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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXIX, Issue 21

November 13, 2018

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**Notices of Rulemaking and Proposed Rules**

**ENERGY, MINERALS  
AND NATURAL  
RESOURCES  
DEPARTMENT  
FORESTRY DIVISION**

**NOTICE OF PROPOSED  
RULEMAKING**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division hereby gives notice of the following proposed rulemaking. EMNRD proposes to amend its rule, 19.21.2 NMAC, Endangered Plant Species List and Collection Permits, by removing *Sclerocactus cloveriae* subsp. *brackii* (Brack’s cactus) from the list of state endangered plants in 19.21.2.9 NMAC.

**Purpose of Amendment.** EMNRD proposes the amendment to remove *Sclerocactus cloveriae* subsp. *brackii* (Brack’s cactus) from the list of state endangered plants in 19.21.2.9 NMAC because according to a recent DNA analysis, *Sclerocactus cloveriae* subsp. *brackii* (synonym *Sclerocactus cloverae* subsp. *brackii*) is not genetically distinct from *Sclerocactus cloveriae* subsp. *cloveriae* (synonym *Sclerocactus cloverae* subsp. *cloverae*) to warrant recognition as a separate subspecies and should therefore not be awarded separate taxonomic status (Porter and Clifford 2018).

**Legal Authority.** EMNRD proposes this rule amendment under the authority of NMSA 1978, Section 75-6-1 and NMSA 1978, Section 9-1-5(E).

The full text of the proposed rule amendment is available from Andrew Frederick at (505) 476-3343 or [AndrewG.Frederick@state.nm.us](mailto:AndrewG.Frederick@state.nm.us) or can be viewed on the EMNRD, Forestry Division’s website at <http://www.state.nm.us/SFD> or at the Forestry Division’s offices in Santa Fe, Chama, Cimarron, Las Vegas, Rio Rancho, Socorro, Capitan, and Silver City.

**Public Hearing and Comment.** EMNRD will hold a public hearing on the proposed rule amendment at 10:30 a.m. on Thursday, December 13, 2018, in the Garrey Carruthers Building, Second Floor Room 2027, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507.

Those wishing to comment on the proposed rule amendment may make oral or written comments or submit information at the hearing or may submit written comments by December 13, 2018 by 5:00 p.m. by mail or email or through the portal on the Forestry Division’s website at <http://www.state.nm.us/SFD>. Please mail written comments to Andrew Frederick, EMNRD, Forestry Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to [AndrewG.Frederick@state.nm.us](mailto:AndrewG.Frederick@state.nm.us).

Technical Information that served as a basis for the proposed rule amendment includes:  
Heil, K. and M. Porter. 1994. *Sclerocactus* (Cactaceae): A revision. *Haseltonia* No. 2: 20 – 46.  
Porter, M.J. and A. Clifford. 2018. Genetic diversity within *Sclerocactus cloverae* Heil & Porter based on ddRAD-seq: the genetic basis for subspecies recognition. Unpublished report to the BLM State Office, Santa Fe, NM.

A copy of the technical information can be obtained from Andrew Frederick at (505) 476-3343 or [AndrewG.Frederick@state.nm.us](mailto:AndrewG.Frederick@state.nm.us) or can be viewed on the EMNRD, Forestry Division’s website at <http://www.state.nm.us/SFD>.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Andrew Frederick at (505) 476-3343 or through the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public

documents can be provided in various accessible formats. Please contact Andrew Frederick at (505) 476-3343, if a summary or other type of accessible format is needed.

**ARCHITECTS, BOARD  
OF EXAMINERS FOR**

**NOTICE OF PUBLIC HEARING  
AND REGULAR BOARD  
MEETING**

**Public Notice.** The New Mexico Board of Examiners for Architects (NMBEA) gives notice that it will conduct a public hearing at the NM Board of Examiners for Architects Office at 2550 Cerrillos Road, Santa Fe, New Mexico 87551 on December 14, 2018, at 10:00am. The purpose of the public hearing is to receive public input on the proposed amendment to 16.30.3 NMAC - Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification and new part to 16.30.7 NMAC - Licensure for Military Service Members, Spouses and Veterans. The board will hold a regular board meeting following the public hearing.

**Rule Information.** The purpose of the amendments to 16.30.3 NMAC, Sections 9, 10, 11, 12 and 18 is to clarify Section 61-15-6 NMSA 1978, Requirements for registration. The purpose of adding a new part to 16.30.7 NMAC is for licensure for military service members, spouses and veterans.

The statutory authorization follows: Section 61-15-4 NMSA 1978 grants the board authority to make rules not inconsistent with law.

No technical information served as a basis for this proposed rule change.

**Public Comment.** Interested parties may provide comment on the proposed amendments of this state rule at the public hearing or may submit written comments to Melarie Gonzales, New Mexico Board of

Examiners for Architects, P. O. Box 509, Santa Fe, New Mexico 87504, or by electronic mail at [nmbea@state.nm.us](mailto:nmbea@state.nm.us), or fax to (505) 476-4829. All written comments must be received no later than 5:00 p.m. (MDT) on December 13, 2018. The public comment period is from November 13, 2018 to December 13, 2018 at 5:00 p.m. (MDT).

Copies of the proposed rules may be accessed through the New Board of Examiners for Architect's website at <http://www.bea.state.nm.us>, or may be obtained from Melarie Gonzales by contacting her at (505) 476-4833 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Melarie Gonzales at (505) 476-4833 as soon as possible before the date set for the public hearing. The NMBEA requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

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**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Human Services Department (HSD) adopted emergency rules for the Federal Poverty Level (FPL), effective October 1, 2018. The Department is holding a public hearing to adopt the rules to make them permanent pursuant to Section 14-4-5.6 NMSA 1978. Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299. Administration of the HSD, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). The rules were implemented to comply with the Federal mandate; failure to implement the emergency rules would have placed the Department in violation of Federal law.

The HSD is required to make changes to 8.102.500 of the New Mexico Administrative Code (NMAC) and 8.106.500 NMAC. The Standard Utility Allowances and the Federal Poverty Guidelines are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS) each federal fiscal year. These amounts

are used to determine the maximum Supplemental Nutrition Assistance Program, Cash Assistance and Low Income Heating and Energy Assistance Programs benefit issuance amounts.

HSD will hold a public hearing to allow public comment on the amendment of the rules for the FPL regulations that were published November 13, 2018. The hearing will be held on Friday, December 14, 2018, from 9:30 a.m. to 10:30 a.m., at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505. The conference room is at the ASD Rodeo Building, first floor. Oral and written comments will be received at that time. All comments received will be posted to the agency's website within three days of receipt. They can be found at: <http://www.hsd.state.nm.us/>.

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**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**NOTICE OF TERMINATION OF  
PROPOSED RULEMAKING**

The New Mexico Human Services Department (HSD) gives notice that it is terminating rulemaking for 8.308.14 NMAC, Co-Payments as published in NM Register, Vol. XXIX, No. 18, 9/25/2018, pursuant to Subsection C of Section 14-4-5 NMSA 1978.

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**PUBLIC EDUCATION  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, December 18, 2018 from 9:00 a.m. to 11:00 a.m. (MST). The purpose of the public hearing is to receive public input on the proposed repeal and replace of 6.60.8 NMAC, Background Checks for Educator Licensure. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the

rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text. The purpose of the proposed rule change provides procedures for sharing background information and expands the background check requirement to additional individuals with access to students. Additionally, the structure of the rule was re-organized.

Statutory Authorization(s): Sections 22-2-1, 22-2-2, 22-8-44, 22-10A-5, 22-10A-7, 22-10A-12, 22-10A-12.1, and 28-2-1 through 28-2-6 NMSA 1978

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Tuesday, December 18, 2018. The PED encourages the early submission of written comments. The public comment period is from Tuesday, November 13, 2018 to Tuesday, December 18, 2018 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from the Policy Division at (505) 827-6452 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 827-6452 as soon as possible before the date of the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

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**PUBLIC EDUCATION DEPARTMENT**

**NOTICE OF TERMINATION OF PROPOSED RULEMAKING**

The New Mexico Public Education Department (PED) gives notice that it is terminating rulemaking for 6.60.8 NMAC, Background Checks for Educator Licensure as published in Issue 15 of the New Mexico Register, August 14, 2018, pursuant to Subsection C of Section 14-4-5 NMSA 1978.

**PUBLIC REGULATION COMMISSION**

**NOTICE OF CHANGES TO THE DATES TO SUBMIT WRITTEN COMMENTS AND TO THE DATE OF THE RULEMAKING PUBLIC HEARING AND SECOND NOTICE OF PROPOSED RULEMAKING**

The New Mexico Public Regulation Commission (Commission) first ordered a notice of proposed rulemaking in this matter on September 12, 2018, but the notice was not submitted to the state records administrator in time to be published in the New Mexico register on a date at least 30 days prior to the rulemaking public comment date that was set by the commission in that previous order. Although the first notice of proposed rulemaking was published in two newspapers of general circulation, which provided partial notice to the public, official notice was not provided to the public by publishing in the New Mexico register as required by the State Rules Act. As a result of not being published in the New Mexico register in a timely fashion, changes must be to the dates to submit written comments and to the date of the rulemaking public hearing, and those changed dates must be provided to the public.

Out of an abundance of caution, and to avoid confusion, a second notice of proposed rulemaking was issued by the commission on October 24, 2018 changing comment submission dates and changing the date of the rulemaking public comment hearing. Notice is hereby provided to the public that changes were made to the dates for submitting comments and to the date for the rulemaking public hearing, as were originally contained in the first notice of

proposed rulemaking. This second notice of proposed rulemaking gives notice of proposed revisions to Part 5 of Title 18, Chapter 60 of the New Mexico Administrative Code (18.60.5 NMAC), regulated by the commission pursuant to the laws pertaining to excavation damage to pipelines and underground utility lines and provided by the Pipeline Safety Act, Section 70-3-11 NMSA 1978 et seq.

**Rulemaking Statutory Authority:**  
 General rulemaking authority: New Mexico Constitution, Article XI, Sec. 2 and, Paragraph (10) of Subsection B of Section 8-8-4 and Section 8-8-15 NMSA 1978 of the Public Regulations Commission Act.  
 Subject matter regulation authority: Section 62-14-10 NMSA 1978 of the excavation damage to pipelines and underground utility lines statute and Subsection A of Section 70-3-13 NMSA 1978 of the Pipeline Safety Act.

**Proposed Rule Summary and Explanation of Purpose:**  
 The purpose of the proposed rulemaking is to clarify that the rule applies to all underground facilities, with the exemption of those preempted by federal law; to implement or revise particular procedures, reporting requirements, and deadlines used to prevent damage to underground utilities; and to address procedures to be taken when damage occurs during pipeline excavation activities. A copy of the order providing notice to changes to the dates to submit written comments and to the date of the rulemaking public hearing and issuing second notice of proposed rulemaking, a copy of the full text of the proposed rule, as well as written comments, additional information, and filing instructions, may be downloaded from the proposed rulemaking section of the commission's website at <http://www.Commission.state.nm.us> under Case No. 18-00262-PL or may be otherwise obtained by calling the commission's records management bureau at (505) 827-6968.

**Comments/Deadlines:**  
 Written initial comments and written response comments must be filed with the commission's records management bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the commission's records management bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 by these deadlines:  
 Written initial comments must be filed by December 14, 2018 at 5:00

p.m., and written response comments by December 18, 2018 at 5:00 p.m. Comments shall refer to Case No. 18-00262-PL. Written initial and response comments will be posted on the commission's website.

**Rulemaking Public Hearing:**  
 The rulemaking public hearing will be held on December 14, 2018 beginning at 2:00 p.m. at the offices of the commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the rulemaking public hearing is to receive oral comments about the proposed rule revisions. Because commenters are afforded the opportunity to submit written comments and written responses to the commission, any individual delivering oral comments shall be limited to five minutes to express their comments, subject to the commission's discretion. The commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that share the same message or seek the same goals, in order to maximize the efficiency of the rulemaking public comment hearing. Because this case is a rulemaking proceeding, no testimony or other evidence will be taken at the hearing.

Because hearings are occasionally rescheduled, interested persons should contact the commission to confirm the date, time, and place of the rulemaking public hearing. If you are an individual with a disability that requires assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

The record of this case will close on December 19, 2018 at 5:00 p.m.

**REAL ESTATE APPRAISERS BOARD**

**PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Real Estate Appraisers Board will hold a rule hearing on Monday, December 17, 2018, at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be



held at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in Hearing Room 2.

The Board is proposing the following amendments listed below to the Real Estate Appraisers and Appraisal Management Companies' rules to correct language, definitions and requirements in accordance with the Appraiser Qualification Board (AQB). The proposed amendments include changed provisions applicable to Trainees, License, Residential Certificate and General Certificate. The amendments modify the definition of "Appraisal Management Company" to more closely track the definition in the Appraisal Management Company Registration Act. Importantly, the proposal adds a new reporting rule to the Appraisal Management Companies' rules, as required by the Appraisal Subcommittee (ASC). To sum up, the amendments are intended to provide for the licensing of appraisers, allow online education, eliminate renewal exam requirements, clarify definitions and provide uniformity in the application of the following rules:

- 16.62.1 NMAC – General Provisions;
- 16.62.2 NMAC – Application for Trainee;
- 16.62.3 NMAC – Application for License;
- 16.62.4 NMAC – Application for Residential Certificate;
- 16.62.5 NMAC – Application for General Certificate;
- 16.62.6 NMAC – Examinations;
- 16.62.7 NMAC – Issuance/Renewal of Trainee Registration/Licenses/Certificates;
- 16.62.8 NMAC – Educational Programs/Continuing Education;
- 16.62.9 NMAC – Certificate of Good Standing;
- 16.62.10 NMAC – Temporary Practice;
- 16.62.11 NMAC – Application for Reciprocity;
- 16.62.12 NMAC – Fees;
- 16.62.13 NMAC – Disciplinary Proceedings;
- 16.62.15 NMAC – Retirement and Reinstatement;
- 16.62.16 NMAC – Advertising;
- 16.62.17 NMAC – Unlicensed Practice/Penalties;
- 16.65.1 NMAC – General Provisions
- 16.65.2 NMAC – Registration Requirements

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <http://www.rld.state.nm.us/>

boards/Real\_Estate\_Appraisers.aspx, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Ruth Romero, Board Administrator, via electronic mail at [nm.reab@state.nm.us](mailto:nm.reab@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, December 14, 2018. Persons will also be given the opportunity to present their comments at the rule hearing.

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

No technical information served as a basis for the proposed rule.

Statutory Authority: Legal authority for this rulemaking can be found in the Real Estate Appraisers Act, NMSA 1978, Sections 61-30-1 through -24 (1990, as amended through 2017), which, among other provisions, specifically authorizes the Board to "adopt rules necessary to implement the provisions of the Real Estate Appraisers Act." Subsection A of Section 61-30-7, NMSA 1978.

Summary of Proposed Changes:

- 16.62.1.2 NMAC, 16.62.2.2 NMAC,
- 16.62.3.2 NMAC, 16.62.4.2 NMAC,
- 16.62.5.2 NMAC, 16.62.6.2 NMAC,
- 16.62.7.2 NMAC, 16.62.8.2 NMAC,
- 16.62.9.2 NMAC, 16.62.10.2 NMAC,
- 16.62.11.2 NMAC, 16.62.12.2 NMAC,
- 16.62.13.2 NMAC,
- 16.62.15.2 NMAC, 16.62.16.2 NMAC and 16.62.17.2 NMAC – SCOPE

The changes for the above parts add the word "residential" after "licensed", which is consistent with the title used in The Real Property Appraiser Qualification Criteria effective 01/01/2015. The word "certified" is also added in the last sentence for clarification.

16.62.1 NMAC – General Provisions  
The addition to paragraph (1) of Subsection A clarifies that appraisal experience from other states will be valid in New Mexico for obtaining or upgrading license or certified status, as long as both the trainee and supervisor were in compliance with

state and federal law at the time the experience was gained.

16.62.2 NMAC – Application for Trainee

Removal of the word "classroom" and adding applicable language to be consistent with The Real Property Appraiser Qualification Criteria effective 01/01/2015; removal of limitation that required only live classes, education may now be taken via distance education; language replaces "attendance" with "complete" which now allows education to be taken either in person or via distance education for courses, and also clarifies that courses must be "completed" vs "taken."

16.62.3 NMAC – Application for License

The change corrects the classification of "License" to "Licensed Residential," which is consistent with the title used in The Real Property Appraiser Qualification Criteria effective 01/01/2015; this change includes the removal of the word "classroom" and adding applicable language to be consistent with The Real Property Appraiser Qualification Criteria effective 01/01/15, as well as removal of the limitation of only no more than 50% of courses may be obtained from internet or distance learning modalities (no longer a limitation, all hours may be via distance education); Effective May 1, 2108, The Appraisal Qualifications Board adopted changes to College-Level Education required for Licensed Residential status to "no education is required," therefore this section is removed from current rules; The changes add the word "residential" after "licensed" which is consistent with the title used in The Real Property Appraiser Qualification Criteria effective 01/01/2015. "Experience" required hours were reduced from 2,000 to 1,000 and the time-frame limit from no fewer than 12 months to no fewer than 6 months.

16.62.4 NMAC – Application for Residential Certificate

This change includes the removal of the word "classroom" and adding applicable language to be consistent with The Real Property Appraiser Qualification Criteria effective 01/01/15, as well as removal of the limitation of only no more than 50% of courses may be obtained from internet or distance learning modalities (no longer a limitation, all hours may be via distance education); Effective May 1, 2018, The Appraisal Qualifications Board adopted changes to College-Level Education required

for Residential Certified appraisers; the education requirements are being replaced with the new criteria. Also changes are made to the experience credit required and the time-frame limit from no fewer than 24 months to no fewer than 12 months.

**16.62.5 NMAC – Application for General Certificate**  
The existing rules inadvertently omitted one class required by The Appraisal Qualifications Board for General Certification; this change adds the class into the rules (Statistics, Modeling, and Finance 15 hours). Also changes are made to the time-frame for experience from no fewer than 30 months to no fewer than 18 months.

**16.62.6 NMAC – Examinations**  
Required score for passing is 70%, not 72%. No change to requirement for Jurisprudence exam at the time of initial examination.

**16.62.7 NMAC – Issuance/Renewal of Trainee Registration/Licenses/Certificates**  
The removal of the “or less than 13 months” is not necessary and is confusing; Proration fees are not allowed or tracked; “Documentation” changed to “completion” as the Board allows for attestation of completion of the required continuing education courses. Clarification is provided on methods in which an application may be submitted to the Board office. Clarification is provided on the documentation of education certificates issued by education providers that licenses must maintain. Clarification that applicants for renewal will be required to review and become familiar with rules and attest to this as part of the renewal process; Removal of “classroom” clarifies that hours of continuing education are not limited to live classes. Clarification is added that the AQB 7-hour National USPAP Update course is required as part of the 28 hours of continuing education. The jurisprudence exam for renewal is being discontinued and applicants will now be required to attest that they have reviewed the rules as part of the new and renewal application process. The jurisprudence exam will remain for new applications. The \$95.00 will no longer be applicable or assessed to renewal applications; Section A is added for clarification as an exemption from issuance of a license or certification of analyzing an appraisal as part of a request for mortgage credit. Section B is added clarifying that a non-residential

licensed or certified appraiser, while out of state and reviewing appraisals on property in New Mexico, is exempt from obtaining a license or certification from New Mexico.

**16.62.8 NMAC – Educational Programs/Continuing Education**  
The word classroom is deleted as classroom hours are no longer mandatory; Removal of the requirement that limits the maximum of 14 online continuing education hours; The Real Estate Appraiser Board office does not have storage capacity for student records when a school closes, therefore this requirement is being removed. Removal of section 4 requires renumbering the remaining numbers.

