL WELLS] DEVIATION TESTS AND WELLBORE SURVEYS; VERTICAL, DEVIATED AND DIRECTIONAL WELLS:

[A. Deviated well bores.

(1) Deviation tests required. An operator shall test a vertical or deviated well that is drilled or deepened at reasonably frequent intervals to determine the deviation from the vertical. The operator shall make the tests at least once each 500 feet or at the first bit change succeeding 500 feet. The operator shall file with the division a tabulation of deviation tests run, that is sworn to and notarized, with form C-104.

(2) Excessive deviation. When the deviation averages more than five degrees in a 500-foot interval, the operator shall include the calculations of the hole's maximum possible horizontal displacement. When the maximum possible horizontal displacement exceeds the distance to the appropriate unit's nearest outer boundary line the operator shall run a directional survey to establish the location of the producing interval or intervals.

(3) Unorthodox locations. If the results of the directional survey indicate that the producing interval is more than 50 feet from the approved surface location and closer than the minimum setback requirements to the applicable unit's outer boundaries, then the well is considered unorthodox. To obtain authority to produce the well, the operator shall file an application with the director with a copy to the appropriate division district office,

and shall otherwise follow the normal process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox location.

(4)

Directional survey requirements.

Upon the director's request, the operator shall directionally survey a vertical or deviated well. The operator shall notify the appropriate division district office of the approximate time the operator will conduct the directional survey. The operator shall file directional surveys run on a well with the division upon the well's completion. The division shall not assign an allowable to the well until the operator has filed the directional surveys.

B. Directional or horizontal well bores.

(1)

Directional drilling within a project area.

The appropriate division district office may grant a permit to directionally drill a well bore if the producing interval is entirely within the producing area or at an unorthodox location the division previously approved. Additionally, if the project area consists of a combination of drilling units and includes state, federal or tribal lands, the operator shall send a copy of form C-102 to the state land office or the BLM, as applicable.

(2)

Unorthodox locations. If all or part of a directional well bore's completed interval is projected to be outside of the producing area, or if any portion of a directional well bore's completed interval, as drilled, is located more than 50 feet from its projected location as indicated on form C-102 filed with the application for permit to drill the well and is outside of the producing area, the well's location is considered unorthodox. To obtain approval for the well's location, the operator shall file a written application in the Santa Fe office of the division in accordance with Subsection C of 19.15.15.13 NMAC.

(3)

Allowables for project areas with multiple proration units. The division shall assign to a project area

within a prorated pool an allowable equal to the applicable unit allowable for the pool multiplied by the number of standard spacing units or approved non-standard spacing units that a horizontal well's or lateral's completed interval develops. If a project area includes a spacing unit or smaller project area dedicated to an existing well bore, unless the operators of all wells in the project area otherwise agree, the project area's allowable shall be computed by deducting the actual production from the existing well bore or well bores from the total allowable for the project area not to exceed the existing allowable for the well bore or well bores.

(4)

Directional surveys required. An operator shall run a directional survey on each well drilled pursuant to Subsection B of 19.15.16.14 NMAC. The operator shall notify the appropriate division district office of the approximate time the operator will conduct the directional survey. The operator shall file a directional survey run on a well with the division upon the well's completion. The division shall not assign an allowable to the well until the operator files the directional survey. If the directional survey indicates that part of the producing interval is outside of the producing area, or, in the case of an approved unorthodox location, less than the approved setback requirements from the applicable unit's outer boundary, then the operator shall file an application with the director with a copy to the appropriate division district office and shall otherwise follow the normal process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox location.

(5)

Re-entry of vertical or deviated well bores for directional drilling projects. These well bores are considered orthodox provided the surface location is orthodox and the producing interval's location is within the tolerance allowed for deviated well bores under Paragraph (3) of Subsection A of 19.15.16.14 NMAC.

C. Additional matters:

(1) Directional surveys that 19.15.16.14 NMAC requires shall have shot points no more than 200 feet apart and shall be run by competent surveying companies that are approved by the director. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits.

(2) The director may set an application for administrative approval whereby the operator shall submit appropriate information and give notice as the director requests. The division may approve un-protested applications administratively within 20 days after the division receives the application and supporting information. If the application is protested, or the director decides that a hearing is appropriate, the division may set the application for hearing.

(3) The division shall grant permission to deviate or directionally drill a well bore for any reason or in a manner not provided for in 19.15.16.14 NMAC only after notice and opportunity for hearing.]

A. Vertical and deviated well bores.

(1) **Deviation tests required.** An operator shall test a vertical or deviated well that is drilled or deepened at reasonably frequent intervals to determine the deviation from the vertical. The operator shall make the tests at least once each 500 feet or at the first bit change succeeding 500 feet. The operator shall file with the division along with its form C-104 a tabulation of deviation tests run that is sworn to and notarized.

(2) **Excessive deviation.** When the deviation averages more than five degrees in a 500-foot interval, the operator shall include the calculations of the hole's maximum possible horizontal displacement. When the maximum possible horizontal displacement exceeds the distance to

the appropriate unit's nearest outer boundary line the operator shall run a directional survey to establish the location of the well's completed interval.

(3)

Unorthodox well locations. If the results of the directional survey of a vertical or deviated well indicate that the completed interval is more than 50 feet from the approved surface location and closer than the minimum setback requirements to the applicable unit's outer boundary, then the well is considered unorthodox. To obtain authority to produce the well, the operator shall file an application with the division's Santa Fe office, and shall follow the process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox well location.

(4)

Directional survey requirements. Upon the director's request, the operator shall directionally survey a vertical or deviated well. The operator shall file directional surveys run on a well, in division-approved format, with the division upon the well's completion. The division shall not approve a form C-104 for the well until the operator has filed the directional surveys.

B. Directional well bores.

(1)

Directional drilling. The appropriate division district office may grant a permit to directionally drill a well bore if every point of the completed interval is projected to be located at a distance greater than or equal to the minimum setback distance from the applicable spacing unit's outer boundaries or at an unorthodox well location the division previously approved.

(2)

Unorthodox well locations. If all or part of a directional well's completed interval is projected to be located less than the minimum distance from the outer boundary of the well's spacing unit, the well's location is considered unorthodox. To obtain approval for the well's location, the operator shall file an application in the division's

Santa Fe office in accordance with Subsection C of 19.15.15.13 NMAC.

(3)

Directional surveys required. An operator shall run a directional survey on each well drilled pursuant to Subsection B of 19.15.16.14 NMAC. The operator shall file a directional survey, in division-approved format, with the division upon the well's completion. The division shall not approve a form C-104 for the well until the operator files the directional survey. The well's location will be considered unorthodox if the directional survey indicates that part of a well's completed interval, as drilled, is located more than 50 feet from its projected location and closer to an outer boundary of the spacing unit than applicable minimum setback distance. For previously approved unorthodox well locations, the well's as-drilled location is unorthodox if the directional survey indicates that any part of the completed interval is located more than 50 feet (or, if less, twenty-five percent of the previously authorized distance) closer to the outer boundary of the spacing unit than the approved location.

C. Directional survey specifications.

Directional surveys that 19.15.16.14 NMAC requires shall have shot points no more than 200 feet apart and shall be run by competent surveying companies. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits.

[19.15.16.14 NMAC - Rp, 19.15.3.111 NMAC, 12/1/2008; A, 2/15/2012; A, 6/26/2018]

19.15.16.15 [SPECIAL RULES FOR] HORIZONTAL WELLS:

A. Directional and horizontal well consent requirement.

An operator shall not file an application for permit to drill nor commence drilling of a horizontal or directional well until the operator has either:

(1) received the consent of at least one lessee or owner of an unleased mineral interest in each tract (in the target pool or

formation) in which any part of the well's completed interval will be located; or

(2) obtained a compulsory pooling order from the division.

B. Setbacks:

(1) Horizontal wells drilled in project areas as defined in Subsection L of 19.15.16.7 NMAC shall have setbacks from the outer boundaries of the project area the same as if the well were drilled in a single-spacing unit for the pool.

(2) Subject to the provisions of Paragraph (2) of Subsection B of 19.15.16.14 NMAC, every point of the completed interval must meet the minimum setback requirement from the outer boundaries of the project area, or an exception must be approved for a non-standard location.

(3) No internal setbacks are required within the project area.

(4) A horizontal well's surface location may be outside the setbacks or outside the project area provided, that the completed interval is entirely within the project area and complies with the applicable setback requirements.

C. Existing and subsequent wells in project areas:

(1) Existing wells in spacing units or project areas that are included in a newly designated project area remain dedicated to their existing spacing units or project areas and are not part of the new project area unless otherwise agreed by all working interest owners in the existing and newly designated project areas.

(2) Subject to the terms of any applicable joint operating agreement, subsequent wells with a completed interval in a horizontal well's project area may be drilled only with the approval of all working interest owners in the project area, or by order of the division after notice to all working interest owners in the project area and opportunity for hearing.

D. Pool rules:

Provision of statewide rules or special

pool orders in effect on February 15, 2012 that limit the number of wells that may simultaneously produce from the portion of a pool or area underlying a spacing unit, or a particular portion of spacing unit, do not apply to horizontal wells. Without limitation of any other right or remedy, an owner or operator of a tract in the same pool as a project area, that is not included in the project area, who contends that a horizontal well in the project area is impairing, or will impair, the owner's or operator's correlative rights may file an application with the division. The division, after notice and hearing, may grant such relief as it determines to be necessary and appropriate, including, but not limited to, imposing a limitation on the rate or amount of production from the project area.

E. Formation of project areas:

(1) Except as provided in Paragraphs (2) and (3) of Subsection E of 19.15.16.15 NMAC, a project area may be formed by filing a form C-102 designating the proposed project area, and simultaneously mailing or delivering a copy thereof to the New Mexico state land office if the proposed project area includes state trust lands:

(2) Before designating a non-standard project area, the operator shall give 20-days notice by certified mail, return receipt requested, to affected persons, as defined in Subparagraph (a) of Paragraph (2) of Subsection A of 19.15.4.12 NMAC, in all spacing units that:

(a) are excluded from the project area, if the project area would be a standard project area except for the exclusion of one spacing unit; or

(b) adjoin the project area, in all other cases:

(3) The notice shall state that the affected persons may protest the designation of a non-standard project area by mailing a protest to the operator within 20 days after mailing of notice as provided in Paragraph (2) of Subsection E of

19.15.16.15 NMAC. Within seven business days after receiving a protest of the proposed non-standard project area, the operator shall notify the division of the protest, and the division shall set the matter for hearing. Unless otherwise authorized by the division, the operator shall not commence drilling in the proposed non-standard project area until the protest has been determined by division order.

(4) No project area may be designated that lies partly within, and partly outside of, a state exploratory unit, or a federal exploratory unit or participating area if the project area includes state trust lands, without the written consent of the commissioner of public lands.

F. Consolidation of project area.

If a horizontal well is dedicated to a project area in which there is more than one owner of any interest in the mineral estate, the operator of the horizontal well shall cause the project area to be consolidated by voluntary agreement or, if applicable, compulsory pooling before the division may approve a request for form C-104 for the horizontal well.]

A. General provisions.

(1) An operator shall not file an application for permit to drill nor commence the drilling of a horizontal oil or gas well until the operator has either:

(a) received the consent of at least one working interest owner or unleased mineral interest owner of each tract (in the target pool or formation) in which any part of the horizontal oil or gas well's completed interval will be located; or

(b) obtained a compulsory pooling order from the division for an appropriate horizontal spacing unit.

(2) Each horizontal well shall be dedicated to a standard horizontal spacing unit or an approved non-standard horizontal spacing unit, except for infill horizontal wells and multi-lateral horizontal wells described in

Subparagraph (a) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC, which may be dedicated to an existing or proposed horizontal spacing unit.

(3) A

horizontal spacing unit that does not meet the following criteria for a standard horizontal spacing unit shall be considered a non-standard horizontal spacing unit and must be approved pursuant to the process described in Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(4) Subject

to Paragraph (9) of Subsection B of 19.15.16.15 NMAC, horizontal spacing units can overlap other horizontal spacing units or vertical well spacing units.

B. Well spacing.

(1) Standard

horizontal spacing units for horizontal oil wells. In lieu of an oil spacing unit described in Subsection A of 19.15.15.9 NMAC, the operator shall dedicate to each horizontal oil well a standard horizontal spacing unit that meets the following criteria.

(a)

The horizontal spacing unit shall comprise one or more contiguous tracts that the horizontal oil well's completed interval penetrates, each of which consists of a governmental quarter-quarter section or equivalent.

(b)

In addition to tracts the horizontal oil well penetrates, the operator may include quarter-quarter sections or equivalent tracts in the standard horizontal spacing unit that are located within 330 feet of the proposed horizontal oil well's completed interval (measured along a line perpendicular to the proposed completed interval or its tangent).

(c)

If, however, the perimeter of the area that includes all the tracts that the horizontal oil well penetrates encloses an area that is substantially rectangular, then the operator may not bring in additional tracts that would result in a non-rectangular horizontal spacing unit.

(d)

The horizontal spacing unit shall contain at least the minimum acreage

required by existing or subsequently adopted special pool orders for a spacing unit in any pool where all or part of the horizontal oil well's completed interval is located.

(2) Exception

for pools with larger spacing. If the horizontal oil well is located entirely or partially in a pool for which existing or subsequently adopted special pool orders prescribe oil spacing units larger than 40 acres, then the horizontal spacing unit may, as an alternative to quarter-quarter sections, comprise one or more tracts of the size and configuration so prescribed, provided that the standard horizontal spacing unit shall include only such tracts that are oriented in the same direction. If a horizontal oil well's completed interval is located within two or more pools for the same formation, and the operator elects to construct a standard horizontal spacing unit utilizing tracts of the size and configuration prescribed by special pool orders, the operator shall use tracts of the maximum tract size prescribed for any of the included pools.

(3) Standard

horizontal spacing units for horizontal gas wells. In lieu of a gas spacing unit described in 19.15.15.10 NMAC, the operator shall dedicate to each horizontal gas well a standard horizontal spacing unit that meets all the following criteria.

(a)

The horizontal spacing unit shall comprise one or more contiguous tracts that the horizontal gas well's completed interval penetrates, each of which consists of a governmental quarter section or equivalent.

(b)

In addition to tracts the well penetrates, the operator may include quarter sections or equivalent tracts in the standard horizontal spacing unit that are located within 330 feet of the proposed horizontal gas well's completed interval (measured along a line perpendicular to the proposed completed interval or its tangent).

(c)

If, however, the perimeter of the area that includes all the tracts that

the horizontal gas well penetrates encloses an area that is substantially rectangular, then the operator may not bring in additional tracts that would result in a non-rectangular horizontal spacing unit.

(d)

The horizontal spacing unit shall contain at least the minimum acreage required by 19.15.15.10 NMAC or by existing or subsequently adopted special pool orders for a spacing unit in any pool where all or part of the horizontal gas well's completed interval is located.

(4) Exception

for pools with larger spacing. If the horizontal gas well is located entirely or partially in an area or pool for which 19.15.15.10 NMAC or existing or subsequently adopted special pool orders prescribe gas spacing units larger than 160 acres, then the horizontal spacing unit may, as an alternative to quarter sections, comprise one or more tracts of the size and configuration so prescribed, provided that the standard horizontal spacing unit shall include only such tracts that are oriented in the same direction. If a horizontal gas well's completed interval is located within two or more pools for the same formation, and the operator elects to construct a standard horizontal spacing unit utilizing tracts of the size and configurations prescribed by 19.15.15.10 NMAC or special pool orders, the operator shall use the maximum tract size prescribed for any of the included pools.

(5) Non-

standard horizontal spacing units.

(a)

Administrative approval. The division may approve non-standard horizontal spacing units for horizontal oil or gas wells after notice and opportunity for hearing, if necessary to prevent waste or protect correlative rights, in accordance with the procedures provided for director approval of non-standard spacing units in Paragraphs (3) through (5) of Subsection B of 19.15.15.11 NMAC.

(b)

Notice. The operator shall give notice of any application for approval of

a non-standard horizontal spacing unit, by certified mail, return receipt requested, to affected persons in all tracts that:

(i)

are excluded from the horizontal spacing unit, if the horizontal spacing unit would be a standard horizontal spacing unit except for the exclusion of such tracts; or

(ii)

adjoin the non-standard horizontal spacing unit, in all other cases.

(c)

Form of notice. The notice shall comply with Paragraph (4) of Subsection B of 19.15.15.11 NMAC.

(d)

Unless otherwise authorized by the division, the operator shall not commence drilling in the proposed non-standard spacing unit until the division issues a final order granting the application.

(6) State,

federal or tribal lands. If the horizontal spacing unit includes state, federal or tribal minerals, the operator shall send a copy of form C-102 to the applicable affected persons identified in Subparagraphs (d) and (e) of Paragraph (8) of Subsection A of 19.15.2.7 NMAC. No horizontal spacing unit may be designated that lies partly within, and partly outside of, a state exploratory unit, or a federal exploratory unit or participating area if the horizontal spacing unit includes state trust lands, without the written consent of the commissioner of public lands.

(7) Multi-

lateral horizontal wells.

(a)

Multiple laterals in the same pool or formation and oriented such that the completed interval of each lateral is located entirely within the boundaries of a horizontal spacing unit for the longest lateral may be dedicated to the same horizontal spacing unit.

(b)

Except as provided in Subparagraph (a) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC, the operator of a multi-lateral horizontal well shall dedicate a separate horizontal spacing unit to each lateral.

(c)

The division may grant exceptions to the requirements of Subparagraphs (a) and (b) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC pursuant to Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(8) Unitized

areas. For a horizontal well the completed interval of which is located wholly within a unitized area or an area with uniform ownership as to the mineral estate in the objective formation, the horizontal spacing unit configuration requirements of Subparagraphs (c) and (d) of Paragraph (1), and Subparagraph (c) of Paragraph (2) of Subsection B of 19.15.16.15 NMAC do not apply.

(9) Existing

and subsequent wells in horizontal spacing units.

(a)

Existing wells. Existing wells in spacing units, horizontal or otherwise, that are wholly or partially included in a new horizontal spacing unit remain dedicated to their existing spacing units and are not part of the new horizontal spacing unit unless otherwise agreed by all working interest owners in the existing and new spacing units. If all owners (and BLM or state land office, if federal or state minerals are included, and the appropriate governmental authority if tribal minerals are included, in the old or new spacing unit) agree to re-dedicate the existing well to the new horizontal spacing unit, the operator shall file an amended form C-102 reflecting the re-dedication, and shall attach a certificate to the effect that all owners have agreed in writing thereto.

(b)

Subsequent wells in existing spacing units. Subject to the terms of any applicable operating agreement, or to 19.15.13 NMAC or any applicable compulsory pooling order as to any compulsory pooled interests:

(i)

a horizontal well that will have a completed interval partially in an existing well's spacing unit, and in the same pool or formation, may be drilled only with the approval of, or, in the absence of approval, after

notice to, all operators and working interest owners of record or known to the applicant in the existing and new well's spacing units:

(ii)

any subsequent well, horizontal or otherwise, with a completed interval located wholly within an existing well's horizontal spacing unit, and in the same pool or formation, if not designated as an infill horizontal well, may be drilled only with the approval of, or, in the absence of approval, after notice to, all operators and working interest owners of record or known to the applicant in the existing and new well's spacing units; and

(iii)

the notice procedures of Subsection B of 19.15.15.12 NMAC shall apply to notices required pursuant to Items (i) or (ii) of Subparagraph (b) of Paragraph (9) of Subsection B of 19.15.16.15 NMAC.

(c)

The provisions of 19.15.13.10 NMAC and 19.15.13.11 NMAC shall apply to any proposal to drill an infill horizontal well in a horizontal spacing unit subject to a compulsory pooling order unless the order includes specific provision for such additional well.

(10) Pooling of

horizontal spacing units. Whenever the operator of any horizontal well shall dedicate thereto lands comprising a standard or approved non-standard horizontal spacing unit in which there are two or more separately owned parcels of land, or royalty interests or undivided interests in oil or gas minerals which are separately owned, or any combination thereof, that have not been previously pooled for oil and gas production from the horizontal spacing unit, the operator shall obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands before producing the horizontal well.

(11) Protests.

Without limitation of any other right or remedy, an owner of a tract that adjoins a proposed or existing horizontal spacing unit but is not included therein who contends that

a horizontal well in the adjoining horizontal spacing unit is impairing, or will impair, the owner's correlative rights may file a protest with the division. The division, after notice and hearing, may grant such relief as it determines to be necessary and appropriate, including, but not limited to, imposing a limitation on the rate or amount of production from the adjoining horizontal spacing unit.

C. Setbacks.**(1) Generally.**

The following setback distances shall apply to each horizontal well.

(a)

The distance in the horizontal plane from any point in the completed interval to any outer boundary of the horizontal spacing unit, measured along a line perpendicular to the completed interval or to the tangent thereof, shall be a minimum of 330 feet for an oil well or 660 feet for a gas well.

(b)

The first and last take point of a horizontal well shall be no closer than 100 feet for an oil well or 330 feet for a gas well, in the horizontal plane, to any outer boundary of the horizontal spacing unit.

(2) District

office to approve. The appropriate division district office may grant a permit for a horizontal well provided every point in the well's completed interval complies with the setback requirements described above or is located at an unorthodox well location the division has approved.

(3) Surface

location. A horizontal well's surface location may be located anywhere inside or outside the boundaries of the horizontal spacing unit, provided the completed interval is located at an orthodox, or division-approved unorthodox, well location within the horizontal spacing unit.

(4) Internal

setbacks. No internal setbacks are applicable within the horizontal spacing unit.

(5)

Unorthodox well locations.

The horizontal well's location is considered unorthodox if:

(a)

any part of the horizontal well's completed interval is projected to be closer to an outer boundary of the horizontal spacing unit than allowed by Paragraph (1) of Subsection C of 19.15.16.15 NMAC, or other applicable rule or special pool order;

(b)

a directional survey shows that the horizontal well's first or last take point, as drilled, is located closer to the outer boundary of the horizontal spacing unit than allowed by Subparagraph (b) of Paragraph (1) of Subsection C of 19.15.16.15 NMAC;

(c)

a directional survey shows that any part of the horizontal well's completed interval, as drilled, is more than 50 feet from its projected location and closer to the outer boundary of the horizontal spacing unit than allowed by Subparagraph (a) of Paragraph (1) of Subsection C of 19.15.16.15 NMAC or other applicable rule or special pool order; or

(d)

for previously approved unorthodox well locations, if a directional survey shows that any part of the completed interval is located more than 50 feet (or, if less, twenty-five percent of the previously authorized distance) closer to the outer boundary of the horizontal spacing unit than the approved location.

(6) Approval

of unorthodox well locations. To obtain approval for the unorthodox well location, the operator shall file an application in the division's Santa Fe office in accordance with the procedures described in Subsections B, C and D of 19.15.15.13 NMAC. For Subparagraph (a) of Paragraph (5) of Subsection C of 19.15.16.15 NMAC, the operator shall obtain approval for the location before drilling the well. For Subparagraphs (b), (c) and (d) of Paragraph (5) of Subsection C of 19.15.16.15 NMAC, the operator shall obtain approval for the as-drilled location before producing the horizontal well.

(7) Unitized

areas. For a horizontal well the completed interval of which is located

wholly within in a unitized area or an area with uniform ownership as to the mineral estate in the objective formation, the setbacks prescribed in Subsection C of 19.15.16.15 NMAC apply only to the outer boundaries of the unitized area, area of uniform ownership or of any uncommitted tract or partially committed tract, instead of the outer boundaries of the horizontal spacing unit.

D. Allowables.**(1) Oil****allowables and gas-oil ratios.**

Unless the division determines, after notice and hearing, that to prevent waste a reduced allowable must be assigned to a pool, the division shall assign to a horizontal oil well in an oil pool an oil allowable equal to the amount of oil that the horizontal oil well can produce. If any non-marginal proration unit exists in the same pool as a horizontal oil well, the division shall assign to each oil well located in the unit an allowable equal to its productive capacity. Production of gas or oil from any horizontal oil well shall not be limited by a limiting gas-oil ratio as provided in Subsection A of 19.15.20.13 NMAC.

(2) Gas

allowables. The division shall assign to a horizontal gas well completed in a prorated gas pool an allowable equal to the amount of gas the horizontal gas well can produce. If any non-marginal gas proration unit exists in the same pool as a horizontal gas well, the division shall assign a top proration unit allowable for gas to such unit that is equal to the amount of gas than the unit can produce.

(3) Effective

dates. Paragraphs (1) and (2) of Subsection D of 19.15.16.15 NMAC shall apply to all pools and areas of the state commencing on the first day of the first month after June 26, 2018 but shall cease to apply to any particular pool on the date of any order, hereafter issued following notice and hearing, whereby the division or commission determines that reduced allowables for such pool are necessary to prevent waste.

E. Other matters.**(1)****Directional survey requirements.**

The operator of each horizontal well shall run a directional survey and file the directional survey, in a division-approved format, upon the well's completion. Directional surveys shall have shot points no more than 200 feet apart and shall be run by competent surveying companies. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits. The division shall not approve a form C-104 for the well until the operator has filed the required directional survey.