**16.62.9 NMAC – Certificate of Good Standing**  
“A” is edited for clarity.

**16.62.10 NMAC – Temporary Practice**  
Addition of certified appraisers is for clarity.

**16.62.11 NMAC – Application for Reciprocity**  
Changes made for clarification. Also clarification on when reciprocal licenses shall expire. B(1) is removed, as New Mexico is electing to not to adopt all of the AQB Criteria (and maintain more stringent requirements), applicants for reciprocity may have met their home state requirements, and obtained their license or certification, while complying with the AQB requirements in that state. Reciprocity will be recognized based on their credentials at the time of application for reciprocity.

**16.62.12 NMAC – Fees**  
The removal of proration of fees is removed as they are not allowed or tracked. Other additions made as corrections.

**16.62.13 NMAC – Disciplinary Proceedings**  
Changes made for process in order to meet the 1-year time limit required by the Appraisal Subcommittee (ASC) for cases to be closed.

**16.62.15 NMAC Retirement and Reinstatement**  
Remove of “/: and replace with “or”. Remove “clock – “from sentence as “clock” is not applicable; Duplication; Subsections C, D & E are the same as Subsections H, I & J, so Subsections H, I & J are removed, and Subsection K is changed to Subsection H.

**Statutory Authority:** Legal authority for this rulemaking can be found in the Appraisal Management Company Registration Act, Sections 47-14-1 through -23, NMSA 1978 (2009, as amended through 2013), which specifically authorizes the Board to “adopt rules that are reasonably necessary to implement, administer and enforce the provisions of the Appraisal Management Company Registration Act, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with the Appraisal Management Company Registration Act.” Section 47-14-23, NMSA 1978.

**Summary of Proposed Changes:**

**16.65.1 NMAC – General Provisions**  
Modifies the definition of “Appraisal Management Company” to mirror the one found in the Appraisal Management Company Registration Act.

**16.65.2 NMAC – Registration Requirements**  
Confusion exists in current rules. The intent on new registration applications appears to require a 15-hour class for initial registration, which is appropriate, however the 15-hour class can be an older class if submitted with a recent 7 hour USPAP Update course. For renewal applications, all that is required is a 7 hour USPAP update; A change made for what constitutes a detailed record and requirement added for AMC’s being audited; A new reporting rule added for “AMC National Registry” required by the Appraisal Subcommittee (ASC).

**REGULATION AND LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS ADVISORY BOARD**

**PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The Private Investigations Advisory Board will hold a rule hearing on Monday, December 17, 2018, at 10:00 a.m. Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Hearing Room, 2nd floor.

The Board is proposing the following amendments listed below to the Private Investigations Advisory Boards' rules. The proposed amendments include addition of the definition "Good Moral Character" and "One year of verifiable training" in efforts to establish clear guidelines for all applicants of the board. Part seven of the proposed rule includes the allowance of a "Grace period" regarding license renewal. The proposed changes also include corrective language to create uniformity and clarification throughout the rules.

16.48.1 NMAC - General Provisions;  
 16.48.2 NMAC - Requirements for Licensure;  
 16.48.4 NMAC - Mandatory Firearms Training;  
 16.48.7 NMAC - License Renewal, Inactive Status and Reinstatement;

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: [http://www.rld.state.nm.us/boards/Private Investigations.aspx](http://www.rld.state.nm.us/boards/Private%20Investigations.aspx), or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Amanda Lewis, Board Administrator, via electronic mail at [pipolygraphbd@state.nm.us](mailto:pipolygraphbd@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, December 14, 2018. Persons will also be given the opportunity to present their comments at the rule hearing.

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

No technical information served as a basis for the proposed rule.

Statutory Authority: Legal authority for this rulemaking can be found in the Private Investigations Act, NMSA 1978, Sections 61-27B-1 through -36 (2007, as amended through 2024), which, among other provisions, specifically authorizes the Board to "adopt rules necessary to implement the provisions of the Private Investigations Act." Subsection C and D of Section 61-27B-5 NMSA

Summary of Proposed Changes:

16.48.1 NMAC - General Provisions  
 Add definitions and change language for uniformity and clarification purposes.

16.48.2 NMAC - Requirements for Licensure  
 Add definitions and clarify guidelines; clarify new process to submit fingerprints; incorporate all instructor requirements into one section and add language to allow for military and federal government entities regarding approved training providers.

16.48.4 NMAC - Mandatory Firearms Training  
 Add language to allow military and federal government entities regarding approved training providers.

16.48.7 NMAC - License Renewal, Inactive Status and Reinstatement  
 Change language to correct bi-annual to biennial and add language to allow for a renewal grace period and for electronic notifications.

**SUPERINTENDENT OF INSURANCE**

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, and proceeding pursuant to the New Mexico Insurance Code, Section 59A-1-1 et seq. NMSA 1978 ("Insurance Code"), proposes to amend the rule pertaining to common definitions for health insurance regulations and other matters, codified at Title 13, Chapter 10, Part 29 of the New Mexico Administrative Code (NMAC) and titled as "Definitions."

The purpose of the rule amendment is to add five definitions to the existing list of definitions in order provide a common lexicon for use throughout the industry.

Statutory authority for promulgation of the proposed new rule is found at Sections 59A-2-8, 59A-2-9, and 59A-18-1 et seq. NMSA 1978.

The proposed rule may be found on the OSI website at <http://www.osi.state.nm.us> under the "Statutes & Rulemaking" tab and is incorporated by reference into this Notice of Proposed Rulemaking. The proposed rule designation is 13.10.31 NMAC. Copies of the Notice of Proposed Rulemaking and proposed rule are

available by electronic download from the OSI website or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

OSI will hold a public hearing on the proposed rule on December 18, 2018 at 9:00 a.m. at the NM Office of Superintendent of Insurance, 4th Floor Conference Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico. The Superintendent or his designee shall act as the hearing officer for this rulemaking. OSI will accept oral comments at the public hearing from members of the public and any interested parties including, but not limited to OSI staff and health insurance carriers covering residents of this state.

Written comments, proposals, or responsive comments will be accepted through 4:00 pm on Friday, December 21, 2018 and may be submitted via email to [mariano.romero@state.nm.us](mailto:mariano.romero@state.nm.us) or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance Attention: Mariano Romero, Room 331  
 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689 Docket No.: 18-00060-RULE-LH

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except on state holidays. Any filings received after 4:00 p.m. will be filed to the docket the next business day.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Melissa Martinez, Law Clerk, Office of General Counsel, at 505-476-0333 at least 48 hours prior to the commencement of the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments

and responses. The record shall close on the earlier of thirty (30) days following the Public Hearing; that is January 17, 2019 or the date a Final Order is issued in this case.

DONE AND ORDERED this 13th day of November 2018.  
/S/JOHN G. FRANCHINI

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**END OF NOTICES OF  
RULEMAKING AND  
PROPOSED RULES**

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### ENVIRONMENT DEPARTMENT

At its public hearing on August 24, 2018, the Environmental Improvement Board repealed its rule 7.6.2 NMAC entitled Food Service and Food Processing and replaced it with 7.6.2 NMAC entitled Food Service and Food Processing, adopted October 19, 2018 and effective December 1, 2018.

At its public hearing on August 24, 2018, the Environmental Improvement Board repealed its rule 20.4.1 NMAC entitled Hazardous Waste Management and replaced it with 20.4.1 NMAC entitled Hazardous Waste Management, adopted October 19, 2018 and effective December 1, 2018.

### ENVIRONMENT DEPARTMENT

**TITLE 20  
ENVIRONMENTAL PROTECTION  
CHAPTER 4 HAZARDOUS  
WASTE  
PART 1 HAZARDOUS  
WASTE MANAGEMENT**

**20.4.1.1 ISSUING AGENCY:** Environmental Improvement Board.  
[20.4.1.1 NMAC - Rp, 20 NMAC 4.1.1, 12/1/2018]

**20.4.1.2 SCOPE:** All persons that generate, store, transport, or dispose of hazardous waste.  
[20.4.1.2 NMAC - Rp, 20 NMAC 4.1.2, 12/1/2018]

**20.4.1.3 STATUTORY AUTHORITY:** Sections 74-1-8 and 74-4-4, NMSA 1978 (as amended).  
[20.4.1.3 NMAC - Rp, 20 NMAC 4.1.3, 12/1/2018]

**20.4.1.4 DURATION:**  
**Permanent**  
[20.4.1.4 NMAC - Rp, 20 NMAC 4.1.4, 12/1/2018]

**20.4.1.5 EFFECTIVE DATE:** December 1, 2018 unless a

later date is cited in the history note at the end of a section.  
[20.4.1.5 NMAC - Rp, 20 NMAC 4.1.5, 12/1/2018]

**20.4.1.6 OBJECTIVE:**  
The objective of Part 1 of Chapter 4 is to establish regulations for the management of hazardous waste, including standards for the identification and listing of hazardous waste, for generators and transporters of hazardous waste, for owners and operators of hazardous waste treatment, storage, and disposal facilities, for specific wastes and such facilities, for land disposal restrictions, and for issuing, suspending, revoking, or modifying permits.  
[20.4.1.6 NMAC - Rp, 20 NMAC 4.1.6, 12/1/2018]

**20.4.1.7 DEFINITIONS:**  
**[RESERVED]**  
[20.4.1.7 NMAC - Rp, 20 NMAC 4.1.7, 12/1/2018]

**20.4.1.8- 20.4.1.99 [RESERVED]**  
[20.4.1.8 - 20.4.1.99 NMAC - Rp, 20 NMAC 4.1.8 - 4.1.99, 12/1/2018]

**20.4.1.100 ADOPTION:**  
OF 40 CFR PART 260: Except as otherwise provided, the regulations of the United States environmental protection agency (“EPA”) set forth in 40 CFR Part 260, as it may be modified or amended, is hereby incorporated by reference.  
[20.4.1.100 NMAC - Rp, 20 NMAC 4.1.100, 12/1/2018]

**20.4.1.101 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the following modifications, exceptions, and omissions are made to the incorporated federal regulations:  
A. The following terms defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR Sections 260.10 and 270.2:

(1) “administrator” or “regional administrator” means the secretary of the New Mexico environment

department or his/her designee;  
(2) “act” or “RCRA” (Resource Conservation and Recovery Act, as amended) means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978 (as amended).

B. The following terms not defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein when the terms are used in this part:

(1) “appropriate act or regulation” means the New Mexico Hazardous Waste Act or 20.4.1 NMAC;

(2) “board” means the environmental improvement board;

(3) “CFR” means the Code of Federal Regulations;

(4) “department” means the New Mexico environment department;

(5) “environmental protection agency” or “EPA” shall be construed to mean the New Mexico environment department except when used in the phrases “EPA hazardous waste number,” “EPA identification number,” “EPA region,” “EPA acknowledgment of consent,” “EPA test methods,” and in the definitions set forth in 40 CFR Sections 260.10 and 270.2;

(6) “Freedom of Information Act” or “FOIA” means Sections 14-2-1 through 14-2-12, 14-3A-1 through 14-3A-2, and 74-4-4.3D, NMSA 1978 (as amended);

(7) “hazardous substance incident” means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

(8) “secretary” means the secretary of the New Mexico environment department or his/her designee; and

(9) “Subtitle C of RCRA” means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978 (as amended).

C. The following provisions of 40 CFR Part 260 are

omitted from Section 20.4.1.100 NMAC:

(1) Section 260.1(b)(6);

(2) Section 260.20;

(3) Section 260.22;

(4) Section 260.30;

(5) Section 260.31;

(6) Section 260.32;

(7) Section 260.33; and

(8) Reference to 40 CFR Part 267.

D. Wherever there is any requirement in any of the federal regulations incorporated into this part to report an emergency situation, the requirement shall be construed to mean that the party required to report shall report the incident to the department via the New Mexico 24-hour emergency response number at (505) 827-9329 or such other number designated by the department. [20.4.1.101 NMAC - Rp, 20 NMAC 4.1.101, 12/1/2018]

**20.4.1.102 - 20.4.1.199 [RESERVED]**

[20.4.1.102 - 20.4.1.199 NMAC - Rp, 20 NMAC 4.1.102 - 4.1.199, 12/1/2018]

**20.4.1.200 ADOPTION OF**

**40 CFR PART 261:** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 261 as it may be modified or amended is hereby incorporated by reference. [20.4.1.200 NMAC - Rp, 20 NMAC 4.1.200, 12/1/2018]

**20.4.1.201 - 20.4.1.299 [RESERVED]**

[20.4.1.201 - 20.4.1.299 NMAC - Rp, 20 NMAC 4.1.201 - 4.1.299, 12/1/2018]

**20.4.1.300 ADOPTION OF**

**40 CFR PART 262:** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 262 as it may be modified or amended is hereby incorporated by reference. [20.4.1.300 NMAC - Rp, 20 NMAC 4.1.300, 12/1/2018]

**20.4.1.301 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and modifications are made to the incorporated federal regulations. The substitution of the following terms

in Subparts E, F and H of 40 CFR Part 262 does not apply to Section 20.4.1.300 NMAC: “administrator” and “regional administrator” for the term “secretary” and “EPA” or “environmental protection agency” for the term “department.” [20.4.1.301 - Rp, 20 NMAC 4.1.301, 12/1/2018]

**20.4.1.302 - 20.4.1.399 [RESERVED]**

[20.4.1.302 - 20.4.1.399 NMAC - Rp, 20 NMAC.4.1.302 - 4.1.399, 12/1/2018]

**20.4.1.400 ADOPTION OF 40 CFR PART 263:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 263 as it may be modified or amended is hereby incorporated by reference. [20.4.1.400 NMAC - Rp, 20 NMAC 4.1.400, 12/1/2018]

**20.4.1.401 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations.

A. The following provision of 40 CFR Part 263 is omitted from Section 20.4.1.400 NMAC: Section 263.20(e).

B. A transfer facility, which stores manifested shipments of hazardous waste for more than 24 hours but 10 days or less shall notify the New Mexico Environment Department using form 8700-12, as it may be modified by EPA, and obtain an EPA identification number for each transfer facility located in New Mexico. New transfer facilities shall provide a notification 30 days prior to operating. Existing transfer facilities shall provide a notification no more than 90 days after the effective date of the regulations.

[20.4.1.401 NMAC - Rp, 20 NMAC 4.1.401, 12/1/2018]

**20.4.1.402 - 20.4.1.499 [RESERVED]**

[20.4.1.402 - 20.4.1.499 NMAC - Rp, 20 NMAC 4.1.402 - 4.1.499, 12/1/2018]

**20.4.1.500 ADOPTION OF 40 CFR PART 264:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 264 as it may be modified or amended is hereby incorporated by reference. [20.4.1.500 NMAC - Rp, 20 NMAC 4.1.500, 12/1/2018]

**20.4.1.501**

**MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations.

A. The following provisions of 40 CFR Part 264 are modified in 20.4.1.500 NMAC:

(1) the substitution of “secretary” for the term “regional administrator” in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 264.12(a), as adopted in this section; the owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the secretary at the time that notice is provided to the regional administrator;

(2) the owner or operator proposing a class 1 permit modification pursuant to 40 CFR 264.15(b)(5) shall submit the request to the director as required in 40 CFR Sections 264.15(b)(5)(i) and 270.42(a);

(3) the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;

(4) “qualified professional engineer” as provided for in 40 CFR Sections 264.115, 264.120, 264.143(i), 264.145(i), 264.147(e), 264.191(a), 264.191(b)(5)(ii), 264.192(a), 264.192(b), 264.193(i)(2), 264.196(f), 264.280(b), 264.554(c)(2), 264.571(a-c), 264.573(a)(4)(ii), 264.573(g), 264.574(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended).

(5) the requirements of 40 CFR Section 264.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure, except for 40 CFR Sections 264.73(b)(7) and 264.73(b)(9) which shall be kept in the operating record for no less than 3 years;

(6) the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

(7) the substitution of “department” for the term “EPA” does not apply to the second occurrence of the term “EPA” in 40 CFR Section 264.1082(c)(4)(ii).

B. The following

provisions of 40 CFR Part 264 are omitted from Section 20.4.1.500 NMAC:

(1) Section 264.1(f);

(2) Section 264.149;

(3) Section 264.150;

(4) Section 264.301(1);

(5) Section 264.1030(d);

(6) Section 264.1050(g); and

(7) Sections 264.1080(e), 264.1080(f), 264.1080(g).  
[20.4.1.501 NMAC - Rp, 20 NMAC 4.1.501, 12/1/2018]

**20.4.1.502 - 20.4.1.599 [RESERVED]**  
[20.4.1.502 - 20.4.1.599 NMAC - Rp, 20 NMAC 4.1.502 - 4.1.599, 12/1/2018]

**20.4.1.600 ADOPTION OF 40 CFR PART 265:** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 265 as it may be modified or amended is hereby incorporated by reference.  
[20.4.1.600 NMAC - Rp, 20 NMAC 4.1.600, 12/1/2018]

**20.4.1.601 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations:

A. The following provisions of 40 CFR Part 265 are modified in 20.4.1.600 NMAC:

(1) the substitution of “secretary” for the term “regional administrator” in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 265.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 265.12(a) to the secretary at the time that notice is provided to the regional administrator;

(2) the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;

(3) “qualified professional engineer” as provided for in 40 CFR Sections 265.115, 265.120, 265.143(h), 265.145(h), 265.147(e), 265.191(a), 265.191(b)(5)(ii), 265.192(a), 265.192(b),

265.193(i)(2), 264.196(f), 265.280(e), 265.441(a) through (c), 265.443(a)(4)(ii), 265.443(g), 265.444(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended);

(4) the requirements of 40 CFR 265.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure;

(5) the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

(6) the substitution of “department” for the term “EPA” does not apply to the second occurrence of the term “EPA” in 40 CFR Section 265.1083(c)(4)(ii).

B. The following provisions of 40 CFR Part 265 are omitted from Section 20.4.1.600 NMAC:

(1) Section 265.1(c)(4);

(2) Section 265.149;

(3) Section 265.150;

(4) Section 265.1030(c);

(5) Section 265.1050(f); and

(6) Sections 265.1080(e), 265.1080(f), 265.1080(g).  
[20.4.1.601 NMAC - Rp, 20 NMAC 4.1.601, 12/1/2018]

**20.4.1.602 - 20.4.1.699 [RESERVED]**  
[20.4.1.602 - 20.4.1.699 NMAC - Rp, 20 NMAC 4.1.602 - 4.1.699, 12/1/2018]

**20.4.1.700 ADOPTION OF 40 CFR PART 266:** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 266 as it may be modified or amended is hereby incorporated by reference.  
[20.4.1.700 NMAC - Rp, 20 NMAC 4.1.700, 12/1/2018]

**20.4.1.701 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations. The provision of 40 CFR Section 266.102(e)(10) are modified in 20.4.1.700 NMAC and shall be

maintained in the operating record by the owner and operator at his facility until closure.  
[20.4.1.701 NMAC - Rp, 20 NMAC 4.1.701, 12/1/2018]

**20.4.1.702 OMISSION OF 40 CFR PART 267:** The provisions of and any reference to 40 CFR Part 267 are omitted from these regulations.  
[20.4.1.702 NMAC - Rp, 20 NMAC 4.1.702, 12/1/2018]

**20.4.1.703 - 20.4.1.799 [RESERVED]**  
[20.4.1.703 - 20.4.1.799 NMAC - Rp, 20 NMAC 4.1.703 - 4.1.799, 12/1/2018]

**20.4.1.800 ADOPTION OF 40 CFR PART 268:** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 268 as it may be modified or amended is hereby incorporated by reference.  
[20.4.1.800 NMAC - Rp, 20 NMAC 4.1.800, 12/1/2018]

**20.4.1.801 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:** Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. The substitution of “department” for the term “EPA” in 20.4.1.101 NMAC does not apply to 40 CFR Section 268.1(e)(3), as adopted in this section.

B. The following provisions of 40 CFR Part 268 are omitted from Section 20.4.1.800 NMAC:

(1) Section 268.5;

(2) Section 268.6;

(3) Section 268.42(b); and

(4) Section 268.44(a) through 264.44(g).