(2) Downhole**commingling.****(a)****Pools or laterals in the same**

formation. Provisions of 19.15.12.11 NMAC requiring approval for downhole commingling do not apply to commingling of oil or gas within a single lateral of a horizontal well bore that is produced from adjacent pools within the same formation, or from multiple laterals of a single well bore that are completed in the same pool or formation and dedicated to the same horizontal spacing unit.

(b)

Other multi-lateral wells. Except as provided in Subparagraph (a) of Paragraph (2) of Subsection D of 19.15.16.15 NMAC, horizontal wells with multiple laterals shall only be produced pursuant to division-approved downhole commingling authority obtained pursuant to 19.15.12.11 NMAC, unless pool segregation is maintained until the fluids reach the wellhead.

(3) Conflicts**with existing rules or special pool**

orders. Provisions of statewide rules or special pool orders in effect on February 15, 2012 that limit the number of wells that may simultaneously produce from the portion of a pool or area underlying a spacing unit, or a particular portion of a spacing unit do not apply to horizontal wells. Provisions of statewide rules or special pool rules in effect on June 26, 2018, save and except the special provisions for the Purple Sage; Wolfcamp (Gas) Pool

in ordering paragraphs (1) through (7) of division order R-14262, that conflict with any of any provisions in 19.15.16.15 NMAC do not apply to horizontal wells. Special pool orders or amendments thereto adopted after June 26, 2018 shall prevail over rules as provided in 19.15.2.9 NMAC.

(4)

Transitional provisions. Any horizontal well drilled, commenced or permitted prior to June 26, 2018 shall retain as its horizontal spacing unit the standard or non-standard spacing unit or project area originally dedicated thereto. If that area is not a standard horizontal spacing unit as provided in Subsection B of 19.15.16.15 NMAC, that area is hereby approved as a non-standard horizontal spacing unit for the horizontal well so drilled, commenced or permitted. [19.15.16.15 NMAC - Rp, 19.15.3.112 NMAC, 12/1/2008; 19.15.16.15 NMAC - N, 2/15/2012; A, 6/26/2018]

19.15.16.20 ALLOWABLES AND AUTHORIZATION TO TRANSPORT OIL AND GAS:

A. The division may assign an allowable to a newly completed or re-completed well or a well completed in an additional pool or issue an operator authorization to transport oil or gas from the well if the operator:

(1) has filed a complete form C-104;

(2) has provided a sworn and notarized tabulation of all deviation tests the operator has run on the well, and directional surveys with calculated bottom hole location, in accordance with the requirements of 19.15.16.14 NMAC or 19.15.16.15 NMAC;

(3) has dedicated a standard spacing unit or horizontal spacing unit for the pool in which the well is completed, a standard spacing unit or horizontal spacing unit has been communitized or pooled and dedicated to the well or the division has approved a non-standard spacing unit or horizontal spacing unit; and

(4) [is-

~~in compliance]~~ complies with ~~[subsection]~~ Subsection A of 19.15.5.9 NMAC.

B. The allowable the division assigns to an oil well is effective at 7:00 a.m. on the completion date, provided the division receives form C-104 during the month of completion. The date of completion shall be that date when new oil is delivered into the stock tanks. Unless otherwise specified by special pool orders, the allowable the division assigns to a gas well is effective at 7:00 a.m. on the date of connection to a gas transportation facility, as evidenced by an affidavit of connection from the transporter to the division, or the date of receipt of form C-104 by the division, whichever date is later. [19.15.16.20 NMAC – Rn, 19.15.16.19 NMAC, 2/15/2012; A, 6/26/2018]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 65 SCHOOL PERSONNEL EDUCATOR PREPARATION PART 3 EDUCATOR PREPARATION PROGRAM ACCOUNTABILITY

6.65.3.1 ISSUING AGENCY: Public Education Department, herein after the department. [6.65.3.1 NMAC - N, 7/1/2018]

6.65.3.2 SCOPE: This rule applies to all educator preparation programs serving candidates in New Mexico. If any part or application of this rule is held invalid, its remainder or application to other situations, shall not be affected. [6.65.3.2 NMAC - N, 7/1/2018]

6.65.3.3 STATUTORY AUTHORITY: Section 22-10A-19.2 NMSA 1978, Section 22-2-1 NMSA 1978, and Section 21-22E-3 NMSA 1978.

[6.65.3.3 NMAC - N, 7/1/2018]

6.65.3.4 DURATION: Permanent. [6.65.3.4 NMAC - N, 7/1/2018]

6.65.3.5 EFFECTIVE DATE: July 1, 2018, unless a later date is cited at the end of a section. [6.65.3.5 NMAC - N, 7/1/2018]

6.65.3.6 OBJECTIVE: To improve and strengthen the preparation of day-one ready New Mexico educators through streamlined evaluation, review, and approval of educator preparation programs in the state. [6.65.3.6 NMAC - N, 7/1/2018]

6.65.3.7 DEFINITIONS:

A. **“Candidate”** means an individual enrolled in an educator preparation program for licensure offered through a department-approved educator preparation program provider.

B. **“Certified review team”** means the team trained by the department to conduct comprehensive site visit reviews. Members of the certified review team may serve in multiple roles. The following shall be represented:

(1) a representative of the department;

(2) a dean from another department-approved educator preparation program;

(3) a director from another department-approved educator preparation program;

(4) a faculty member from another department-approved educator preparation program approved in New Mexico;

(5) a member of a local education agency administrative team; and

(6) a principal or eligible cooperating teacher from a local school.

C. **“Clinical experience”** means the guided, hands-on application of knowledge and theory to actual practice through collaborative and facilitated learning activities taking place in field-based

assignments.

D. “Clinical supervisor” means the employee of the educator preparation program who works with and provides feedback to candidates during their clinical experience that is both trained and certified in NMTEACH and trained or experienced in the field in which they are supervising.

E. “Cohort” means a set of individuals who enter an educator preparation program or exit an educator preparation program in the same year, or both.

F. “Completer” means a candidate who earns a certificate or diploma from an educator preparation program approved by the department.

G. “Cooperating teacher” means an educator who has earned a rating of highly effective or exemplary on the NMTEACH educator effectiveness system, is employed by a local education agency, is collaboratively selected by the local education agency and the educator preparation program, has at least three years of experience under the appropriate license, and is the primary evaluator of the candidate during their clinical experience. The department may allow an educator who recently relocated to New Mexico and does not yet have an NMTEACH evaluation to serve as a cooperating teacher if:

(1) the teacher has taught for at least three years; and
 (2) the teacher is either nationally board certified or has an effectiveness rating on their out-of-state evaluation equivalent to highly effective or exemplary.

H. “Comprehensive site visit review” means the visit conducted by a certified review team to evaluate educator preparation program performance.

I. “Day-one ready educator” means a teacher who positively impacts measurable student achievement from the first day the educator begins teaching by demonstrating deep content knowledge, the ability to motivate and actively engage students, the

ability to personalize learning based on students’ needs, and a willingness to engage in continuous efforts to improve teaching abilities.

J. “Disposition” means the level of professionalism demonstrated by a candidate indicating capacity to be a day-one ready educator.

K. “Educator preparation program advisory board” means the group of individuals appointed by the EPP who have unique knowledge regarding the educational needs of the local community.

L. “Educator preparation program” or “EPP” means an educational program offered by an educational preparation provider that is intended to lead to teacher licensure upon candidates’ successful completion of the program.

M. “EPP provider” means any individual, private or public education association, corporation, or institution of higher education offering an educator preparation program.

N. “High-needs areas” shall include one or more of the following:

(1) schools earning a “D” or “F” on the school grading system pursuant to 6.19.8 NMAC;

(2) schools with a high percentage of students qualifying as economically disadvantaged;

(3) schools with a high percentage of students qualifying for special education services;

(4) schools with a high percentage of students qualifying as English learners; or

(5) other schools determined by the department.

O. “Initial approval” means the first time an educator preparation program provider seeks and is granted approval from the professional practices and standards council to create a new educator preparation program in the state of New Mexico.

P. “Local education agency” or “LEA” means a school district or a state-chartered charter school.

Q. “New Mexico teacher assessments” or “NMTA” means the tests required for individuals seeking initial New Mexico licensure.

R. “NMTEACH educator effectiveness system” or “NMTEACH” means the department-approved educator evaluation system defined in 6.69.8 NMAC that measures teacher performance on five components:

- (1) improved student achievement;
- (2) classroom observation;
- (3) planning, preparation, and professionalism;
- (4) student or parent surveys; and
- (5) teacher attendance.

S. “Professional practices and standards council” or “PPSC” means the body that approves new educator preparation programs as defined in 6.2.8 NMAC.

T. “Program revision” means the addition of new licensure programming or modifications made to an existing department-approved educator preparation program including changes to standards.

U. “Quality review rubric” means the tool used by the certified review team during a comprehensive site visit review to determine an EPP’s status according to a series of aligned indicators and subcomponents that contribute to an overall rating on a five-level performance scale.

V. “Revocation” means the department decision to no longer recognize an educator preparation program as approved nor to license candidates completing coursework at the revoked educator preparation program within three semesters of revocation.

W. “Scorecard” means the annual report prepared and released by the department to

rate educator preparation program performance on an A through F scale.

X. "Theory of action"

means the collection of cause and effect relationships developed by the educator preparation program to guide and achieve demonstrable outcomes. [6.65.3.7 NMAC - N, 7/1/2018]

6.65.3.8 APPLICATION PROCESS FOR APPROVAL:

A. EPP providers existing at the time of the enactment of 6.65.3 NMAC shall be required to reapply through the PPSC no later than the end of the 2018 – 2019 school year.

B. EPP providers seeking a program revision for an existing department-approved EPP and EPP providers seeking initial approval shall submit an application to the department to be reviewed by the PPSC.

C. Applications shall provide the information outlined in the PPSC manual and meet the general requirements of 6.65.3.9 NMAC. [6.65.3.8 NMAC - N, 7/1/2018]

6.65.3.9 EDUCATOR PREPARATION PROGRAM GENERAL REQUIREMENTS:

EPPs shall meet requirements as stated in state statute, regulation, and the following additional requirements.

A. EPPs shall establish rigorous entry requirements including:

- (1) passage of all NMTA essential academic skills tests prior to admission;
- (2) candidate undergraduate grade point average of at least 2.75 on a 4.0 scale; and
- (3) successful completion of the department's required background check and approval process.

B. EPPs shall ensure that opportunities for clinical experiences are provided to candidates continuously throughout their enrollment.

(1) Clinical experiences shall begin upon the candidate's entrance into an EPP.

(2) The

majority of clinical experiences shall align with the area, subject, or category of certification or license being sought by the candidate.

(3) During at least one of candidates' multiple clinical experiences, candidates shall serve as a teacher in a school under the supervision of a cooperating teacher and plan and deliver independent instruction to students on a regularly scheduled basis.

C. EPPs shall ensure that candidates embrace and execute upon their responsibility as educators to develop the skills and capacities to implement meaningful practices for parent and family engagement, notably keeping families fully informed of their child's progress towards college-and-career readiness, on a regular basis, using objective measures in all subject areas.

D. EPPs shall establish partnerships with stakeholder groups to fulfill requirements related to clinical experiences and meet the needs of LEAs. At a minimum, partners shall include:

- (1) classroom teachers;
- (2) principals;
- (3) superintendents;
- (4) human resource directors;
- (5) curriculum directors; and
- (6) the EPP advisory board.

E. Programs for all teachers shall include instruction in pedagogy that is aligned with department standards pursuant to 6.61.2 NMAC through 6.61.12 NMAC.

F. EPPs shall conduct a minimum of three formally documented observations that include verbal and written feedback on the candidate's practice.

(1) Observations and evaluations of candidates shall be aligned with the four domains of NMTEACH:

(a)

planning and preparation;

(b) creating an environment for learning;

(c) teaching for learning; and

(d) professionalism.

(2) Results of evaluations shall inform program interaction with the candidate including feedback, placement, remediation, and support.

(3) Documentation of observations shall be stored by the EPP for a minimum of five years after candidate completion and shall be available to the completer and the department upon request.

G. EPPs shall establish rigorous exit requirements in alignment with those required to seek licensure from the department including:

(1) successful demonstration of competency in all relevant areas, subjects, or categories of NMTA; and

(2) a written recommendation from the EPP that the candidate demonstrates the dispositions necessary for success in the classroom and other learning environments.

H. In a form approved by the department, all EPPs shall annually submit candidate level data as agreed to in memoranda of understanding or associated amendments between the department and EPP providers. Failure to comply with data reporting and collection requests may result in revocation of the EPP's approval.

I. EPPs shall fully comply, in a timely manner, with all requirements that allow the department to generate a scorecard and conduct the comprehensive site visit review in accordance with 6.65.3.11 NMAC and 6.65.3.12 NMAC.

[6.65.3.9 NMAC - N, 7/1/2018]

6.65.3.10 ENTRY REQUIREMENTS THAT MAY BE WAIVED BY EDUCATOR PREPARATION PROGRAMS:

EPPs may waive entrance requirements outlined in Paragraphs (1) and (2) of Subsection A of 6.65.3.9 NMAC for certain candidates.

A. Candidates admitted under a waiver specific to Paragraph (1) of Subsection A of 6.65.3.9 shall be provided remedial services designed to support the candidate to pass all NMTA tests. Documentation of the remedial support provided to the candidate and documentation that the candidate passes all NMTA tests within one year of admittance under a waiver shall be available to the department upon request. For each cohort, waivers for candidates who do not pass the NMTA essential academic skills tests or for candidates not meeting the required minimum GPA shall not exceed ten percent in each category.

B. EPPs shall provide support, as needed, to candidates admitted under a waiver.

C. Candidates admitted under waivers who do not meet the entry requirements outlined in Subsection A of 6.65.3.9 NMAC within one year of enrollment shall be exited from the EPP. EPPs shall not readmit said candidates until they meet all requirements of Subsection A of 6.65.3.9 NMAC.

[6.65.3.10 NMAC - N, 7/1/2018]

6.65.3.11 EDUCATOR PREPARATION PROGRAM SCORECARDS:

The department shall issue an annual scorecard to each department-approved EPP in the state of New Mexico. EPPs earning initial approval after the enactment of 6.65.3 NMAC shall be issued their first scorecard after the completion of their first two years of operation.

A. The EPP scorecard shall:

- (1) evaluate the effectiveness of the EPP;
- (2) rate EPP performance on an A through F scale;
- (3) be issued annually by the department for all

EPPs with at least 10 candidates; and (4) be publicly released by the department.

B. The scorecard shall be organized into four domains:

- (1) admissions;
- (2) candidate promise;
- (3) hiring and retention; and
- (4) graduate performance.

C. The department shall, in the technical manual, state which specific indicators shall be included in the calculations for the domains defined in Subsection B of 6.65.3.11 NMAC. The technical manual shall be published annually on the department website prior to the release of the scorecards and in accordance with memoranda of understanding between the EPPs and the department.

D. The indicators measured by the department shall include the following:

- (1) acceptance rate;
- (2) candidate aptitude based on department-approved assessments;
- (3) diversity of cohort;
- (4) candidate performance on licensure tests;
- (5) hiring and retention rates for completers teaching in New Mexico;
- (6) multiple measures of effectiveness of completers, as measured by NMTEACH;
- (7) student growth based on department-approved assessments;
- (8) student achievement based on department-approved assessments;
- (9) completers serving in high-needs areas;
- (10) candidate perception surveys; or
- (11) employer perception surveys.

[6.65.3.11 NMAC - N, 7/1/2018]

6.65.3.12 COMPREHENSIVE SITE VISIT REVIEW PROCESS:

EPPs shall fully cooperate with the comprehensive site visit review process. The department shall develop an EPP manual outlining the comprehensive site visit process that shall include all documents necessary for the site visit review. Site visits shall occur every four years on a calendar determined by the department unless the status of a program, as outlined in 6.65.3.13 NMAC, changes in a way that merits more frequent visits. EPPs receiving initial approval after the enactment of 6.65.3 NMAC shall participate in their first comprehensive site visit review after the completion of their first two years of operation.

A. The comprehensive site visit review process shall assess the performance of the EPP on the four components of the quality review rubric.

- (1) curriculum design and delivery;
- (2) clinical experience;
- (3) candidate quality; and
- (4) continuous improvement.

B. The comprehensive site visit review process shall include the following three elements:

- (1) **Self-evaluation.** EPPs shall complete the self-evaluation documents in the EPP manual prior to the site visit. Documents shall be submitted to the department at least 12 weeks prior to the site visit. Documents shall include:
 - (a) quality review rubric;
 - (b) quality review worksheets for each of the four key components on the quality review rubric; and
 - (c) data and artifacts listed as supplemental evidence in the EPP manual accompanied by any releases for such information, if necessary.

(2) **Site visit.** The certified review team shall conduct the site visit and review the

EPP using the quality review rubric.

(3)

Summative conference. The certified review team shall debrief the site visit with the EPP and present their initial findings.

C. At the end of the comprehensive site visit review process, the EPP shall be assessed on its overall performance and shall be rated with one of following site visit classifications defined in the EPP manual:

- (1) industry leader;
- (2) well-developed;
- (3) proficient;
- (4) developing; or
- (5) underdeveloped.

D. The certified review team shall release a final written report to the EPP containing the EPP's scores on each component of the quality review rubric and their overall performance no later than 90 calendar days after the comprehensive site visit review.

E. EPPs shall have 14 calendar days after receiving the report to submit a response, in writing, to the department to indicate any alleged factual errors and to provide any documentation deemed necessary to support the allegations. If, after review of the EPP's response, the department determines the error to be valid, the report shall be amended within 20 calendar days.
[6.65.3.12 NMAC - N, 7/1/2018]

6.65.3.13

DETERMINATION OF EPP

STATUS: The scorecard grade and the site visit classification shall determine whether an EPP earns approval for continued operation, is placed on probation, or has its approval revoked. The EPP status shall determine the frequency of comprehensive site visit reviews and the scope of EPP responsibilities. EPPs shall be notified of their status by the department no later than November 30 annually.

A. Approval for

continued operation. Approval for continued operation shall be granted to EPPs earning a C or better on the department scorecard and proficient or better on the comprehensive site visit review. Approval for continued operation shall last four years unless the EPP scorecard grade falls below a C during the four year approval period. Any approved EPP falling below a C during their approval period shall have their status changed to probation.

B. Probation. EPPs shall be placed on probation if they earn less than a C on the department scorecard or below proficient on the comprehensive site visit review. During the two year probation period, EPPs shall not be eligible to seek approval for new programs from the PPSC. EPPs may continue to accept candidates for entry while on probation.

(1)

Responsibilities of EPPs on probation shall include:

- (a) development of an improvement plan that addresses program deficiencies that shall be submitted to the department for approval within 90 calendar days of notification of probation status;
- (b) annual submittal of a report to the department detailing progress made on the improvement plan;
- (c) participation in a comprehensive site visit review at the end of the two-year probation period;
- (d) participation in professional development and technical assistance prescribed by the department; and
- (e) individual, written notification informing current candidates of the EPP's probation status within 30 calendar days of department notification.

(2) Probation

shall last two years unless the EPP scorecard grade improves to a C or above after the first year of probation.

(3) The

department shall monitor the EPP's

progress toward improving the areas noted in the comprehensive site review process throughout the probationary period by reviewing the required data reports and conducting monitoring visits as deemed necessary by the department.

(4) Any

EPP not exiting probation after the conclusion of the two year probation period may be moved to a status of revocation or may be granted an additional year of probation. EPPs on a third year of probation shall:

(a)

participate in an additional comprehensive site visit review at the end of the third year of probation;

(b)

provide documentation of candidate notification of continued probation to the department; and

(c)

cease acceptance of new candidates.

(5) EPPs not

making necessary improvements to exit probation after three years on probation shall have their status changed to revocation.

C. Revocation.

(1) The

department may revoke an EPP's approval for any of the following reasons:

(a)

earning a grade of F on the scorecard or underdeveloped on the comprehensive site visit review;

(b)

not exiting probation status;

(c)

failing to meet reporting or compliance requirements as set forth by statute, department regulation, or guidance provided in department manuals; or

(d)

having 10 or fewer completers for at least two consecutive years.

(2) The

department shall notify EPPs of revocation in writing. Immediately upon receipt of a notice of revocation, the EPP shall:

(a)

cease recruitment and acceptance of new candidates;

(b) allow candidates currently enrolled in the EPP to complete the licensure program, provided they complete the program within three semesters of the notice of revocation; and

(c) work with candidates unable to complete the licensure program within three semesters by providing options for transfer to another EPP.

(3) An EPP provider that has received a notice of revocation may file a request for reconsideration by the department no later than 30 calendar days after the notice of revocation has been received.

(a) The department shall review the materials submitted by the EPP provider including written statements of position, documents, and comments supporting the claim.

(b) The department, after considering the request, shall make a decision and inform the EPP provider in writing of its decision within 60 calendar days of receipt of the request for reconsideration.

(c) The decision of the department shall be final.

(4) An EPP with revoked approval shall wait two years following the date of revocation before reapplying via the application process defined in 6.65.3.8 NMAC. [6.65.3.13 NMAC - N, 7/1/2018]

History of 6.65.3 NMAC:
[RESERVED]

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.11.2 NMAC, Sections 3, 7, and 10, effective 7/1/2018

6.11.2.3 STATUTORY AUTHORITY: This rule is adopted pursuant to Sections 22-2-1, 22-2-2, and 22-5-4.12 NMSA 1978 and 42

U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act. [8/15/1997; 6.11.2.3 NMAC - Rn, 6 NMAC 1.4.3, 11/30/2000; A, 11/13/2009; A, 7/1/2018]

6.11.2.7 DEFINITIONS:

A. “Administrative authority” means the local school district superintendent, a principal or a person authorized by either to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.

B. “Criminal acts” are acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.

C. “Delinquent acts” are acts so defined in Subsection A of Section 32A-2-3 NMSA 1978 of the Delinquency Act.

D. “Detention” means requiring a student to remain inside or otherwise restricting his or her liberty at times when other students are free for recess or to leave school.

E. “Disciplinarian” means a person or group authorized to impose punishment after the facts have been determined by a hearing authority.

F. “Disruptive conduct” means willful conduct which:

(1) materially and in fact disrupts or interferes with the operation of the public schools or the orderly conduct of any public school activity, including individual classes; or

(2) leads an administrative authority reasonably to forecast that such disruption or interference is likely to occur unless preventive action is taken.

G. “Expulsion” means the removal of a student from school either permanently or for an indefinite time exceeding 10 school days or a locally established lesser period.

H. “Gang related activity” is disruptive conduct.

I. “Hearing

authority” means a person or group designated to hear evidence and determine the facts of a case at the required formal hearing.

J. “Immediate removal” means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.

K. “In-school suspension” means suspending a student from one or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere.

L. “Legal limits” include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools’ authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.

M. “Long-term suspension” means the removal of a student from school for a specified time exceeding either 10 school days or any lesser period a local school board may set as a limit on temporary suspension.

N. “Mechanical restraint” means the use of any device or material attached or adjacent to the student’s body that restricts freedom of movement or normal access to any portion of the student’s body and that the student cannot easily remove, but “mechanical restraint” does not include mechanical supports or protective devices.

[N:] **O. “Parent”** means the natural parent, a guardian or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, Section 22-12-1 et seq. NMSA

1978, or the student if [(s)he] the student is not subject to compulsory attendance.

P. “Physical restraint” means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student’s body, but “physical restraint” does not include physical escort.

[Ø:] Q. “Public school” means the campus of and any building, facility, vehicle or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.

[P:] R. “Refusal to cooperate with school personnel” means a student’s willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.

[Ø:] S. “Refusal to identify self” means a person’s willful refusal, upon request from school personnel known or identified as such to the person, to identify himself or herself accurately.

T. “Restraint” when not otherwise modified means mechanical or physical restraint.

[R:] U. “Review authority” is a person or group authorized by the local board to review a disciplinarian’s final decision to impose a long-term suspension or expulsion.

V. “Seclusion” means the involuntary confinement of a student alone in a room from which egress is prevented. “Seclusion” does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student’s education plan, individual safety plan, behavioral plan or individualized education program that involves the student’s separation from a larger group for purposes of calming.

[S:] W. “Sexual harassment”, regarding students,

means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;

(2) submission to or rejection of such conduct by a student is used as the basis for decisions/opportunities affecting the student;

(3) such conduct substantially interferes with a student’s learning or creates an intimidating, hostile or offensive learning environment.

[F:] X. “School personnel” means all members of the staff, faculty and administration employed by the local school board. The term includes school security officers, school bus drivers and their aides, and also authorized agents of the schools, such as volunteers or chaperons, whose responsibilities include supervision of students.

[H:] Y. “Student” means a person who is enrolled in one or more classes at a public school or a person who was a student during the previous school year and is participating in a school sponsored activity connected with his or her prior status as a student.

Z. “Student experiencing homelessness” means children and youth as defined by Section 725(2) of the federal McKinney-Vento Act.

[V:] AA. “Temporary suspension” means the removal of a student from school for a specified period of 10 school days or less after a rudimentary hearing.

[W:] BB. “Weapon” as set forth in Section 22-5-4.7 NMSA 1978 means:

(1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of

more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

[8/15/1997; 6.11.2.7 NMAC - Rn, 6 NMAC 1.4.7, 11/30/2000; A, 7/1/2018]

6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Formal enforcement action under the Compulsory School Attendance Law, supra, and the Family Services Act, Section 32A-3A-1 et seq. NMSA 1978 shall be initiated whenever a student’s absences indicate that the law is being violated. An administrative authority who has reason to believe a student is violating local school board attendance policies may take whatever further disciplinary action is deemed appropriate under local policies.

B. Search and seizure: School property assigned to a student and a student’s person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with the requirements below.

(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school’s policy on searches at the beginning of each school year or upon admission for students entering during the school year.

(2) Who may search. Certified school personnel, school security personnel and school bus drivers are “authorized persons” to conduct searches when a search is permissible as set forth below. An authorized person who is conducting a search may request the assistance of some other person(s), who upon consent become(s) an authorized person for the purpose of that search only.

(3) When search permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when [(s)he] the

authorized person has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when ~~[(s)he]~~ the administrative authority has reasonable cause to believe that a search is necessary to help maintain school discipline.

(4) Conduct of searches; witnesses. The following requirements govern the conduct of permissible searches by authorized persons.

(a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.

(b) Student vehicles when on campus or otherwise under school control and students' personal effects which are not within their immediate physical possession may be searched in accordance with the requirements for locker searches.

(c) Physical searches of a students person may be conducted only by an authorized person who is of the same sex as the student, and except when circumstances render it impossible may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search must not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.

(5) Seizure of items: Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the

educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

(6) Notification of law enforcement authorities: Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.

C. Basis for disciplinary action: A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) for committing any act which endangers the health or safety of students, school personnel or others for whose safety the public school is responsible, or for conduct which reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;

(2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or

(3) for committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.

(1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex, or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex, or disability rather than on other differences in individual cases or students.

E. Restraint and seclusion: In accordance with Section 22-5-4.12 NMSA 1978, each school shall follow requirements for the use of restraint and seclusion techniques.

(1) Schools shall establish and review annually policies and procedures, as approved by the local school board or governing body, for the use of restraint and seclusion techniques. Such policies and procedures shall require and describe appropriate training for school personnel and shall include requirements in relation to the use of restraint and seclusion techniques.

(a) A school may permit the use of restraint and seclusion techniques on any student pursuant to the requirements in Section 22-5-4.12 NMSA 1978.

(b) Less restrictive interventions, including positive behavioral intervention supports or other comparable behavior management techniques, shall be implemented prior to the use of restraint and seclusion techniques.

(c)

If a restraint or seclusion technique is used on a student, trained and authorized school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use, pursuant to the requirements in Section 22-5-4.12 NMSA 1978.

(2) Districts or charter schools shall develop and implement an annual training for designated school personnel regarding positive behavioral intervention supports or comparable behavior management techniques and the use of restraint and seclusion techniques. In the event that new designated school personnel are employed within the school after the provision of the annual training, the principal of the school, or a person authorized to act officially in a matter involving school discipline or the maintenance of order within the school, shall ensure that a training is provided to new designated school personnel within 60 days of employment.

(3) Schools shall update school safety plans.

(a) A school safety plan pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC shall include additional minimum requirements.

(i) The school safety plan shall not be specific to any individual student.

(ii) The school safety planning team shall include at least one of each of the following: administrator, educator, and special education expert and may include a counselor or social worker, nurse, and school resource officer or security staff.

(b) A school safety plan pursuant to requirements of Paragraph 7 of Subsection D of 6.12.6.8 NMAC shall be submitted to the department on a triennial basis, on a schedule as determined by the department. Notice of school safety plan submittal will be provided by the department to local education agencies 90 days prior to the due date.

(4) Schools shall establish reporting and documentation procedures pursuant to the requirements listed in Section 22-5-4.12 NMSA 1978. In addition, schools shall provide written or oral assurance of secure storage and access to written documentation in accordance with 20 U.S.C. § 1232g; 34 CFR Part 99, Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

(5) Exemptions to the requirements prescribed in Subsection E of 6.11.2.10 NMAC shall be pursuant to Subsections G and H of Section 22-5-4.12 NMSA 1978.

[E:] F. Corporal punishment: ~~Corporal punishment shall not be utilized as a means of enforcing rules of conduct in public schools.~~ Corporal punishment shall be prohibited by each local school board and each governing body of a charter school pursuant to Subsection B of Section 22-5-4.3 NMSA 1978. Restraint or seclusion techniques used in compliance with Subsection E of 6.11.2.10 NMAC shall not be deemed to be corporal punishment.

[F:] G. Detention, suspension and expulsion: Where detention, suspension or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection [G] I of 6.11.2.10 NMAC and 6.11.2.11 NMAC below.

H. Discipline of students experiencing homelessness: Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements in 42 U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.

(1) Public schools shall develop discipline policies and procedures that are

reviewed at least annually and align with local school board or governing body policies. Policies and procedures shall:

(a) through professional development activities, create an awareness among educators and administrators of the types of behaviors that students experiencing homelessness may exhibit due to homelessness and provide strategies and supports to address the behaviors through the student assistance team process in accordance with Subsection D of 6.29.1.9 NMAC;

(b) take into account the issues related to a student's homelessness by talking with the student and applicable staff and families prior to taking disciplinary action;

(c) consult with school behavior response teams or other applicable personnel to assign appropriate discipline related to the behavior;

(d) implement discipline alternatives to out of school suspensions or expulsions or classroom removals, if possible; and

(e) connect students with mental health services as needed.

(2) Public schools shall review school discipline records and data of students experiencing homelessness in order to identify any patterns in disciplinary actions that indicate an unfair bias against the students. The collection and review of such records shall be in compliance with the Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

[G:] I. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and

regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in 6.11.2.11 NMAC below.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of [~~Subsection G, Paragraph (3) of 6.11.2.10 NMAC~~] Paragraph (3) of Subsection I of 6.11.2.10 NMAC below.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures

of Subsection C of 6.11.2.12 NMAC below.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[08/15/1997; 6.11.2.10 NMAC - Rn, 6 NMAC 1.4.10, 11/30/2000; A, 6/29/2007; A, 11/13/2009; A, 10/31/2011; A, 7/1/2018]

**REGULATION AND LICENSING DEPARTMENT
BARBERS AND COSMETOLOGISTS, BOARD OF**

This is an amendment to 16.34.1 NMAC, Sections 2 and 7, effective 07/14/2018.

16.34.1.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.1.2 NMAC - Rp 16 NMAC 34.1.2, 06-16-01; A, 07/14/2018]

16.34.1.7 DEFINITIONS: As used in the Barbers and Cosmetologists Act:

A. "applicant" means a person who has applied for a license;

B. "apprentice" means a person enrolled in a barber apprenticeship program approved by and registered with the state apprenticeship agency;

C. "approval number" means the number assigned by the board to designate an approved provider;

D. "approved" means accepted as a provider by the board;

E. "barber" means a person, other than a student, who for compensation engages in barbering;

F. "barber apprenticeship" means an apprenticeship program registered with the state apprenticeship agency;

G. "barbering" means shaving or trimming the beard or cutting the hair, curling and waving, including permanent waving, straightening the hair, giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, shampooing, bleaching or dyeing the hair or applying tonics or applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body, caring for and servicing wigs and hair pieces or removing of unwanted hair except

by means of electrology;

H. “board” means the board of barbers and cosmetologists;

I. “booth establishment license” means a license required of an individual who rents space within another licensed establishment for the purpose of rendering licensed services as a separate, independent business;

J. “branch campus/ additional location” means an additional location that provides the same administrative services as the main campus, and offers at least one complete program entered into the programs offered at the main campus; a branch campus/additional location must be approved by the board as a separate school with a stand-alone license;

K. “clean or cleansing” means washing with liquid soap and water, detergent, antiseptics, or other adequate methods to remove all visible debris or residue. Cleansing is not disinfection;

L. “contact hour” means one contact hour equals a minimum of 50 minutes of instruction;

M. “cosmetologist” means a person, other than a student, who for compensation engages in cosmetology;

N. “cosmetology” means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances, using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person, manicuring and pedicuring the nails of a person, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrology. A cosmetologist shall not perform any type of shaving using a straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.

O. “current work experience” means verified work that has occurred within the previous five years;

P. “disinfect or disinfection” means the use of chemical agents (after cleaning) to destroy potentially dangerous pathogens on non-porous items;

Q. “disinfectant” means an EPA-registered bactericidal, virucidal and fungicidal chemical effective against pathogens of concern when used as directed on the manufacturer’s label. For purposes of this rule alcohol and UV light boxes are not approved for disinfection;

R. “electrologist” means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

S. “electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

T. “enterprise” means a business venture, firm, or organization;

U. “expansion campus facility” means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

V. “establishment” means an immobile beauty shop, barbershop, electrology clinic, salon or similar place of business in which cosmetology, barbering, eyebrow threading, hairstyling or electrolysis is performed;

W. “esthetician” means a person, other than a student, who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging,

cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person; using the term or title of “medical esthetician” is not allowable under the act; this term is misleading and could be deemed deceptive or fraudulent;

X. “eyebrow threading” means a method of hair removal in which a thin thread is doubled, twisted and then rolled over areas of unwanted hair, removing the hair at the follicle level;

~~[X:]~~ **Y.** “executive director” means the director for the board;

~~[Y:]~~ **Z.** “expansion campus facility” means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

~~[Z:]~~ **AA.** “externship” means a student enrolled in any course licensed by this act may, at the school’s option, participate in an externship program upon completion of seventy-five percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except for offering complete services on the public, applying any chemicals, or receiving any compensation;

BB. “hairstylist” means a person, other than a student, who for compensation engages in hairstyling;

~~[AA:]~~ **CC.** “HSD” means the New Mexico human services department;

~~[BB:]~~ **DD.** “hands-on training” means student training on clients, students or models that includes active personal participation and practical experience necessary

to gain knowledge. Training on mannequins is considered hands-on training;

[~~CC~~:] EE.

“instructor” means a person licensed to teach in a school of cosmetology, barbering or in a school of electrology;

[~~DD~~:] FF.

“journey worker” means a person who holds a current New Mexico barber license; is recognized by the sponsor as having attained and mastered a level of skill, abilities, and competencies in barbering and is authorized to provide related instruction and on-the-job training to licensed apprentices. The maximum allowable ratio of licensed apprentices to journey workers during on-the-job training is one to one;

[~~EE~~:] GG. “jurisprudence exam” means the examination given regarding the laws, rules and regulations, which relate to the practice of barbers and cosmetologists in the state of New Mexico;

[~~FF~~:] HH. “license” means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of the act;

[~~GG~~:] II. “license in good standing” refers to a current, valid, board-issued license with no restrictions placed on the license by the board;

[~~HH~~:] JJ. “main campus” means a school, which has been licensed by the board; any change in location of the main campus must comply with the procedures set forth in 16.34.8 NMAC of these rules; the main campus includes the primary facilities and any separate or detached expansion campus facility of the primary training site within a two-mile radius;

[~~H~~:] KK.

“manicurist-esthetician” means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and who uses cosmetic preparations, including

makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

[~~JJ~~:] LL.

“manicurist-pedicurist” means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

[~~KK~~:] MM.

“multi-use” means non-porous instruments, items, equipment, implements or tools that must be cleaned and disinfected. The items must be disinfected by a complete immersion in an EPA registered, bactericidal, virucidal and fungicidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer’s directions. Non-porous items are the only items that can be disinfected;

[~~LL~~:] NN. “non-porous” means multi-use items such as metal, glass and plastic;

[~~MM~~:] OO. “outreach enterprise” means an independent mobile unit, or system of units, equipped with or carrying both professional and special equipment used by a professional licensee of this act to a site or premises for the purpose of providing professional services to the handicapped, restricted, homebound, impaired, incapacitated, delicate, or otherwise constrained client;

[~~NN~~:] PP. “sponsor” means the sponsor in whose name the standards of apprenticeship will be registered with the state apprenticeship agency, and which will have the full responsibility for administration and operation of a barber apprenticeship program;

[~~OO~~:] QQ. “provider” means the person, firm, corporation, institution or agency approved to conduct or sponsor a continuing education program and ensure its integrity;

[~~PP~~:] RR.

“reciprocity” means a mutual exchange of privileges between states;

[~~QQ~~:] SS. “revoke a license” means to prohibit the conduct authorized by the license;

[~~RR~~:] TT.

“sanitation” means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

[~~SS~~:] UU.

“school” means a public or private instructional facility approved by the board that teaches cosmetology or barbering;

[~~TT~~:] VV.

“single use items” means tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: disposable razors, pedipads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, and porous files, etc.) shall be disposed of immediately after use;

[~~UU~~:] WW. “state apprenticeship agency” means the department of workforce solutions’ state apprenticeship agency;

[~~VV~~:] XX. “statement of compliance” means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;

[~~WW~~:] YY. “statement of non-compliance” means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support;

[~~XX~~:] ZZ. “sterilize or sterilization” means to eliminate all forms of bacteria or other microorganisms;

[~~YY~~:] AAA. “student” means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis;

[~~ZZ~~:] BBB. “supervising licensee” means licensee designated by the establishment

owner or manager to act on behalf of the enterprise or establishment in the absence of the owner or manager. The supervising licensee must be licensed in all aspects of the activity being practiced in the enterprise or establishment;

[~~AAA~~] **CCC.** “suspend a license” means to prohibit, for a stated period of time, the conduct authorized by the license; “suspend a license” also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension;

[~~BBB~~] **DDD.** “verified work experience” means work experience in the applicable discipline in a licensed establishment, enterprise or electrology clinic as verified by:

(1)

certified and notarized statement by employer(s);

(2)

certified and notarized statement by licensed co-worker(s);

(3)

certified and notarized statement by client(s);

(4)

[~~certified and notarized~~] copies of tax returns; or

(5)

[~~certified and notarized~~] copies of W-2's; or [~~(6) other~~ related form(s) of documentation.]

[16.34.1.7 NMAC - Rp 16 NMAC 34.1.7, 06-16-01; A, 07-16-04; A, 10-04-07; A, 12-17-15; A, 10-29-16; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.2 NMAC, Sections 2, 6, 8, and 11 effective 07/14/2018.

16.34.2.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors, electrologists, schools, enterprises, and establishments.

[16.34.2.2 NMAC - Rp 16 NMAC

34.2.2, 06/16/2001; A, 07/14/2018]

16.34.2.6 OBJECTIVE:

Pursuant to the Barbers and Cosmetologists Act this part establishes licensure requirements for barbers, cosmetologists, hairstylists, manicurist/pedicurists, estheticians and electrologists. It further provides for licensure requirements of establishments, enterprises, electrology clinics, schools and instructors.

[16.34.2.6 NMAC - Rp 16 NMAC 34.2.6, 06/16/2001; A, 07/14/2018]

16.34.2.8 GENERAL LICENSING PROCEDURES:

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.

Applications must include the required fee in the form of a money order, cashier's check, business check, or credit card for on-line renewal only, (no personal checks will be accepted). Incomplete applications will be returned. Applications are valid for one year from date of receipt. Designated deadlines will apply to resubmitted applications.

(2) With

the exception of applications for barber apprentice licenses as listed in Subsection E below, applications for licensure must include:

(a)

proof of age indicating applicant is at least 17 years of age; please provide one of the following: a copy of birth certificate, driver's license, state issued identification card, or baptismal certificate;

(b)

proof of applicable secondary education: please provide a copy of one of the following: a high school diploma, G.E.D. certificate or transcript of G.E.D. test scores, letter from the high school attended containing the school seal, copy of the high school transcript showing 10th grade equivalency or higher, a post-secondary transcript, successful completion

of a 10th grade equivalency test, letter from the G.E.D. testing facility showing that the G.E.D has been passed; documents submitted in a language other than English must be accompanied by a certified translation completed by a government certified translator; and

(c)

a transcript of hours from a school or a certificate of completion of a barber apprenticeship issued by the state apprenticeship agency showing that the training hours were completed within the preceding 12 months; if the training hours were obtained more than 12 months before the application is submitted to the board, then the applicant will need to register at a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education; upon completion and proof of the remediation, the applicant may apply for and submit to the complete theory examination, the applicable practical examination and a state law examination.

(d) A

current valid email address:

(e)

The applicant must have successfully passed the national written and practical examinations. The minimum passing scaled score for all written and practical licensing examinations is 75.

B. Photographs:

applicants for original licensure shall attach a recent passport size, color photograph, front-view of face. The photo must be at least one and one-half inches by one and one-half inches and no larger than two inches by three inches.

C. Electronic

signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.

D. Incomplete

applications will be returned. Designated deadlines will apply to resubmitted applications.

E. Upon acceptance

into a barber apprenticeship program, the apprentice shall apply for a

barber apprentice license on the form required and provided by the board. Applications shall include the required fee in the form of a money order, cashier's check, business check or credit card (no personal checks will be accepted).

F. Renewal is the responsibility of the licensee:

(1) 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 late fees or reexamination as set forth in the act.

(2) A licensee, with a valid instructor license for the preceding 12 months, may use the instructor license to renew or reinstate his original practitioner license.

(3) The board will issue renewal licenses within 15 working days of receipt of the renewal request and applicable fee.

(4) Timely renewal of an establishment, enterprise, electrology clinic and school license is the full and complete responsibility of the LICENSEE. Failure to renew the license within 30 days after its expiration, will result in payments of renewal and late fees.

(5) A licensee, who works at more than one establishment must obtain an official duplicate license for each establishment pursuant to 16.34.4.15 NMAC.

[16.34.2.8 NMAC - Rp 16 NMAC 34.2.8, 06/16/2001; A, 07/16/2004; A, 10/04/2007; A, 12/17/2015; A, 10/29/2016; A, 07/14/2018]

16.34.2.11 PROVISIONS FOR EMERGENCY LICENSURE:

A. Barbers, cosmetologists, hairstylist, manicurists/pedicurists, estheticians, electrologists, and instructors currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon satisfying the following

requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.34.2.8 NMAC, general licensing procedures; 16.34.5.8 NMAC, general licensure requirements; and 16.34.6.8 NMAC, reciprocity;

(3) other required verification will be that the board office will contact the applicant's prior licensing board by email, mail, or telephone for confirmation of what is provided by the applicant.

B. The board may waive the following requirements for licensure:

(1) application fees;

(2) specific forms or documentation required, on an individual case by case basis, under 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC.

D. Licenses issued under (the emergency provision) shall be issued for a period of one year of less following the date of issuance, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before one year following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.34.2.11 NMAC - N/E, 11/10/2005; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.3 NMAC, Sections 2, 10 and 14, effective 07/14/2018.

16.34.3.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.3.2 NMAC - Rp 16 NMAC 34.3.2, 06-16-01; A, 07/14/2018]

[16.34.3.10 EXAMINATION CONTRACT:

~~A. To ensure test validity, reliability and standardization, the board may contract with an outside testing agency which has developed examinations to test the qualifications for licensure as a cosmetologist, manicurist, esthetician, electrologist, barber and instructor.~~

~~B. All examiners are trained and certified by the testing agency to ensure the fairness and integrity of the examination.~~

~~C. Examination answer sheets are scored by the testing agency.~~

~~D. The testing agency releases the board, its officers and employees, and the state of New Mexico from all liabilities, claims and obligations whatsoever arising from or under the contract for examination services-] [RESERVED]~~

[16.34.3.10 NMAC - Rp, 16 NMAC 34.3.10, 06/16/2001; A, 10/04/2007; Repealed, 07/14/2018]

16.34.3.14 EXAMINATION REQUIREMENTS FOR APPLICANTS WITH FULL HOURS, NO OUT-OF-STATE LICENSE:

An applicant, who has completed an equivalent course of study in the United States within the preceding 12 months, but has not obtained a license in another state, will be admitted to the New Mexico board examinations subject

to all requirements, which apply to New Mexico applicants to take examination.

[16.34.3.14 NMAC - N, 10/04/2007; A, 07/14/2018]

**REGULATION AND
LICENSING DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD OF**

This is an amendment to 16.34.4 NMAC, Sections 2 and 14, effective 07/14/2018.

16.34.4.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors, electrologists, schools, enterprises, and establishments; applicants for examination and students.
[16.34.4.2 NMAC - Rp 16 NMAC 34.4.2, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

16.34.4.14 STUDENT PERMIT:

A. Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within 15 days of date of registration, the board will issue a student permit and permit number. The student permit authorizes the holder to practice course related skills in an approved school and perform services on the public only after fifteen percent of the required hours for graduation from the course of study are accrued.

B. Student permit are valid for 90 days following completion of graduation requirements. The student permit will be issued to the student upon graduation of course of study by a school official and can be used to enter a licensed establishment and provide all services in the applicable course of study under the constant supervision of a licensee of the board, in the applicable course of study. The student permit holder may not assume supervisory or managerial responsibilities of a licensed establishment at any time.

The student permit is valid for 90 days while waiting to test. Once the 90 days has expired the student permit must be turned into the state board office and the student must terminate working at the licensed establishment. It is the responsibility of the licensed establishment to monitor the expiration of the student permit. The student permit must be turned into the board with initial licensure application as part of the application process. No extensions will be given after the 90 days has terminated. [The student must reapply if the course of study goes beyond one year.]

C. Student permits are the property of the board and must be returned to the board office with the notice of termination or official transcript of credit by the school. Additional requirements applicable to student permits are found in Paragraph 7 of Subsection A of 16.34.8.13 NMAC of these rules.

D. Student permits cannot be used outside a school environment without board approval.

E. Student permits are not to be used as a student externship permit as defined in 16.34.8.17 NMAC.

[16.34.4.14 NMAC - Rp 16 NMAC 34.4.14, 06/16/2001; A, 07/16/2004; A, 10/04/2007; A, 04/12/2010; A, 11/14/2010; A, 12/17/2015; A, 07/14/2018]

**REGULATION AND
LICENSING DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD OF**

This is an amendment to 16.34.5 NMAC, Sections 2, 3, 8 and add Section 17, effective 07/14/2018.

16.34.5.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.5.2 NMAC - Rp 16 NMAC 34.5.2, 06/16/2001; A, 07/14/2018]

16.34.5.3 STATUTORY

AUTHORITY: Sections 61-17A-5, 61-17A-7, 61-17A-8, 61-17A-9, 61-17A-10, 61-17A- 11. 61-17A-12 and 61-17A-15 NMSA 1978 of the Barbers and Cosmetologists Act. The board may provide the standards for the licensure of barbers, cosmetologists, hairstylists, manicurist/pedicurists, estheticians, and electrologists and the licensure of instructors, schools, enterprises and establishments.

[16.34.5.3 NMAC - Rp 16 NMAC 34.5.3, 06/16/2001; A, 07/14/2018]

16.34.5.8 GENERAL LICENSURE REQUIREMENTS:

A. Any person is eligible to be registered as a practitioner and is qualified to receive a license as a registered barber, cosmetologist, hairstylist, manicurist, esthetician, manicurist/esthetician, or electrologist who submits proof that the applicant:

(1) is at least 17 years of age;

(2) has an education equivalent to the completion of the second year of high school;

(3) has completed the course of study for the license in a licensed school within the preceding 12 months; or for a barber license, proof that the applicant has either completed the course of study in a licensed school within the preceding 12 months or has successfully completed a barber apprenticeship program registered by the state apprenticeship agency within the preceding 12 months;

(4) has paid the required fees as set forth in these rules; and

(5) has passed the practical and written examination conducted by the board.

B. Any person is eligible for initial registration or re-registration as an instructor and is qualified to receive a license as an instructor who submits proof that the applicant has met all the above requirements and in addition:

(1) has an education equivalent to the

completion of four years of high school; and

(2) holds a current license in New Mexico as a practitioner in the field in which the applicant is seeking licensure as an instructor.

C. Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal 150 hours of training. Work experience less than six full months will not be considered toward training hours.

D. Applications are valid for one year from date of receipt.

E. All application fees are non-refundable. [16.34.5.8 NMAC - Rp 16 NMAC 34.5.8, 06/16/2001; A, 07/16/2004; A, 12/17/2015; A, 10/29/2016; A, 07/14/2018]

16.34.5.17 HAIRSTYLIST LICENSE (1200 HOURS OR EQUIVALENT):

A. A hairstylist license permits the practitioner to:

(1) cleanse, massage or stimulate the scalp with oils, creams, lotions or other cosmetic or chemical preparations;

(2) apply cosmetic or chemical preparations, antiseptics, powders, oils, clays or lotions to the scalp;

(3) cut, arrange, apply hair extensions to or style the hair by any means;

(4) shampoo, bleach, dye, or apply tonics to the hair;

(5) cleanse, color, lighten, wave or straighten the hair with cosmetic or chemical preparations;

(6) cut or trim beards with clippers or scissors only;

B. A hairstylist shall not perform any services other than those listed above. To do so may lead to revocation of the license or other

disciplinary action by the board.
[16.34.5.17 - N, 07/14/2018]

**REGULATION AND LICENSING DEPARTMENT
BARBERS AND COSMETOLOGISTS, BOARD OF**

This is an amendment to 16.34.6 NMAC, Sections 2 and 8, effective 07/14/2018.

16.34.6.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors and electrologists licensed out-of-state.