[20.4.1.801 NMAC - Rp, 20 NMAC 4.1.801, 12/1/2018]

**20.4.1.802 - 20.4.1.899 [RESERVED]**  
[20.4.1.802 - 20.4.1.899 NMAC - Rp, 20 NMAC 4.1.802 - 4.1.899, 12/1/2018]

**20.4.1.900 ADOPTION OF 40 CFR PART 270:** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 270 as it may be modified or amended is hereby incorporated by reference.  
[20.4.1.900 NMAC - Rp, 20 NMAC 4.1.900, 12/1/2018]



**20.4.1.901 PERMITTING PROCEDURES:**

A. Permit issuance or denial.

(1) Once an application is determined to be administratively and technically complete, the secretary shall prepare and issue either a draft permit or a notice of intent to deny.

(a) A draft permit shall contain all conditions, compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in 40 CFR Part 270.

(b) A notice of intent to deny shall state the secretary's reasons for the intended denial.

(2) Any draft permit or notice of intent to deny prepared by the department under Paragraph one of this subsection shall be accompanied by a fact sheet and shall be based on the administrative file. Copies of the fact sheet shall be sent to the applicant; to any state or federal agency, as applicable; and, upon request, to any other person.

(3) The secretary shall give public notice that a draft permit or a notice of intent to deny has been prepared, and shall allow 45 days for review and public comment, including requests for public hearing.

(4) If the secretary issues a draft permit, and a timely written notice of opposition to the draft permit and a request for a public hearing is received, the department, acting in conjunction with the applicant, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing.

(5) No ruling shall be made on permit issuance or denial without an opportunity for a public hearing, at which all interested persons shall be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at the public hearing. A public hearing shall be scheduled if:

(a) the secretary issues a notice of intent to deny, and a timely request for public hearing is received from the applicant;

(b) the secretary issues a draft permit, a timely request for public hearing is received from any person opposed

to the granting of a permit, and such person does not subsequently withdraw the request pursuant to Paragraph four of this subsection; or

(c) the secretary determines, no later than five days following the end of the comment period specified in Paragraph four of this subsection, that a public hearing should be held notwithstanding the absence of a timely request for public hearing.

(6) The comment period specified in Paragraph three of this subsection shall automatically be extended to the close of any public hearing.

(7) The secretary shall give due consideration and the weight he/she deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at a public hearing.

(8) When ruling on permit issuance or denial, the secretary may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the permit applied for will not meet the requirements of these regulations.

(9) At the time that any final permit decision is issued, the secretary shall issue a response to comments. This response shall:

(a) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change;

(b) briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing, and

(c) be available to the public.

(10) A final permit decision shall become effective 30 days after notice of the decision has been served on the applicant, or such later time as the secretary may specify. This provision shall not be construed to extend the time for appeal of a permit decision as provided by the Hazardous Waste Act.

(11) The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.

(12) The secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date.

B. Permit Modifications, Suspension and

Revocation.

(1) The secretary may modify, suspend, or revoke a permit issued pursuant to Subsection A of this section for cause set forth in 40 CFR Part 270 and the act.

(2) The secretary may modify, suspend, revoke any permit upon his/her initiative, or if, after the department's investigation of the facts and circumstances, pursuant to the request of any interested person, such permit action is deemed warranted.

(3) Requests for permit modification, suspension, revocation shall be in writing and shall contain facts or reasons supporting the request.

(4) If the secretary decides that the request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation, and reissuance, or termination are not subject to public notice, comment, or hearings.

(5) If the secretary decides to modify or revoke and reissue a permit under 40 CFR section 270.41 or 40 CFR section 270.42(c), considered a major modification under the act, a draft permit shall be prepared incorporating the proposed changes. The secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit the secretary shall require the submission of a new application.

(6) Class 1 and 2 modifications under 40 CFR 270.42(a) and (b) shall be considered minor permit modifications under the act.

(7) In a permit modification under this section, only those conditions to be modified shall be reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the exiting permit until a new final permit is reissued.

(8) If the secretary decides to terminate a permit under 40 CFR section 270.43, a notice of intent to terminate shall be issued. The secretary shall follow the applicable procedures as required for a draft permit under Section

20.4.1.901 NMAC.

C. Public Notices.  
 (1) Pre-application public meeting and notice. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR Section 124.31 through July 1, 2008 is hereby incorporated by reference.  
 (2) Public notice requirements at the application stage. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.32 through July 1, 2008 is hereby incorporated by reference.  
 (3) Public notice of issuance of a draft permit or a notice of intent to deny, and of any public hearing scheduled, shall be given by publication of a notice in a newspaper of general circulation in the area affected, broadcasts over local radio stations and by mailing a copy of the notice to the permit applicant, those individuals on the department mailing list of persons interested in hazardous waste permit actions, and to any unit of local, state and federal government as may be applicable.  
 (4) All public notices issued shall contain the following minimum information:  
 (a) the subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;  
 (b) a brief description of the procedures by which requests for hearings may be made, unless already scheduled;  
 (c) the name and address of the office processing the permit action for which notice is being given;  
 (d) the name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;  
 (e) a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;  
 (f) the name, address and telephone number of a person from whom interested persons may obtain further information;  
 (g) in addition, public notice of a scheduled public hearing shall also contain references to the dates of previous public notices relating to the permit;  
 (h) the notice shall state where interested persons may secure copies of any

proposed draft permit or notice of intent to deny.  
 D. Fact Sheet.  
 (1) A fact sheet shall be prepared for every draft permit for a hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual legal, methodological and policy questions considered in preparing the draft permit.  
 (2) The fact sheet shall include, when applicable:  
 (a) a brief description of the type of facility or activity which is the subject of the draft permit;  
 (b) the type and quantity of wastes which are proposed to be or are being treated, stored, disposed, injected, emitted, or discharged;  
 (c) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;  
 (d) reasons why any request for variance or alternative to require standards do or do not appear justified;  
 (e) a description of the procedures for reaching a final decision on the draft permit, including: the beginning and ending dates of the comment period, the address where comments will be received, procedures for requesting a hearing, the nature of that hearing, any other procedures by which the public may participate in the final decision, and the name and telephone number of a person to contact for additional information.  
 (3) The fact sheet shall be available at the time the public notice is published.  
 E. Information repository. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.33 through July 1, 2008 is hereby incorporated by reference.  
 F. Hearings.  
 (1) Public notice of any public hearing shall be given at least 30 days prior to the scheduled date of the hearing and shall state the subject.  
 (2) Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the secretary.  
 (3) The secretary may designate a hearing officer to take evidence at the hearing.  
 (4) All hearings shall be recorded by a

certified court reporter. A transcript will be furnished to all persons for review at the department's main office. Costs of a copy of a transcript will be borne by those requesting such copies.  
 (5) In hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.  
 (a) Testimony for hearings on permit issuance or modification shall be presented in the following order: testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification), testimony by other persons (except the department supporting issuance or modification of the permit, in any reasonable order, testimony by persons (except the department) opposed to issuance or modification of the permit, in any reasonable order, testimony by the department, and rebuttal testimony, as appropriate.  
 (b) Testimony for hearings on permit suspension or revocation shall be as follows: testimony by the department, testimony by other persons supporting suspension or revocation of the permit, in any reasonable order, testimony by the permittee, testimony by other persons opposed to suspension or revocation of the permit, in any reasonable order, and rebuttal testimony, as appropriate.  
 (c) In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.  
 (7) The burden of proof at hearings shall be as follows:  
 (a) for hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee;  
 (b) for hearings on permit suspension or revocation, the burden of proof shall be on the department.  
 G. Secretary's decision.  
 (1) Any person heard or represented at the hearing shall be given written notice of the action of the secretary.  
 (2) The secretary shall notify the applicant or permittee of his/her decision and the reasons therefor by certified mail.  
 H. Appeals. Appeals

of the secretary's decision shall be as provided by the Hazardous Waste Act.

(1) The filing of an appeal does not act as a stay of any action required by the secretary's decision.

(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the secretary in deciding upon the permit action. [20.4.1.901 NMAC - Rp, 20 NMAC 4.1.901, 12/1/2018]

**20.4.1.902 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. "Qualified professional engineer" as provided for in 40 CFR Sections 270.14(a), 270.16(a), and 270.26(c)(15) shall mean an independent New Mexico licensed professional engineer. A professional engineer shall abide by all requirements of the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended) and applicable regulations.

B. The substitution of the terms "EPA," "regional administrator" and "administrator" in 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2) & (3), 270.10(g)(1)(i), 270.11(a)(3), 270.32(c), 270.72(a)(5), and 270.72(b)(5), as adopted in this section.

C. The following provisions of 40 CFR Part 270 are omitted from 20.4.1.900 NMAC:

(1) statement in Section 270.1(b), "treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part.";

(2) Sections 270.1(b)(1) and 270.1(b)(2);

(3) "and standardized permit (subpart J of this part)" in the definition of "permit" in Section 270.2;

(4) definition of "standardized permit" in Section 270.2;

(5) Section 270.10(a)(6);

(6) Section 270.10(h)(2);

(7) portion of the first sentence stating, "or as a

routine change with prior approval under 40 CFR 124.213" of Section 270.40(b);

(8) Section 270.41 referencing 270.320 and 40 CFR part 124, subpart G;

(9) Section 270.41(b)(3);

(10) Section 270.51(e); and

(11) Section 270, subpart J. [20.4.1.902 NMAC - Rp, 20 NMAC 4.1.902, 12/1/2018]

**20.4.1.903 - 20.4.1.999**

**[RESERVED]**

[20.4.1.903 - 20.4.1.999 NMAC - Rp, 20 NMAC 4.1.903 - 4.1.999, 12/1/2018]

**20.4.1.1000 ADOPTION OF 40 CFR PART 273:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 273 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.1000 NMAC - Rp, 20 NMAC 4.1.1000, 12/1/2018]

**20.4.1.1001**

**MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. The following terms have the meanings set forth herein.

(1) "Aerosol can" means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

(2) "Regional administrator" and "EPA" as used in 40 CFR sections 273.12 and 273.32 shall mean, as applicable to handlers of universal waste pesticides under this part, notification to the secretary of the New Mexico department of agriculture.

(3) "Universal waste" means, in addition to the hazardous wastes listed in 40 CFR Section 273.9, aerosol cans as described in this subsection.

B. Alternative universal waste labeling. As an alternative to the labeling requirements for universal waste in 40 CFR sections 273.14 and 273.34, universal waste handlers may use other words that accurately identify the universal waste material, for example, "spent bulbs" or "batteries for recycling." Note that the labeling must be either on the individual piece of universal waste, on the container in which the universal waste is stored,

or on a pallet of banded or otherwise bound universal waste being readied for shipment.

C. Breaking and crushing universal waste lamps. In addition to the requirements for universal waste lamps contained in Subparts B and C of 40 CFR Part 273, the following requirements shall apply.

(1) A handler of universal waste may intentionally break or crush lamps generated on-site to reduce their volume to facilitate management or transport to destination facilities. However, breaking and crushing of lamps and subsequent management of the resulting waste must occur in a safe and controlled manner that minimizes the release of hazardous constituents to the workplace and the environment, and steps must be taken to minimize exposures of children, pregnant women, and other sensitive individuals to mercury releases from these activities. Universal waste destination facilities as defined in 40 CFR Section 273.9 may not intentionally break or crush lamps under this subsection.

(2) A handler of universal waste who intentionally breaks or crushes mercury-containing universal waste lamps under this subsection shall comply with the following provisions.

(a) Use a mechanical unit specifically designed for the process that results in the breaking or crushing operation to take place in a container or while the lamps are being added to the container, for example, a drum-top lamp crusher. The unit must also incorporate air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to, the protection provided by a high efficiency particulate air (HEPA) filter, activated charcoal, and a negative air flow (vacuum) through the unit. The unit must have documentation from the manufacturer that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury.

(b) Develop and implement a written procedure specifying how to safely break or crush universal waste lamps. This procedure must include: type of equipment to be used to break or crush the lamps, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment,

safe work practices, decontamination and spill response practices, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator(s) and assistant(s) must receive training applicable to their duties relating to breaking and crushing operations, waste handling, area and equipment decontamination, spill response, and emergency procedures; this training must be documented.

(c) Ensure that the area in which the lamps are broken or crushed is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

(d) Ensure that spills of the contents of the universal waste lamps that may occur during breaking or crushing operations are cleaned up in accordance with 40 CFR sections 273.13 or 273.33. A spill clean-up kit must be readily available to immediately clean up spills or leaks of the contents of the universal waste lamps which may occur during lamp breaking or crushing operations.

(e) Store the broken and crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury in closed, non-leaking containers that are in good condition. Transfer of the broken or crushed lamps to other containers is not permitted unless the area is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

(f) Label drums or containers used for storage of broken or crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury with the words "universal waste-lamps," "waste lamps," "used lamps," or other words that accurately identify the contents, for example, "crushed bulbs."

(g) Manage residues, filter media, or other solid waste generated as part of the breaking or crushing operation that are not being reclaimed and that exhibit any characteristics of a hazardous waste identified in Subpart C of 40 CFR Part 261 in accordance with all applicable requirements of this part.

(3) The owner or operator of a unit that

breaks or crushes mercury-containing universal waste lamps must notify the department's hazardous waste bureau of its intent to operate the unit. The notification shall include the owner and operator name(s), address(es), and phone number(s); manufacturer's documentation describing the unit; documentation that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury; and a description of how and where the unit will be operated.

(a) For units in operation before the requirements in this subsection became effective, the owner or operator must submit such notification within 90 days of the effective date of this requirement.

(b) For units not in operation before the effective date of the requirements in this subsection, the owner or operator must submit such notification before operating the unit.

D. Universal waste aerosol cans. In addition to the requirements for universal waste contained in 40 CFR Part 273, the following requirements shall apply.

(1) Applicability. The requirements of this part apply to persons managing aerosol cans as described in Subsection A of this section, except persons managing the following aerosol cans.

(a) Aerosol cans that are not yet wastes under this part, including those that do not meet the criteria for waste generation in Subparagraph (c) of Paragraph (1) of this subsection.

(b) Aerosol cans that are not hazardous waste. An aerosol can must be managed as a hazardous waste if its contents exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261.

(c) Generation of waste aerosol cans. An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of this part, an aerosol can is considered to be no longer useable when the can is as empty as proper work practices allow, the spray mechanism no longer operates as designed, the propellant is spent, or the product is no longer used. An unused aerosol can becomes a waste on the date the handler decides to discard it. This section does not apply to aerosol cans,

including punctured aerosol cans, that are empty as defined in 40 CFR 261.7(b).

(2) Waste management. A handler of universal waste must manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste to the environment as follows.

(a) A handler of universal waste must immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(b) A handler of universal waste may accumulate universal waste aerosol cans in an accumulation container provided it is clearly marked for such use. The accumulation container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans must be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) Puncturing universal waste aerosol cans. A handler of universal waste may puncture aerosol cans containing hazardous waste under this part to remove and collect the contents of the aerosol cans provided the handler complies with the following provisions.

(a) Ensure that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste to the environment.

(b) Ensure that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture aerosol cans. This procedure must include the type of equipment to be used to puncture the aerosol cans, operation and maintenance of the unit, safe work practices, and proper waste management practices.

(c)

Ensure that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the aerosol can which may occur during the can-puncturing operation.

(d)

Immediately transfers the contents of the aerosol can, or puncturing device if applicable, to a container that meets the requirements of 40 CFR Section 262.34.

(e)

Ensure that the area in which the aerosol cans are punctured is well ventilated.

(f)

Ensure that employees are thoroughly familiar with the procedure for sorting and puncturing aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(g)

Determine whether the contents of the aerosol can, residues, and other solid wastes generated from the aerosol can puncturing activities are a hazardous waste identified in this part.

(h)

Manage the contents of the universal waste aerosol can, residues, and other solid waste generated from the aerosol can puncturing activities in accordance with all applicable hazardous waste management requirements if they exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261. The handler is considered the generator of the contents of the universal waste aerosol can and other solid waste generated from the aerosol can puncturing activities. If the contents of the universal waste aerosol can, residues, or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

(4) Labeling

or marking. Each universal waste aerosol can, or each container in which universal waste aerosol cans are contained or accumulated, must be labeled or marked clearly with any one of the following phrases: "universal waste-aerosol can(s)", "waste aerosol can(s)," or other words that accurately identify the contents, for example, "spent aerosol can(s)." [20.4.1.1001 NMAC - Rp, 20 NMAC 4.1.1001, 12/1/2018]

**20.4.1.1002 ADOPTION OF 40 CFR PART 279:** Except as otherwise provided, the regulations of the United States environmental protection agency set forth in 40 CFR

Part 279 as it may be modified or amended is hereby incorporated by reference. [20.4.1.1002 NMAC - Rp, 20 NMAC 4.1.1002, 12/1/2018]

**20.4.1.1003 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. Alternative used oil labeling for generators. As an alternative to the labeling requirements for containers and aboveground tanks used to store used oil in 40 CFR Section 279.22, used oil generators may use other words that accurately identify the used oil, for example, "waste oil" or "oil for recycling."

B. Used oil storage.

(1) In addition to the requirements for used oil storage in 40 CFR Section 279.22, containers and aboveground tanks used to store used oil outdoors must be closed, except when it is necessary to add or remove used oil.

(2) With the exception of the response to releases requirements in 40 CFR 279.22(d), this section does not apply to used oil storage containers, used temporarily in the normal course of maintenance and service activities, where these containers are emptied at the end of each work day or shift.

[20.4.1.1003 NMAC - Rp, 20 NMAC 4.1.1003, 12/1/2018]

**20.4.1.1004 - 20.4.1.1099 [RESERVED]**

[20.4.1.1004 - 20.4.1.1099 - Rp, 20 NMAC 4.1.1004 - 4.1.1099, 12/1/2018]

**20.4.1.1100 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this Part does not relieve a person of the obligation to comply with all other applicable state and federal regulations. If the EPA should suspend any federal hazardous waste regulation having a direct counterpart to these regulations, the counterpart in these regulations shall be deemed suspended without any further action being taken.

[20.4.1.1100 NMAC - Rp, 20 NMAC 4.1.1100, 12/1/2018]

**20.4.1.1101 CONSTRUCTION:**

This Part shall be liberally construed to effectuate the purpose of the Act. [20.4.1.1101 NMAC - Rp, 20 NMAC 4.1.1101, 12/1/2018]

**20.4.1.1102 REFERENCE TO 40 CFR PART 124:** Reference to any provisions of 40 CFR Part 124 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the corresponding provision of section 901 of this Part with the exception of any reference to 40 CFR sections 124.31 through 124.33 and any reference to any section of 40 CFR Part 124 that is contained within 40 CFR sections 124.31 through 124.33. [20.4.1.1102 NMAC - Rp, 20 NMAC 4.1.1102, 12/1/2018]

**20.4.1.1103 REFERENCE TO 40 CFR PART 280:**

Reference to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the New Mexico Underground Storage Tank Regulations, 20.5.1 through 20.5.17 NMAC.

[20.4.1.1103 NMAC - Rp, 20 NMAC 4.1.1103, 12/1/2018]

**20.4.1.1104 SEVERABILITY:**

If any provision or application of this Part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.4.1.1104 NMAC - Rp, 20 NMAC 4.1.1104, 12/1/2018]

**20.4.1.1105 EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL REGULATION:**

If any federal regulation incorporated by reference in this Part is stayed, invalidated, or otherwise rendered unenforceable by EPA, in whole or in part, by action of a federal court or by the EPA, such incorporated federal regulation shall be enforceable by the department only to the extent it is enforceable by EPA. [20.4.1.1105 NMAC - Rp, 20 NMAC 4.1.1105, 12/1/2018]

**20.4.1.1106 SAVING CLAUSE:**

Amendment and supersession of EIB/HWMR7 and this Part shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to EIB/HWMR-7 or this Part.