[16.34.6.2 NMAC - Rp 16 NMAC 34.6.2, 06/16/2001; A, 07/14/2018]

16.34.6.8 RECIPROCITY

A. An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules.

B. Credit for work experience. Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal 150 hours of training. Work experience less than six full months will not be considered toward training hours. To obtain any license by reciprocity, no more than fifty percent of the hours required for licensure by in-state applicants may be obtained by work experience.

C. Full hours or work experience, out-of-state license. Any person who seeks licensure in the state of New Mexico through reciprocity from any other state shall:

(1) furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with the state;

(2) furnish a certified transcript for the course of study [~~or affidavit of hours from the regulatory agency or school attended~~

~~in the state from which the applicant is applying] if hours completed are not included in the affidavit from the state regulatory agency;~~

(3) complete the application for reciprocity on a form provided by the board and submit the required fee: [~~and~~

(4) furnish notarized letters of employment from past employers or employment records to prove work experience as stated in B of this section, if [~~needed~~] hours are not equivalent to New Mexico; and

(5) all documents submitted to the board office must be in English; documents submitted in a language other than English must be accompanied by a certified translation approved by the American translators association (ATA).

D. Foreign training. All foreign trained applicants must submit to the applicable examination. Refer to 16.34.3 NMAC for requirements.

E. Incomplete hours, out of state license.

(1) An applicant who holds a valid license in another state and who needs additional training not in excess of 100 hours may obtain the training hours in any state. Upon submitting proof of having acquired the additional training hours, the applicant may then be licensed through reciprocity.

(2) An applicant licensed in a state where the course of study is not equivalent to New Mexico's may apply work experience or apprenticeship training hours, on a case by case basis, toward the training requirements as stated in Subsection B of 16.34.6.8 NMAC, provided these hours do not exceed fifty percent of the required hours in New Mexico. If the allowed hours credited from work experience or apprenticeship training meet or exceed the equivalent of the New Mexico course of study, the applicant may obtain licensure through reciprocity.

(3) An applicant who cannot obtain a license

through reciprocity with the previous training and work experience, he will be required to obtain approval of the previous hours of training as stated in Subsection I of 16.34.6.8 NMAC, obtain the additional hours needed and submit to the New Mexico licensing examination applicable to the license he is seeking.

F. In order to expedite the process of approving training hours and work experience for reciprocity applicants and transfer students, the board executive director may forward the required documents to a member of the board who is also a licensee for approval.

G. 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 greater.

[16.34.6.8 NMAC - Rp 16 NMAC 34.6.8, 06/16/2001; A, 10/04/2007; A, 04/12/10; A, 12/17/2015; A, 10/29/2016; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.7 NMAC, Sections 2, 8 and 9, effective 07/14/2018.

16.34.7.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.7.2 NMAC - Rp 16 NMAC 34.7.2, 06/16/2001; A, 07/14/2018]

16.34.7.8 APPLICATION AND REQUIREMENTS FOR ENTERPRISE OR ESTABLISHMENT LICENSE:

A. A completed official application for an enterprise or establishment license must be filed with the board at least 15 days prior to the expected opening of the enterprise or establishment. Applications must

include the required fee in the form of a money order, cashier's check, business check or credit card for on-line transactions, (no personal checks will be accepted). Applications must include:

(1) a copy of the owner's business license must accompany initial application;
(2) a list of all booth renters working in the establishment (if applicable);
~~(2)~~ (3) all fees are non-refundable;
~~(3)~~ (4) incomplete applications will be returned; and
~~(4)~~ (5) electronic signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.

B. The application, if complete, may be administratively approved. A formal inspection of the enterprise, outreach enterprise unit or establishment shall take place after the issuance of the license.

C. When an enterprise or establishment relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the administrative fee.

D. If any portion of the establishment is completely segregated from the primary area, a duplicate establishment license must be acquired and posted in the separate area. A duplicate license fee will be assessed.

E. All enterprise and establishment licenses must be renewed each year on the last day of the month of original issue date.

F. Official enterprise or establishment license must be displayed where visible to the public upon entry to the establishment;

G. The most recent inspection report shall be printed and posted in each establishment where visible to the public within 72 hours of the inspection. It is the responsibility of the licensee that signed the inspection report and the owner to ensure this requirement is

met.

H. The following information shall be kept on file on the premises of an enterprise or establishment and available for inspection by the board:

(1) the full names of all employees in the enterprise or establishment and their exact duties;
(2) the name and address of enterprise or establishment owner;
(3) a complete description of all services performed;
(4) implementation of proper program of identification of products during use and in storage to avoid confusion as to products or their ingredients; such program shall include efforts to ensure that ingredient information provided by manufacturers or distributors remains available with the product for use by licensed professionals and clients.

(5) safety data sheet (SDS) must be current. A file containing pertinent information regarding products. Hard copies MUST be available. Computer based storage or access may only be used when all employees have access at all hours;

(6) a copy or access to the New Mexico board of barbers and cosmetologists statutes and rules;

(7) a site specific OSHA exposure control plan;

(8) if a pedicure tub is maintained on the premises, a log is maintained by the salon showing the legible signature, license number of the person disinfecting pedicure tub as defined in 16.34.7.9 NMAC. The time and date of the disinfection process and the name of the disinfectant used. Log entries must be maintained on the salon premises for 12 months; and

(9) as defined in 16.34.7.9 NMAC a log of each autoclave use must be maintained showing all testing samples and results, and a maintenance log of all maintenance performed according to the manufacturer's directions. The

salon must retain the most recent twelve months of the log at the salon for review by the board;

I. Each establishment licensed by the board shall post a sign at the main entrance, which indicates the type of business being performed.

J. Proper signage must indicate the type of services offered.

K. If establishment is attached to a residence, it shall have a separate entrance. Permission from the county or city is required prior to submittal of application.

L. Each mobile outreach unit shall post a sign indicating the type of business being performed. The outreach enterprise license will be maintained at its business address. Each mobile outreach unit shall carry and have posted a duplicate enterprise license assigned to that unit.

M. Any establishment or mobile outreach enterprise unit licensed by the board may not be used for living or sleeping quarters or in any way for residential purposes. If an establishment is located in a private residence, a segregated area must be provided for the licensed activity and maintenance of proper water supply and toilet standards to ensure proper infection control and safety standards. Reasonable access to a restroom must be provided by the establishment or mobile outreach enterprise unit.

N. Except as provided in these rules, no services authorized under this act may be provided away from a licensed establishment. Services authorized under this act may be provided in mobile outreach units only as specified in these rules.

O. Any licensee performing services in a mobile outreach unit must carry a current duplicate license at all times. The licensee must show the client the license upon request.

P. Each outreach enterprise mobile unit will be equipped with or have available a cellular phone or other communication capability necessary for immediate access or prompt response.

Q. Each outreach enterprise mobile unit must have signage on at least two sides for identification information in letters no smaller than five inches.

R. Outreach enterprise mobile units shall be used for the sole purpose stated in 16.34.1 NMAC of these rules.

[16.34.7.8 NMAC - Rp 16 NMAC 34.7.8, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

16.34.7.9 INFECTION CONTROL & SAFETY STANDARDS FOR ESTABLISHMENTS AND ENTERPRISES:

A. All licensees who operate enterprise or establishments, including outreach mobile units must comply with the following minimum infection control and safety standards. Failure to comply with these requirements may result in an administrative fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

(1) maintenance of adequate ventilation to ensure that occupants are not improperly exposed to hazardous products or chemicals;

(2) maintenance of smoking restriction to ensure that products or chemicals used are not inadvertently ignited;

(3) maintenance of spill standards to ensure that occupants are not improperly exposed to any product or chemical;

(4) maintenance of hot and cold running water available in an operable manner to perform professional services in a safe and sanitary manner while serving the public;

(5) all establishments shall be completely separated by solid partitions, or by walls where food is prepared should be enclosed and away from public areas;

(6) rest rooms of establishments must be in working order and have ceiling high partitions from the rest of the establishment or

common area;

(7) hours of operation shall be posted where clearly visible to the public at all times;

(8) each establishment must have signs stating:
(a)

only “disinfected tools or new disposable supplies” may be used on clients; and

(b) “single use” instruments, items and supplies must be discarded after each use.

(9) most recent inspection report shall be posted where clearly visible to the public upon entry to the establishment;

(10) each establishment owner/manager must print the inspection report within [48] 72 hours of inspection and post the inspection in a conspicuous place;

(11) maintenance of all equipment in safe working condition;

(12) compliance with local licensing, fire, building, health, ventilation, heating and safety requirements;

(13) floors, walls, and other fixtures must be kept reasonably clean at all times;

(14) floors shall be thoroughly cleaned each day;

(15) hair cuttings must be swept up and deposited in a closed receptacle after each haircut;

(16) trash containers must be emptied daily and kept clean by washing or using plastic liners;

(17) it is the responsibility of all licensees, including the salon owner and the designated licensed salon manager to ensure that all infection control requirements are followed;

(18) implementation of proper component mixing practices to reduce the risk of undesired reactions;

(19) maintenance of safety data sheets containing pertinent facts regarding products;

(20) implementation of proper storage practices to ensure that products are maintained in the manner that prevents any risk of fire or of undesired reactions;

(21) implementation of proper disinfection practices of working tools and implements; all non-porous (multi-use) items must be cleaned and then disinfected per procedure listed in Subsection B. of 16.34.7.9 NMAC;

(22) sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of filled contaminated waste containers on-site shall not exceed 90 days; containers shall be stored as far away as possible from autoclave/clean instruments. Establishment shall maintain records of waste removal;

(23) use of an autoclave requires monthly spore tests. Autoclaves and autoclave packaging of tools are prohibited unless regular (at least once per month but not more than 30 days between tests) spore tests are performed by a contracted laboratory. If a positive spore test is received, the autoclave may not be used until a negative spore result is received;

(24) each establishment must maintain a log of each autoclave use, all testing samples and results, and a maintenance log of all maintenance performed according to the manufacturer's directions. The salon must retain the most recent twelve months of the log at the salon for review by the board;

(25) there shall be adequate disinfectants in your place of business to perform all scheduled services for two business days;

(26) adherence to the product manufacturer's directions for safe use that appear on

the product labeling; including proper mixing, replacement of solution, contact time and disposal;

(27) disinfectant solutions must be made daily, and disposed of at the end of the day or immediately if visible debris is present;

(28) if concentrated disinfectants must be diluted with water, measuring devices must be readily available and used to ensure an effective solution is made;

(29) all products and chemicals not in the original container must be kept in closed and legibly labeled container with name of product, product description (disinfectant) and manufacturer's name;

(30) disinfected implements must be stored in a disinfected, dry, covered container and be isolated from contaminants. At no time can these items come into contact with used/dirty items;

(31) all multi-use implements must be kept in covered, marked, separate containers (dirty or disinfected);

(32) maintain disinfected combs, brushes and implements in enclosed containers marked as "ready for use";

(33) maintain dirty or used combs, brushes and implements in enclosed containers marked "not ready for use";

(34) towel warmers must be disinfected daily. Salons using hot steamed towels in services must meet the following requirements:

(a) all towels, linens, sheets, robes and other linens must be laundered after each use, dried and hot to the touch, and be kept in enclosed container or cabinet;

(b) towels must be washed with detergent, (properly diluted), and dried on "hot";

(c) practitioners preparing towels for the warmers must first wash their hands or wear gloves;

(d) wet towels used in services must be

prepared fresh each day. At the end of the day, unused steamed towels must be removed and laundered;

(e) clean towels, sheets, robes and other linens must be used for each client;

(f) the use of paper or disposable towels, linens, etc. shall be disposed of after each use; and

(g) a new, disposable neck strip must be used for each client or a freshly laundered unused towel be placed between chair cloth/shampoo cape and person's skin. The chair cloth and shampoo cape must not have direct contact with client's skin.

(35) filters and drains of pedicure basins must be cleaned and disinfected after each use with an EPA hospital grade disinfectant. Immediately after each service, the practitioner must follow steps listed below:

(a) dirty water is drained, and any visible debris is removed;

(b) all removable filter screens, inlet jets, footplates, impeller assemblies, and other parts are removed and debris eliminated before scrubbing with a disinfected brush and detergent and water;

(c) the tub basin is scrubbed with detergent and water, and rinsed with water, and drained;

(d) removable parts are replaced;

(e) the basin or tub is filled with clean water and an EPA-registered hospital level disinfectant is added following the manufacturer's directions;

(f) if the pedicure tub is electrical, the fan or pump must be turned on and the unit operated for the entire contact time; and

(g) after the contact time is complete, the disinfectant must be drained, and the tub rinsed with clean water.

(36) pedicure tub liners are single use items and must be disposed of immediately after

use;

(37) pedicure basins shall be disinfected between clients, at the end of the day, and deep disinfection once weekly; and

(38) a log is maintained by the salon showing the legible signature, license number of the person disinfecting the tub, the time and date of the disinfection process and the name of the disinfectant used. Log entries must be maintained on the salon premises for 12 months.

(39) Eyebrow thread is a single use item and must be disposed of immediately after use.

B. Cleaning and disinfection

(1) all single-use instruments, items, tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: eyebrow thread, disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, toe separators, porous files and porous buffers, etc.) shall be disposed of immediately after use;

(2) prior to use on any client, all multi-use (non-porous) instruments, items, equipment, implements or tools must be cleaned and disinfected. Items must be cleaned with soap and warm water or a chemical cleaner. The items must then be disinfected by a complete immersion in an EPA-registered, bactericidal, fungicidal and virucidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

(3) before disinfecting any surface or item, any visible debris and disposable parts must be removed. After cleaning, all surfaces of non-porous, multi-use tool or implement, including handles, must be disinfected by fully

submerging the item in disinfectant in a covered container for the full amount of contact time listed on the manufacturer's label;

(4) implements and surfaces shall first be thoroughly cleaned of all visible debris prior to disinfection. EPA-registered bactericidal, fungicidal and virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates;

(5) EPA-registered bactericidal, fungicidal and virucidal disinfectants shall be used as follows:

(a) some disinfectants may be sprayed on the instruments, tools, or equipment to be disinfected;

(b) disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled; and

(c) these chemicals are harsh and may affect the long term use of scissors and other sharp objects. Leaving items in solution in accordance with manufacturers' recommendation for effective disinfection is recommended.

(6) head rests, hand rests, pedicure basins, foot rests, manicure tables and other fixtures that come in contact with licensees and the public shall be cleaned and disinfected prior to use for each client;

(7) cups, bowls, basins, and jars must be cleaned and disinfected prior to use on each client;

(8) after each client, the implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal and virucidal disinfectant. Equipment, implements, tools, and materials to be cleaned and disinfected include, but are not limited to: combs and picks, haircutting shears, thinning shears/texturizers, edgers, guards, perm rods;

(9) items MUST stay immersed or visibly moist

with disinfectant for the entire contact time listed on the manufacturer's label to be effective;

(10) whether or not disposable, the following must be replaced with clean or new (including, but not limited to) towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas);

(11) items that may not be immersed can be sprayed or wiped with disinfectant sprays and wipes that are bactericidal, fungicidal and virucidal (EPA-registered disinfectants) and must remain visibly moist for contact time indicate on the product label:

(a) metal guards, clipper blades, drill bits, high frequency waxes, and other removable parts must be removed. All product residue, hair skin debris, nail dust, other visible debris must be brushed or wiped off, and the removable part must be disinfected with an EPA-registered, hospital level disinfectant spray or wiped after each use. The surfaces must remain wet with the spray or wipe disinfectant for the contact time listed on the disinfectant label; and

(b) electric clippers, nail drills, flat irons, blow dryers, glass or metal electrodes, esthetic machines, steamers, or other electric or electronic tools must be cleaned and disinfected after each use, including the body and handle.

(12) clipper wash designed as cleaner, not as disinfectant, unless specified as disinfectant on label;

(13) all disinfectant solution must be changed per the manufacturer's label or sooner if contaminated;

(14) all products must be wiped cleaned and the exterior disinfected with a disinfectant wipe at the end of the day;

(15) all fluids, semi-fluids, creams, waxes, and powders must be kept in clean covered containers with a solid cover, and must be dispensed in a manner which prevents contamination of the unused supply;

(16) products in tubs must be removed with disposable or disinfected spatulas, and fingers may never be used;

(17) products removed from container must not be returned to the container and must be used or discarded;

(18) containers must be wiped cleaned and the exterior disinfected with a disinfectant wipe at the end of the day;

(19) wax pots must be kept covered and the exterior cleaned daily;

(a) if debris is found in the wax pot, or if the wax has been contaminated by contact with skin;

(b) unclean applicators, or double dipping, the wax pot must be emptied, the wax discarded, and the pot must be disinfected;

(c) disposable spatulas and wooden sticks may be dipped into the wax only once and then discarded without using the other end;

(d) applicators may be dipped only once into the wax unless the wax is a single-service item and unused wax is discarded after each service; and

(e) any surface touched by a used wax stick must be disinfected immediately after the service.

(20) paraffin warmers must be kept covered, the exterior cleaned daily, and the wax must be debris free. Cannot go back into paraffin tub;

(21) a new waxing stick must be used for each wax application; no double-dipping;

(22) all licensees must provide a suitable place equipped to give adequate service, as advertised to clients, subject to inspection by the board;

(23) practitioners shall wash their hands with liquid soap, or use a liquid hand sanitizer, prior to performing any services on a client. Thoroughly wash hands and the exposed portion of arms with soap and water before

providing services to each client after smoking, drinking, eating and using the restroom; and

(24) proper use of protective devices when so indicated by the product manufacturer's direction for safe use or when the nature of the product indicates such protection is necessary.

C. Blood exposure procedure

(1) If a blood exposure should occur, the following steps must be followed:

(a) when possible injured party should go to a sink and rinse injury with running water and "milk" the injury if possible to remove any bacteria that may have entered the wound;

(b) supply injured party with antiseptic or single use packet of antibacterial ointment and the appropriate dressing to cover the injury; and

(c) bag all blood-soiled (contaminated) porous articles and dispose of in trash. Immediately wash and disinfect all non-porous items (do not continue service with these items). This is the responsibility of the licensee.

(2) If the client is injured, the following steps must be followed:

(a) stop service;

(b) protection - put on gloves;

(c) clean injured area;

(d) apply antiseptic;

(e) cover the injury with the appropriate dressing to prevent further blood exposure;

(f) bag and dispose of all contaminated single use items;

(g) clean and disinfect any implements or surfaces contaminated;

(h) clean hands; and

(i) return to service.

(3) disinfect

all non-porous items (do not continue service with these items).

(4) do not allow containers, brushes, nozzles or liquid styptic container to touch the skin or contact the wound. Use a disposable applicator (never use styptic pencil unless specified for single use).

D. Prohibitions

(1) licensees shall not use any product in providing a service authorized under the Act that is banned or deemed to be poisonous or unsafe by the United States food and drug administration (FDA) or other local, state, or federal governmental agencies responsible for making such determination;

(2) possession or storage on licensed premises of any item banned or deemed to be poisonous or unsafe by the FDA or governmental agency shall be considered *prima facie* evidence of its use;

(3) for the purpose of performing services under the Act, no licensee shall buy, sell, or use, or apply to any person liquid monomeric methyl methacrylate (MMA);

(4) the use, storage or dispensing of such beauty service products containing methyl methacrylate (MMA) or other chemicals determined to be hazardous to the health of licensees or consumers by the board of any federal, state or local health agency, shall be prohibited:

(a) fumigants, formalin (formaldehyde) tablets or formalin liquids;

(b) roll on wax is prohibited;

(c) UV light boxes;

(d) autoclaves and autoclave packaging of tools are prohibited unless regular (at least once per month but not more than 30 days between tests) spore tests are performed by a contracted laboratory. If a positive spore test is received, the autoclave may not be used until a negative spore result is received;

(e) practitioners must not use tools or implements provided by customers unless the practitioner first cleans and disinfects the tool or implement;

(f) prohibited tools must not be used even if supplied by the customer;

(g) salons must not store tools or implements in boxes for customers;

(h) licensees may not perform services on the public while under the influence of alcohol or drugs;

(i) alcohol cannot be served at any establishment without proper license;

(j) procedures performed by any means, by hand, chemical, mechanical, or electrical apparatus or appliance which comes into contact with or penetrates into the dermal layer of the skin is considered invasive;

(k) the use of any product or preparation that comes into contact with or penetrates the dermis layer of the skin;

(l) no establishment or school shall use of any razor-edged device or tool; to include but not limited to credo blades, callus shavers, rasps, graters or other tools for the purpose of removing skin or calluses that could cause an open flesh wound;

(m) no animals in establishments or mobile units unless it is a qualified service animal in accordance with the Service Animal Act, Sections 28-11-1.1 to .6 NMSA 1978; and

(n) live fish, leeches, snails, and other living creatures may not be used in any cosmetic service.
[16.34.7.9 NMAC - Rp 16 NMAC 34.7.9, 06/16/2001; A, 07/16/2004; A, 10/04/2007; A, 12/17/2015; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.8 NMAC, Sections 2, 8, and short-form amendment to Sections 13 and 15, effective 07/14/2018. In Section 13, Subsections B through D were not included as there were no changes in these subsections. In Section 15, Subsections A through H were not included as there were no changes in these subsections.

16.34.8.2 SCOPE: All barber, cosmetology, hairstylist, esthetician, manicurist/pedicurist, manicurist/esthetician, instructor, electrology schools and all students of barbering, cosmetology, hairstylist, esthetician, manicurist/pedicurist, manicurist/esthetician, instructor and electrology.

[16.34.8.2 NMAC - Rp 16 NMAC 34.8.2, 06/16/2001; A, 07/14/2018]

16.34.8.8 APPLICATION FOR OPENING, RELOCATING, CHANGING NAME OF A SCHOOL:

A. A school license is nontransferable.

B. A change of ownership or control is any action by which a person or corporation obtains authority to control the actions of an institution. These actions may include, but are not limited to:

(1) the transfer of the controlling interest of stock of an institution to its parent corporation.

(2) the merger of two or more institutions;

(3) the division of an institution into two or more enterprises or establishments;

(4) the transfer of the assets or liabilities of an institution to its parent corporation;

(5) the acquisition by an individual of the controlling interest of an institution, whether a proprietorship, partnership or corporation;

(6) the sale of an institution; or

(7) the lease of or right to do business as an institution.

C. If ownership or legal control of a licensed school changes, the new owner, lessee or other legally responsible party must submit a new application and secure a new license from the board.

D. If legal control of a school does not change, but the organization of ownership does change (e.g. a sole proprietor becomes the sole stockholder of a corporation which owns the school), the board must receive notarized proof of such change within 30 days of such change.

E. A completed application to open, change ownership or relocate a school authorized under this act must be filed with the board. An application to open a school, change ownership or relocate or change the name of a school filed by a currently licensed school owner must be filed at least 15 days in advance of the expected date of change.

(1) Applications must be on official forms approved by the board and must include the appropriate fee.

(2) Applicants to open, change ownership or relocate a school must demonstrate that the school is financially responsible and the school has sufficient resources to ensure against precipitous closure. Applicants shall provide at least the following information: evidence of ownership; corporate or business status; identity and address of owners, partners, shareholders, and directors; copies of articles of incorporation and by-laws, if applicable; evidence of financial responsibility, including compiled financial statement and balance sheet indicating assets and liabilities; a corporate surety bond or [bank letter of credit in the amount of five thousand dollars (\$5,000) to indemnify students for fees and tuition paid to a school if the school ceases operation] or terminates a program prior to the completion of a student's contract with the school; disclosure of the filing within the last seven years of bankruptcy of

owner(s), partner(s), or director(s); and the identity of two business or financial references.

(3) An owner(s), partner(s), or director(s) of a school applicant must sign a release directed to financial institutions authorizing the disclosure of financial information and shall disclose loan history.

(4) An owner(s), partner(s), or director(s) of a school applicant will be required to disclose civil actions brought within 10 years of the date of the application against an owner(s), partner(s), or director(s) for or involving nonpayment of debt, fraud, or misrepresentation and the disposition of such action(s).

(5) An owner(s), partner(s), or director(s) of a school applicant will be required to disclose any arrest or conviction within the ten years of the date of the application for fraud, larceny, embezzlement, or any crime involving stealing, taking, theft, robbery, or unlawful appropriation of money or anything of value that belongs to another and the disposition of such action(s).

(6) A school is not financially responsible if an owner(s), partner(s), or director(s) is not making payments in accordance with an agreement, judgment, or debt obligation, or if an owner(s), partner(s), or director(s) has been convicted of felony involving a crime described in Paragraph 5 of Subsection E of 16.34.8.8 NMAC and that owner(s), partner(s), or director(s) is not sufficiently rehabilitated as provided in the Criminal Offender Employment Act, Section 28-2-1 through 28-2-6 NMSA 1978.

(7) In the case of a change of ownership of a school, the school establishment license of the prior owner does not expire for 30 days after the date of sale providing it is a current and valid license. In order to ensure continued training for students, the new owner may operate under the prior license until the earlier of the 30-day expiration date of the prior license or obtaining the new

school establishment license.

(8) In case of a change of ownership of a school, the new school shall submit a student roster of all students enrolled at the time of the change which lists for each student the name, the date of birth, the social security number, course enrolled, the course beginning date and the student permit. The school shall submit the student roster to the board within 30 days of the change of ownership.