[20.4.1.1106 NMAC - Rp, 20 NMAC 4.1.1106, 12/1/2018]

**20.4.1.1107 AVAILABILITY OF MATERIALS INCORPORATED BY**

**REFERENCE:** Materials incorporated by reference into this Part may be reviewed at the New Mexico Hazardous Waste Bureau,

2905 Rodeo Park Drive East, Bldg. 1,  
Santa Fe, New Mexico 87505.  
[20.4.1.1107 NMAC - Rp, 20 NMAC  
4.1.1107, 12/1/2018]

**HISTORY OF 20.4.1 NMAC:**

Pre-NMAC History:  
EIB 78-3 Hazardous Waste  
Regulations, filed 10/5/78;  
EIB/HWMR 1 Hazardous Waste  
Management Regulations, filed  
12/6/82;  
EIB/HWMR 2 Hazardous Waste  
Management Regulations, filed  
1/5/84;  
EIB/HWMR 3 Hazardous Waste  
Management Regulations, filed  
7/23/86;  
EIB/HWMR 4 Hazardous Waste  
Management Regulations, filed  
12/16/87;  
EIB/HWMR 5 Hazardous Waste  
Management Regulations, filed  
9/30/88;  
EIB/HWMR 6 Hazardous Waste  
Management Regulations, filed  
2/11/91;  
EIB/HWMR 7 Hazardous Waste  
Management Regulations, filed  
10/21/92.

**History of Repealed Material:**

20 NMAC 4.1 Hazardous Waste  
Management (filed 9/27/95) -  
Repealed 6/14/2000.  
20 NMAC 4.1 Hazardous Waste  
Management (filed 6/14/2000) -  
Repealed 12/1/2018.

**Other History:**

EIB/HWMR 7, Hazardous Waste  
Management Regulations (filed  
10/21/92) replaced by 20 NMAC  
4.1 Hazardous Waste Management,  
effective 9/23/94;  
20 NMAC 4.1, Hazardous Waste  
Management (filed 8/24/94) replaced  
by 20 NMAC 4.1, Hazardous Waste  
Management, effective 11/1/95.  
20 NMAC 4.1, Hazardous Waste  
Management (filed 9/27/95) replaced  
by 20.4.1 NMAC, 20 NMAC 4.1,  
Hazardous Waste Management,  
effective 6/14/2000.

**ENVIRONMENT  
DEPARTMENT**

**TITLE 7 HEALTH  
CHAPTER 6 FOOD  
HANDLING  
PART 2 FOOD SERVICE  
AND FOOD PROCESSING**

**7.6.2.1 ISSUING  
AGENCY:** New Mexico  
Environmental Improvement Board.

[7.6.2.1 NMAC - Rp, 7.6.2.1 NMAC,  
12/1/2018]

**7.6.2.2 SCOPE:** All food  
establishments and food processing  
plants.

[7.6.2.2 NMAC - Rp, 7.6.2.2 NMAC,  
12/1/2018]

**7.6.2.3 STATUTORY**

**AUTHORITY:** 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).

[7.6.2.3 NMAC - Rp, 7.6.2.3 NMAC,  
12/1/2018]

**7.6.2.4 DURATION:**

Permanent.  
[7.6.2.4 NMAC - Rp, 7.6.2.4 NMAC,  
12/1/2018]

**7.6.2.5 EFFECTIVE**

**DATE:** December 1, 2018, unless  
a later date is cited at the end of a  
section.

[7.6.2.5 NMAC - Rp, 7.6.2.5 NMAC,  
12/1/2018]

**7.6.2.6 OBJECTIVE:**

The objective of these regulations  
is to protect the public health by  
establishing standards and provisions  
for the safe operation of food  
establishments and food processing  
plants to assure that consumers are  
not exposed to adverse environmental  
health conditions.

[7.6.2.6 NMAC - Rp, 7.6.2.6 NMAC,  
12/1/2018]

**7.6.2.7 DEFINITIONS:**

**A.** Adoption of food  
code definitions. Except as otherwise

provided below, Part 1-2 (Definitions)  
of the 2017 United States food and  
drug administration model food code  
is hereby adopted and incorporated in  
its entirety.

**B.** Modifications to  
food code definitions. The following  
terms defined in food code Part 1-2  
have the meanings set forth herein, in  
lieu of the meanings set forth in food  
code, Part 1-2.

**(1)**

“Adulterated” has the meaning state  
in the New Mexico Food Act, Section  
25-2-10 NMSA 1978.

**(2)**

“Critical  
control point” means a point, step, or  
procedure in a food process at which  
a control measure can be applied  
and at which control is essential to  
prevent, reduce to an acceptable level,  
or eliminate an identified food hazard.

**(3)**

“Critical  
limit” means the maximum or  
minimum value to which a physical,  
biological, or chemical parameter  
must be controlled at a critical control  
point to prevent, eliminate, or reduce  
to an acceptable level the occurrence  
of the identified food hazard.

**(4)**

“Drinking  
water” means water that meets criteria  
as specified in 20.7.10 NMAC.  
Drinking Water is traditionally known  
as “potable water”, and includes the  
term “water” except where the term  
used connotes that the water is not  
potable, such as “boiler water,” “mop  
water,” “rainwater,” “wastewater,”  
and “non-drinking” water.

**(5)**

“Food  
establishment” means an operation  
that stores, prepares, packages,  
serves, or vends food directly to the  
consumer, or otherwise provides food  
for human consumption such as a  
restaurant; satellite or catered feeding  
location; catering operation if the  
operation provides food directly to  
a consumer or to a conveyance used  
to transport people; market; vending  
location; conveyance used to transport  
people; an institution; or food bank;  
and relinquishes possession of food  
to a consumer directly, or indirectly  
through a delivery service such as  
home delivery of grocery orders or  
restaurant takeout orders, or delivery

service that is provided by common carriers.

(a)

Food establishment includes:

(i)

an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; or

(ii)

an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(b)

Food establishment does not include:

(i)

an establishment that offers only prepackaged foods that are not time/temperature control for safety (TCS) foods;

(ii)

a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii)

a food processing plant; including those that are located on the premises of a food establishment;

(iv)

a kitchen in a private home if only baked goods (e.g., cookies, brownies, cakes, fruit pies) that are not TCS food, are prepared for sale or service at a fundraising function (e.g., a religious or charitable organization's bake sale) if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

(v)

an area where food that is prepared as specified in Item (iv) of Subparagraph (b) of Paragraph (5) of Subsection B of 7.6.2.7 NMAC is sold or offered for human consumption;

(vi)

a kitchen in a private home, such as a facility licensed by or registered with the department of health (DOH), or the children, youth and families department (CYFD), or a bed-and-

breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority;

(vii)

a private home that receives catered or home-delivered food that is served to non-paying guests;

(viii)

non-paying guests in private homes;

(ix)

a private home or home environment where residents take part in preparing and serving their own meals;

(x)

a pot-luck dinner or similar event in which the food is prepared or contributed by the participants and for which no fee is charged;

(xi)

a custom exempt meat processing facility where animals are processed for personal use by the animal owner as food and not for sale or service in a food establishment;

(xii)

a dairy establishment as defined in the New Mexico Food Act;

(xiii)

an animal slaughter facility;

(xiv)

an aquaculture facility that raises fish;

(xv)

a "pure honey" processing facility; "pure honey" refers to natural liquid or solid honey extracted from the combs or in the comb taken from beehives with no processing or adding of additional ingredients; or

(xvi)

an operation that offers to consumers whole raw agricultural products.

(6)

"Hazard analysis critical control point (HACCP) plan" means a document prepared in accordance with the principles of HACCP to ensure control of hazards which are significant for food safety.

(7)

"Hermetically sealed container" means an airtight container that is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing, or to maintain the controls which prevent potential growth of microorganisms or the elaboration of toxins through acidity (pH) or water activity ( $a_w$ ).

(8)

"Public water system" has the meaning stated in 20.7.10 NMAC.

(9)

"Regulatory authority" means the New Mexico environment department.

(10)

"Temporary food establishment" (TFE) means a food establishment that operates at a fixed location in conjunction with a single event or celebration for a period not exceeding the length of the event or celebration, and does not exceed 30 days.

C.

Additions to food code definitions. The following terms not defined in food code Part 1-2 have the meanings set forth herein when the terms are used in this part.

(1)

"Acid food" means food that has a natural pH of 4.6 or below.

(2)

"Acidified food" means low-acid food to which acid(s) or acid food(s) are added and have a water activity ( $a_w$ ) greater than 0.85 and have a finished equilibrium pH of 4.6 or below. Carbonated beverages and food that are stored, distributed, and retailed under refrigeration are not classified as acidified food.

(3)

"Control point" means a step at which biological, chemical, or physical factors can be controlled.

(4)

"Corrective action" means an action to be taken when the results of monitoring at the critical control point indicate a loss of control.

(5)

"Deviation" means failure to meet a critical limit.

(6) “Food code” means the 2017 United States food and drug administration model food code.

(7) “Food handler card” means a card issued to an individual after successful completion of a food handler training program to function as a food employee.

(8) “Food handler training program” means an ANSI/ASTM E2659-09 accredited food handler training certificate program.

(9) “Good manufacturing practices” (GMPs) means the minimum sanitary and processing requirements related to production methods, equipment, facilities, and other controls that a food processing plant must meet to assure that food is safe and wholesome.

(10) “Hazard analysis and critical control point” (HACCP) means a food safety management system that focuses on the identification, evaluation, and control of food safety hazards.

(11) “Hazard analysis” means the process of collecting and evaluating information on hazards associated with the food under consideration to decide which are significant and must be addressed in the HACCP plan.

(12) “Home-based food processing operation” means any business in which a residential kitchen is permitted to process approved food that is not classified as a TCS food and is packaged and is offered directly to the consumer.

(13) “Jerky” means a dried, finished meat, poultry, fish, or game animal product having a water activity ( $a_w$ ) less than 0.85.

(14) “Low acid food” means any food, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity ( $a_w$ ) greater than 0.85. Tomatoes and tomato products having a finished equilibrium pH less than 4.7 are not classified as low acid food.

(15) “Misbranded” has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA 1978.

(16) “Mobile food establishment” means a food establishment that is designed to be readily movable; completely retains its mobility; and is equipped to serve food. Mobile food establishment includes self-contained mobile units, non-self-contained mobile units, pushcarts, and mobile support units.

(17) “Mobile support unit” means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle used in conjunction with a New Mexico based servicing area that travels to, and services, other mobile food establishments as needed to replenish supplies, including food and potable water, clean the interior of the unit, or dispose of liquid or solid wastes.

(18) “Monitoring” means to conduct a planned sequence of observations or measurements to assess whether a process, point, or procedure is under control and to produce an accurate record for future use in verification.

(19) “Non self-contained mobile unit” means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle that is required to operate from a New Mexico based servicing area.

(20) “Operational plan” means a written plan outlining the product formulation, production steps, safety requirements, distribution, labeling, and recall procedures of a food product that will be implemented by a food establishment or food processing plant when processing packaged food.

(21) “Process authority” means an expert in the processes for controlling pathogenic microorganisms in food, and as such, is qualified by education, training and experience to evaluate all of the aspects of pathogen control measures and determine if such control measures, when properly implemented, will control pathogens effectively.

(22) “Pushcart” means a human propelled unit, equipped to serve food, that is required to operate from a New Mexico based servicing area.

(23) “Recall” means a return of food products that are either known or suspected to be adulterated, misbranded, or otherwise unsafe for human consumption, to the manufacturer or distributor, or that are disposed of by approved methods.

(24) “Sanitation standard operating procedures” (SSOPs) means written procedures specific to a single food processing plant to be followed routinely for the performance of designated operations to ensure sanitary conditions and to prevent product adulteration in a food processing plant.

(25) “Self-contained mobile unit” means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle that is not required to operate from a New Mexico based servicing area.

(26) “Shelf-stable product” means a product that is hermetically sealed and, when stored at room temperature, should not demonstrate any microbial growth.

(27) “Standard operating procedures” (SOPs) means written procedures to be followed routinely for the performance of designated operations in a food processing plant.

(28) “Standards of identity” means legal standards, defined by the food and drug administration (FDA), for foods regarding minimum quality specifications, including permitted ingredients and processing requirements, to be marketed under a certain name.

(29) “Sub-ingredient” means an ingredient within another ingredient that has been added to a food and is declared parenthetically following the name of the ingredient or by dispersing each ingredient in its order of predominance in the ingredient



statement without naming the original ingredient.

(30)

“Validation” means that element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP system, when properly implemented, will control effectively the identified food hazards.

(31)

“Verification” means those activities, other than monitoring, that establish the validity of the HACCP plan and that the system is operating according to the plan. It includes validation procedures.

[7.6.2.7 NMAC - Rp, 7.6.2.7 NMAC, 12/1/2018]

**7.6.2.8 FOOD ESTABLISHMENT REQUIREMENTS:**

**A.** Adoption of food code. Except as otherwise provided, the 2017 United States food and drug administration model food code and the supplement to the 2017 food code are hereby adopted and incorporated in their entirety.

**B.** Modifications to food code. Except as otherwise provided, the following modifications are made to the incorporated food code.

(1) 2-102.12

Certified food protection manager.

(a)

At least one employee per food establishment that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.

(b)

This section applies to food establishments, temporary food establishments, and mobile food establishments.

(c)

This section does not apply to certain types of food establishments deemed by the regulatory authority to pose minimal risk of causing, or

contributing to, foodborne illness based on the nature of the operation and extent of food preparation.

(d)

A single certified food protection manager may be responsible for more than a single food establishment, provided that a variance is approved by the regulatory authority as specified in Paragraph (12) of Subsection B of 7.6.2.8 NMAC and Section 8-103.11 of the food code.

(e)

The effective date of Paragraph (1) of Subsection B of 7.6.2.8 NMAC shall be three months from the effective date of 7.6.2.8 NMAC.

(2) 2-102.20

Food protection manager certification

(a)

A person in charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the conference for food protection standards for accreditation of food protection manager certification programs is deemed to comply with Paragraph 2-102.11(B).

(b)

A food establishment that has an employee that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs is deemed to comply with Section 2102.12.

(3) 3-201.15

Molluscan shellfish.

(a)

Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the United States (U.S.) DOH and human services, public health service, FDA, national shellfish sanitation program guide for the control of molluscan shellfish.

(b)

Molluscan shellfish shall be from

sources that are listed in the interstate certified shellfish shippers list.

(4) 3-202.18

Shellstock identification.

(a)

Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in the national shellfish sanitation program guide for the control of molluscan shellfish, and that list:

(i)

except as specified under Subparagraph (c) of Paragraph 3 of Subsection B of 7.6.2.8 NMAC, on the harvester’s tag or label, the following information in the following order: the harvester’s identification number that is assigned by the shellstock control authority, the date of harvesting, the most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellstock control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested, the type and quantity of shellfish, the following statement in bold, capitalized type: “this tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days”;

(ii)

except as specified in Subparagraph (d) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, on each dealer’s tag or label, the following information in the following order: the dealer’s name and address, the certification number assigned by the shellstock control authority, the original shipper’s certification number including the abbreviation of the name of the state or country in which the shellfish are harvested, the same information as specified for a harvester’s tag under Item (i) of Subparagraph (a) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, and the following statement in bold, capitalized type: “this tag is required to be attached until container is empty

and thereafter kept on file for 90 days.”

(b) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under Subparagraph (a) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC shall be subject to a hold order or seizure and destruction in accordance with Section 25-2-6 NMSA 1978.

(c) If a place is provided on the harvester’s tag or label for a dealer’s name, address, and certification number, the dealer’s information shall be listed first.

(d) If the harvester’s tag or label is designed to accommodate each dealer’s identification as specified under Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, individual dealer tags or labels need not be provided.

(5) 3-502.11 Variance requirement. A food establishment shall obtain a variance from the regulatory authority as specified in Sections 8-103.10 and 8-103.11 of the food code before:

(a) smoking food as a method of food preservation rather than as a method of flavor enhancement;

(b) curing food;

(c) using food additives or adding components such as vinegar:

(i) as a method of food preservation rather than as a method of flavor enhancement; or

(ii) to render a food so that it is not TCS food;

(d) packaging TCS food using a reduced oxygen packaging method except where the growth of and toxin formation by clostridium botulinum and the growth of listeria monocytogenes are controlled as specified under Section 3-502.12 of the food code;

(e) operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption;

(f) preparing food by another method that is determined by the regulatory authority to require a variance; or

(g) sprouting seeds or beans.

(6) 4-205.10 Food equipment, certification and classification.

(a) Food equipment, including new and replacement equipment, shall be certified or classified for sanitation by an American national standards institute (ANSI) - accredited certification program. Such accredited programs include, but are not limited to, the national sanitation foundation (NSF), underwriters laboratories (UL), intertek ETL, or the Canadian standards administration (CSA).

(b) Food equipment that is certified or classified for sanitation by an ANSI - accredited certification program is deemed to comply with Parts 4-1 and 4-2 of the Food Code.

(7) 4-301.11 Cooling, heating, holding capacities and use.

(a) Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Chapter 3 of the food code.

(b) Steam tables, slow cookers, and other hot holding devices shall not be used in cooking, heating or reheating food as specified under Sections 3-401 and 3-403 of the food code.

(8) 5-102.11 Standards. Except as specified under Section 5-102.12 of the food code:

(a) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and

(b) Water from a non-public water system shall meet:

(i) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and

(ii) the drinking water source setback requirements as specified in 20.7.3 NMAC.

(9) 5-102.13 Sampling. Except when used as specified under Section 5-102.12 of the Food Code, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

(10) 5-203.13 Service sink.

(a) Except as specified in Paragraph (C) of Section 5-203.13 of the food code, at least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(b) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.

(c) When no health hazard will exist, the regulatory authority may approve an alternative method.

(11) 6-501.115 Prohibiting animals.

(a) Except as specified in Subparagraphs (b) and (c) of Paragraph (10) of Subsection B of 7.6.2.8 NMAC, live animals may not be allowed on the premises of a food establishment.

(b) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles cannot result:

(i) edible fish or decorative fish in aquariums, shellfish or crustaceans on

ice or under refrigeration, and shellfish and crustaceans in display tank systems;

(ii) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(iii) in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

(iv) pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas, condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service;

(v) in areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals; and

(vi) pet dogs in outdoor dining areas, if allowed by the food establishment, and pet dogs are excluded from any area where food is prepared, pet dogs are kept on a leash and under reasonable control at all times, pet dogs are not allowed on chairs, consumer's laps, tables, or other furnishings, consumers shall not feed pet dogs on food establishment tableware, and a sign approved by the regulatory authority is posted at each entrance to the designated outdoor dining area stating the conditions

under which pet dogs are allowed and alerting patrons that pet dogs are allowed and may be present.

(c) Live or dead fish bait may be stored if contamination of food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles cannot result.

(12) 8-103.10 Modifications and waivers.

(a) The regulatory authority may grant a variance by modifying or waiving the requirements of the food code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under Section 8-103.11 of the food code in its records for the food establishment.

(b) The regulatory authority shall grant the variance, grant the variance subject to conditions, or deny the variance within 15 working days following the receipt of the variance request.

(13) 8-201.11 When plans are required. Except for temporary food establishments, a permit applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval at least 30 calendar days before:

(a) the construction of a food establishment;

(b) the conversion of an existing structure for use as a food establishment;

(c) the remodeling of a food establishment or a change of type of food establishment or food operation as specified under Subparagraph (c) of Paragraph (17) of Subsection B of 7.6.2 NMAC if the regulatory authority determines that plans and specifications are necessary to ensure compliance with the food code; or

(d) opening or changing ownership of an existing food establishment, if current plans and specifications are not on file with the regulatory authority.

(14) 8-301.11 Prerequisite for operation.

(a) A person may not operate a food establishment or servicing area without a valid permit to operate issued by the regulatory authority.

(b) Except as specified in Subparagraphs (c) and (d) of Paragraph (13) of Subsection B of 7.6.2 NMAC, when more than a single food establishment is operated on the premises, each one shall be separately permitted.

(c) Bars operating in conjunction with a food establishment do not require a separate permit.

(d) A food establishment used as a servicing area does not require a separate permit.

(e) Prior to the issuance of a permit or the renewal of a permit, the regulatory authority shall make inspections of the food establishment or food processing plant as it deems necessary.

(15) 8-302.11 Submission 30 calendar days before proposed opening. An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment, mobile food establishment, food processing plant, or home-based food processing operation.

(16) 8-302.13 Qualifications and responsibilities of applicants. To qualify for a permit, an applicant shall:

(a) be an owner of the food establishment or an officer of the legal ownership;

(b) comply with the requirements of 7.6.2 NMAC;

(c) as specified under Paragraph (21) of Subparagraph B of 7.6.2.8 NMAC, agree to allow access to the food establishment and to provide required information; and

(d) pay the applicable permit fees when approval to open is granted by the regulatory authority.

<p>(17) 8-302.14 Contents of the application. The application shall include:</p> <p>(a) the name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;</p> <p>(b) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;</p> <p>(c) a statement specifying whether the food establishment:</p> <p>(i) is mobile or stationary and temporary or permanent;</p> <p>(ii) prepares, offers for sale, or serves time/temperature control for safety food only to order upon a consumer's request, or in advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or using time as the public health control as specified under Section 3-501.19 of the food code;</p> <p>(iii) prepares time/temperature control for safety food in advance using a food preparation method that involves two or more steps which may include combining time/temperature control for safety food ingredients, cooking, cooling, reheating, hot or cold holding, freezing or thawing;</p> <p>(iv) prepares food as specified under Item (ii) of Subparagraph (c) of Paragraph (16) of Subparagraph B of 7.6.2.8 NMAC for delivery to and consumption at a location off the premises of the food establishment where it is prepared;</p> <p>(v) prepares food as specified under Item (ii) of Subparagraph (c) of Paragraph (16) of Subparagraph B of 7.6.2.8 NMAC for service to a highly susceptible population;</p> <p>(vi) prepares only food that is not time/temperature control for safety food;</p>	<p>(vii) does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;</p> <p>(d) the name, title, address, and telephone number of the person directly responsible for the food establishment;</p> <p>(e) the name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under Subparagraph (d) of Paragraph (16) of Subsection B of 7.6.2.8 NMAC, such as the zone, district, or regional supervisor;</p> <p>(f) the names, titles, and addresses of the persons comprising the legal ownership as specified under Subparagraph (b) of Paragraph (16) of Subsection B of 7.6.2.8 NMAC, including the owners and officers, and the local resident agent if one is required based on the type of legal ownership;</p> <p>(g) a statement signed by the applicant that attests to the accuracy of the information provided in the application and affirms that the applicant will comply with the food code, and allow the regulatory authority access to the food establishment as specified under Subparagraph (a) of Paragraph (20) of Subsection B of 7.6.2.8 NMAC and to the records specified under Sections 3-203.12 and 5-205.13 of the food code and Subparagraph (6) of Paragraph (D) of Section 8-201.14 of the food code; and</p> <p>(h) other information required by the regulatory authority.</p> <p>(18) 8-303.20 Existing establishments, permit renewal, and change of ownership.</p> <p>(a) The regulatory authority may renew a permit for an existing food establishment upon submission of a renewal form provided by the regulatory authority and the required fee(s) as specified in Roman numerals (i) and (ii) of Subparagraph (a) of Paragraph (3) of Subsection D of</p>	<p>7.6.2.8 prior to the expiration date of the permit. Permit renewals that are not submitted before the expiration date shall be assessed a late fee as specified in Subparagraph (c) of Paragraph (3) of Subsection D of 7.6.2.8, regardless of whether a permit fee is required.</p> <p>(b) The regulatory authority may issue a permit to a new owner of an existing food establishment, mobile food establishment, servicing area, or food processing plant upon completion of requirements as specified in Paragraph (14) of Subsection B of 7.6.2.8 and Paragraph (15) of Subsection B of 7.6.2.8, and an inspection shows it is in compliance with 7.6.2 NMAC.</p> <p>(19) 8-401.10 Establishing inspection interval.</p> <p>(a) Except as specified in Subparagraph (b) of Paragraph (18) of Subsection B of 7.6.2.8 NMAC, the regulatory authority shall inspect a food establishment, mobile food establishment, food processing plant, or home-based food processing operation at least annually to determine compliance with the Food Service Sanitation Act, the New Mexico Food Act, and 7.6.2 NMAC.</p> <p>(b) The regulatory authority may periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature control for safety food and that:</p> <p>(i) has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or</p> <p>(ii) has inexperienced food employees.</p> <p>(c) When an inspection conducted by the regulatory authority reveals a violation, or repeat violation of priority items of 7.6.2 NMAC and a re-inspection is scheduled by the regulatory authority, a re-inspection penalty fee shall be assessed by the</p>
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regulatory authority and paid by the operator as specified in Subparagraph (d) of Paragraph (3) of Subsection D of 7.6.2.8 NMAC.

(20) 8-401.20

Performance- and risk-based.

The regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with the food code and the establishment's potential as a vector of foodborne illness by evaluating:

(a)

past performance, for nonconformance with code or HACCP plan requirements that are priority items or priority foundation items;

(b)

past performance, for numerous or repeat violations of Food Code or HACCP plan requirements that are core items;

(c)

past performance, for complaints investigated and found to be valid;

(d)

the hazards associated with the particular foods that are prepared, stored, or served;

(e)

the type of operation including the methods and extent of food storage, preparation, and service;

(f)

the number of people served; and

(g)

whether the population served is a highly susceptible population.

(21) 8-402.11

Allowed at reasonable times after due notice.

(a)

After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment, mobile food establishment, food processing plant, or home-based food processing operation is in compliance with the food code by allowing access to the establishment, allowing inspection, and providing information and

records specified in the food code and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(b)

The regulatory authority shall be allowed to copy any records pertaining to the manufacture, processing, packing, distribution, receipt, holding, or importation of food maintained by or on behalf of a food establishment, mobile food establishment, food processing plant, or home-based food processing operation in any format, including paper and electronic formats, and at any location. Proprietary documents shall be protected by the regulatory authority as specified in Section 8-202.10 of the food code.

(22) 8-402.20

Refusal, notification of right to access, and final request for access. If a person denies access to the regulatory authority, the regulatory authority shall:

(a)

inform the person that:

(i)

the permit holder is required to allow access to the regulatory authority as specified under Section 8-402.11 of the food code;

(ii)

access is a condition of the acceptance and retention of a food establishment permit to operate as specified under Section 8-304.11 of the food code;

(iii)

if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and

(iv)

refusal to allow access is grounds for immediate permit suspension or revocation;

(b)

make a final request for access.

(23) 8-403.30

Issuing report and obtaining acknowledgement of receipt. The regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations, as soon as possible after the inspection, to the permit holder or

to the person in charge, and request a signed acknowledgment of receipt.

(24) 8-801.10

Proper methods. A notice issued in accordance with the food code shall be considered to be properly served if it is served by one of the following methods:

(a)

the notice is personally served by the regulatory authority, a law enforcement officer, or a person authorized to serve a civil process to the permit holder, the person in charge, or person operating a food establishment without a permit; or

(b)

the notice is sent by the regulatory authority to the last known address of the permit holder or the person operating a food establishment without a permit, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired.

(25) 8-801.20

Restriction or exclusion order, hold order or immediate suspension. An employee restriction or exclusion order, an order to hold and not distribute food, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order, or an immediate suspension order shall be:

(a)

served as specified in Paragraph (24) of Subsection B of 7.6.2.8 NMAC; or

(b)

clearly posted by the regulatory authority at a public entrance to the food establishment and a copy of the notice sent by first class mail to the permit holder or to the owner or custodian of the food, as appropriate.

(26) 8-901.10

Conditions warranting remedy. The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of the food code if a person operating a food establishment or employee:

(a)

fails to have a valid permit to operate a food establishment as specified under Section 8-301.11 of the food code;

(b) violates any term of condition of a permit as specified under Section 8-304.11 of the food code;

(c) allows repeated violations of the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978; the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or serious or repeated food code violations to reoccur or remain uncorrected beyond time frames for correction approved, directed, or ordered by the regulatory authority;

(d) fails to comply with a regulatory authority order issued as specified in Section 8-501.20 of the food code concerning an employee or conditional employee suspected of having a disease transmissible through food by infected persons;

(e) fails to comply with a hold order as specified in Paragraph (27) of Subsection B of 7.6.2.8 NMAC;

(f) fails to comply with an order issued as a result of a hearing for an administrative remedy as specified in Section 8-906.40 of the food code; or

(g) Fails to comply with an immediate suspension order issued by the regulatory authority as specified in Paragraph (25) of Subsection B of 7.6.2.8 NMAC and Paragraph (31) of Subsection B of 7.6.2.8 NMAC.

(27) 8-903.10 Hold order, justifying conditions and removal of food.

(a) The regulatory authority may place a hold order on a food that:

(i) originated from an un-approved source;

(ii) may be unsafe, adulterated, or not honestly presented;

(iii) is not labeled according to law, or, if raw molluscan shellfish, is not tagged or labeled according to law; or

(iv) is otherwise not in compliance with the food code.

(b) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the order to a place of safekeeping.

(28) 8-903.20 Hold order, warning or hearing not required.

(a) The regulatory authority may issue a hold order to a permit holder or to a person who owns or controls the food, as specified in Paragraph (27) of Subsection B of 7.6.2.8 NMAC, without prior warning, notice of a hearing, or a hearing on the hold order.

(b) If the suspected food has been distributed, the permit holder shall be given the opportunity to recall the food voluntarily at the permit holder's expense.

(c) If the permit holder refuses to recall the suspected food, the regulatory authority may order a mandatory recall of the suspected food at the permit holder's expense.

(29) 8-903.60 Examining, sampling, and testing food. The regulatory authority may examine, sample, and test food in order to determine its compliance with the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978; the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; and 7.6.2 NMAC.

(30) 8-903.80 Destroying or denaturing food. When any food is found, by examination or laboratory analysis, to be in violation of safe health standards, the regulatory authority may order condemnation and disposal of the product lot, at the expense of the permit holder.

(31) 8-904.10 Conditions warranting action. The regulatory authority may immediately suspend a permit if it determines through inspection, or examination of employees, food records, or other

means as specified in the food code, that an imminent health hazard exists.

(32) 8-904.20 Immediate suspension, warning or hearing not required. The regulatory authority may immediately suspend a person's permit as specified in Paragraph (31) of Subsection B of 7.6.2.8 NMAC by providing written notice as specified in Section Paragraph (25) of Subsection B of 7.6.2.8 NMAC of the immediate suspension to the permit holder or person in charge, without prior warning, notice of a hearing, or a hearing.

(33) 8-904.30 Contents of the notice. An immediate suspension notice shall state:

(a) that the food establishment permit is immediately suspended and that all food operations shall immediately cease;

(b) the reasons for the immediate suspension with reference to the provisions of the food code that are in violation;

(c) the name and address of the regulatory authority representative to whom a written request for re-inspection may be made and who may certify that reasons for the suspension are eliminated; and

(d) that the permit holder may request an appeal hearing by submitting a timely request as specified in Paragraph (35) of Subsection B of 7.6.2.8 NMAC and Paragraph (36) of Subsection B of 7.6.2.8 NMAC.

(34) 8-904.50 Term of suspension, reinstatement of permit.

(a) An immediate suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and other means as appropriate.

(b) The suspended permit shall be reinstated immediately if the regulatory authority determines that

the public health hazard or nuisance no longer exists. A notice of the reinstatement shall be provided to the permit holder or person in charge.

(35) 8-905.10

Response to notice of hearing or request for hearing, basis and time frame.

(a)

A permit applicant may request a hearing regarding the disposition of an application for a new or revised permit if the regulatory authority does not issue or deny the permit within the time frame specified in the Food Code.

(b)

A permit holder may request a hearing to address concerns about the regulatory authority's denial of application for a permit or request for a variance, or compliance actions, except that a hearing request does not stay the regulatory authority's restriction or exclusion of employees specified in Section Paragraph (31) of Subsection B of 7.6.2.8 NMAC.

(c) A

person desiring a hearing in response to a denial of an application for permit or an adverse administrative determination shall submit a hearing request to the regulatory authority within 10 calendar days of the date of the denial, inspection, or compliance action.

(36) 8-905.20

Request for hearing, required form and contents. A request for hearing as specified in Section 8-905.10 of the food code shall be in written form and contain the following information.

(a) If

a request for hearing:

(i)

a statement of the issue of fact specified in Paragraph (B) of Section 8-905.30 of the food code for which the hearing is requested; and

(ii)

a statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(b) If

either a response to notice of hearing or a request for a hearing:

(i)

a statement indicating whether

the presence of witnesses for the regulatory authority is required; and  
(ii)

the name and address of the respondent's or requestor's legal counsel, if any.

(37) 8-905.60

Notice, contents. A notice of hearing shall contain the following information:

(a)

time, date and place of the hearing;

(b)

purpose of the hearing;

(c)

the rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in Paragraph (39) of Subsection B of 7.6.2.8 NMAC; and

(d)

the consequences of failing to appear at the hearing.

(38) 8-905.100

Record of proceeding. A complete digital recording of a hearing shall be made and maintained as part of the regulatory authority's records.

(39) 8-907.10

Rights of parties.

(a)

The rules of civil procedure and the rules of evidence shall not apply, but a hearing shall be conducted so that all relevant views, arguments, and testimony are amply and fairly presented.

(b)

Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support of their position.

(40) 8-907.30

Evidence to be excluded. Evidence shall be excluded that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege.

(41) 8-909.10

Gaining access to premises and records. The regulatory authority may seek access for one or more of the following purposes, according to law for gaining access:

(a)

if admission to the premises of a

food establishment, mobile food establishment, temporary food establishment, food processing plant, or home-based food processing operation is denied or other circumstances exist that would justify an inspection order under law, to make an inspection including taking photographs;

(b) to

examine and sample the food or other substances found on the premises; and

(c) to

examine and copy the records on the premises relating to food as specified in Section 8-402.11 of the food code.

C. Omissions. The following provisions are omitted from the incorporated food code:

(1)

5-203.11(C) Handwashing sinks.

(2) 8-7

Authority.

(3) 8-902.20

Content of inspection order.

(4) 8-905.30

Provided upon request.

(5) 8-905.40

Provided in accordance with law.

(6) 8-905.50

Timeliness, appeal proceeding within five business days, other proceeding within 30 calendar days.

(7) 8-905.70

Proceeding commences upon notification.

(8) 8-905.80

Procedure, expeditious and impartial.

(9) 8-905.90

Confidential.

(10) 8-906.10

Appointment by regulatory authority and purpose.

(11) 8-906.20

Qualifications.

(12) 8-906.30

Powers, administration of hearings.

(13) 8-906.40

Powers, administrative remedies.

(14) 8-909.20

Contents of court petition.

(15) 8-909.30

Sworn statement of denied access.

(16) 8-909[.].40

Contents of an order.

(17) 8-909.50

Optional contents of an order.

- (18) 8-910.10 Institution of proceedings.
- (19) 8-911.10 Authorities, methods, fines, and sentences.
- (20) 8-912.10 Petitions of injunction.
- (21) 8-913.10 Petitions, penalties, and continuing violations.

**D.** Additional requirements. Except as otherwise provided, the following additions are made to the incorporated food code:

(1) 2-104.11 Food handler cards.

(a) Except as specified in Subparagraphs (b) and (g) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC, food employees shall demonstrate their knowledge of safe food handling practices through passing a test from a food handler training program and possess a valid food handler card.

(b) Except as specified in Subparagraph (g) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC, individuals who do not possess a valid food handler card prior to employment as a food employee shall obtain such card within 30 calendar days from the beginning of employment.

(c) Food handler cards shall be kept by the food employee on his or her person while working at a food establishment or a copy kept on file by the current employer and be made available for inspection by the regulatory authority.

(d) The regulatory authority may approve an entity's training program to be used in lieu of requiring a food handler card of its food employees. A food employee must complete the entity's approved training program at least every three years. This exemption is only valid during the food employees' time of employment with the entity that administered the training.

(e) An employee or person in charge at any food establishment, food processing plant, temporary food establishment, or mobile food

establishment must provide training regarding pertinent safe food handling practices to food employees prior to beginning food handling duties, if the food employee does not hold a valid food handler card. Record of the training, including name of instructor, date of training, and name(s) of food employees shall be maintained on file and made available to the regulatory authority upon request. The record of training shall be maintained for the duration of the food employee's employment.

(f) Food handler cards shall be valid for three years from the date of issuance.

(g) This paragraph does not apply to:

(i) food employees who comply with Paragraph (1) of Subsection B of Section 7.6.2.8 NMAC;

(ii) food employees who comply with Subparagraph (b) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(iii) food employees who do not prepare or handle Time/Temperature Control for Safety Food, provided that at a minimum the permit holder assures the employee complies with Subparagraph (e) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(iv) employees or volunteers who occasionally function as a food employee, provided that at a minimum the permit holder assures the employee complies with paragraph (e) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(v) food employees or volunteers working as food employees of temporary food establishments, provided that at a minimum the person in charge during hours of operation complies with Paragraph (1) of Subsection B of Section 7.6.2.8 NMAC or has a valid food handler card, either of which shall be obtained prior to issuance of a temporary food establishment permit, and the permit holder assures the food employee or volunteer complies with Subparagraph (e) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(vi) food employees or volunteers working as food employees for charitable organizations serving the needy, provided that at a minimum the person in charge during hours of operation complies with Paragraph (1) of Subsection B of Section 7.6.2.8 NMAC; or

(vii) employees who do not function as food employees.

(h) The food handler card requirements of Paragraph (1) of Subsection D of Section 7.6.2.8 NMAC shall become effective three months after the effective date of 7.6.2.8 NMAC.

(2) 8-301.12 Responsibility for operation.

(a) Except as specified in Subparagraphs (b) and (c) of Paragraph (2) of Subsection D of 7.6.2.8 NMAC, the permit holder shall be responsible for all food operations conducted on the premises for which a permit is issued.

(b) Permit holders shall not be responsible for food operations on the premises when another permit holder is operating with a permit.

(c) Each permit holder shall be responsible for shared facilities or equipment on the premises.

(3) 8-303.15 Permit fees, late fees, penalty fees, and expiration dates.

(a) Except as specified in Subparagraph (b) of Paragraph (3) of Subsection D of 7.6.2.8 NMAC, permit fees shall be:

(i) \$200.00 for food establishments, mobile food establishments, servicing areas, and food processing plants;

(ii) \$100.00 for home-based food processing operations; and

(iii) \$25.00 for temporary food establishments for each single event or celebration.

(b) Permit fees shall be waived for food establishments, mobile food establishments, and temporary food



establishments that provide food to consumers at no charge, as well as temporary food establishments that serve only non-TCS food or operate no more than two days in a calendar month.

(c)

In addition to the permit fees specified above, a \$25 late fee shall be added to the permit fee if the permit is not renewed on or before the expiration date of the permit.

(d)

A re-inspection penalty fee of \$100 shall be assessed by the regulatory authority and paid by the operator when a re-inspection is scheduled by the regulatory authority as specified in Subparagraph (c) of Paragraph (18) of Subsection B of 7.6.2.8 NMAC.

(e)

If a permit is not renewed as specified in Section 8-303.20 of the food code, and applicable re-inspection penalty fees are not paid within 30 days after the expiration of the permit, a new permit shall not be issued except upon completion of requirements specified in Section 8-303.10 of the food code.

(f)

Permits issued by the regulatory authority shall include an expiration date, which shall be:

(i)

The last day of the anniversary month of the date of original issue for food establishments, mobile food establishments, servicing areas, and food processing plants.

(ii)

The last day of the single event or celebration for temporary food establishments.

(g)

No discount or refund shall be made for partial years or for permit suspension or revocation.

(4) 8-407.11

Posting of compliance emblems.

(a)

Except as specified in Subparagraph (e) of Paragraph (4) of Subsection D of 7.6.2.8 NMAC, an emblem indicating the compliance status of a food establishment shall be posted in a conspicuous place at each entrance to the food establishment where it can be easily seen by consumers and shall

be posted or removed only by the regulatory authority.

(b)

An "approved" emblem shall be posted at a food establishment that is operated in compliance with the food code.

(c)

An "unsatisfactory" emblem may be posted at a food establishment when any priority items are out of compliance during an inspection; or any priority item, priority foundation item, or core item is out of compliance on a repeated basis within the last 25 months.