F. The application, if complete, may be administratively approved. A formal inspection of the establishment shall occur within 90 days of opening. Incomplete applications without proper and complete supporting documents will be returned.

G. When a school relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the school relocation fee.

H. If any portion of the school is completely segregated from the primary area, a duplicate school license must be acquired and posted in the separate area. A duplicate license fee will be assessed. The school must also comply with 16.34.8.12 NMAC, expansion campus facility requirements.

I. All school licenses must be renewed on March 31 of each year. Any school that has not renewed by March 31 must reapply for licensure and meet all the current application requirements.

J. Each school licensed by the board shall post a current copy of the statutes and rules and regulations and the most recent inspection report in an area where clearly visible to the public.

K. Each school licensed by the board shall post an exterior sign which indicates the facility houses a school.

[16.34.8.8 NMAC - Rp 16 NMAC 34.8.8, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

16.34.8.13 REGULATIONS CONCERNING STUDENTS:

A. Student registration
(1) When a school receives an application from a prospective student, it shall promptly notify the student of the registration requirements of the board.

(2) It shall constitute a violation of the rules, within the meaning of the act, for a school to engage in failure to transmit student registration documents and fees in a timely fashion to the board pursuant to Subsection G of 16.34.15.8 NMAC, wherein fines will be imposed.

(3) It shall be the responsibility of the prospective student to comply with the registration requirements by the first day he/she attends class for credit. Failure to do so may result in loss of hours earned prior to proper registration.

(4) No school shall allow a student to attend class for credit until the student has complied with the registration requirements:

(a) Applicants for the barber, cosmetology, hairstylist, manicure/pedicure, esthetician, electrologist, and manicure/esthetician courses must be at least sixteen years of age and have successfully completed two years of high school or the equivalent.

(b) Applicants for the instructor course must be at least 17 years of age and have successfully completed four years of high school or the equivalent.

(5) Acceptable proof of age and education requirements as follows:

(a) Proof of age includes a copy of a birth certificate, a driver's license or a state issued identification card, or a baptismal certificate.

(b) Proof of two years of secondary education includes a high school diploma, a G.E.D. certificate or transcript of G.E.D. test scores, a sealed letter from the high school attended, a copy of the high school

transcript showing all required grades have been passed, a letter from the G.E.D. testing facility stating that the G.E.D. test has been passed, or any other test approved by the United States department of education for the purpose of determining an applicant's ability to benefit, providing that documentation of grade equivalency is established by the test publisher and the required grade level for the course of study has been achieved.

(c)

The board, or its executive director, may accept as proof of secondary education the applicant's notarized statement that [he/she] the applicant has completed the required secondary education, but has been unable to obtain documentary proof of that from a foreign nation. A notarized statement will not be accepted for students who have completed the secondary education in the United States.

(6) Evidence

of compliance with the foregoing requirements shall accompany the application for registration form provided by the board.

(7) Upon

receipt of a complete student registration form and applicable fee, which shall be received in the board office within 15 days of the date of registration, the board office will then issue a student permit and a permit number. The student permit authorizes the holder to practice course related skills in an approved school on the public only after successful completion of fifteen percent of the program. In addition, the student permit also authorizes the student to participate in the student externship program pursuant to 16.34.8.17 NMAC of these rules. A photograph of the student (front view, head only, at least one and one-half inches by one and one-half inches) shall be attached to the permit. The permit shall be displayed in a binder in the school in which the student is enrolled and open to review by the state inspector or other board designee. Student permits are the property of the board and must be returned to the board by the school

upon termination of the student's enrollment.

(8) If

inspection of the student permits and school records determines that students are attending class without being properly registered with the board, the student may be denied the hours previously accrued and the school will be reported to the board for disciplinary action.

[16.34.8.13 NMAC - Rp 16 NMAC 34.8.13, 06/16/2001; A, 07/16/2004; A, 10/04/2007; A, 12/17/2015; A, 07/14/2018]

16.34.8.15 CURRICULUM:

I. Hairstylist

curriculum - 1200-course hours or equivalent credit

(1) THEORY:

- 75 hours or equivalent credit (a)
- limited to orientation; (b)
- state laws and regulations; (c)
- professional image; (d)
- first aid; (e)
- chemistry; (f)
- electricity; (g)
- job seeking; and (h)
- ethics (2)
- STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit (a)
- related theory and safety; (b)
- preparation, procedures and practice; (c)
- products, materials and implements; (d)
- public sanitation; (e)
- methods of sanitation and

- sterilization; (f)
- chemical agents; (g)
- types and classifications of bacteria; (h)
- bacterial growth; (i)
- infections; and (j)
- infection control and safety standards (3)
- SHAMPOO, RINSES, SCALP TREATMENTS: 75 hours or equivalent credit (a)
- related theory; (b)
- anatomy; (c)
- physiology; (d)
- preparation; (e)
- procedures and practice; (f)
- products, materials and implements; (g)
- hair analysis; (h)
- disorders of the hair and scalp; (i)
- hair and scalp treatments; (j)
- related chemistry; and (k)
- client record keeping and safety (4)
- CHEMICAL REARRANGING - PERMS AND RELAXERS: 250 hours or equivalent credit (a)
- related theory; (b)
- anatomy; (c)
- physiology; (d)
- preparation, procedures and practice; (e)
- products, materials and implements; (f)
- hair analysis and client consultation; (g)
- related chemistry; and (h)
- client record keeping and safety (5)

HAIRSTYLING: 150 hours or equivalent credit

related theory;	(a)
anatomy;	(b)
physiology;	(c)
preparation, procedures and practice;	(d)
products, materials and implements;	(e)
hair analysis and client consultation;	(f)
related chemistry;	(g)
wet styling;	(h)
blow drying;	(i)
finger waving;	(j)
air waving;	(k)
hair pressing;	(l)
hair extensions;	(m)
hair weaving;	(n)
braiding;	(o)
corn rowing;	(p)
client consultation and recommendations;	(q)
client record keeping and safety;	(r)
care of wigs and hair pieces	(s)
	(6) HAIR

COLORING - BLEACHING: 225 hours or equivalent credit

related theory;	(a)
anatomy;	(b)
physiology;	(c)
preparation, procedures and practice;	(d)
products, materials and implements;	(e)
hair analysis and client consultation;	(f)
related chemistry;	(g)

temporary, semi-permanent, and permanent applications;	(h)
bleaching, tinting, toning, frosting, special effects and problems;	(i)
client consultation and recommendations; and	(j)
client record keeping and safety	(k)
	(7) HAIR

CUTTING: 225 hours or equivalent credit

related theory;	(a)
anatomy;	(b)
physiology;	(c)
preparation, procedures, and practice;	(d)
use of scissors, shears, razor and clippers;	(e)
products, materials and implements;	(f)
client consultation and recommendations; and	(g)
client recordkeeping and safety	(h)
	(8)

REQUIRED HANDS-ON**TRAINING: instructor approved procedures:**

ladies haircuts;	(a)	75
mens haircuts;	(b)	25
hairstylings;	(c)	25
coloring;	(d)	30
chemical texturing;	(e)	
seven permanent waving; and	(i)	
seven permanent relaxing	(ii)	
	(9)	SALON

BUSINESS, RETAIL SALES: 50 hours or equivalent credit

related theory;	(a)
opening a salon and business plan;	(b)

written agreements;	(c)
regulations and laws;	(d)
salon operation, policies, practices, personnel, compensation, payroll deductions;	(e)
use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and	(f)
salon safety	(g)
	(10)

MISCELLANEOUS: 75 hours or equivalent credit

to be applied by the Instructor to strengthen student performance in curriculum related areas; or	(a)
for supervised field trips and other course related training	(b)

[H:] J. Field trips:

Students enrolled in an approved course of study are allowed to supplement their training through supervised field trips. Such trips and hours or equivalent credit accrued must be supervised and verified by a school official. Field trips, which include curriculum activities such as providing services to residents of nursing homes, must be supervised by a licensed instructor. Hours or equivalent credit accrued through field trips are recorded in the miscellaneous category. If a student is actually participating in a technical skills competition, the hours may be recorded in the applicable curriculum category.

[16.34.8.15 NMAC - Rp 16 NMAC 34.8.15, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

**REGULATION AND
LICENSING DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD OF**

This is an amendment to 16.34.10 NMAC, Sections 2 effective 07/14/2018.

16.34.10.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.
[16.34.10.2 NMAC - Rp 16 NMAC 34.10.2, 06/16/2001; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.11 NMAC, Sections 2 and adding Section 9 effective 07/14/2018.

16.34.11.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors, electrologists, schools, enterprises and establishments.
[16.34.11.2 NMAC - Rp 16 NMAC 34.11.2, 06-16-01; A, 07/14/2018]

16.34.11.9 [RESERVED] VIOLATION OF SANITATION AND SAFETY REQUIREMENTS:

A. If an establishment or enterprise fails the second inspection (re-inspection):
(1) an administrative fee pursuant to 16.34.15.8 NMAC;
(2) a cease and desist order will be served;
(3) a re-inspection fee of up to \$200.00 will be assessed, at the time of the re-inspection.
B. If an establishment or enterprise fails the third inspection (2nd re-inspection):
(1) the inspector will file a complaint;
(2) a re-inspection fee of \$200.00 will be assessed, at the time of the re-inspection;
(3) a cease and desist will be served.
[16.34.11.9 NMAC - Rp 16 NMAC 34.11.9, 06-16-01; Repealed, 10/04/2007; N, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.13 NMAC, Sections 2 and 13 effective 07/14/2018.

16.34.13.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, establishments, applicants and consumers.
[16.34.13.2 NMAC - Rp 16 NMAC 34.13.2, 06/16/2001; A, 07/14/2018]

16.34.13.13 PETITIONS:
A. The board shall accept for consideration at its regular meetings where licensee actions are taken, petitions for variance of these rules. If a licensee wishes to petition the board for a variance of these rules, [he/she/it] the licensee shall do so by filing with the board, in writing, a petition for variance. Such petition shall cite the specific section of these rules from which a variance is sought. It shall include an explanation of all factors and considerations to support the variance sought. A petition needs to be submitted at least 15 days prior to the board meeting where it is to be considered. The petitioner may also request to personally appear before the board to support the petition. The board will only accept petitions that are submitted in the following format:
(1) list the specific section of the rules to be varied, including part number and section;
(2) provide the petitioner’s rationale for the variance;
(3) provide thorough documentation to support the request for variance; and
(4) provide nine copies of the petition and supporting documentation in soft-sided binders for review by the board.
B. Decisions made by the board on a petition for variance shall be made in the same procedural manner as other actions of the board.

C. The denial of a petition for variance cannot be appealed.
[16.34.13.13 NMAC - N, 06/16/2001; A, 10/04/2007; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.14 NMAC, Sections 2 and 8 effective 07/14/2018.

16.34.14.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, specialty licenses, enterprises and establishments.
[16.34.14.2 NMAC - Rp 16 NMAC 34.14.2, 06/16/2001; A, 10/29/2016; A, 07/14/2018]

16.34.14.8 FEES: The fees for examination, original licensure and annual renewal, licensure by reciprocity and special fees are as follows:

- A.** Enterprise or establishment license (original) \$200.00
- B.** Enterprise or establishment license (renewal) \$50.00
- C.** Booth establishment license (original) \$200.00
- D.** Booth establishment license (renewal) \$50.00
- E.** School license (original and renewal) \$500.00
- F.** Relocation of a school \$185.00
- G.** Barber license (original and renewal) \$50.00
- H.** Cosmetologist license (original and renewal) \$50.00
- I.** Hairstylist license (original and renewal) \$50.00
- [H:] J.** Manicurist/pedicurist license (original and renewal) \$50.00
- [H:] K.** Manicurist/esthetician license (original and

renewal)	\$50.00
[K:] L. Electrologist license (original and renewal)	\$50.00
[E:] M. Esthetician license (original and renewal)	\$50.00
[M:] N. Instructor license (original and renewal)	\$50.00
[N:] O. Reciprocity (original)	\$150.00
[O:] P. Administrative fee (other examination administrative costs) a maximum of	\$100.00
[P:] Q. Administrative fee (lists on disks)	\$95.00
[Q:] R. Administrative fee (relocation of establishments, etc.)	\$25.00
[R:] S. Examinations and re-examinations all licenses except instructor a maximum of	\$100.00
[S:] T. Instructor examination and re-examination a maximum of	\$100.00
[F:] U. Duplicate licenses	\$25.00
[H:] V. Student permit license	\$25.00
[V:] W. Barber apprentice license	\$25.00
[W:] X. Late fee	\$40.00
[X:] Y. Provider approval, initial and renewal	\$50.00
Z. Re-inspection fee up to	\$200.00

[16.34.14.8 NMAC - Rp 16 NMAC
34.14.8, 06/16/2001; A, 07/16/2004;
A, 10/04/2007; A, 04/12/2010; A,
10/29/2016; A, 07/14/2018]

**REGULATION AND
LICENSING DEPARTMENT
BARBERS AND
COSMETOLOGISTS, BOARD OF**

**This is an amendment to 16.34.15
NMAC, Sections 2, and 8 effective
07/14/2018.**

16.34.15.2 SCOPE: All
barbers, cosmetologists, hairstylists,
estheticians, manicurist/pedicurists,
manicurist/estheticians, instructors,
electrologists, schools, enterprises and
establishments.

[16.34.15.2 NMAC - Rp 16 NMAC
34.15.2, 06/16/2001; A, 07/14/2018]

**16.34.15.8 ADMINISTRATIVE
PENALTIES AND FINES:**

~~[A:]~~ Subject to legally
required procedural safeguards, any
person who violates any provisions
of the act or any rule adopted by the
board may incur, in addition to any
other penalty provided by law, a civil
penalty in an amount of less than one
thousand dollars (\$1,000) for each
violation. The board will serve on the
licensee official notice of any such
fine that the board proposes to assess.
Failure to pay a fine, once properly
assessed, may result in an additional
fine or revocation of license or other
disciplinary action. The penalties to
be assessed are as follows:

A. A re-inspection fee
of two hundred dollars (\$200) will be
assessed for each inspection pursuant
to 16.34.11.9 NMAC.

B. Failure to comply
with establishment requirements:

(1) first
offense: two
hundred dollars (\$200);

(2) second
offense: four
hundred dollars (\$400);

(3) third and
subsequent offenses: the board
shall take steps to impose a further
fine up to the limit of nine hundred
ninety nine dollars (\$999) or to take
other disciplinary action as permitted
by the act or the New Mexico
Uniform Licensing Act.

C. Failure to
comply with sanitation and safety
requirements for establishments:

(1) first
offense: warning
from inspector/"board";

(2) second
offense: two
hundred dollars (\$200);

(3) third and
subsequent offenses: the board
shall take steps to impose a further
fine up to the limit of nine hundred
ninety nine dollars (\$999) or to take
other disciplinary action as permitted
by the act or the New Mexico
Uniform Licensing Act.

D. Failure to post
required licenses:

(1) first

offense: one hundred fifty dollars
(\$150);

(2) second
offense: four hundred dollars (\$400)

(3) third and
subsequent offenses: the board shall
take steps to impose a further fine up
to the limit of nine hundred ninety
nine dollars (\$999) or to take other
disciplinary action as permitted by
the act or the New Mexico Uniform
Licensing Act.

E. Working on an
expired or invalid license:

(1) first
offense: one hundred fifty dollars
(\$150);

(2) second
offense: four hundred dollars (\$400);

(3) third and
subsequent offenses: the board shall
take steps to impose a further fine up
to the limit of nine hundred ninety
nine dollars (\$999) or to take other
disciplinary action as permitted by
the act or the New Mexico Uniform
Licensing Act.

F. Performing services
for compensation in an unlicensed
establishment:

(1) first
offense: five hundred dollars (\$500);

(2) second
offense: six hundred dollars (\$600);

(3) third and
subsequent offenses: the board shall
take steps to impose a further fine up
to the limit of nine hundred ninety
nine dollars (\$999) or to take other
disciplinary action as permitted by
the act or the New Mexico Uniform
Licensing Act.

G. Failure by a school
to properly and timely register all
students:

(1) first
offense: two hundred dollars (\$200);

(2) second
offense: four hundred dollars (\$400);

(3) third and
subsequent offenses: the board shall
take steps to impose a further fine up
to the limit of nine hundred ninety
nine dollars (\$999) or to take other
disciplinary action as permitted by
the act or the New Mexico Uniform
Licensing Act.

H. Committing any of

the causes listed in Subsection A of Section 61-17-21 NMSA 1978 not otherwise addressed in these rules:

- (1) first offense: two hundred dollars (\$200);
- (2) second offense: four hundred dollars (\$400);
- (3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

I. Student loan default is defined as “the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the lender or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days.”

J. Official notice of default: The board shall take steps to impose a fine up to nine hundred ninety nine dollars (\$999) or take other disciplinary action as permitted by the act or the Uniform Licensing Act which may include suspension, revocation or failure to renew a license.

[16.34.15.8 NMAC - Rp 16 NMAC 34.15.8, 06-16-01; A, 04/12/10; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS, BOARD OF

This is an amendment to 16.34.16 NMAC, Section 2 effective 07/14/2018.

16.34.16.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/ estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.16.2 NMAC - Rp 16 NMAC 34.16.2, 06/16/2001; A, 07/14/2018]

REGULATION AND LICENSING DEPARTMENT PHARMACY , BOARD OF

On 05/23/2018, the Pharmacy Board repealed its rule 16.19.20 NMAC, Controlled Substances, filed 07-15-2002, and replaced it with 16.19.20 NMAC, Controlled Substances, effective 06-26-2018.

REGULATION AND LICENSING DEPARTMENT PHARMACY , BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 20 CONTROLLED SUBSTANCES

16.19.20.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy. [16.19.20.1 NMAC - Rp 16.19.20.1 NMAC, 06-26-2018]

16.19.20.2 SCOPE: All persons or entities that manufacture, distribute, dispense, administer, prescribe, deliver, analyze, or conduct research using controlled substances. [16.19.20.2 NMAC - Rp 16.19.20.2 NMAC, 06-26-2018]

16.19.20.3 STATUTORY AUTHORITY: Section 30-31-11 of the Controlled Substances Act, 30-31-1 through 30-31-42 NMSA 1978, authorizes the board of pharmacy to promulgate regulations and charge reasonable fees for the registration and control of the manufacture, distribution and dispensing of controlled substances. [16.19.20.3 NMAC - Rp 16.19.20.3 NMAC, 06-26-2018]

16.19.20.4 DURATION: Permanent. [16.19.20.4 NMAC - Rp 16.19.20.4 NMAC, 06-26-2018]

16.19.20.5 EFFECTIVE DATE: June 26, 2018, unless a

different date is cited at the end of a section.

[16.19.20.5 NMAC - Rp 16.19.20.5 NMAC, 06-26-2018]

16.19.20.6 OBJECTIVE: The objective of Part 20 of Chapter 19 is to protect the public health and welfare of the citizens of New Mexico by controlling and monitoring access to controlled substances and to give notice of the board’s designation of particular substances as controlled substances.

[16.19.20.6 NMAC - Rp 16.19.20.6 NMAC, 06-26-2018]

16.19.20.7 DEFINITIONS: [RESERVED] [16.19.20.7 NMAC - Rp 16.19.20.7 NMAC, 06-26-2018]

16.19.20.8 REGISTRATION REQUIREMENTS: Persons required to register:

- A.** manufacture - term includes repackagers;
- B.** distributors - term includes wholesale drug distributors;
- C.** dispensers - pharmacies, hospital pharmacies, clinics (both health and veterinarian);
- D.** practitioners - includes a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian, pharmacist, pharmacist clinician, certified registered nurse anesthetists, psychologists, chiropractic examiner, euthanasia technicians or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act. Practitioners, excluding veterinarians, must register with the New Mexico prescription monitoring program in conjunction with their controlled substance registration.

- E.** scientific investigators or researchers;
- F.** analytical laboratories and chemical analysis laboratories;
- G.** teaching institutes;
- H.** special projects and demonstrations which bear directly

on misuse or abuse of controlled substances - may include public agencies, institutions of higher education and private organizations;

I. registration waiver: an individual licensed practitioner (e.g., intern, resident, staff physician, mid-level practitioner) who is an agent or employee of a hospital or clinic, licensed by the board, may, when acting in the usual course of employment or business, order controlled substances, for administration to the patients of the facility, under controlled substance registration of the hospital or clinic in which he or she is employed provided that:

(1) the ordering of controlled substances for administration, to the patients of the hospital or clinic, is in the usual course of professional practice and the hospital or clinic authorizes the practitioner to order controlled substances for the administration to its patients under its state controlled substance registration;

(2) the hospital or clinic has verified with the practitioner's licensing board that the practitioner is permitted to order controlled substances within the state;

(3) the practitioner acts only within their scope of employment in that hospital or clinic;

(4) the hospital or clinic maintains a current list of practitioners given such authorization and includes the practitioner's full name, date of birth, professional classification and license number, and home and business addresses and phone numbers;

(5) the list is available at all times to board inspectors, the DEA, law enforcement and health professional licensing boards; and

(6) the hospital or clinic shall submit a current list of authorized practitioners with each hospital or clinic controlled substance renewal application.

[16.19.20.8 NMAC - Rp 16.19.20.8 NMAC, 06/26/2018]

16.19.20.9 REGISTRATION AND EXPIRATION DATES:

A. Any person who is required to be registered and who is not registered may apply for registration at any time.

B. In December 1982 all registrant renewal dates will be assigned to one of 12 groups which shall correspond to the months of the year. Thereafter, any person who first registers will also be assigned to one of the 12 groups.

C. Expiration date of the registration of all individuals or businesses within any group will be the last day of the month designated for that group. Renewal date will be within 30 days of the date shown on the registration permit and will expire on that date if not renewed by the registrant.

D. Renewal applications will be mailed to the address indicated on the application on file or as amended by change of address supplied by the registrant to the board of pharmacy.

[16.19.20.9 NMAC - Rp 16.19.20.9 NMAC, 06/26/2018]

16.19.20.10 REGISTRATION FEE:

A. The registration fee or renewal fee required by the Controlled Substances Act shall be \$180.00 for registrants per triennium. A locum tenens practitioner may apply for an initial registration which expires no more than one year after date of issuance, and this registration fee shall be \$60.00.

B. Research applicants registered as a practitioner shall not be required to register as a scientific investigator if he is registered as a practitioner. However, this does not exempt him from the regulations applicable to a scientific investigator.

C. Duplicate license - \$10.00.

[16.19.20.10 NMAC - Rp 16.19.20.10 NMAC, 06/26/2018]

16.19.20.11 APPLICATION

FORMS: Application forms may be obtained from the board of pharmacy, Albuquerque, New Mexico.

[16.19.20.11 NMAC - Rp 16.19.20.11 NMAC, 06/26/2018]

16.19.20.12 SCHEDULES:

Applications shall designate the schedule of controlled substances and whether the application is for narcotic or non-narcotic in schedules I through V.

[16.19.20.12 NMAC - Rp 16.19.20.12 NMAC, 06/26/2018]

16.19.20.13 SEPARATE REGISTRATION OF EACH PRINCIPAL PLACE OF BUSINESS:

Separate registration is required for each principal place of business or professional practice with the address indicated on the application if drugs are dispensed or distributed from the different locations. **NOTE:** This does not include warehouse storage areas; office used by agents for soliciting which contain no controlled substances other than samples, physician's office where controlled substances are prescribed but not administered or otherwise dispensed.

[16.19.20.13 NMAC - Rp 16.19.20.13 NMAC, 06-26-2018]

16.19.20.14 INFORMATION REQUIRED:

A. The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board may consider the following factors from information listed on the application:

(1) maintenance of effective controls against diversion of controlled substances;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's

establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

B. Each application shall include all information as required on the application form, including but not limited to a current DEA registration and professional license, and shall be signed by the applicant.
[16.19.20.14 NMAC - Rp 16.19.20.14 NMAC, 06-26-2018]

16.19.20.15 FACILITY INSPECTION: The board of pharmacy may direct the drug inspector to inspect the facilities prior to approval of any application for security provision and other applicable standards as required by the Controlled Substances Act.
[16.19.20.15 NMAC - Rp 16.19.20.15 NMAC, 06-26-2018]

16.19.20.16 PROCEDURE SUMMARY: A scientific investigator or research applicant shall submit a summary of procedures indicating the nature, extent and duration of such research. The summary shall also include the names of individuals engaged in the project (other than those exempt under the Controlled Substances Act) the name or names of the substances to be used in the research project, the adequacy of safeguards against diversion of the controlled substance(s) to be used, source of supply of controlled substance(s) if applicable, and evidence of FDA and DEA approval and registration if registered by the federal agencies.
[16.19.20.16 NMAC - Rp 16.19.20.16 NMAC, 06-26-2018]

16.19.20.17 ANALYTICAL LABORATORIES:
A. Analytical laboratory applicants shall submit application on the form provided by the board. All applicable questions on the application shall be filled in and signed by the person in charge of the facility.
B. Quantities of controlled substances in possession of analytical laboratories shall be limited to such quantities as required for reference standards, assays or other scientific purposes.
[16.19.20.17 NMAC - Rp 16.19.20.17 NMAC, 06-26-2018]

16.19.20.18 EXEMPTION OF LAW ENFORCEMENT OFFICIALS: Registration is waived for the following persons:
A. Any officer or employee of the state or federal customs agency, the state police, or any enforcement officer of any political subdivision of the state, who is engaged in the enforcement of any federal, state and local law relating to controlled substances and is duly authorized to possess controlled substances in the course of his official duties.
B. Any official exempted by this section may procure any controlled substance in the course of an inspection pursuant to Section 31 of the Controlled Substances Act or in the course of any criminal investigation involving the person from whom the substance was procured.