(d)

Removal, defacing, or obstruction of an emblem by any person other than the regulatory authority shall result in immediate permit suspension or revocation.

(e)

Food processing plants and temporary food establishments are exempt from the posting of compliance emblems.

(5) 8-901.201

Permit suspension and revocation.

(a)

The regulatory authority may suspend or revoke a permit for reasons specified in Section 8-901.10 of the food code.

(b)

The regulatory authority shall conduct a hearing as specified in Section 8-905 of the food code, as amended in 7.6.2 NMAC, prior to suspending or revoking a permit.

(c)

The permit holder shall be notified of the hearing at least seven days prior to the hearing as specified in Paragraph (37) of Subsection B of 7.6.2.8 NMAC.

(d)

Failure by the permit holder to appear shall result in immediate suspension or revocation of the permit.

(e)

The suspension of a permit shall remain in effect until the conditions leading to the suspension no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and other means as appropriate.

(f)

A permit shall only be revoked if a permit has previously been suspended.

(g)

A permit that has been revoked shall not be considered for reapplication until the permit holder has demonstrated to the satisfaction of the regulatory authority that the food establishment will comply with the food code. [7.6.2.8 NMAC - Rp, 7.6.2.8 NMAC, 12/1/2018]

**7.6.2.9 MOBILE FOOD ESTABLISHMENT REQUIREMENTS:**

**A.** In addition to meeting the applicable requirements of 7.2.6.8 NMAC, with the exception of Section 5-203.12 of the food code, mobile food establishments shall comply with the requirements specified in this section.

**B.** The regulatory authority may impose additional requirements for mobile food establishments as specified in Section 8-102.10 of the food code. Additional requirements may include, but are not limited to:

(1) limiting

or restricting the number and type of food items to be prepared and served;

(2) limiting or

restricting preparation steps;

(3) limiting

or restricting hours of operation, or hours of operation before returning to a servicing area; or

(4) requiring a

servicing area or mobile support unit.

**C.** The regulatory authority may modify or waive requirements for mobile food establishments as specified in Paragraph (12) of Subsection B of 7.6.2.8 NMAC and Section 8-103.11 of the food code.

**D.** Mobile food establishments shall provide the following required information as specified in Paragraph (F) of Section 8-201.12 of the food code:

(1) the

location of the potable water source;

(2) the location and method of solid and liquid waste disposal; and

(3) the identifying system used to distinguish the permitted unit from others.

**E.** Mobile food establishments shall have adequate electrical and fuel capacity, as determined by the regulatory authority, to allow proper operation of equipment. The electrical and fuel sources shall be adequately supplied at all times when food temperature control is required.

**F.** Mobile food establishments shall be operated within 200 feet of toilet facilities as specified in Sections 5-203.11 and 5-203.12 of the food code whenever the unit is stopped to operate for more than a two hour period.

**G.** The operation of mobile food establishments shall be conducted within the enclosure of the permitted unit. During a single event or celebration, certain operations (e.g., additional covered storage, additional food preparation area, outdoor serving counter) may be conducted outside of the enclosure, when approved. If approved, an additional temporary food establishment permit shall be required.

**H.** Mobile food establishments shall provide only single-service articles for use by consumers.

**I.** Self-contained mobile food establishment requirements. Self-contained mobile food establishments shall:

(1) meet all of the equipment requirements of the food code;

(2) include adequate storage facilities on the unit for all food, equipment, utensils, supplies, potable water, and waste water used in the operation of the unit;

(3) be capable of accomplishing all steps of the operation, including required food preparation and warewashing, within the enclosure of the unit;

(4) provide, as specified in Paragraph (F) of Section

8-201.12 of the food code, how and where the unit will be cleaned and serviced and where it will be stored during non-operating hours; and

(5) notify the regulatory authority office of jurisdiction at least 24 hours in advance before operating in a jurisdictional area outside of the permitting office.

**J.** Non-self-contained mobile unit and pushcart requirements.

(1) Non-self-contained mobile units and pushcarts shall provide, as specified in Paragraph (F) of Section 8-201.12 of the food code, an agreement between the operator and the servicing area that includes:

(a) the days and hours the servicing area will be used;

(b) the extent of support services to be provided; and

(c) a copy of the current servicing area permit.

(2) Prior to discontinuing use of a servicing area, the operator shall provide a revised agreement as specified in Paragraph (1) of Subsection J of 7.6.2.9 NMAC for a new servicing area. Mobile food establishments shall not operate prior to the approval of a new servicing area.

(3) Non-self-contained mobile units and pushcarts shall operate within a reasonable distance, and report at least daily, to the servicing area for support services.

(4) Non-self-contained mobile units and pushcarts shall notify the regulatory authority in writing and receive prior approval to operate outside of a reasonable distance of the servicing area.

**K.** Additional pushcart requirements.

(1) Pushcarts are limited to:

(a) serving non-TCS foods or drinks;

(b) serving individually commercially

packaged TCS foods in the original packaging and maintained at proper temperatures; and

(c) assembling and serving of pre-cooked sausage (e.g., hot dog, bratwurst, frankfurter) with commercially prepared toppings (e.g., chili, sauerkraut, relish).

(2) Pre-preparation, such as washing, slicing, peeling, cutting of food intended for use on a pushcart, shall occur at the servicing area.

(3) Food handling shall be conducted under an overhead protective cover.

(4) Grills shall include a protective lid that can be readily closed.

(5) Operators of pushcarts shall ensure the following are contained on, or within, the cart in sufficient supply for daily operation:

(a) food, utensils, single service articles, and cleaning supplies;

(b) handwashing sink as specified in Section 5-202.12 of the food code with a minimum of five gallons of potable water; and

(c) wastewater holding tank meeting the requirements of Section 5-401.11 of the food code.

(6) TCS food served on pushcarts shall not be subsequently cooled and reheated.

(7) Ice chests may be utilized for packaged food provided that they are continuously drained in an approved manner and the food is maintained at temperatures as specified in Section 3-202.11 of the food code.

[7.6.2.9 NMAC - Rp, 7.6.2.9 NMAC, 12/1/2018]

**7.6.2.10 TEMPORARY FOOD ESTABLISHMENT REQUIREMENTS:**

**A.** In addition to meeting the applicable requirements of 7.6.2.8 NMAC, with the exception of Section 5-203.12 of the food code, temporary food establishments

shall comply with the requirements specified in this section.

**B.** The regulatory authority may impose additional requirements for temporary food establishments as specified in Section 8-102.10 of the food code. Requirements may include, but are not limited to:

- (1) require food safety training for employees prior to issuing a permit;
- (2) restrict the number and type of food items to be prepared and served;
- (3) restrict preparation steps;
- (4) restrict hours of operation; or
- (5) require a servicing area for advanced preparation of food.

**C.** The regulatory authority may modify or waive requirements for temporary food establishments as specified in Paragraph (12) of Subsection B of 7.6.2.8 NMAC and Section 8-103.11 of the food code.

**D.** Temporary food establishment requirements.

(1) Temporary food establishments shall serve only food that has been approved.

(2) Except as specified in this subparagraph, temporary food establishments shall conduct all food operations within the approved enclosure. Temporary food establishments may, after approval, store or prepare food at an offsite food establishment prior to operation when:

(a) the food establishment has adequate equipment for the type and volume of food and preparation steps required; and

(b) the temporary food establishment operator provides to the regulatory authority a letter of agreement between the operator and the food establishment that includes:

the days and hours the food establishments will be used;

a list of tasks that will be performed at the food establishments; and

(iii) a copy of the current food establishment permit.

(3) Temporary food establishments shall provide, in writing, to the regulatory authority for approval the:

(a) location of the approved potable water source;

(b) location and method of solid waste disposal; and

(c) location and method of liquid waste disposal.

(4) Temporary food establishments shall supply a handwashing sink, located as specified in Section 5-204.11 of the food code, for employee hand washing. At a minimum, a handwashing sink shall consist of a container with a faucet-type spigot filled with warm water and a catch bucket for the wastewater. The water shall be maintained at a minimum of 100 degrees fahrenheit as specified in Section 5-202.12 of the food code.

(5) Temporary food establishments shall maintain an adequate supply of liquid soap and single use paper towels at the handwashing sink at all times.

(6) Temporary food establishments shall provide a warewashing station as specified in Section 4-301.12 of the food code. Extra utensils may be approved in lieu of a warewashing station as specified in Table 10-1, below.

(7) Temporary food establishments shall maintain an adequate supply of potable water at all times during operation for tasks such as: handwashing; food preparation; and washing, rinsing, and sanitizing of surfaces, utensils, and equipment. Except as specified in Table 10-1, below, auxiliary heating units capable of producing an adequate supply of hot water for such purposes shall be provided.

(8) Temporary food establishments shall provide an adequate supply of ice, as necessary, to maintain TCS food at temperatures

as specified in Section 3-501.16 of the food code.

(9) Temporary food establishments shall not store packaged food in undrained ice or iced water, except for pressurized containers of non-TCS beverages. The water or ice shall contain at least 10 parts per million of available chlorine and shall be changed as necessary to keep the water and container clean. Ice used to store food shall not be used as food.

(10) Temporary food establishments shall not store raw meat, poultry, fish, or eggs in the same ice chests as ready-to-eat food when ice chests are approved for use to store food as specified in Table 10-1, below.

(11) Temporary food establishments shall transport food at temperatures as specified in Section 3-501.16 of the Food Code and protect food from contamination as specified in Part 3-3 of the food code.

(12) Temporary food establishments shall not carry over previously heated or cooked food from one day to the next. This requirement may be waived for Type 3 temporary food establishments (as identified in Table 10-1, below) or for food prepared in advance at an offsite food establishment.

(13) Temporary food establishments shall operate on a surface that is smooth, easily cleanable, and non-absorbent (e.g., concrete, machine laid asphalt). Grass may be approved as specified in Table 10-1, below.

(14) Temporary food establishments shall operate under a weather-resistant covering that is smooth, easily cleanable and nonabsorbent to protect the operation from overhead contamination.

(15) Temporary food establishments shall be constructed in a manner that prevents the entrance of insects or other vermin and adequately protects food from consumers and environmental contamination.

(16) Temporary food establishments shall provide separation (e.g. table) to keep

consumers from entering the food operation.

(17)

Temporary food establishments shall provide walls that are smooth, easily cleanable, and non-absorbent. This requirement may be waived when flying insects and other pests are absent due to location, weather, or other limiting conditions. Except as specified in Table 10-1, below, walls shall meet the following requirements:

(a)

cover tightly from ceiling to floor;

(b)

use an approved counter-serving opening with tight fitting screened doors or air curtain; counter-serving openings shall be kept closed, except when in use; and

(c)

when approved for use, screening shall be 16 mesh to 1 inch.

(18) In

conjunction with the requirements specified in this section, a temporary food establishment shall, based upon risk, be classified as a Type 1, 2 or 3 temporary food establishment and meet the corresponding requirements specified in Table 10-1, below.

**SEE TABLE ON  
FOLLOWING PAGE**

	Type 1	Type 2	Type 3
Menu	unpackaged non-TCS commercially processed packaged TCS in original package (receive-store-hold)	no cook (receive-store-minimum prep*-hold-serve) same day prep (receive-store-minimum prep*-cook-hold-serve) reheat commercially processed (receive-store-reheat-hold-serve)	complex food prep (receive-store-prep-cook-cool-reheat-hot hold-serve) serving highly susceptible population
Handwashing	gravity fed <= 4 hrs - insulated container or auxiliary heating source > 4 hrs - auxiliary heating source	same as Type 1	hot & cold running water under pressure
3-compartment sink	unpackaged non-TCS <= 4 hrs - 3-comp or extra utensils > 4 hrs - 3-comp required packaged TCS: not required	same as Type 1 unpackaged non-TCS	3-comp required w/hot & cold running water under pressure
Refrigeration	unpackaged non-TCS: not required packaged TCS: <= 1 day - insulated ice chest w/ drained ice 2-3 days - mechanical equipment > 3 days - mechanical ANSI equipment only	same as Type 1 packaged TCS	mechanical ANSI equipment only
Cold holding (e.g., prep table, display case)	unpackaged non-TCS: not required packaged TCS: ice bath 2-3 days - mechanical equipment recommended > 3 days - mechanical ANSI equipment recommended	same as Type 1 packaged TCS	same as Type 1 packaged TCS
Hot holding	not allowed	covered non-ANSI equipment allowed**	covered ANSI equipment only
Cooking/reheating	not allowed	covered non-ANSI equipment allowed**	covered ANSI equipment only
Flooring	grass; smooth, durable, easily cleanable such as: concrete, machine-laid asphalt, sealed wood, tile, impermeable tarp	<= 2 days - same as Type 1 > 2 days - same as Type 1, no grass	<= 3 days - same as Type 1, no grass > 3 days - constructed flooring
Walls	unpackaged non-TCS <= 3 days - no sides, ability to cover solid > 3 days - 3.5 side screening, ability to cover solid packaged TCS: not required	<= 1 day - no sides, ability to cover solid 1 to 3 days - 3.5 side screening, ability to cover solid > 3 days - complete enclosure w/approved opening	complete enclosure w/approved opening
Training	as required by regulatory authority	as required by regulatory authority	certified food protection manager required

\*Minimum preparation includes activities such as: slicing/cutting fruits and vegetables, opening commercially packaged TCS foods, and seasoning TCS foods. Minimum preparation does not include activities such as: cutting, slicing, or forming raw meat, poultry, or fish; assembly of complex menu items.

\*\*Chafing dishes may be allowed for events of four hours or less. Insulated ice chests and slow cookers are not allowed for hot holding. Slow cookers are not allowed for heating, cooking, or reheating.

[7.6.2.10 NMAC - Rp, 7.6.2.10 NMAC, 12/1/2018]

**7.6.2.11 GENERAL FOOD PROCESSING REQUIREMENTS:**

**A.** Food processing plant permit requirements.

(1) All food processing plants shall comply with all applicable provisions of 7.6.2.8 NMAC.

(2) No person shall operate a food processing plant without a permit issued by the regulatory authority.

(3) When a food establishment has an adjunct/additional food processing plant, each such business may be permitted separately.

**B.** Sale of adulterated or misbranded food.

(1) No person shall sell or offer, or expose for sale, or have in possession with intent to sell, any processed and packaged food product that is adulterated or misbranded.

(2) The term “adulterated” includes products that are defective, unsafe, filthy, or produced under unsanitary conditions (Section 25-2-10, NMSA 1978).

(3) “Misbranding” includes statements, designs, or pictures in labeling that are false or misleading, or failure to provide required information outlined in Paragraph (2) of Subsection D of 7.6.2.11 NMAC.

(4) Adulterated or misbranded food products shall be reconditioned, condemned or destroyed in accordance with Section 25-2-6, NMSA 1978.

**C.** Labeling requirements.

(1) All packaged food shall be labeled in accordance with the applicable requirements of the Federal Food, Drug and Cosmetic Act as amended, the Fair Packaging and Labeling Act, regulations developed thereunder, and the New Mexico Food Act. Details concerning type, size and location of required labels are contained in FDA regulations covering the requirements

of the federal acts (Code of Federal Regulation, Title 21, Part 101.)

(2) At least the following information shall appear on the label of any packaged food:

(a) the name, street address, city, state and zip code of either the manufacturer, packer, or distributor;

(b) an accurate statement of the net amount of food in the package, in terms of weight measure, volume measure (listed in both “English” and metric units) or numerical count;

(c) the common or usual name of the food contained in the package; and

(d) ingredients of the food, listed by their common names, in order of their predominance by weight.

(3) If the label of a food bears representation in a foreign language, the label must bear all the required statements in the foreign language, as well as in English. This requirement does not apply to Spanish names that are commonly used in New Mexico.

(4) Any food product that does not comply with all applicable labeling requirements shall be deemed to be misbranded.

**D.** Standards of identity.

(1) Standards of identity define what a given food product is, its name and the ingredients that must be used, or are allowed to be used, and the ones that must be declared on the label. FDA food standards govern both labeling and composition of such foods, and must be consulted for detailed specifications. The standards are published in the annual editions of the Code of Federal Regulations (CFR), Title 21, Parts 103 through 169.

(2) Any food product that is represented as, or purports to be, a food for which a standard of identity has been promulgated, must comply with the specifications of the standard in every respect. A food product that does not comply fully with the applicable standard is misbranded, unless its

label bears the word “imitation” or meets the descriptive label requirements in the CFR, Title 21, Part 101.

**E.** Low acid canned foods and acidified foods.

(1) All processors of low acid canned foods or foods that have been acidified must comply with specific federal regulations contained in the CFR, Title 21, Parts 108, 113, and 114.

(2) All processors of low acid canned foods and acidified foods are required by federal regulation to register their food processing plants and file processing information for all products with the FDA using appropriate forms. Registration and processing information forms are obtainable on request from: FDA, LACF Registration Coordinator (HFF-233), 200-C Street, SW, Washington, D.C. 20204.

(3) Any low acid canned food product that does not comply with the federal requirements will be considered adulterated.

**F.** Operational plans.

(1) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, provide the following information for the product(s) to be manufactured and distributed:

(a) names of the ingredient(s);

(b) the final product pH if appropriate;

(c) the final product water activity ( $a_w$ ) if appropriate;

(d) names of preservative(s);

(e) the type of packaging to be used and whether the packaging is integral to product stability (e.g. the vacuum packing of fresh meat); and

(f) the complete operational procedure for product formulation, using a flow chart to show at what stage(s) each ingredient is added.

(2) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, provide the following information about product distribution:

(a) the intended distribution and use condition of the product;

(b) if the product is to be distributed at ambient, refrigerated or frozen temperature;

(c) the expected shelf life during distribution, retail storage, and in the hands of the ultimate consumer;

(d) how the product should be prepared for consumption; and

(e) what mishandling of the product might occur in the merchandising channels or in the hands of the consumer.

(3) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, state the intended process (cooking time and temperatures). This information may be included in the flow chart required in Subparagraph (f) of Paragraph (1) of Subsection F of 7.6.2.11 NMAC. Consideration must be given to those steps that lead to the destruction or inhibition of disease causing or spoilage organisms if done properly, or the growth of such organisms if done improperly.

(4) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, submit product labels that comply with all requirements of Subsection C of 7.6.2.11 NMAC.

(5) Prior to adding any new product to the product line, or changing the manufacturing process or product distribution for any existing product in the product line, the food processor shall provide to the regulatory authority:

(a) for each new product, the same information as specified for the initial

application in Paragraphs (1), (2), (3) and (4) of Subsection F of 7.6.2.11 NMAC; and

(b) for each existing product for which a change will be made in the manufacturing process or product distribution, the applicable changes to the information previously submitted pursuant to Paragraphs (1), (2), (3) and (4) of Subsection F of 7.6.2.11 NMAC.

(6) All food processing plants shall design, maintain and use a coding system that will identify the date and place of manufacture of each product on the product label, or securely affixed to the body of the container. A description of the proposed coding system shall be included in the application.

(7) The regulatory authority may require that the food processing plant's processes be reviewed by a competent process authority to approve all critical factors of public health significance as defined in the CFR, Title 21, Sections 114.83 and 114.89.

(8) In lieu of a process authority, the regulatory authority may accept those processes which comply with Paragraphs (1) and (2) of Subsection E of 7.6.2.11 NMAC.

(9) Recall procedures shall be prepared and must be on file at the food processing plant. Procedures shall include plans for recalling products which may be injurious to human health; for identifying products which may be injurious to human health; for identifying, collecting, warehousing, and controlling products; for determining the effectiveness of recalls; for notifying the regulatory authority, FDA, and United States department of agriculture (USDA) of any recalls; and for implementing recall programs.

(10) Whenever the regulatory authority finds or has probable cause to believe that any food processing plant's product fails to meet standards or is adulterated with any substance that may be

injurious to human health, the suspected lot of product shall be embargoed or detained at the food processing plant, if not yet distributed to consumers or retail outlets, until a determination of ultimate disposition is made.

(11) If the suspected lot has been distributed, the food processing plant shall be given the opportunity to recall the product voluntarily at the processor's expense.

(12) If a food processing plant refuses to conduct a voluntary recall, the secretary of the New Mexico environment department may order a mandatory recall of the suspected product lot at the processor's expense.

(13) When any food product is found, by examination or laboratory analysis, to be in violation of the standards of Subsections B, D or E, of 7.6.2.11 NMAC, the secretary of the New Mexico environment department may order condemnation and disposal of the product lot at the food processing plant's expense.

G. Compliance with accepted operational procedures.

(1) A copy of the accepted process and procedures shall be on file at the food processing plant. It shall be available for review by the regulatory authority at all times. A food processing plant shall not deviate from the accepted process and operational procedures without written consent of the regulatory authority.

(2) Samples of ingredients, materials obtained from selected points during the course of processing or handling, and final products shall be examined for pathogenic microorganisms as often as necessary for quality assurance. Food products may also be tested for organisms that are indicative of the possible presence of pathogens or for specific spoilage organisms. The secretary of the New Mexico environment department may request that certain foods be examined for specific pathogenic microorganisms or their toxins.

(3) Routine inspections of facilities, equipment

and operations will be conducted as specified in this section. In addition, HACCP evaluations will be conducted by the regulatory authority of the food processing plant as needed to identify hazards, critical control points, and daily monitoring requirements.

[7.6.2.11 NMAC - Rp, 7.6.2.11 NMAC, 12/1/2018]

**7.6.2.12 JERKY MANUFACTURED FOOD REQUIREMENTS:**

**A.** In addition to complying with the requirements specified in 7.6.2.11 NMAC, food processing plants that produce jerky shall comply with the requirements specified in this section.

**B.** Food processing plants that produce jerky shall have the appropriate approved equipment to measure and monitor food safety factors related to the production of jerky.

**C.** Cooking. The following parameters shall be achieved in a sealed oven, for a minimum of one hour, and no less than fifty percent of the cooking time, during the jerky cooking process:

(1) a minimum internal temperature of 145 degrees fahrenheit for four minutes for meat and 165 degrees fahrenheit instantaneous for poultry; and

(2) maintain a steady or increasing relative humidity level throughout the cooking process.

**D.** In lieu of complying with the cooking parameters specified in Subsection C of 7.6.2.12 NMAC the regulatory authority may approve alternative methods for treating product provided that the proposed method is scientifically-based and adequately documented by data developed according to an experimental protocol.

**E.** Food establishments that produce jerky shall:

(1) meet the requirements of Subsections B and C of 7.6.2.12 NMAC;

(2) have an approved operational plan for each product produced;

(3) keep the operational plan on file at the food establishment;

(4) follow the approved operational plan and not deviate from it without approval from the regulatory authority; and

(5) monitor and record food safety factors, including but not limited to, time, temperature, and humidity and make the records available to the regulatory authority.

[7.6.2.12 NMAC - Rp, 7.6.2.12 NMAC, 12/1/2018]

**7.6.2.13 BOTTLED DRINKING WATER MANUFACTURED FOOD REQUIREMENTS:**

**A.** In addition to meeting the requirements specified in 7.6.2.11 NMAC, food processing plants that produce bottled drinking water shall comply with the requirements specified in this section.

**B.** Bottled drinking water processing operational requirements and standards.

(1) The bottled drinking water plant shall follow generally accepted good manufacturing practice such as contained in 21 CFR Part 129 or the international bottled water association bottled water code of practice.

(2) Bottled drinking water which is bottled through lines or equipment used for food or milk products shall demonstrate (assure) that the cleaning process prevents adulteration of the bottled water. Bottled drinking water shall not be transported or stored in bulk tanks used for any non-food product, nor processed or bottled through equipment or lines used for any non-food product.

**C.** Bottled drinking water labeling requirements. All bottled drinking water labels shall meet the requirements specified in Subsection C of 7.6.2.11 NMAC.

**D.** Analytical requirements. Unless otherwise provided, samples shall be collected, prepared, and examined using the most current methods for the examination of drinking water

listed in 40 CFR Part 141 or by other methods for the examination of drinking water approved by the United States environmental protection agency. Examination of samples shall be performed by an approved laboratory.

**E.** Monitoring requirements.

(1) Bottled drinking water plants shall be required to submit one microbiological sample per finished product per week. A copy of the microbiological analysis report shall be submitted within 10 working days of analysis to the regulatory authority. Any coliform or fecal coliform positive result shall require the plant owner or operator to notify the regulatory authority within 24 hours and to submit to resampling guidelines specified in 20.7.10 NMAC.

(2) Bottled drinking water plants that know that a maximum contaminant level, as specified in 20.7.10 NMAC, has been exceeded or who have reason to believe circumstances exist that may adversely affect the safety of bottled drinking water, including but not limited to source contamination, spills, accidents, natural disasters, or breakdowns in treatment, shall notify the regulatory authority within 24 hours.

[7.6.2.13 NMAC - Rp, 7.6.2.13 NMAC, 12/1/2018]

**7.6.2.14 SHELLFISH REQUIREMENTS:** Adoption of national shellfish sanitation program (NSSP) guide for control of molluscan shellfish. Except as otherwise provided, the 2017 NSSP guide for control of molluscan shellfish is hereby adopted and incorporated in its entirety.

[7.6.2.14 NMAC - Rp, 7.6.2.14 NMAC, 12/1/2018]

**7.6.2.15 HOME-BASED FOOD PROCESSING:**

**A.** Plan review, permitting, inspection, and training requirements.



<p>(1) No person shall operate a home-based food processing operation without a permit.</p>	<p>4-803.11;</p>	<p>(c)</p>	<p>food processing related activities.</p>
<p>(2) In addition to meeting the applicable requirements of 7.6.2.8 NMAC and 7.6.2.11 NMAC, home-based food processing operations shall comply with the requirements specified in this section.</p>	<p>6-202.112; 4-803.13(A); 4-402.11; 4-402.12;</p>	<p>(d) (e) (f) (g)</p>	<p>Home-based food processing operations shall not wash out or clean pet cages, pans or similar items in the kitchen. (7) Household cooking may not occur in the kitchen during home-based food processing-related activities.</p>
<p>(3) Home-based food processing operations shall meet the requirements of Paragraph (1) of Subsection D of 7.6.2.8 NMAC and Part 2-1 of the food code.</p>	<p>4-205.10; 8-101.10(B);</p>	<p>(h) (i) (j)</p>	<p>(8) The following provisions from the food code, as amended in 7.6.2 NMAC, are applicable to home-based food processing operations only during home-based food processing related activities:</p>
<p>(4) The permit issued shall be displayed at the home-based food processing operation. A copy of the permit shall be displayed at places at which the operator sells food at times when the operator is selling the home-based processed foods.</p>	<p>6-202.14; 6-201.14; 6-201.13; 4-701.10;</p>	<p>(k) (l) (m) (n)</p>	<p>(a) (b) (c) (d)</p>
<p><b>B. Food protection requirements.</b></p>	<p>5-204.11;</p>	<p>(o)</p>	<p>2-103.11;</p>
<p>(1) Home-based processed food products and components shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.</p>	<p>5-501.10.</p>	<p>self-closing doors as required in 6-202.15(A)(3); and (p)</p>	<p>(e) (f) (g) (h)</p>
<p>(2) Home-based food processing operations must keep a sample of each processed food batch for 14 days. The samples shall be labeled with the production date and time.</p>	<p>products processed by home-based food processing operations shall not be time/temperature control for safety foods and shall be approved by the regulatory authority.</p>	<p>(2) Food</p>	<p>5-204.11; 5-205.11; 5-501.13; 6-301.12; and 6-501.115.</p>
<p>(3) Vehicles used in transporting home-based processed food products shall be maintained in a safe and sanitary manner. Vehicle compartments used to transport animals shall not be used for transporting home-based processed foods.</p>	<p>only sell their products at farmer's markets, roadside stands, festivals, or other venues in which the producer sells directly to the consumer.</p>	<p>(3) Home-based food processing operations shall</p>	<p>(9) Home-based food processing operations shall submit a detailed procedure to be used to clean and sanitize the kitchen sink before and during home-based food processing related activities.</p>
<p><b>C. Exceptions and limitations.</b></p>	<p>processed by a home-based food processing operation shall not be sold, used, or offered for consumption in food establishments including, but not limited to, restaurants, grocery stores and convenience stores, by internet sales, or sold in interstate commerce.</p>	<p>(4) Products</p>	<p>(10) Home-based food processing operations shall comply with Section 5-402.11 of the food code unless an alternative method is approved.</p>
<p>(1) The following provisions from the food code, as amended in 7.6.2 NMAC, shall not apply to home-based food processing operations:</p>	<p>not be permitted in the kitchen and shall be kept out of food preparation areas during home-based food processing related activities.</p>	<p>(5) Pets shall</p>	<p><b>D. Home-based food labeling.</b> A home-based food processing operation shall properly label all foods in accordance with Subsection C of 7.6.2.11 NMAC and include the words "home produced" in bold conspicuous 12 point type on the principal display panel. [7.6.2.15 NMAC - Rp, 7.6.2.15 NMAC, 12/1/2018]</p>
<p>(a) 8-407.11; (b) 5-501.11;</p>	<p>employees shall not be allowed entry into the kitchen during home-based</p>	<p>(6) Non-</p>	<p>7.6.2.16 <b>CATERING FOOD ESTABLISHMENTS:</b></p>

**A.** In addition to complying with the requirements specified in 7.6.2.8 NMAC food establishments that cater shall comply with the requirements specified in the section.

**B.** Catering food establishments shall:

(1) operate from a permitted food establishment or servicing area,

(2) be permitted and operated separately from other permitted food establishments or servicing areas,

(3) upon request by the regulatory authority, provide a schedule of events to be catered, and

(4) supply a handwashing sink and adequate supply of liquid soap and single use paper towels as specified in Paragraph (4) and (5) of Subsection D of 7.6.2.10 NMAC when the catering activity includes preparation, delivery, and/or display, service, and restocking of food that is not packaged. [7.6.2.16 NMAC, N, 12/1/2018]

**HISTORY OF 7.6.2 NMAC:**

**Pre-NMAC History:** Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

- EIB Rule 73-1, Regulations Governing Food Protection In Food-Service Establishments, 6/25/1973.
- EIB Rule FQM 2, Food Service Regulations; 10/15/1980.
- EIB Rule FQM 2, Food Service Regulations; 11/14/1985.
- EIB Rule FQM 2, Food Service and Processor Regulations; 5/22/1990.
- EIB Rule FQM 2, Food Service And Processor Regulations; 12/02/1992.

**History of Repealed Material:**

- 7 NMAC 6.1 Food Service And Food Processing Regulations - Repealed, 8/12/2000.
- 7.6.2 NMAC, Food Service And Food Processing, filed 7/13/2000 - Repealed effective 3/1/2016.
- 7.6.2 NMAC, Food Service and Food Processing, filed 3/1/2016 - Repealed effective 12/1/2018.

**ENVIRONMENT DEPARTMENT**

**This is an amendment to 20.2.3 NMAC, repealing Section 109, effective 11/30/2018.**

**20.2.3.109 TOTAL-SUSPENDED PARTICULATES:**

The maximum allowable concentrations of total suspended particulate in the ambient air are as follows:

**A.** 24-hour average: 150 ug/m3;

**B.** seven-day average: 110 ug/m3;

**C.** 30-day average: 90 ug/m3;

**D.** annual geometric mean: 60 ug/m3. **[RESERVED]** [11/30/95; 20.2.3.109 NMAC - Rn, 20 NMAC 2.3.109 10/31/02; Repealed, 11/30/18]

**PUBLIC EDUCATION DEPARTMENT**

The New Mexico Public Education Department approved at its 9/19/2018 hearing, to repeal its rule 6.61.9 NMAC, Certificates of Endorsement Waiver (filed 10/31/2007) and replace it with 6.61.9 NMAC, Certificates of Endorsement Waiver (adopted on 10/31/2018) and effective 11/13/2018.

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS PART 9 CERTIFICATES OF ENDORSEMENT WAIVER**

**6.61.9.1 ISSUING AGENCY:** Public Education Department (PED), hereinafter the department. [6.61.9.1 NMAC - Rp, 6.61.9.1 NMAC, 11/13/2018]

**6.61.9.2 SCOPE:** This rule governs the requirements for the issuance and duration of endorsement waivers to those individuals who do not meet the requirements for endorsements as required for providing instructional services in certain areas. [6.61.9.2 NMAC - Rp, 6.61.9.2 NMAC, 11/13/2018]

**6.61.9.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, and 22-10A-14, NMSA 1978 [6.61.9.3 NMAC - Rp, 6.61.9.3 NMAC, 11/13/2018]

**6.61.9.4 DURATION:** Permanent. [6.61.9.4 NMAC - Rp, 6.61.9.4 NMAC, 11/13/2018]

**6.61.9.5 EFFECTIVE DATE:** November 13, 2018, unless a later date is cited in the history note at the end of a section. [6.61.9.5 NMAC - Rp, 6.61.9.5 NMAC, 11/13/2018]

**6.61.9.6 OBJECTIVE:** This rule establishes the process and requirements for school districts, state-chartered charter schools, and state institutions to request and receive endorsement waivers. [6.61.9.6 NMAC - Rp, 6.61.9.6 NMAC, 11/13/2018]

**6.61.9.7 DEFINITIONS:** **[RESERVED]** [6.61.9.7 NMAC - Rp, 6.61.9.7 NMAC, 11/13/2018]

**6.61.9.8 REQUIREMENTS FOR INITIAL ENDORSEMENT WAIVER REQUESTS:**

**A.** Endorsement waivers shall:

(1) be authorized by the department, in writing;

(2) permit a superintendent, state-charter administrator, or governing authority of a state institution to fill an existing licensed teaching position in a public school or state institution with an

individual holding a standard license who does not hold the specific endorsement required for that position; and  
 (3) be issued for up to one school year.

**B.** Endorsement waivers may be requested in the following areas:

- (1) agriculture;
- (2) business education;
- (3) family and consumer sciences;
- (4) gifted education;
- (5) health;
- (6) information tech coordinator;
- (7) language arts;
- (8) library media;
- (9) mathematics;
- (10) performing arts;
- (11) physical education;
- (12) psychology;
- (13) reading;
- (14) science;
- (15) social studies;
- (16) technology education; and
- (17) visual arts.

**C.** Endorsement waivers in mathematics, language arts, science, and social studies shall be limited to individuals with teaching licensure in secondary education, grades 7 - 12; middle level licensure, grade 5 - 9; and licensure for grades pre-K - 12.

**D.** Requests for endorsement waivers shall:

- (1) be based on an emergency in which, due to circumstances beyond the control of the district, state-chartered charter school, or state institution, and as determined by the department, a vacancy exists in a teaching position requiring an endorsement listed in Subsection A of 6.61.9.8 NMAC that must be filled immediately or as soon

as practicable to avoid a deterioration of significant services;

(2) be submitted within 60 calendar days of the beginning date of the endorsement waiver candidate's employment contract with the district, state-chartered charter school, or state institution;

(3) include documentation of unsuccessful recruitment efforts to fill the vacant position including the methods used and the dates and duration of efforts;

(4) demonstrate that the request has been made with the knowledge and consent of the candidate for the endorsement waiver;

(5) include documentation of the candidate's degree and coursework taken; and

(6) include a detailed plan completed and signed by the candidate identifying how they will gain the needed endorsements, including the completion at least nine college credit hours within one school year.

[6.61.9.8 NMAC - Rp, 6.61.9.8 NMAC, 11/13/2018]

**6.61.9.9 REVIEW OF INITIAL ENDORSEMENT WAIVER REQUESTS:**

**A.** The department shall review all requests for endorsement waivers within 60 calendar days of receipt. Waiver requests shall be valid for one school year unless granted renewal according to the terms stated in 6.61.9.11 NMAC.

(1) Approved waivers shall detail the conditions under which the waiver has been approved.

(2) Denied waivers shall state the reasons for the denial and shall provide details regarding the right of the district, state-chartered charter school, or state institution to request a review or appeal.

**B.** The department shall consider the following criteria when determining whether to approve

or deny an endorsement waiver request:

(1) whether the candidate's plan for gaining the endorsement meets the criteria defined in Subsection C of 6.61.9.8 NMAC;

(2) the waiver history of the candidate;

(3) whether the degree and coursework taken by the endorsement waiver candidate could later qualify the candidate to receive an endorsement in the area requested;

(4) whether the candidate will be reasonably capable of completing required coursework or passing required content tests for the waiver; and

(5) the NMTEACH effectiveness rating of the waiver candidate.

**C.** Endorsement waivers shall not be approved if:

(1) the waiver request does not have the written consent of the candidate;

(2) the request is for endorsements in teaching English to speakers of other languages, bilingual education, or modern and classical languages pursuant to Subsection F of 6.32.2.10 NMAC; or

(3) the candidate's NMTEACH effectiveness rating from the prior year is ineffective or minimally effective.

**D.** The department may deny a request for an endorsement waiver for the following reason:

(1) the candidate's degree or college coursework is too far removed from the focus area of the endorsement waiver;

(2) the application is submitted without supporting documentation or a certification attesting to the specific methods, dates, and duration of recruitment efforts;

(3) the candidate has held an endorsement waiver for more than three years, whether consecutive or not;

(4) the candidate has previously been issued an endorsement waiver and has failed to comply with the conditions of the department, including taking and passing required assessments; or (5) the request is submitted beyond the 60-day deadline without demonstrating good cause for the delay.  
[6.61.9.9 NMAC - Rp, 6.61.9.9 NMAC, 11/13/2018]

**6.61.9.10 RENEWAL OF AN ENDORSEMENT WAIVER:**

Endorsement waivers may be renewed if evidence of enrollment in or pending completion of required coursework and testing requirements is provided. It shall be the sole responsibility of the district, state-chartered charter school, or state institution to submit this documentary evidence to the department’s licensure bureau.

A. Requests for the renewal of an endorsement waiver shall:

- (1) be submitted by the superintendent, state-chartered charter school administrator, or the governing authority of a state institution, on a department-approved form;
- (2) document all courses completed and exams taken by the candidate in the prior school year;
- (3) demonstrate the candidate’s compliance with all conditions required by the department for issuance of an endorsement waiver in the prior school year; and
- (4) contain a detailed plan for completion of endorsement requirements within the current school year by the educator.

B. Endorsement renewals shall not be approved if:

- (1) the candidate does not consent to providing the instructional services required of the position for which the waiver is being sought;
- (2) prior non-use of an endorsement waiver is used

as the reason for renewing the waiver; or

(3) the request for renewal does not comply with the requirements of 6.61.9.8 NMAC.

C. Endorsement renewals may not be approved if the candidate fails to complete and earn credit for college coursework to obtain the requisite credentials or obtain the degree required for the endorsement without good cause as determined by the department.

D. Provided that the holder of an endorsement waiver has complied with all conditions for the issuance of an endorsement imposed during the preceding school year, there shall be no need for the public school or state institution to reestablish the existence of an emergency.

[6.61.9.10 NMAC - Rp, 6.61.9.10 NMAC, 11/13/2018]

**6.61.9.11 REQUESTS FOR REVIEW OF DENIED WAIVERS:**

A. Candidates with a denied waiver, denied waiver renewal, or a waiver under review shall not provide instructional services in the classroom for which the endorsement waiver is being sought unless the candidate also has a valid substitute certificate and is performing services as a substitute teacher pursuant to Section 22-0A-15 NMSA 1978 and 6.63.10 NMAC.

B. Requests for review of a denied initial endorsement waiver shall:

- (1) be in writing;
- (2) be addressed to and received by the director of the department’s licensure bureau within 30 calendar days of receipt of the denial by the district, state-chartered charter school, or state institution;
- (3) contain a statement of reasons why the endorsement waiver should be issued;
- (4) document the candidate’s progress to-date toward completion of the required coursework and tests necessary to obtain the endorsement and what

steps will be taken to fulfill said requirements within the duration of the endorsement waiver.