C. Laboratory personnel, when acting in the scope of their official duties, are also exempt from registration under the Controlled Substances Act.
[16.19.20.18 NMAC - Rp 16.19.20.18 NMAC, 06-26-2018]

16.19.20.19 MODIFICATION, TRANSFER AND TERMINATION OF REGISTRATION:
A. Modification of a registration to authorize additional controlled substances may be made by filing an application in the same number as an application for a new

registration. No fee shall be required for such modification.
B. Registration shall terminate if and when a registrant dies, discontinues business or professional practice, has his professional license revoked or suspended, no longer possesses a DEA registration or has had his DEA registration revoked or suspended, or changes his name or address as shown on the registration. In such instances, the registrant or his estate shall notify the board of pharmacy promptly of such fact and return certificate of registration to the board within 30 days.

C. Inventories and records of controlled substances listed in schedules II, III, IV and V shall be maintained either separately from all other records or in such form that the information required is readily retrievable from ordinary business records of the registrant.

D. In the event of a change in name or address the person shall file an application in the same number as an application for modification of a registration. No fee shall be required for such modification.

E. Registration under the Controlled Substances Act shall not be transferable.
[16.19.20.19 NMAC - Rp 16.19.20.19 NMAC, 06-26-2018]

16.19.20.20 INVENTORY RECORDS:
A. All registrants are required to keep inventory and procurement records.

B. All registrants shall comply with the following inventory requirements: schedule I, II, III, IV and V annual inventory.

C. The annual inventory date shall be May 1 for the initial inventory by the registrant or on the registrant's regular general physical inventory date, provided that date does not vary by more than six months before or after May 1. The registrant shall notify the board of pharmacy of the date on which the annual inventory will be taken, if different from May 1. The actual

taking of the inventory should not vary more than four days from the annual inventory date. The inventory shall document being taken either as of the opening or as of the close of business activity, the inventory date and time, and shall be entered on the inventory record.

D. Controlled substances added to the Controlled Substances Act after date of enactment, which substance was, immediately prior to that date, not listed on any schedule, every registrant who possesses that substance shall take an inventory of all stock of the substance on hand and file this record with the other inventory records as required.

E. Upon the change of a pharmacist-in-charge, an inventory of all controlled substances shall be taken within 72 hours, by the new pharmacist-in-charge. The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.

F. Upon transfer of ownership of a pharmacy, an inventory of all controlled substances shall be taken by the pharmacist-in-charge. The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.
[16.19.20.20 NMAC - Rp 16.19.20.20 NMAC, 06-26-2018]

16.19.20.21 INVENTORY RECORDS OF

MANUFACTURERS AND REPACKAGERS: Manufacturers and repackagers inventory records shall contain the following information:

A. Finished form:
(1) name of substance;
(2) each finished form of the substance (10 milligram tablet, etc.)
(3) the number of units or volume of each finished form in each commercial container

(100 tablet bottle, etc.)

(4) the number of commercial containers of each such finished form.

B. Controlled substances not included above such as damaged, defective impure substances awaiting a disposal giving total quantity and the name of the substance. A statement of reason for the substance being included in this category.

[16.19.20.21 NMAC - Rp 16.19.20.21 NMAC, 06-26-2018]

16.19.20.22 DISTRIBUTION INVENTORY RECORDS:

Distributor inventory records shall contain the same information required of manufacturers.

[16.19.20.22 NMAC - Rp 16.19.20.22 NMAC, 06-26-2018]

16.19.20.23 INVENTORY REQUIREMENTS - RESEARCH:

A. Research registrant shall include in his inventory the name of the substance, each finished form of the substance, the number of units or volume of each finished form in each commercial container (100 tablet bottle, etc.) and the number of commercial containers of each such finished form.

B. A commercial container which has been opened shall be the exact count or measure of substances listed in schedule I or schedule II. If the substance is listed in schedule III, IV or V, he shall make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case the count must be exact.

[16.19.20.23 NMAC - Rp 16.19.20.23 NMAC, 06-26-2018]

16.19.20.24 ANALYTICAL LABORATORIES:

Analytical laboratories shall include in the inventory record the same information required of manufacturer's.

[16.19.20.24 NMAC - Rp 16.19.20.24 NMAC, 06-26-2018]

16.19.20.25 CONTROLLED SUBSTANCES INVENTORIES AND RECORDS:

A. Pharmacies, hospitals, clinics and practitioners who dispense controlled substances shall maintain inventories and records of controlled substances listed in schedules II and II-N separately from all of the other prescription records.

B. "Readily retrievable" means records kept in such a manner as to be easily separated out from all other records in a reasonable time or records are kept on which certain items are redlined, starred or in some manner are visually identifiable apart from other items appearing on the record.

[16.19.20.25 NMAC - Rp 16.19.20.25 NMAC, 06-26-2018]

16.19.20.26 PROCUREMENT RECORDS:

"Order forms" refer to DEA form 222 required for distribution or procurement of a schedule I or II controlled substance under the federal act. Order forms are issued in books of six forms in triplicate to registrants by requisition from DEA registration branch, Department of Justice, P.O. Box 28083, Central Station, Washington, DC, 20005.

[16.19.20.26 NMAC - Rp 16.19.20.26 NMAC, 06-26-2018]

16.19.20.27 ORDER FORMS AS RECORDS:

Order forms for schedule I and II controlled substances shall be deemed proper record of receipt, if the purchaser records on copy 3 of the order form the number of commercial or bulk containers furnished of each item and the date on which such containers are received by the purchaser.

[16.19.20.27 NMAC - Rp 16.19.20.27 NMAC, 06-26-2018]

16.19.20.28 INVENTORY RECORDS:

All schedule I and II narcotic substance inventory records and procurement records will be kept separate from other records of the registrant.

[16.19.20.28 NMAC - Rp 16.19.20.28 NMAC, 06-26-2018]

16.19.20.29 PROCUREMENT RECORDS:

Procurement records,

other than the inventory, may be kept at a central location, rather than at the registered location, if prior approval has been obtained under the federal regulations; provided such records are delivered, upon request of the board, to the registered location within 48 hours of such request.
[16.19.20.29 NMAC - Rp 16.19.20.29 NMAC, 06-26-2018]

16.19.20.30 DISPOSITION RECORDS: Practitioner's disposition records shall include date of dispensing, name of patient, name and strength of substance and amount dispensed.
[16.19.20.30 NMAC - Rp 16.19.20.30 NMAC, 06-26-2018]

16.19.20.31 PHARMACY AND HOSPITAL PRESCRIPTION AND DISPENSING RECORDS:

A. Prescriptions for schedule II shall be maintained in a separate file.

B. In pharmacies without computerized prescription information, prescriptions for schedules II, III, IV and V shall have the name of the dispensing pharmacist and the date filled inscribed on the face of the prescription. (Typewritten, printed or rubber stamp are acceptable.)

C. Prescriptions for schedule III, IV and V shall be maintained either in a separate file only, or in such form that they are readily retrievable from other records of the pharmacy. "Readily retrievable" means that at the time of filing, the face of the prescription is stamped in red ink in the lower right hand corner with the letter "C" no less than 1 inch high, or the records comply with 16.19.6.22 NMAC "Computerized Prescription Information".

D. Prescriptions so marked may then be filed with prescriptions for schedule II substances, or in the usual consecutively numbered prescription file for non-controlled drugs.

E. Pharmacies employing automatic data processing systems or other electronic record

keeping systems for prescriptions must comply with 16.19.6.22 NMAC "Computerized Prescription Information".

F. Hospital floor stock records. A record of controlled substances administered from floor stock shall contain the following information:

- (1) name of patient;
- (2) date and time administered;
- (3) name of drug;
- (4) strength of drug;
- (5) amount administered;
- (6) name of prescribing physician;
- (7) name of person administering the controlled substance.

[16.19.20.31 NMAC - Rp 16.19.20.31 NMAC, 06-26-2018]

16.19.20.32 RESEARCH DISPOSITION RECORDS:

A. A registered person using any controlled substance under FDA regulations in research at a registered establishment which maintains records in accordance with FDA approved research requirements is not required to keep records if he notifies the DEA and the board of pharmacy of the name, address and all registration numbers of establishments maintaining such records.

B. A registered person using any controlled substance in preclinical research or in teaching at a registered establishment which maintains records of such substances is not required to keep records if he notifies the DEA and the board of pharmacy of the name, address and all registration numbers of the establishments maintaining the records.

[16.19.20.32 NMAC - Rp 16.19.20.32 NMAC, 06-26-2018]

16.19.20.33 MANUFACTURERS AND REPACKAGERS:

A. Disposition records shall be maintained on all controlled substances. Schedule I and II records shall be maintained separately from all other records.

B. Disposition records for schedules III, IV and V shall be maintained either separately from all other records or in such form that the information required is readily retrievable from the ordinary business records of the registrant.

[16.19.20.33 NMAC - Rp 16.19.20.33 NMAC, 06-26-2018]

16.19.20.34 WHOLESALE DISTRIBUTORS: Wholesale distributors disposition records shall contain the same information required of manufacturers.

[16.19.20.34 NMAC - Rp 16.19.20.34 NMAC, 06-26-2018]

16.19.20.35 ANALYTICAL LABORATORIES RECORDS:

Analytical laboratories records shall include:

- A.** name of substance;
- B.** the form or forms in which substance is received, imported or manufactured and the concentration of the substance;
- C.** quantity and strength received;
- D.** date of receipt;
- E.** name and DEA registry number of supplier;
- F.** adequate record of distribution.

[16.19.20.35 NMAC - Rp 16.19.20.35 NMAC, 06-26-2018]

16.19.20.36 REPORT OF LOSS OR THEFT OF A CONTROLLED SUBSTANCE:

A. The registered supplier shall be responsible for reporting in-transit losses of controlled substances by a common carrier or contract carrier selected by the supplier upon discovery of such loss or theft. Registrant shall complete DEA form 106 as required and furnish a copy to the board of pharmacy.

B. A significant loss or theft of a controlled substance shall be reported in writing to the board

of pharmacy and DEA on form 106 as required by federal regulations. "Significant loss" includes suspected diversions, in-transit losses or any other unexplained loss and must be reported to the board of pharmacy within five days of becoming aware of that loss. DEA form 106 may be obtained from the board of pharmacy or DEA.
[16.19.20.36 NMAC - Rp 16.19.20.36 NMAC, 06-26-2018]

16.19.20.37 HOSPITALS, INSTITUTIONS AND CLINICS:

Disposal of excess or undesirable controlled substances resulting from extemporaneous amounts of residue or wasted controlled substances. A registrant who needs to dispose of excess or undesirable controlled substances resulting from injections from ampules or less than the full ampule or other such circumstances shall keep a written memorandum report on the hospital narcotic records and periodically file a report on DEA form 41 with DEA pursuant to the requirements of the federal DEA Regulations 1307.21(c).
[16.19.20.37 NMAC - Rp 16.19.20.37 NMAC, 06-26-2018]

16.19.20.38 DISPOSITION OF DAMAGED, OUTDATED OR UNWANTED CONTROLLED SUBSTANCES:

Any registrant in possession of any controlled substances and desiring or required to dispose of such substances(s) may contact the regional director of DEA for authority and instructions to dispose of such substance.
[16.19.20.38 NMAC -Rp 16.19.20.38 NMAC, 06-26-2018]

16.19.20.39 EXEMPTION FOR PHARMACY REGISTRATION AS A DISTRIBUTOR, DISTRIBUTION BY A DISPENSER TO ANOTHER PRACTITIONER REGISTERED TO DISPENSE CONTROLLED SUBSTANCES:

A registrant who is registered to dispense controlled substances may distribute a quantity of such substances to a registered practitioner for general dispensing to

his patients if:

A. the distribution is recorded by the pharmacist indicating the number of units or volume of such finished forms and commercial containers dispensed, the date and manner of disposition;

B. the same information is recorded as a procurement by the registrant receiving the substance;

C. if the substance is listed in schedule I or II, an order form is used as required by the federal regulations;

D. the total number of dosage units of all controlled substances distributed by the pharmacy by this method during the 12 month period in which the practitioner is registered to dispense does not exceed five percent of the total number of dosage units of all controlled substances distributed and dispensed by the pharmacy during the 12 month period.

[16.19.20.39 NMAC - Rp 16.19.20.39 NMAC, 06-26-2018]

16.19.20.40 DISTRIBUTION UPON TRANSFER OR DISCONTINUANCE OF BUSINESS:

A. Upon transfer of a business from one owner to another, the registrant may dispose of the controlled substances in his possession as follows:

(1) On the date of transfer of controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with 16.19.20.19 NMAC, board of pharmacy regulations to Title 21, Section 1304.11-1304.14 of the federal DEA regulations. This inventory of the registrant-transferee and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with DEA or the board of pharmacy unless requested by either agency. Transfer of schedule I or II substances require the use of order forms (Form DEA 222c).

(2) All records required to be kept by the

registrant-transferee with reference to the controlled substances being transferred, shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

(3) All schedule II substances must be transferred pursuant to order forms as required by the federal regulations. A copy of the inventory will constitute a record of receipt for the purchaser.

B. Upon discontinuance of business, if there are controlled substances which are not transferred to another registrant, these substances shall be handled as unwanted controlled substances under 16.19.20.37 NMAC.

[16.19.20.40 NMAC - Rp 16.19.20.40 NMAC, 06-26-2018]

16.19.20.41 PRESCRIPTIONS:

A. A prescription for a controlled substance may be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, and who is registered under the Controlled Substances Act. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

B. A prescription may not be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.

C. A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic dependent person for the sole purpose of continuing his dependence upon such drugs.

D. A prescription may not be issued for the dispensing of the narcotic drugs listed in any schedule to a narcotic drug-dependent person in the course of conducting an

authorized clinical investigation in the development of a narcotic addict rehabilitation program.
[16.19.20.41 NMAC - Rp 16.19.20.41 NMAC, 06-26-2018]

16.19.20.42 PRESCRIPTION REQUIREMENTS:

A. All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner. Information on the prescription may be added or clarified by the pharmacist after consultation with the practitioner. A practitioner may sign a paper prescription in the same manner as he would sign a check or legal document (*e.g.*, J.H. Smith or John H. Smith). Where an oral order is not permitted, paper prescriptions must be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by the practitioner. A computer-generated prescription that is printed out or faxed by the practitioner must be manually signed. Electronic prescriptions shall be created and signed using an application that meets the requirements of Part 1311 of the Code of Federal Regulations. An individual practitioner may sign and transmit electronic prescriptions for controlled substances provided the practitioner meets all of the requirements of Part 1306.08 of the Code of Federal Regulations.

B. A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in Subsections C and D of 16.19.20.41 NMAC and Subsection E of 16.19.20.42 NMAC. The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

C. A prescription

prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the parenteral products pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

D. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

E. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a schedule II narcotic substance for a patient enrolled in a hospice program certified by Medicare under title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

F. A pharmacist may dispense directly a controlled substance listed in schedule III or IV, which is a prescription drug as determined under the New Mexico Drugs and Cosmetics Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral

prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner. A telephone order for a new therapy for an opiate listed in schedule III, IV, or V shall not exceed a 10 day supply, based on the directions for use, unless a written prescription is on file at this pharmacy from any practitioner for the same opiate within the past six months. A telephone order for this new opiate therapy may not be refilled.

G. A pharmacy employee shall verify the identity of the patient or the patient's representative who is receiving any prescription for a controlled substance listed in schedule II, III, IV, or V before it is released. Acceptable identification means a current state issued driver's license, including photo, or other current government issued photo identification of the person presenting said identification. The identification type (*e.g.* driver's license, identification card, passport, etc.), number, name imprinted on that identification, and state must be recorded. Exceptions are, a new controlled substance prescription filled for a patient known to the pharmacist or pharmacist intern, whose identification has already been documented in a manner determined by a written policy developed by the pharmacist-in-charge; a controlled substance prescription filled for home delivery; or a controlled substance prescription filled for and delivered to a licensed facility.

[16.19.20.42 NMAC - Rp 16.19.20.42 NMAC, 06-26-2018]

16.19.20.43 PRESCRIPTIONS NOT TO BE REFILLED:

Prescriptions for schedule II drugs may not be refilled.
[16.19.20.43 NMAC - Rp 16.19.20.43 NMAC, 06-26-2018]

16.19.20.44 REFILL PROCEDURE: Each refilling of a schedule III, IV or V controlled substance prescription shall be entered on the back of the prescription,

indicating the amount dispensed, if less than the amount called for on the prescription, the date of refill and the initials of the pharmacist dispensing the substance.

[16.19.20.44 NMAC - Rp 16.19.20.44 NMAC, 06-26-2018]

16.19.20.45 PRESCRIPTION FILL AND REFILL REQUIREMENTS:

A. Prescriptions for any controlled substance shall not be filled more than six months after the date of issue.

(1) Controlled substance prescriptions dispensed directly to a patient shall not be refilled before seventy-five percent of the prescription days' supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

(2) Controlled substance prescriptions delivered to a patient indirectly (as mail order) to a patient shall not be refilled before sixty-six percent of a 90 day supply has passed or fifty percent of a 30 day supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

B. Prescriptions for schedule III, IV, or V controlled substances shall not be filled or refilled more than six months after the date of issue or be refilled more than five times unless renewed by the practitioner and a new prescription is placed in the pharmacy files.
[16.19.20.45 NMAC - Rp 16.19.20.45 NMAC, 06-26-2018]

16.19.20.46 PRESCRIPTION - PARTIALLY FILLED:

A. A prescription for a controlled substance in schedule II may be partially filled if:

(1) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;

(2) the partial fill amount is recorded on the written prescription or in the electronic prescription record; and

(3) the

remaining portions shall be filled not later than 30 days after the date on which the prescription is written.

B. A prescription for a controlled substance in schedule II initially filled later than 30 days after the date written may be partially filled if;

(1) the pharmacist is unable to dispense the total quantity prescribed;

(2) the partial fill amount is recorded on the written prescription or in the electronic prescription record;

(3) the remaining portion is filled within 72 hours of the partial filling; and

(4) the pharmacist notifies the prescribing physician if the remaining portion cannot be filled within the 72 hour period. No further quantity may be supplied beyond 72 hours without a new prescription.

C. Partial filling of a prescription for schedule III or IV shall be recorded in the same manner as a refill, providing the total quantity of partial filling does not exceed the total quantity prescribed and no dispensing occurs after six months from date of prescription.

D. A prescription for a schedule II controlled substance written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities, to include individual dosage units.

(1) If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient".

(2) A prescription that is partially filled and does not contain the notation "terminally ill" or LTCF patient"

shall be deemed to have been filled in violation of this regulation. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist.

(3) The total quantity of schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions, for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

[16.19.20.46 NMAC - Rp 16.19.20.46 NMAC, 06-26-2018]

16.19.20.47 EMERGENCY DISPENSING:

A. Emergency dispensing of schedule II controlled substances. "**Emergency situation**" means the prescribing physician determines:

(1) that immediate administration of a controlled substance is necessary for proper treatment of the intended patient;

(2) that no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under schedule II; and

(3) that it is not reasonably possible for the prescribing practitioner to provide a written prescription to be presented to the person dispensing the substance prior to the dispensing.

B. A pharmacy may dispense a schedule II controlled substance in the above instance only if he receives oral authorization of a practitioner or authorization via facsimile machine and provided:

(1) the quantity prescribed is limited to the amount needed to treat the patient

during the emergency period;

(2)

the pharmacist shall reduce the prescription to a written form and it contains all information required of a schedule II controlled substance prescription except the signature of the prescribing practitioner;

(3) the

prescribing physician, within seven days after authorization of the emergency dispensing, shall furnish a written, signed prescription to the pharmacist. The signed prescription shall have written on the face "AUTHORIZATION FOR EMERGENCY DISPENSING" and the date of the oral order or facsimile order;

(4) the signed

prescription shall be attached to the oral emergency prescription order or the facsimile emergency prescription order and be filed as other schedule II prescriptions.

C. In the event the prescribing physician fails to deliver a signed written prescription to the pharmacist, within the seven days period, the pharmacist shall notify the nearest DEA office, and the board of pharmacy.

[16.19.20.47 NMAC - Rp 16.19.20.47 NMAC, 06-26-2018]

16.19.20.48 SECURITY REQUIREMENTS:

A. All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

B. In evaluating the overall security system of a registrant or applicant, the following factors may be considered, where applicable to the need for strict compliance with security requirements:

(1) the type of

activity;

(2) the type

and form of controlled substances handled;

(3) the

quantity of controlled substances handled;

(4)

the location of the premises and

relationship such location bears on security needs;

(5) the type of

building construction of the facility and the general characteristics of the building;

(6) the type of

vault, safe, and secure enclosures or other storage system used;

(7) the type of

closures on vaults, safes, and secure enclosures;

(8) the

adequacy of key control systems and lock control system;

(9) the extent

of unsupervised public access to the facility;

(10) the

adequacy of supervision over employees having access to storage or distribution areas;

(11) the

procedures for handling business guests, visitors, maintenance personnel and non-employee service personnel;

(12) the

adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution and disposition of controlled substances in its operation.

[16.19.20.48 NMAC - Rp 16.19.20.48 NMAC, 06-26-2018]

16.19.20.49 MANUFACTURERS, REPACKAGERS AND WHOLESALE DISTRIBUTORS:

Security requirements which meet the federal DEA provision shall be deemed adequate under New Mexico Controlled Substances Act.

[16.19.20.49 NMAC - Rp 16.19.20.49 NMAC, 06-26-2018]

16.19.20.50 PHARMACIES AND HOSPITALS, EMPLOYING STAFF PHARMACISTS:

Controlled substances listed in schedule I shall be stored in a securely locked, substantially constructed cabinet. Controlled substances listed in schedule II, III, IV and V shall be stored either in securely locked, substantially constructed cabinets or dispersed throughout the stock of non-controlled substances in such

a manner as to obstruct the theft or diversion of the substances.

[16.19.20.50 NMAC - Rp 16.19.20.50 NMAC, 06-26-2018]

16.19.20.51 HOSPITALS SERVED BY CONSULTANT OR PART-TIME PHARMACISTS, CLINICS AND PHYSICIANS:

Controlled substances listed in schedule I through V shall be stored in a securely locked, substantially constructed cabinet.

[16.19.20.51 NMAC - Rp 16.19.20.51 NMAC, 06-26-2018]

16.19.20.52 RESEARCH REGISTRANTS AND CHEMICAL ANALYSIS LABORATORIES:

Controlled substances listed in schedules I and II shall be stored in a securely locked, substantially constructed cabinet. Schedules III, IV and V substances shall be stored either in a securely locked, substantially constructed cabinet or dispersed in with the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the substances.

[16.19.20.52 NMAC - Rp 16.19.20.52 NMAC, 06-26-2018]

16.19.20.53 DISPENSING WITHOUT PRESCRIPTION:

A. A controlled

substance listed in schedule V and a substance listed in schedules II, III, or IV *which is not a prescription drug* as determined by FDA and the Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription provided:

(1) such

dispensing is made by a pharmacist or registered pharmacist intern and not by a non-pharmacist employee;

(2) not more

than eight ounces of any controlled substance containing opium, nor more than 48-dosage units is dispensed at retail to the same person in any given 48-hour period;

(3) not

more than four ounces of any other controlled substance or more than 24-dosage units may be dispensed at retail to the same person in any given

48-hour period;

(4) the purchaser is at least 18 years of age;

(5) the pharmacist requires every purchaser of such substance, not known to him to furnish suitable identification (including proof of age where appropriate);

(6) a bound record book for dispensing such substances is maintained requiring the signature and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance; the book shall contain a statement on each page where purchaser is required to sign, stating no purpose of such substance has been made within the given 48-hour period at another pharmacy and the purchaser shall be made aware of such statement before signing the record.

B. Exempt pseudoephedrine product.

(1) Any pseudoephedrine containing product listed as a schedule V controlled substance in Paragraph (2) of Subsection B of 16.19.20.69 NMAC shall be dispensed, sold or distributed only by a licensed pharmacist, pharmacist intern, or a registered pharmacy technician.

(2) Unless pursuant to a valid prescription, a person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

(a) produce a driver's license or other government-issued photo identification showing the date of birth of the persons;

(b) sign a log after reading the purchaser statement for pseudoephedrine receipt or other program or mechanism indicating the date and time of the transaction, name of the person, address, driver's license number or government issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction,

the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; this log will be only for exempt pseudoephedrine products and shall be kept separate from all other records; the log is to be produced in a way that a customer's personal information is not available to other purchasers;

(c) be limited to no more than three and six-tenths grams per day or more than a total of nine grams of a product, mixture or preparation containing pseudoephedrine within a thirty-day period.

(3) Pseudoephedrine purchaser statement must state in addition to any federal requirements: "I have not purchased more than three and six-tenths grams today or more than a total of nine grams of pseudoephedrine as a single entity or in a combination with other medications in the last 30 days. Entering false statements or misrepresentations in this logbook may subject me to criminal penalties."

(4) Prices charged for compounds, mixtures, and preparations that contain pseudoephedrine shall be monitored. The board may adopt rules to prevent unwarranted price increases as a result of compliance with this section.

(5) Pharmacies shall submit the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC electronically, in a board defined format, to the board or its agents. Pharmacies will submit data every seven days beginning September 15, 2013. Pharmacies may petition the executive director of the board for an alternative method for the submission of the information collected pursuant to this section.

(6) Authority to contract: The board is authorized to contract with another agency of this state or with a private vendor, as necessary, for the collection of the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC. Any contract shall be bound to comply with the

provisions regarding confidentiality of prescription or personal information in 16.19.20.53 NMAC of this regulation and shall be subject to the penalties specified in 16.19.20 NMAC and 16.19.27 NMAC.

[16.19.20.53 NMAC - Rp 16.19.20.53 NMAC, 06-26-2018]

16.19.20.54 EXEMPTED OVER-THE-COUNTER DRUGS:

(Information published by DEA.)

[16.19.20.54 NMAC - Rp 16.19.20.54 NMAC, 06-26-2018]

16.19.20.55 EXEMPT CHEMICAL PREPARATIONS:

The board hereby exempts such chemical preparations and mixtures which are intended for laboratory, industrial, educational, or special research purposes, which are not intended for general administration to a human being or other animal and which:

A. contains no narcotic controlled substances and is packaged in such a form or concentration that the package quantity does not present any significant potential for abuse, or;

B. contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agent in such a manner, combination, quantity, proportion or concentration, that the preparation or mixture does not present any potential for abuse, and the narcotic substance cannot in practice be removed, and;

C. are exempt from federal regulations (CFR 21 Part 1308.24).

[16.19.20.55 NMAC - Rp 16.19.20.55 NMAC, 06-26-2018]

16.19.20.56 HEARINGS, DENIAL OF REGISTRATION, REVOCATION OR SUSPENSION OF REGISTRATION:

Proceedings to suspend or revoke a registration or to refuse renewal of a registration shall be held pursuant to the Uniform Licensing Act.

[16.19.20.56 NMAC - Rp 16.19.20.56 NMAC, 06-26-2018]

16.19.20.57 ADMINISTRATIVE INSPECTION - DEFINED:

Administrative inspection means - the inspection of any place where registrants are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substances. When authorized by an administrative inspection warrant, the inspector may:

- A. inspect and copy records required by the Controlled Substances Act;
 - B. inspect the restricted area and all pertinent equipment, all container substances, containers and labeling found at the controlled area;
 - C. make a physical inventory of specific items or all controlled substances on-hand at the premises;
 - D. collect samples, if applicable;
 - E. check records and information of distribution of controlled substances by the registrant as they relate to total distribution;
 - F. examination of records, invoices, appropriate for verification of the records or otherwise bearing on the provisions of the Controlled Substances Act.
- [16.19.20.57 NMAC - Rp 16.19.20.57 NMAC, 06-26-2018]

16.19.20.58 VOLUNTARY CONSENT TO INSPECTION:

The board inspector will ask the registrant to voluntarily consent to the inspection. He will inform the registrant of his constitutional rights to an inspection warrant, however, if the registrant consents to inspection without warrant, the inspector will obtain a signed consent waiver statement from the registrant before proceeding with an accountability audit or inspection.

[16.19.20.58 NMAC - Rp 16.19.20.58 NMAC, 06-26-2018]

16.19.20.59 WRITTEN CONSENT:

- A. The written consent shall contain the following information:
 - (1) that the

owner, or agent in charge of the premises has been informed of his constitutional right not to have an administrative inspection made without an administrative inspection warrant;

- (2) of his right to refuse to consent to such an inspection;
- (3) of the possibility that anything of an incriminating nature which may be found may be seized and used against him in a board hearing or a criminal prosecution;
- (4) that he had been presented with a notice of inspection;
- (5) that the consent given by him is voluntary and without threats of any kind; and
- (6) that he may withdraw his consent at any time during the course of inspection.

B. Written consent shall be produced in duplicate and one copy shall be retained by the person being inspected and one copy shall be retained by the inspector for filing in the board office.

[16.19.20.59 NMAC - Rp 16.19.20.59 NMAC, 06-26-2018]

16.19.20.60 ADMINISTRATIVE WARRANT:

- A. A copy of the administrative warrant need not be given to the registrant unless items are seized or confiscated.
 - B. To serve the warrant, all that is required is to announce possession of it, the contents of the warrant need not be stated to the person upon whom the warrant is served.
- [16.19.20.60 NMAC - Rp 16.19.20.60 NMAC, 06-26-2018]

16.19.20.61 CONSENT TO CHARGES: Unless the person in charge of the premises so consents in writing, these regulations shall not extend to financial data, sales data other than shipping date, or pricing data.

[16.19.20.61 NMAC - Rp 16.19.20.61 NMAC, 06-26-2018]

16.19.20.62 ADMINISTRATIVE WARRANT - NOT REQUIRED:

An administrative warrant shall not be required for a new pharmacy or drug distribution facility applying for initial registration under the Controlled Substances Act or the Pharmacy Act, or in any other situation where a warrant is not constitutionally required.

[16.19.20.62 NMAC - Rp 16.19.20.62 NMAC, 06-26-2018]

16.19.20.63 ADMINISTRATIVE WARRANT - REFUSAL:

If a registrant or any person subject to the Controlled Substances Act refuses to permit execution of an administrative warrant or impedes the inspection in the execution of that warrant, he shall be advised that such refusal or action constitutes a violation of Section 30-31-32 NMSA 1978, Controlled Substances Act.

[16.19.20.63 NMAC - Rp 16.19.20.63 NMAC, 06-26-2018]

16.19.20.64 CONTROLLED SUBSTANCE PRECURSORS:

See 16.19.21 NMAC - Drug Precursors [16.19.20.64 NMAC - Rp 16.19.20.64 NMAC, 06-06-2018]

16.19.20.65 SCHEDULE I:

A. Section 30-31-6 NMSA 1978, schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIOIDS**, unless specifically exempt or unless listed in another schedule, any of the following opioids, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5)

Alphamethadol; (6)	Alpha-	Normethadone; (35)	cyclohexylmethyl]benzamide); (62)	
methyl fentanyl; (7)		Norpipanone; (36)	U47700; (trans-3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide); (63)	
Benzethidine; (8)		Phenadoxone; (37)	MT-45; (1-(4-Nitrophenylethyl) piperidylidene-2-(4-chlorophenyl) sulfonamide); (64) W-15;	
Betacetylmethadol; (9)		Phenamprodine; (38)	(4-chloro-N-[1-(2-phenylethyl)-2-piperidinyldiene]-benzenesulfonamide); (65)	
Betameprodine; (10)		Phenomorphin; (39)	W-18; (1-(4-Nitrophenylethyl) piperidylidene-2-(4-chlorophenyl) sulfonamide); (66) U-50488;	
Betamethadol; (11)		Phenoperidine; (40)	(2-(3,4-dichlorophenyl)-N-methyl-N-[(1R,2R)-2-pyrrolidin-1-ylcyclohexyl]acetamide); (67) U50488H;	
Betaprodine; (12)		Piritramide; (41)	((-)(trans)-3,4-dichloro-N-methyl-N-[2-(1-pyrrolidiny)cyclohexyl]benzeneacetamide); (68)	
Clonitazene; (13)		Proheptazine; (42)	Fentanyl-related substances, their isomers, esters, ethers, salts, and salts of isomers, esters and ethers. Fentanyl-related substance means any substance, unless specifically exempted or unless listed in another schedule, that is structurally related to fentanyl by one or more of the following modifications:	
Desmethyltramadol; (14)		Propiramide; (43)	(a)	
Dextromoramide; (15)		Propiramide; (44)	replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;	
Diamprodine; (16)		Propiram; (45)	(b)	
Diethylthiambutene; (17)		Racemoramide; (46)	substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;	
Dimethylthiambutene; (18)		Difenoxin	Trimeperidine; (47)	(c)
Dimethylthiambutene; (19)			U-48800; (2-(2,4-dichlorophenyl)-N-((1S,2S)-2-(dimethylamino)cyclohexyl)-N-methylacetamide, monohydrochloride; (49)	substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
Dimenoxadol; (20)			U-49900; (trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide; (50)	(d)
Dimepheptanol; (21)			Hydroxy-3-Methylfentanyl; (51)	replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; or
Dimethylthiambutene; (22)	3-Methylthiofentanyl; (52)		(e)	
Dioxaphetyl Butyrate; (23)	Alpha-Methyl fentanyl; (53)		replacement of the N-propionyl group by another acyl group; or	
Dipipanone; (24)	Methylthiofentanyl; (54)			
Ethylmethylthiambutene; (25)	hydroxfentanyl ; (55)			
Etonitazene; (26)	Fluoro fentanyl; (56)			
Etoperidine; (27)	Thiofentanyl; (57)			
Etoperidine; (28)	fentanyl; (58)			
Furethidine; (29)	fentanyl; (59)			
Hydroxypethidine; (30)	Betahydroxythiofentanyl; (60)			
Ketobemidone; (31)	fentanyl; (61)			
Levomoramide; (32)	AH-7921; (3,4-dichloro-N-[(1-dimethylamino)			
Levophenacymorphin; (33)				
Morpheridine; (34)				
Noracymethadol; (34)				
Norlevorphanol;				

(f) any combination of the above substances include, but are not limited to, the following substances:

- (i) Acrylfentanyl;
- (ii) 4F-butyrfentanyl;
- (iii) 4-methoxybutyrfentanyl;
- (iv) Fluorobutyrfentanyl;
- (v) Fluorofentanyl;
- (vi) FIBF; (Para Fluoro Isobutyryl Fentanyl);
- (vii) Cyclopropyl fentanyl;
- (viii) Thiofuranyl fentanyl (Thiophene fentanyl);
- (ix) 3-methylfentanyl (N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts and salts of isomers.

B. OPIUM

DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

- (1) Acetorphine;
- (2) Acetyl dihydrocodeine;
- (3) Benzyl morphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dehydro morphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphinol;
- (12)

- Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Pholcodine;
- (22) Thebacon;
- (23) Drotebanol;
- (24) 6AM; (6-acetylmorphine);

C. STIMULANTS:

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

- (1) Fenethylamine;
- (2) N-ethylamphetamine;
- (3) cis-4-methylaminorex;
- (4) N,N-dimethylamphetamine;
- (5) (BZP), 1-benzylpiperazine; N-benzylpiperazine;
- (6) (DCPP); 2,3-dichlorophenylpiperazine;
- (7) (DBZP); dibenzylpiperazine;
- (8) (MBZP); methylbenzylpiperazine;
- (9) (mCPP); meta-chlorophenylpiperazine;
- (10) (MDBZP); methylenedioxybenzylpiperazine;
- (11) (meOPP); para-methoxyphenylpiperazine;
- (12) (pCPP); para-chlorophenylpiperazine;

- (13) (pFPP); para-fluorophenylpiperazine;
- (14) (2-DPMP), desoxy pipradrol; 2-diphenylmethylpiperidine;
- (15) D2PM, diphenylprolinol; diphenyl-2-pyrrolidinemethanol;
- (16) HDMP-28; methyl naphthidate;
- (17) Nocaine, (+)-CPCA; 3 α -carbomethoxy-4 β -(4-chlorophenyl)-N-methylpiperidine;
- (18) BTQ or butyltolylquinuclidine; (2-Butyl-3-(p-tolyl)quinuclidine);

D. DEPRESSANTS:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone;
- (3) Benzodiazepines;
- (a) Bromazepam;
- (b) Camazepam;
- (c) Cloxazolam;
- (d) Delorazepam;
- (e) Ethylloflazepate;
- (f) Fudiazepam;
- (g) Flunitrazepam;
- (h) Haloxazolam;
- (i) Ketazolam;
- (j) Loprazolam;
- (k) Lormetazepam;
- (l)

methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole;

(j)

AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole);

(k)

RCS-4 or SR-19 (1-pentyl-3-[(4-methoxy)-benzoyl]indole);

(l)

RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole);

(m)

JWH-210 (1-pentyl-3-(4-ethylnaphthoyl)indole);

(n)

WIN-49,098 (Pravadoline)
(4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone;

(o)

WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone);

(p)

any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation;

(i)

naphthoylindoles: any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201;

(ii)

naphthylmethylindoles: any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl,

or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199;

(iii)

naphthoylpyrroles: any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307;

(iv)

naphthylmethylindenes: any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176;

(v)

phenylacetylindoles: any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8;

(vi)

cyclohexylphenols: any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,

1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490;

(vii)

benzoylindoles: any compound containing a 3-(benzoyl) [5] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241;

(q)

UR-144 1-(pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl) methanone;

(r)

XLR11 1-(5-fluoro-pentyl)-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl) methanone;

(s)

AKB48 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide;

(t)

QUPIC; Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate;

(u)

5-fluoro-PB22; 5F-PB22; Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;

(v)

AB-FUBINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;

(w)

ADB-PINACA; N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide;

(x)

AB-CHMINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;

(y)

AB-PINACA; N-(1-amino-3-methyl-

1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide;

(z)

THJ-2201; [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone;

(aa)

FDU-PB-22 IUPAC: 1-Naphthyl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;

(bb)

5-fluoro ABICA: N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide;

(cc)

FUB-144 or FUB-UR-144; [1-(4-fluorobenzyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone;

(dd)

MN-18; N-(1-Naphthyl)-1-pentyl-1H-indazole-3-carboxamide;

(ee)

FUB-PB-22; Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;

(ff)

ADB-CHMINACA (N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide);

(gg)

AMB-FUBINACA or FUB-AMB (methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);

(hh)

5-fluoro-AMB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-L-valine, methyl ester);

(ii)

5-fluoro-ADB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-3-methyl-D-valine, methyl ester);

(jj)

Bk-DMBDB or dibutylone; 1-(Benzo[d][1,3]dioxol-5-yl)-2-(dimethylamino)butan-1-one;

(kk)

MMB-FUBINACA; methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate;

(ll)

MDMB-CHMICA; methyl (S)-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate;

(mm)

NM2201; Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;

(nn)

5-Fluoro-AKB48 or 5F-APINACA; N-((3s,5s,7s)-adamanta-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide;

(oo)

5-Fluoro-ADB; Methyl(S)-2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate;

(pp)

5-Fluoro-AMB; N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-L-valine, methyl ester;

(qq)

MAB-CHMINACA; N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;

(rr)

SDB-006; N-benxyl-1-pentyl-1H-indole-3-carboxamide;

(ss)

Cumyl-PINACA; 1-pentyl-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide;

(tt)

Cumyl-PICA; 1-pentyl-N-(2-phenylpropan-2-yl)-1H-indole-3-carboxamide;

(36) Substances

determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

(a)

Salvia divinorum;

(b)

Salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2H-benzo[f]isochromene-7-carboxylate);

(37) (4-MEC);

4-methyl-ethylcathinone;

(38) (4-EMC);

4-ethyl-methcathinone;

(39)

Ethcathinone; 2-ethylamino-1-phenylpropan-1-one;

(40) Ethylone;

3',4'-methylenedioxyethcathinone;

(41) Bk-MBDB;

butylone; beta-keto-N-methyl-3,4-benzodioxolylbutanamine;

(42) (NRG-1),

naphyrone; naphthylpyrovalerone;

(43)

Metamfepramone; N,N-dimethylcathinone;

(44) Alpha-

PPP; alpha-pyrrolidinopropiophenone;

(45) (α -PBP);

alpha-pyrrolidinobutiophenone;

(46)

(MOPPP); 4'-methoxy-alpha-pyrrolidinopropiophenone;

(47)

(M α PPP); 4'-methyl- α -pyrrolidinopropiophenone;

(48) (MDPPP);

3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone;

(49) (MDPBP);

3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone;

(50) (MPBP);

4'-methyl- α -pyrrolidinobutiophenone;

(51)

Alpha-PVP; alpha-pyrrolidinovalerophenone;

(52) (MDAI);

5,6-methylenedioxy-2-aminoindane;

(53)

Buphedrone; alpha-methylamino-butyrophenone;

(54)

Eutylone; beta-keto-ethylbenzodioxolylbutanamine;

(55) beta-keto-

ethylbenzodioxolylpentanamine;

(56) beta-keto-

methylbenzodioxolylpentanamine (pentylone);

(57) 4-Bromo-

2,5-dimethoxyphenethylamine (2c-B, Nexus);

(58)

N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine, and N-hydroxy MDA);

(59)

5-methoxy-N,N-dimethyltryptamine (5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

(60)

Mephedrone; 4-methylmethcathinone; (61) (MDPV);	(83) (2C-C); 2,5-dimethoxy-4-chlorophenethylamine;	(103) (DiPT); N,N-diisopropyltryptamine;
3,4-methylenedioxypropylamphetamine; (62) (2C-E);	(84) (2C-D); 4-methyl-2,5-dimethoxyphenethylamine;	(104) (DPT); dipropyltryptamine;
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine; (63) (2C-D);	(85) (2C-E, aquarust, cindy); 2,5-dimethoxy-4-ethylphenethylamine;	(105) (5-MeO-DALT); N,N-diallyl-5-methoxytryptamine;
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine; (64)	(86) (2C-G); 3,4-dimethyl-2,5-dimethoxyphenethylamine;	(106) (3-MeO PCP); 3-methoxyphencyclidine;
(2C-T-2); 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine; (65) (2C-	(87) (2C-I); 2,5-dimethoxy-4-iodophenethylamine;	(107) (4-MeO PCP); 4-methoxyphencyclidine;
T4); 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine; (66) (2C-H);	(88) (2C- T21); 2-[2,5-dimethoxy-4-(2-fluoroethylthio)phenyl]ethanamine;	(108) (MK-801); dizocilpine;
2-(2,5-Dimethoxyphenyl)ethanamine; (67) (2C-N);	(89) (2C-B-FLY); 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine;	(109) (PCE, perchloroethylene, perchloroethene, Perc; tetrachloroethylene;
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine; (68)	(90) Bromo-DragonFLY or 3C-Bromo-Dragonfly or DOB-Dragonfly;	(110) (PCE, perchloroethylene, perchloroethene), Perc; tetrachloroethylene;
(2C-P); 2-(2,5-Dimethoxy-4-(n-propylphenyl)ethanamine; (69)	(91) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine;	(111) (PCPr); phencyclamine, N-(1-phenylcyclohexyl)propanamine;
Methylone; 3,4-Methylenedioxy-N-methylcathinone; (70) Aminorex	(92) (DOB); 2,5-Dimethoxy-4-bromoamphetamine;	(112) (Tenocyclidine); 1-(1-(2-thienyl)cyclohexyl)piperidine;
(2-amino-5-phenyl-2-oxazoline); (71)	(93) (DOC); 2,5-Dimethoxy-4-chloroamphetamine;	(113) (3-MeO PCE); 3-methoxyeticyclidine, N-ethyl-1-(3-methoxyphenyl)cyclohexanamine;
Pentedrone; (72)	(94) (TMA2); 2,4,5-trimethoxyamphetamine;	(114) (ETH- LAD); 6-ethyl-6-nor-lysergic acid diethylamide;
4-FMC or flephedrone; 4-fluro-N-methylcathinone; (73) (3-FMC);	(95) (TMA6); 2,4,6-trimethoxyamphetamine;	(115) (AL- LAD); 6-allyl-6-nor-LSD;
3-fluro-N-methylcathinone; (74) (3-MMC);	(96) (MDAT); 6,7-methylenedioxy-2-aminotetralin;	(116) (PRO- LAD); 10-didehydroergoline-8-carboxamide;
3-methylmethcathinone; (75)	(97) (4-acetoxy DiPT, ipracetin); 4-acetoxy-N,N-diisopropyltryptamine;	F. Any material, compound, mixture or preparation which contains any quantity of the following substances.
(3,4 DMMC); 3,4-Dimethylmethcathinone; (76) (3-MEC);	(98) (4-acetoxy DMT, psilacetin); O-Acetylpsilocin;	(1) 3, 4-methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;
3-Methyl-N-ethylcathinone; (77)	(99) 4-HO MET, metocin; 4-hydroxy-N-methyl-N-ethyltryptamine;	(2) (MPPP); 1-methyl-4-phenyl-4-propionoxypiperidine its optical isomers, salts, and salts of isomers;
4-methylbuphedrone or 4-MeBP; 2-methylamino-1-(4-methylphenyl)butan-1-one; (78) (4 MTA);	(100) 4-HO MiPT, hats; 4-hydroxy-N-methyl-N-isopropyltryptamine;	(3) 1-(2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its optical isomers, salts and salts of isomers;
4-methylthioamphetamine; (79)	(101) 5-MeO- aMT, Alpha-O; 5-methoxy- α -methyltryptamine;	(4) Cathinone
(5-Me MDA); 5-methyl-3,4-methylenedioxyamphetamine; (80) (6-APB);	(102) (5-MeO- MiPT); N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine;	(5) Methcathinone;
6-benzofuran; (81) (PMA);		
4-methoxyamphetamine; (82)		
(2C-B); 2,5-dimethoxy-4-bromophenethylamine;		

(6)	Racemethorphan;	(n)
Tianeptene.	(22)	Oxycodone;
[16.19.20.65 NMAC - Rp 16.19.20.65 NMAC, 06-26-2018]	Racemorphan;	(o)
16.19.20.66 SCHEDULE II:	(23) Sufentanil;	(p)
A. OPIOIDS: Unless	(24)	Thebaine;
specifically excepted or unless in	Carfentanil;	(25) (LAAM);
another schedule any of the following	(26)	Alfentanil;
opioids, including its isomers, esters,	Levo-alphaacetylmethadol;	(r)
ethers, salts and salts of isomers,	Tapentadol.	Oripavine.
esters, and ethers whenever the	B. Shall consist of	(2) Any salt,
existence of such isomers, esters,	the drugs and other substances, by	compound derivative, or preparation
ethers, and salts is possible within the	whatever official name, common	thereof, which is chemically
specific chemical designation except	or usual name, chemical name or	equivalent or identical with any of the
dextro and levopropoxyphene.	brand name designated, listed in	substances referred to in Paragraph
(1)	this section. Substance, vegetable	(1) of Subsection A of 16.19.20.66
Alphaprodine;	origin or chemical synthesis. Unless	NMAC, except that these substances
(2)	specifically exempt or unless listed in	shall not include the isoquinoline
Anileridine;	another schedule, any of the following	alkaloids of opium.
(3)	substances whether produced directly	(3) Opium
Bezitramide;	or indirectly by extraction from	poppy and poppy straw.
(4)	substances of vegetable origin, or	(4) Coca
Diphenoxylate;	independently by means of chemical	leaves and any salt, compound,
(5)	synthesis, or by a combination of	derivative or preparation of coca
Dihydrocodeine;	extraction and chemical synthesis.	leaves and any salt, compound,
(6)	(1) Opium	derivative or preparation thereof
Dextropropoxyphene (bulk) non-	and opiate, and any salts, compound,	which is chemically equivalent or
dosage form;	derivative, or preparation of opium	identical with any of these substances,
(7) Fentanyl;	or opiate excluding naloxone,	except that the substances shall not
(8)	dextrorphan, nalbuphine, naltrexone	include de-cocainized coca leaves
Isomethadone;	and apomorphine but including the	or extraction of coca leaves, which
(9)	following:	extractions do not contain cocaine or
Levomethorphan;	(a)	ecgonine.
(10)	Raw opium;	C. STIMULANTS:
Levorphanol;	(b)	Unless specifically exempt or
(11)	Opium extracts;	unless listed in another schedule,
Metazocine;	(c)	any material, compound, mixture
(12)	Opium fluid extracts;	or preparation which contains any
Methadone;	(d)	quantity of the following substances
(13) 4-cyano-2-	(e)	having a stimulant effect on the
dimethylamino-4, 4-diphenylbutane;	(f)	central nervous system. (See
(14)	Granulated opium;	16.19.21 NMAC- Drug Precursors).
Moramide-Intermediate, 2-methyl-	(g)	(1)
3-morpholino-1, 1-dipehyl-propane-	Tincture of opium;	Amphetamine, its salts, optical
carboxylic acid;	(h)	isomers and salts of its optical
(15) Pethidine;	Codeine;	isomers;
(16) 4-cyano-1-	(i)	(2)
methyl-4-phenylpiperidine;	Ethylmorphine;	Methamphetamine, its salts, isomers
(17) ethyl-4-	(j)	and salts of isomers.;
phenyl-piperidine-4-carboxylate;	Etorphine hydrochloride;	(3)
(18) 1-methyl-	(k)	Phenmetrazine and its salts;
4-phenylpiperidine-4-carboxylic acid;	Hydrocodone;	(4)
(19)	Hydromorphone;	Methylphenidate;
Phenazocine;	(l)	(5)
(20)	Metopon;	Lisdexamfetamine.
Piminodine;	(m)	D. DEPRESSANTS:
(21)	Morphine;	Unless specifically exempt or
		unless listed in another schedule

any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers is possible within the specific chemical designation.