C. Requests for review of a denied renewal endorsement waiver shall:

- (1) be in writing;
- (2) be addressed to and received by the director of the department’s licensure bureau within 30 calendar days of receipt of the denial by the district, state-chartered charter school, or state institution;
- (3) contain a statement of reasons why the endorsement waiver should be renewed; and
- (4) provide documentation justifying the reasons for the candidate’s failure to satisfy the requirements for issuance of an endorsement during the preceding school year.

D. After review of a denied waiver, the decision of the department shall be communicated as soon as practicable. The decision of the department shall constitute a final agency decision and may be appealed pursuant to a district court in accordance with applicable law.  
[6.61.9.11 NMAC - Rp, 6.61.9.11 NMAC, 11/13/2018]

**HISTORY OF 6.61.9 NMAC:**  
**History of Repealed Material:**  
6.61.9 NMAC, Certificates of Waiver, filed 7-2-2001 - Repealed effective 10/31/2007.  
6.61.9 NMAC, Certificates of Waiver, filed 10/31/2007 was repealed and replaced by 6.61.9 NMAC - Certificates of Waiver, effective 11/13/2018.

**REGULATION AND LICENSING DEPARTMENT**

**PHARMACY, BOARD OF**

**This is an amendment to 16.19.4 NMAC, Sections 7 and 9, effective 11-13-2018. . In 16.19.4.7 NMAC, Subsections H through S and**

**Subsection U through DD were not published as there are no changes.**

**16.19.4.7 DEFINITIONS:**

**A. "A year"** begins with the first day of the pharmacist's birth month and ends the last day of the pharmacist's birth month the following year.

**B. "Activity"** as used in the ACPE criteria for quality and these regulations, the term refers to an individual educational experience or program such as a lecture, home study course, workshop, seminar, symposium, etc.

**C. "Alternate supervising physician"** means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence, or expand the "scope of practice [and/or] or sites of practice" of the pharmacist clinician and is approved by the board.

**D. "Approved provider"** means an institution, organization or agency that has been recognized by the accreditation council for pharmaceutical education (ACPE) as having met its criteria indicative of the ability to provide quality continuing pharmaceutical education, and is listed in the ACPE annual publication of approved providers.

**E. "Board"** means the New Mexico board of pharmacy.

**F. "Consultation"** means communication in person, telephonically, by two-way radio, by e-mail or by other electronic means.

**G. [~~"Contract hour"~~]**  
**"Contact hour"** means a unit of measure equivalent to 60 minutes of participation in an approved organized learning experience or activity.  
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**T. "Pharmaceutical care"** means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of ~~[like]~~ life, including identifying potential and actual drug-related problems,

resolving actual drug-related problems and preventing potential drug-related problems.

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[02-15-96; 16.19.4.7 NMAC - Rn, 16 NMAC 19.4.7, 03-30-02; A, 01-31-07; A, 08-16-10; A, 10-25-12; A, 11-13-18]

**16.19.4.9 DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:**

**A. Preamble:** In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

**B. Professional conduct** may be defined as complying with all the laws and regulations that apply to a given professional activity.

**C. Definition:**  
 Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to.

(1) Violation of any provision of the Pharmacy Act as determined by the board.

(2) Violation of the board of pharmacy regulations as determined by the board.

(3) Violation of the Drug and Cosmetic Act as determined by the board.

(4) Violation of the Controlled Substances Act as determined by the board.

(5) Failure of the pharmacist to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep his pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of his professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) Failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions, and other confidence

entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities.

(9)

Participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare.

(10)

The solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) the

solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a)

the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or

(b)

a request for therapeutic interchange or refill of a medication prescribed for the patient;

(12) the

solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

~~(11)~~ (13)

Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

~~(12)~~ (14)

Failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.19.4.12 NMAC.

~~(13)~~ (15)

Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

~~(14)~~ (16)

Conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances

Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States.

~~(15)~~ (17)

Suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

~~(16)~~ (18)

Dispensing a prescription for a dangerous drug to a patient without an established practitioner-patient relationship:

(a)

except for the provision of treatment of partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health;

(b)

except for on-call practitioners providing services for a patient's established practitioner;

(c)

except for delivery of dangerous drug therapies to patients ordered by a New Mexico department of health physician as part of a declared public health emergency;

(d)

except for dispensing the dangerous drug naloxone as authorized in Section 24-23-1 NMSA 1978;

(e)

except for the prescribing or dispensing and administering for immunizations programs.

~~(17)~~ (19)

Dispensing a prescription order for a dangerous drug to a patient if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order was issued on the basis of an internet-based questionnaire or an internet-based consultation without a valid practitioner-patient relationship.

~~(18)~~ (20)

Failure to perform a prospective drug review as described in Subsection D of 16.19.4.17 NMAC and document steps taken to resolve potential problems.

[03-01-93; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 03-30-02; A, 07-15-02; A, 01-15-08; A, 09-16-11; A, 8-31-12; A, 03-23-16; A, 10-19-16; A, 11-13-18]

**REGULATION  
AND LICENSING  
DEPARTMENT**

**PHARMACY, BOARD OF**

**This is an amendment to 16.19.27 NMAC, Section 7, effective 11-13-2018.**

**16.19.27.7 DEFINITIONS:**

Dishonorable conduct by a pharmacist intern licensed pursuant to Section 61-11-6 NMSA 1978, or pharmacy technician registered pursuant to Section 61-11-6 NMSA 1978.

**A. Dishonorable**

conduct by a pharmacist intern or pharmacy technician shall mean, among other things, but not to be limited to:

(1) violation

of any provision of the Pharmacy Act as determined by the board;

(2) violation

of the board of pharmacy regulations as determined by the board;

(3) violation

of the Drug and Cosmetic Act as determined by the board;

(4) violation

of the Controlled Substances Act as determined by the board;

(5) failure

of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring

prescription stock from unlicensed sources;

(7) failure to

hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;

(8)

participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the

solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) the

solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a)

the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or

(b)

a request for therapeutic interchange or refill of a medication prescribed for the patient;

(11) the

solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner.

This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

~~(10)~~ (12)

failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

~~(11)~~ (13)

conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

~~(12)~~ (14)

suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

**B. Dishonorable**

conduct by a facility (business) shall mean but not to be limited to:

(1) violation

of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or

(b) a request for therapeutic interchange or refill of a medication prescribed for the patient;

(11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner.

This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

~~(10)~~ (12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

~~(11)~~ (13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

~~(12)~~ (14) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;

~~(13)~~ (15) failure to correct written deficiencies, documented by drug inspectors during routine inspections;

~~(14)~~ (16) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC);

~~(15)~~ (17) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public;

~~(16)~~ (18) having a policy or procedure which hinders the apprehension and/or prosecution of individuals who the pharmacist or pharmacist intern after reasonable inquiry suspect of prescription forgery, alteration, fraud, misrepresentation or a prescription transaction which is not otherwise in accordance with the law;

~~(17)~~ (19) failure to adhere to the written policy and procedures established by the pharmacist-in-charge.

C. "Pharmaceutical care" means the provision of drug therapy and other patient care services

related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems. (Subsection V of Section 61-11-2 NMSA 1978)

D. "Dispensing error" means a prescription that was dispensed from the pharmacy differently from what was prescribed.

E. "Harm" means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.

F. "Patient counseling" means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or a device. (Subsection T of Section 61-11-2 NMSA 1978).

G. "Physical environment" means the facility layout design, fixtures, and surroundings that affect lighting levels, sound levels, temperature, interruptions, and distractions. [16.19.27.7 NMAC - N, 12-01-2003; A, 04-01-2004; A, 09-30-05; A, 12-15-08; A, 11-13-18]

## STATE PERSONNEL, OFFICE

This is an amendment to 1.7.6 NMAC, repealing Section 12, effective 11/13/2018.

1.7.6.12 ~~[RESCISSION OF RESIGNATION: An employee may rescind a letter of resignation within three workdays of its submission and the agency must honor the rescission if it is submitted within the prescribed time limit.] [RESERVED]~~  
 [1-2-93 ... 5-15-96; Rn, 1 NMAC 7.8.16.2, 7-1-97; 1.7.6.12 NMAC - Rn, 1 NMAC 7.6.12, 11/30/00; A, 11/14/02; Repealed, 11/13/2018]

**TAXATION AND REVENUE DEPARTMENT**

**TITLE 3: TAXATION  
CHAPTER 12: HIGHWAY USE TAXES AND FEES  
PART 99: SPECIAL FUEL USER PERMITS**

**3.12.99.1 ISSUING**

**AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P. O. Box 630, Santa Fe, NM 87504-0630.  
[3.12.99.1 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.2 SCOPE:** This part applies to commercial motor carriers using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds operating in the state of New Mexico.  
[3.12.99.2 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.3 STATUTORY AUTHORITY:** Sections 9-5-1, 9-11-6.2, 7-16A-2.1, 7-16A-19 and 7-16A-19.1 NMSA 1978.  
[3.12.99.3 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.4 DURATION:** Permanent.  
[3.12.99.4 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.5 EFFECTIVE DATE:** November 13, 2018, unless a later date is cited at the end of a section.  
[3.12.99.5 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the Special Fuel Use Permits provisions of Chapter 7, Article 16A of NMSA 1978.  
[3.12.99.6 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.7 DEFINITIONS:** As used in this rule:

**A. "Department"** has the same meaning as defined in Subsection F of 7-16A-2 NMSA 1978.

**B. "International border commercial zone"** has the same meaning as defined in Subsection D of 7-16A-19.1 NMSA 1978.

**C. "Person"** has the same meaning as defined in Subsection K of 7-16A-2 NMSA 1978.

**D. "Special fuel user"** has the same meaning as defined in Subsection R of 7-16A-2 NMSA 1978.  
[3.12.99.7 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.8 TEMPORARY SPECIAL FUEL USER PERMIT:**

**A.** On a form provided by the department, a special fuel user whose vehicle is not registered with the department shall acquire from the department, before operating the vehicle on New Mexico highways, a temporary special fuel user permit valid for one calendar day only or for one entry into and one exit out of New Mexico.

**B.** A special fuel user whose vehicle is not registered with the department, that applies for a temporary special fuel user permit valid for one calendar day only, for one entry into and one exit out of New Mexico, shall pay five dollars (\$5.00) for each motor vehicle.

**C.** A special fuel user operating under a temporary special fuel user permit shall pay a special fuel user tax of five cents (\$.05) per mile for each mile traveled in New Mexico.  
[3.12.99.8 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.9 BORDER CROSSING SPECIAL FUEL USER PERMIT:**

**A.** A special fuel user who operates a commercial motor carrier vehicle registered or titled in Mexico, who is engaged primarily in movement across the New Mexico-Mexico border and into or from an

international border commercial zone and whose exclusive use of New Mexico highways is limited to an area within ten miles of the New Mexico-Mexico border, may apply for, on a form approved by the department, a quarterly, semi-annual or annual border crossing special fuel user permit.

**B.** The department shall issue the permit if it approves the application and upon payment of the fee for the border crossing special fuel user permit.

**C.** The fee for the border crossing special fuel user permit shall be:

(1) for a quarterly permit, one hundred twenty-five dollars (\$125);

(2) for a semi-annual permit, two hundred dollars (\$200); and

(3) for an annual permit, three hundred fifty dollars (\$350).

**D.** A special fuel user holding a valid border crossing special fuel user permit and operating within the specified 10 miles of the New Mexico - Mexico border, as provided above, shall be exempt from the five dollar (\$5.00) temporary special fuel user permit specified in Paragraph (1) of Subsection A and Subsection C of 7-16A-19 NMSA 1978 and exempt from the five cents (\$.05) per mile special fuel user tax pursuant to Subsections E and F of 7-16A-2.1 NMSA 1978.

**E.** A special fuel user holding a valid border crossing special fuel user permit and operating outside the specified 10 miles of the New Mexico-Mexico border, shall acquire a temporary special fuel user permit for a fee of five dollars (\$5.00) and shall pay the special fuel user tax of five cents (\$.05) per mile for each mile traveled in New Mexico.

[3.12.99.9 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**3.12.99.10 VIOLATION OF THE SPECIAL FUELS SUPPLIER TAX ACT:**

**A.** It is a violation of the special fuels supplier tax act for



a person to act as a temporary special fuel user without possessing a valid temporary special fuel user permit issued by the department.

**B.** It is a violation of the special fuels supplier tax act for a person holding a valid border crossing special fuel user permit to travel in the motor carrier vehicle for which the permit was issued on New Mexico highways, outside of the area in which the permit authorizes travel, unless the person may otherwise under law engage in that travel.

**C.** In addition to any other penalty that may apply, a person who violates the terms of use of a border crossing special fuel user permit, is subject to a fine of three hundred dollars (\$300).

[3.12.99.10 NMAC - N/E, 9/25/2018; N, 11/13/2018]

### **3.12.99.11**

#### **REVOCAION OF SPECIAL FUEL USER PERMITS:**

**A.** After notice and a hearing, the department may revoke the border crossing special fuel user permit of a special fuel user found to have violated the special fuels supplier tax act.

**B.** The hearing shall be conducted pursuant to the tax administration act.

[3.12.99.11 NMAC - N/E, 9/25/2018; N, 11/13/2018]

**History of 3.12.99 NMAC:**  
[RESERVED]

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**END OF ADOPTED  
RULES**

**OTHER MATERIAL RELATED TO ADMINISTRATIVE LAW**

**HUMAN SERVICES DEPARTMENT - INCOME SUPPORT DIVISION**

**NOTICE OF PUBLIC COMMENT**

The United States Department of Health and Human Services requires the New Mexico Human Services Department meet certain Temporary Assistance for Needy Families (TANF) work participation requirements. To assist in meeting these requirements, federal regulations (45 CFR 261.40) allow New Mexico to decrease its work participation rate percentage by the number of percentage points that the FY 2018 caseload fell in comparison to the FY 2005 caseload. This is termed the TANF Caseload Reduction Credit. The total Federal and Maintenance of Effort (MOE) expenditures that are included in this report are subject to change due to fluctuations during year end budget close out and increases in MOE funding.

The estimated changes and corresponding methodologies are reported in the proposed TANF Caseload Reduction Credit Report which is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed report may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at (505) 827-7227. If you are a person with a disability and you require this information in an alternative format, please contact the American Disabilities Act Coordinator, at (505) 827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats.

The comment period will begin at 8:00 a.m. on November 13, 2018 and end at 4:00 p.m. on December 13, 2018. Individuals wishing to comment on the TANF Caseload Reduction Credit Report should contact the Human Services Department, Income Support Division, Work and Family Support

Bureau, P.O. Box 2348, Santa Fe, New Mexico, 87504-2348, or by calling (505) 827-7227.

Interested persons may address written or recorded comments to:

Human Services Department  
Income Support Division  
Work and Family Support Bureau  
P.O. Box 2348  
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us).

**ENVIRONMENT DEPARTMENT**

**NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION**

The New Mexico Environment Improvement Board gives Notice of Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the above rules:

Internal rule citations have been changed to conform to proper legislative citation style.

Numbering corrections for Subsection B of Section 8, Food Establishment Requirements:

Subparagraph (c) of Paragraph (13): changed internal paragraph reference from "(16)" to "(17)";

Subparagraph (c) of Paragraph (16): changed internal paragraph reference from "(20)" to "(21)";

Subparagraph (b) of Paragraph (18): changed internal paragraph reference from "(12)" and "(13)" to "(14)" and "(15)";

Subparagraph (a) of Paragraph (25): changed internal paragraph reference from "(23)" to "(24)";

Subparagraph (e) of Paragraph (26): changed internal paragraph reference from "(26)" to "(27)";

Subparagraph (g) of Paragraph (26): changed internal paragraph reference from "(24)" and "(30)" to "(25)" and "(31)";

Subparagraph (a) of Paragraph (28): changed internal paragraph reference from "(26)" to "(27)";

Paragraph (32): changed internal paragraph reference from "(30)" and "(24)" to "(31)" and "(25)";

Subparagraph (d) of Paragraph (33): changed internal paragraph reference from "(34)" and "(35)" to "(35)" and "(36)";

Subparagraph (b) of Paragraph (35): changed internal paragraph reference from "(30)" to "(31)"; and

Subparagraph (c) of Paragraph (37): changed internal paragraph reference from "(38)" to "(39)";

Numbering corrections for Subsection D of Section 8, Food Establishment Requirements:

Subparagraph (c) of Paragraph (5): changed internal paragraph reference from "(36)" to "(37)";

Numbering corrections for Subsection C of Section 9, Mobile Food Establishment Requirements:

changed internal paragraph reference from "(11)" to "(12)";

Numbering corrections for Subsection C of Section 10, Temporary Food Establishment Requirements:

changed internal paragraph reference from "(11)" to "(12)";

A copy of this Notification was filed with the official version of the above rule.

**END OF OTHER MATERIAL RELATED TO ADMINISTRATIVE LAW**

# 2018 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXIV, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 4</b>	<b>January 16</b>
<b>Issue 2</b>	<b>January 18</b>	<b>January 30</b>
<b>Issue 3</b>	<b>February 1</b>	<b>February 13</b>
<b>Issue 4</b>	<b>February 15</b>	<b>February 27</b>
<b>Issue 5</b>	<b>March 1</b>	<b>March 13</b>
<b>Issue 6</b>	<b>March 15</b>	<b>March 27</b>
<b>Issue 7</b>	<b>March 29</b>	<b>April 10</b>
<b>Issue 8</b>	<b>April 12</b>	<b>April 24</b>
<b>Issue 9</b>	<b>April 26</b>	<b>May 15</b>
<b>Issue 10</b>	<b>May 17</b>	<b>May 29</b>
<b>Issue 11</b>	<b>May 31</b>	<b>June 12</b>
<b>Issue 12</b>	<b>June 14</b>	<b>June 26</b>
<b>Issue 13</b>	<b>June 28</b>	<b>July 10</b>
<b>Issue 14</b>	<b>July 12</b>	<b>July 24</b>
<b>Issue 15</b>	<b>July 26</b>	<b>August 14</b>
<b>Issue 16</b>	<b>August 16</b>	<b>August 28</b>
<b>Issue 17</b>	<b>August 30</b>	<b>September 11</b>
<b>Issue 18</b>	<b>September 13</b>	<b>September 25</b>
<b>Issue 19</b>	<b>September 27</b>	<b>October 16</b>
<b>Issue 20</b>	<b>October 18</b>	<b>October 30</b>
<b>Issue 21</b>	<b>November 1</b>	<b>November 13</b>
<b>Issue 22</b>	<b>November 15</b>	<b>November 27</b>
<b>Issue 23</b>	<b>November 29</b>	<b>December 11</b>
<b>Issue 24</b>	<b>December 13</b>	<b>December 27</b>

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.

# 2019 New Mexico Register

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### Volume XXX, Issues 1-24

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<b>Issue 6</b>	<b>March 14</b>	<b>March 26</b>
<b>Issue 7</b>	<b>March 28</b>	<b>April 9</b>
<b>Issue 8</b>	<b>April 11</b>	<b>April 23</b>
<b>Issue 9</b>	<b>April 25</b>	<b>May 14</b>
<b>Issue 10</b>	<b>May 16</b>	<b>May 28</b>
<b>Issue 11</b>	<b>May 30</b>	<b>June 11</b>
<b>Issue 12</b>	<b>June 13</b>	<b>June 25</b>
<b>Issue 13</b>	<b>July 5</b>	<b>July 16</b>
<b>Issue 14</b>	<b>July 18</b>	<b>July 30</b>
<b>Issue 15</b>	<b>August 1</b>	<b>August 13</b>
<b>Issue 16</b>	<b>August 15</b>	<b>August 27</b>
<b>Issue 17</b>	<b>August 29</b>	<b>September 10</b>
<b>Issue 18</b>	<b>September 12</b>	<b>September 24</b>
<b>Issue 19</b>	<b>September 26</b>	<b>October 15</b>
<b>Issue 20</b>	<b>October 17</b>	<b>October 29</b>
<b>Issue 21</b>	<b>October 31</b>	<b>November 12</b>
<b>Issue 22</b>	<b>November 14</b>	<b>November 26</b>
<b>Issue 23</b>	<b>December 5</b>	<b>December 17</b>
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