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Glutethimide;
- (6) 1-phenylcyclohexylamine;
- (7) 1-piperidinocyclohexanecarbonitrile.

E.

HALLUCINOGENIC

SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomers" includes the optical, positional, and geometric isomers):

- (1) Nabilone;
- (2) Phenylacetone (P2P, benzyl methyl ketone; methyl benzyl ketone);

F.

MISCELLANEOUS:

- (1) Dihydroetorphine;
 - (2) Bulk dextropropoxyphene;
 - (3) Remifentanil.
- [16.19.20.66 NMAC - Rp 16.19.20.66 NMAC, 06-26-2018]

16.19.20.67 SCHEDULE

III: Shall consist of drugs and other substances, by whatever official name, common or usual name designated listed in this section.

A. NARCOTIC

DRUGS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of the following narcotic drugs, or any salts thereof.

(1) Not more than one and eight-tenths grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than one and eight-tenths grams of codeine per 100 milliliters or not more than 90 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than one and eight-tenths grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams,

with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

B. STIMULANTS:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system.

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant, amphetamine, phenmetrazine or methamphetamine previously exempt, for which the exemption was revoked by FDA Regulation Title 21, Part 308.13, and any other drug of the quantitative composition shown in that regulation for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

- (2) Benzphetamine;
- (3) Phendimetrazine;
- (4) Chlorphentermine;
- (5) Clortermine.

C. DEPRESSANTS:

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system.

- (1) Any compound, mixture or preparation containing:
 - (a) Amobarbital;
 - (b) Secobarbital;
 - (c) Pentobarbital;
 - (d) Butalbital; or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
 - (a) Amobarbital;
 - (b) ...

Secobarbital		testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances listed in this section:	(27)	Sanozolol;
(c)			(28)	
Pentobarbital; or any salt of any of these drugs approved by the FDA for marketing only as a suppository.				Testolactone;
(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid.			(29)	Testosterone;
(4)		(1) Boldenone;	(30)	Trenbolone; and
Chlorhexadol;		(2) Chloro	(31)	Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.
(5) Lysergic Acid;		(3) Clostebol;		F. Exempt anabolic steroids: Compounds, mixtures, or preparations that contain an anabolic steroid that have been exempted by the board from Subsection E of 16.19.20.67 NMAC, schedule III to the same extent that the substance has been exempted from the application of the Federal Controlled Substance Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.
(6) Lysergic Acid Amide;		(4) Dehydrochlormethyltestosterone;		[16.19.20.67 NMAC - Rp 16.19.20.67 NMAC, 06-26-2018]
(7) Methyprylon;		(5) Dihydrotestosterone;		16.19.20.68 SCHEDULE IV:
(8) Sulfondiethylmethane;		(6) Drostanolone;		Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
(9) Sulfonethylmethane;		(7) Ethylestrenol;		A. DEPRESSANTS:
(10) Sulfonmethane;		(8) Fluoxymesterone;		Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
(11) Telazol;		(9) Formebolone;		(1)
Tiletamine/zolazepam;		(10) Mestanolone;		Alfaxalone;
(12) Ketamine Hydrochloride;		(11) Mesterolone;		(2)
(13) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug and Cosmetic Act.		(12) Methandienone;		(3) Barbital;
(14)		(13) Methandranone;		(4) Chloral
Embutramide;		(14) Methandriol;		Betaine;
(15)		(15) Methandrostenolone;		(5) Chloral
Dronabinol; (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. food and drug administration.		(16) Methenolone;		(6)
(16)		(17) Methyltrienolone;		Hydrate;
Perampanel;		(18) Methyltestosterone;		(7)
D. MISCELLANEOUS:		(19) Mibolerone;		(8)
(1) Nalorphine		(20) Nandrolone;		Chlordiazepoxide;
(a narcotic drug);		(21) Norbolethone;		(7) Clobazam;
(2) Buprenorphine;		(22) Norethandrolone;		
(3) Clenbuterol.		(23) Oxandrolone;		
E. ANABOLIC STEROIDS: The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to		(24) Oxymesterone;		
		(25) Oxymetholone;		
		(26) Stanolone;		

of 16.19.20.68 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

- (1) Librax;
 (2) Menrium,
 5-2;
 (3) Menrium,
 4-5;
 (4) Menrium,

10-4;
 [16.19.20.68 NMAC - Rp 16.19.20.68 NMAC, 06-26-2018]

16.19.20.69 SCHEDULE V:

A. Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
 (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
 (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
 (4) Not more than two and five-tenths milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
 (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
 (6) Not more than five-tenths milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

B. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule,

any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers.

- (1) Pyrovalerone.
 (2)

Pseudoephedrine as a drug that includes any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. Pursuant to 30-31-10.C the following substances are excluded from schedule V controlled substances: pseudoephedrine products in liquid form including liquid filled gel caps and pseudoephedrine products already classified as dangerous drugs.

C. Depressants.

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

- (1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];
 (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid];
 (3) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino-phenyl)-carbamic acid ethyl ester].
 [16.19.20.69 NMAC - Rp 16.19.20.69 NMAC, 06-26-2018]

16.19.20.70 EXEMPT DANGEROUS DRUGS (PRESCRIPTION STATUS DRUGS):

The drugs set forth in the *Federal DEA Table of Excepted Prescription Drugs* published in a separate volume under Code of Federal Regulations, Title 21, Chapter II, Part 1308.32 have been exempt by the New Mexico board of pharmacy. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exemption to the Federal DEA in order that a

drug may be exempt by DEA and the New Mexico board of pharmacy.
 [16.19.20.70 NMAC - Rp 16.19.20.70 NMAC, 06-26-2018]

History of 16.19.20 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: BOP 69-2, Rules and Regulations of the State Board of Pharmacy, filed 06-13-69; BOP 69-3, New Mexico Laws and Regulations, Pharmacy Act, Drug and Cosmetic Act, Narcotic Drug Act, Poisons Act, Board of Pharmacy Rules and Regulations, filed 08-15-69; BOP 72-1, New Mexico Board of Pharmacy Rules and Regulations Promulgated Pursuant to New Mexico Drug and Cosmetic Act, Pharmacy Act, Controlled Substances Act, filed 04-01-69; Regulation No. 20, Controlled Substances, filed 02-07-80; Regulation No. 20, Controlled Substances, filed 10-24-85; Regulation No. 20, Controlled Substances, filed 02-02-87; Regulation No. 20, Controlled Substances, filed 07-27-90.

History of Repealed Material:

85-1, Repealer, filed 10-29-85.
 16 NMAC 19.20, Pharmacists - Controlled Substances, filed 05-01-98, repealed effective 07-15-2002.
 16.19.20 NMAC, Controlled Substances, filed 07-15-2002, repealed effective 06-26-2018.

Other History:

Regulation No. 20, Controlled Substances, filed 07-27-90; renumbered, reformatted to 16 NMAC 16.4, Pharmacists - Controlled Substances, filed 02-02-96; 16 NMAC 19.20, Pharmacists - Controlled Substances, filed 07-25-96; 16 NMAC 19.20, Pharmacists - Controlled Substances, filed 05-01-98; 16 NMAC 19.20, Pharmacists - Controlled Substances, filed 05-01-98, replaced by 16.19.20 NMAC, Controlled Substances, effective 07-15-2002.

**REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF**

This is an amendment to 16.19.12 NMAC, Section 12, effective 06-26-2018.

16.19.12.12 LICENSE/REGISTRATION RENEWAL:

- A. Pharmacist license renewal for active \$200.00 bi-ennially
- B. Pharmacist license renewal for in-active \$70.00 bi-ennially
- C. Intern renewal \$25.00 per year
- D. Duplicate license for interns and pharmacists \$10.00
- E. Controlled substance registration [~~\$60.00~~] \$180.00 tri-ennially

(A locum tenens practitioner may apply for an initial registration which expires no more than one year after date of issuance, and this registration fee shall be \$60.00)

- F. Duplicate license for controlled substance \$10.00
- G. Pharmacy technician renewal \$30.00 bi-ennially
- H. Pharmacist clinician \$70.00 bi-ennially
- I. Pharmacist license renewal for active pharmacists with 50 or more years of service - \$70.00 bi-ennially
- J. Note: Waiver of license renewal fees: The board of pharmacy waives the renewal fee set forth in

regulation 16.19.12.12 for individuals who are currently serving in the United States military in an active war zone or who serve in direct support of operation in active war zones.

[03-07-80...08-27-90; A, 07-31-98; A, 11-14-98; 16.19.12.12 NMAC - Rn, 16 NMAC 19.12.12, 03-30-02; A, 12-15-02; A, 09-30-03; A, 07-15-04; A, 12-15-05; A, 01-31-07; A, 03-22-15; A, 06-26-18]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.14.8 NMAC, Section 41, effective July 1, 2018 that was erroneously omitted from all published and electronic copies in issue 10 of the New Mexico Register. It is, therefore, being published in this issue.

13.14.8.41 PARTIAL COVERAGE ENDORSEMENT: The partial coverage endorsement NM form 26, may be attached to loan policies provided the premium in 13.14.10.64 NMAC is paid.
[13.14.8.41 NMAC - N, 7/1/2018]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an emergency amendment to 13.14.9 NMAC, Section 18, effective July 1, 2018.

13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER’S POLICIES: The following schedule of premium rates for original owner’s policies shall be in effect from the effective date of this rate rule until modified by the superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	[195] 176	24,000	[320] 290	38,000	[429] 388
11,000	[203] 184	25,000	[327] 296	39,000	[436] 395
12,000	[213] 193	26,000	[336] 304	40,000	[444] 402
13,000	[222] 201	27,000	[344] 311	41,000	[450] 407
14,000	[232] 210	28,000	[354] 320	42,000	[457] 414
15,000	[241] 218	29,000	[361] 327	43,000	[465] 421
16,000	[251] 227	30,000	[369] 334	44,000	[473] 428
17,000	[260] 235	31,000	[378] 342	45,000	[480] 434
18,000	[270] 244	32,000	[384] 348	46,000	[486] 440

19,000	[278] 252	33,000	[393] 356	47,000	[494] 447
20,000	[287] 260	34,000	[399] 361	48,000	[502] 454
21,000	[293] 265	35,000	[407] 368	49,000	[508] 460
22,000	[302] 273	36,000	[415] 376	50,000	[517] 468
23,000	[311] 281	37,000	[421] 381		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$[6.28] 5.68	80%		\$[6.28] 5.68
over \$100 to \$500	\$[4.94] 4.47	80%		\$[4.94] 4.47
over \$500 to \$2,000	\$[3.87] 3.50	80%		\$[3.87] 3.50
over \$2,000 to \$5,000	\$[3.12] 2.82	75%		\$[3.12] 2.82
over \$5,000 to \$10,000	\$[2.59] 2.34	70%		\$[2.59] 2.34
over \$10,000 to \$25,000	\$[2.22] 2.01	65%	\$0.25	\$[2.47] 2.26
over \$25,000 to \$50,000	\$[1.94] 1.76	60%	\$0.25	\$[2.19] 2.01
over \$50,000	\$[1.55] 1.40	50%	\$0.25	\$[1.80] 1.65

[6/16/1986...4/3/1995; A, 5/1/1999; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5/15/2000; A, 5/31/2000; A, 8/1/2000; A, 3/1/2002; A, 7/1/2003; A, 7/1/2004; A, 7/1/2005; A, 7/1/2006; A, 9/1/2007; A, 7/1/2008; A, 8/1/2009; A, 10/1/2012; A, 8/15/2014; A/E, 7/1/2018]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.14.9 NMAC, Section 39, effective July 1, 2018.

13.14.9.39 SUBSTITUTION RATE ON LOANS TO TAKE UP, RENEW, EXTEND OR SATISFY AN EXISTING INSURED LOAN:

A. For purpose of the premium discount on refinanced property pursuant to ~~Section 59A-30-6.0 NMSA 1978~~ Section 59A-30-6.1 NMSA 1978, the following discount shall apply:

(1) forty percent of the current basic premium rate applies to any amount up to the amount of the previous policy insuring the mortgage or deed of the trust being refinanced, if the new policy is issued within three years from the date of the prior policy;

(2) fifty percent of the basic premium rate

applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if any new policy is issued more than three years but less than five years from the date of the prior policy;

(3) sixty percent of the basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if any new policy is issued more than five years but less than 10 years from the date of the prior policy;

(4) eighty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued more than twenty years from the date of the prior policy; or

(5) the premium for insurance coverage above the amount of the previous

policy shall be ninety percent of the current basic premium rate as set by rule. In no promulgated or approved rate for a loan policy.

B. The term "same borrower" in Section 59A-30-6.1 NMSA 1978 shall have the same meaning as "insured" as defined in paragraph 1 (D) of the conditions set forth in NM form 1.

C. The term "same property" in Section 59A-30-6.1 NMSA 1978 shall mean the identical property or any portion thereof. The reduction in rate pursuant to Section 59A-30-6.1 NMSA 1978 shall not apply in any case where any additional property not covered by the original policy or policies is included in the policy to be issued.

D. If two or more previous loan policies insuring different properties are presented to the title agent or insurer for a refinance discount pursuant to Section 59A-30-6.1 NMSA 1978, and provided that the new policy

will contain the same properties as shown in said previous policies, the discount will be computed as follows: title agent or insurer shall base the discount on the date of issue of the oldest previous policy and upon a liability amount equal to the sum of the liability amounts of the previous policies. In no event shall the premium collected be less than the regular minimum promulgated rate for an owner's policy.

E. This rule, may be applied in connection with the issuance of a series of mortgage policies issued by reason of noted being apportioned to individual units in connection with a master policy covering the aggregate indebtedness, including improvements. Individual mortgagee policies must be issued at the original first mortgage rate. [4/3/1995; 13.14.9.39 NMAC - Rn, 13 NMAC 14.9.12.5, 5/15/2000; A, 7/1/2005; A, 8/15/2014; A, 7/1/2018]

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC, Sections 15, 16 and 17, effective 6/26/2018.

Explanatory statement: percent styles throughout the rule were corrected to conform to correct rule styles.

18.19.5.15 - PROOF OF [IDENTIFICATION NUMBER,] IDENTITY, AND AGE FOR A DRIVING AUTHORIZATION CARD OR IDENTIFICATION CARD THAT IS NOT ACCEPTABLE FOR FEDERAL PURPOSES

A. Applicants for a New Mexico driving authorization card or identification card that is not acceptable for federal purposes must provide documentary proof of their [identification number] identity, age and residency.

B. An applicant who cannot establish lawful status and who does not hold a current, valid New Mexico driver's license or

identification card must also submit fingerprints for a background check, as provided in 19.18.5.17 NMAC.

C. [An applicant who chooses to provide a social security number must present his or her social security administration (SSA) account number card. If a SSA account card is not available, the person shall present one the following documents, provided that the document bears the applicant's social security number:

- ~~(1) a W-2 form;~~
- ~~(2) a SSA-1099 form;~~
- ~~(3) a non-SSA-1099 form; or~~
- ~~(4) a pay stub with the applicant's name and social security number on it.~~

D. Applicants can use the following documents to provide documentary proof of their identification number or documentary proof of their identity, but one document cannot be used for proof of both their identification number and identity:

- ~~(1) a passport or passport card from the applicant's country of citizenship if verified through systematic alien verification for entitlements system (SAVE);~~
- ~~(2) a certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;~~
- ~~(3) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;~~
- ~~(4) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;~~
- ~~(5) an identification card issued by the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico, or such other foreign consulate with which the New Mexico motor vehicle division has established a reliable method of verifying the authenticity of the identification card;~~

- ~~(6) an individual tax identification number;~~
- ~~(7) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;~~
- ~~(8) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;~~
- ~~(9) certified copy of foreign birth certificate issued by the applicant's place of birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;~~
- ~~(10) affidavit of Indian birth;~~
- ~~(11) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;~~
- ~~(12) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;~~
- ~~(13) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;~~
- ~~(14) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;~~
- ~~(15) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;~~
- ~~(16) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;~~
- ~~(17) a valid~~

United States active duty/retiree/
reservist military identification card
(DOD ID DD-2);

_____ (18) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

_____ (19) N560 certificate of citizenship if verified in SAVE;

_____ (20) N550 certificate of naturalization if verified in SAVE;

_____ (21) a valid permanent resident card issued by the United States government if verified in SAVE;

_____ (22) a valid I-551 resident alien card issued since 1997 if verified in SAVE; or

_____ (23) a valid New Mexico license or identification card;

_____ (24) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

_____ (25) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

_____ (26) a social security card;

_____ (27) a medical insurance card or documentation of medical insurance coverage of eligibility that contains an identification number;

_____ (28) military discharge/separation papers (DD-214);

_____ (29) selective service card.] Applicants can use one of the following documents if it contains the applicant's name and date of birth, to provide documentary proof of their identity and age. If the document does not contain the applicant's name and date of birth, two of the following documents will be required:

_____ (1) an original

or certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's place of birth;

_____ (2) a consular report of birth abroad issued by the U.S. department of state, form FS-240, DS-1350 or FS-545;

_____ (3) an unexpired employment authorization document issued by the U.S. department of homeland security, form I-766 or form I-688B, verified by SAVE;

_____ (4) an identification card issued by the consulate of Mexico in El Paso, Texas, or Albuquerque, New Mexico, or such other foreign consulate;

_____ (5) a certified letter of enrollment issued by a federally recognized Indian nation, tribe or pueblo;

_____ (6) a valid identification card issued by a federally recognized Indian nation, tribe or pueblo;

_____ (7) certified copy of foreign birth certificate issued by the applicant's place of birth, provided that if the document is not in English, a certified copy of the foreign birth with a notarized English translation;

_____ (8) affidavit of Indian birth;

_____ (9) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (10) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (11) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

_____ (12) an

American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

_____ (13) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

_____ (14) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center identification card;

_____ (15) a valid United States active duty/retiree/
reservist military identification card (DOD ID DD-2);

_____ (16) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth;

_____ (17) N560 certificate of citizenship if verified in SAVE;

_____ (18) N550 certificate of naturalization if verified in SAVE;

_____ (19) a valid permanent resident card issued by the United States government if verified in SAVE;

_____ (20) a valid I-551 resident alien card issued since 1997 if verified in SAVE;

_____ (21) a valid New Mexico license or identification card;

_____ (22) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

_____ (23) a New Mexico correction department photo identification card, or a photo identification card issued by the federal bureau of prisons, that includes the name, date of birth and documentation that the card has not expired within the past year;

_____ (24) a social security card;

_____ (25) military discharge/separation papers (DD

214);
(26) selective service card;
(27) an I-94 form presented without a passport if it contains the applicant's photo;
(28) a military dependent identification card that includes the applicant's photo;
(29) a medical insurance card or documentation of medical insurance coverage or eligibility containing an insurance identification number including a Medicaid or Medicare card;
(30) a passport or passport card from the applicant's country of citizenship;
(31) a passport or passport card from the United States if verified through systematic alien verification for entitlements system (SAVE);
(32) individual tax identification number (ITIN);
(33) a medical record less than one year old that is not from a visit to an emergency room or urgent care facility;
(34) proof of eligibility for and receipt of welfare benefits, including general assistance, temporary assistance for needy families and the supplemental nutrition assistance program with a copy of the human services department eligibility profile page dated with the last year.
 [18.19.5.15 NMAC - N, 11/15/2016; A/E, 6/26/2018]

18.19.5.16 - PROOF OF NEW MEXICO RESIDENCY

A. All applicants for a REAL ID Act of 2005 compliant New Mexico identification card, driving permit, provisional driver's license, or driver's license, other than a commercial driver's license, and all applicants for a driving authorization card or identification card not acceptable for federal purposes must provide documentary evidence demonstrating New Mexico residency.

B. Applicants must provide two of the following documents, showing the applicant's

name or the name of applicant's spouse in combination with a certificate of marriage and a New Mexico residential address for the applicant, as proof that the applicant lives in New Mexico.
(1) a current real property rental agreement or purchase agreement;
(2) a utility bill dated within 60 days, such as water, gas, electric, waste, telephone, cable or satellite bill, but not a bill for a cell phone;
(3) an insurance bill, card or binder, dated within the past 6 months;
(4) a bank or credit card statement dated within 60 days;
(5) an employment pay stub that contains the applicant's name and address, dated within 60 days;
(6) a current, local property tax statement or mortgage documents;
(7) a document from an education institution, such as a transcript, report card or enrollment confirmation, provided it is dated within 60 days;
(8) original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant is a New Mexico resident;
(9) a New Mexico medical assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;
(10) a New Mexico public assistance card with address on card, letter from issuing agency that came with card showing name and address, or profile printout from issuing agency;
(11) documents indicating membership in a New Mexico religious organization, provided that the applicant is less than 18 years of age; or
(12) documents indicating membership in a New Mexico sports organization, provided

that the applicant is less than 18 years of age;
(13) [if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian.] a New Mexico medical or public assistance card, profile printout or a letter from the issuing agency;
(14) if the applicant is less than 18 years of age, an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, the parent/guardian's New Mexico identification card, or two proofs of New Mexico residency of the parent/guardian; and
(15) a document evidencing eligibility and proof that the applicant is currently receiving services from a non-profit organization qualified pursuant to Section 501(c)(3) of the Federal Internal Revenue Code of 1986 provided the document displays the applicant's address.
C. Applicants for an identification card not acceptable for federal purposes who are homeless or in temporary lodging and unable to provide two of the documents identified in Subsection B of 18.19.5.16 NMAC may provide an affidavit or a notarized letter from [in the manner required by the department from] a representative of a New Mexico governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house attesting to the address where the applicant resides or receives services in lieu of the documents required in Subsection B of 18.19.5.16 NMAC.
 [18.19.5.16 NMAC - N, 11/15/2016; A/E, 6/26/2018]

**18.19.5.17 - FINGERPRINTS
AND CRIMINAL HISTORY
SCREENING**

A. Authority; use of criminal history information: The taxation and revenue department (TRD) is authorized to obtain the criminal history records of applicants for driving authorization cards and TRD is authorized to obtain criminal history records of applicants for identification cards that are not acceptable for federal agencies for federal purposes, provided that the applicant does not possess a valid New Mexico license or identification card and that the applicant does not provide proof of lawful status.

B. Procedure for applicants:

(1) If an applicant otherwise meets the application and eligibility requirements, then TRD shall take a full-face or front-view photograph and fingerprints of the applicant and shall submit the same to the New Mexico department of public safety (DPS) for the purpose of obtaining a current criminal history screening through the national crime information center as well as a criminal history screening through the records of DPS.

(2) An applicant shall provide to TRD a criminal background screening request, fingerprints, and supporting documentation including an authorization for release of information to TRD in accordance with the procedures of DPS.

(3) DPS will review state records and also transmit the fingerprints to the federal bureau of investigation for a national screening. The results of the screening will be transmitted to TRD for review.

(4) Applicants and licensees shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to [TRD. ~~TRD shall timely submit the fees to DPS.~~] DPS or designee of DPS. Fees cannot be waived by TRD.

(5) TRD shall comply with applicable

confidentiality requirements of the DPS and the federal bureau of investigation regarding the handling and dissemination of criminal history information.

C. TRD review of criminal history information:

(1) TRD shall review the results and shall not issue a driving authorization card if the results show that the applicant has an outstanding criminal arrest warrant for a felony or a misdemeanor charge in any state or country or if the results show that the applicant's fingerprints are associated with any name, date of birth or social security number other than those provided when the person applied for the driving authorization card.

(2) TRD shall notify the person if the application is denied, including the reason for the denial, and the person's right to a hearing.

(3) TRD shall destroy the results of the screening after it has completed its review and issued the driving authorization card, or one year from the date of the denial, whichever occurs sooner.

D. Evidence of eligibility: A person whose application for a driving authorization has been denied shall become eligible upon submitting evidence that the basis for ineligibility was resolved. Such evidence may include:

(1) documents that demonstrate that the criminal arrest warrant was quashed, withdrawn, or resolved;

(2) documents that demonstrate that there is not a conflict with the name, date of birth or social security number; or

(3) other documents as approved by the director of the motor vehicle division.

[18.19.5.17 NMAC - N, 11/15/2016; A/E, 6/26/2018]

**END OF ADOPTED
RULES**

2018 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	March 1	March 13
Issue 6	March 15	March 27
Issue 7	March 29	April 10
Issue 8	April 12	April 24
Issue 9	April 26	May 15
Issue 10	May 17	May 29
Issue 11	May 31	June 12
Issue 12	June 14	June 26
Issue 13	June 28	July 10
Issue 14	July 12	July 24
Issue 15	July 26	August 14
Issue 16	August 16	August 28
Issue 17	August 30	September 11
Issue 18	September 13	September 25
Issue 19	September 27	October 16
Issue 20	October 18	October 30
Issue 21	November 1	November 13
Issue 22	November 15	November 27
Issue 23	November 29	December 11
Issue 24	December 13	December 27

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us/nmregister>. For further information, call 505-476-7942.