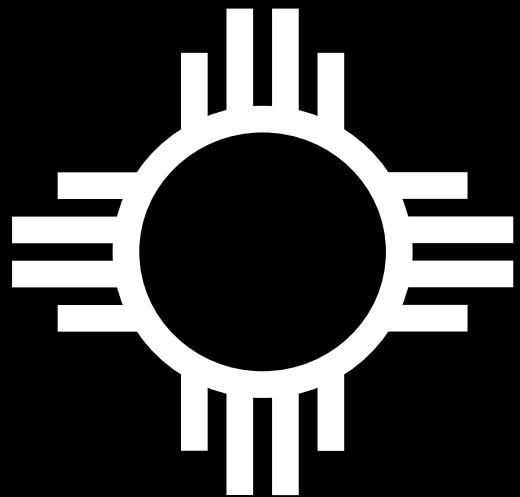


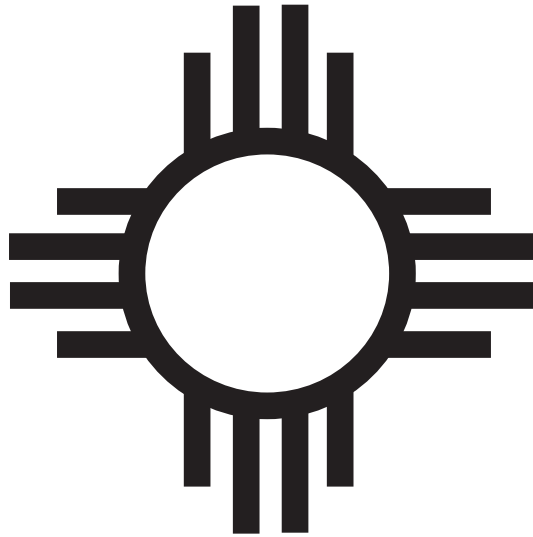
**NEW
MEXICO
REGISTER**



Volume XXVI
Issue Number 11
June 16, 2015

New Mexico Register

**Volume XXVI, Issue 11
June 16, 2015**



The official publication for all notices of rulemaking
and filing of proposed, adopted and emergency rules in
New Mexico

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Santa Fe, New Mexico
2015

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New Mexico Register

Volume XXVI, Issue 11

June 16, 2015

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Notices of Rulemaking and Proposed Rules

DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

Notice Of Board Of Finance Rules

The State Board of Finance is in the process of amending two of its rules: *Acceptance of Credit/Debit Cards and Use of Electronic Fund Transfers* (2.60.8 NMAC) and *Bond Project Disbursements* (2.61.6 NMAC); and the State Board of Finance is in the process of introducing a new rule: *Determinations of the State Board of Finance* (2.61.9 NMAC). Copies of the existing rules, proposed amendments and proposed new rule are available in room 181, Bataan Memorial Building, Santa Fe, NM and on the State Board of Finance website, http://nmdfa.state.nm.us/Board_of_Finance.aspx. The Board will consider adopting the proposed rule amendments and new rule at its July 21, 2015 meeting, which takes place at 9:00 a.m. in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed amendments and new rule to: Director, State Board of Finance, 181 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501, by July 16, 2015.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing

The Human Services Department (the Department), Medical Assistance Division (MAD) previously published in the May 29, 2015 New Mexico Register Volume XXVI, Number 10 the Notice of Rulemaking for amending 8.281.500 and 8.200.430 New Mexico Administrative Code (NMAC) rules. The Department will be withdrawing this Notice of Rulemaking. The Department has filed a new Notice of Rulemaking for 8.281.500 NMAC and is now accepting comments through July 16, 2015. The Department has elected to not re-file a Notice of Rulemaking for 8.200.430 NMAC at this time.

The register and amendments to this rule will be available June 16, 2015 on

the HSD website: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at 505-827-7743 or at 888-997-2583 asking for extension 7-7743.

The Department is taking this opportunity to amend 8.281.500 NMAC to implement the Qualified State Long Term Care Insurance Partnership Program, to define who may be recognized as a spouse, and to update and standardize language.

Highlights:

Section 7-the proposed amendment adds definitions for asset limits, long term care insurance policy, protected asset limits, the Qualified State Long Term Care Partnership Program, and defines who is recognized as a spouse.

Section 13-the proposed amendment adds detailed instruction to implement the Qualified State Long Term Care Insurance Partnership Program.

Section 14-the proposed amendment adds instructions on asset transfers under the Qualified State Long Term Care Insurance Program.

Section 16-the proposed amendment adds instruction as to how to determine the resource assessments when an eligible recipient has a policy for the Qualified State Long Term Care Insurance Partnership Program.

Section 23-the proposed amendment adds instructions on determining deductions of premiums for the Qualified State Long Term Care Insurance Partnership policies in the medical care credit calculation. The amendment allows a deduction for the full amount of court ordered child or spousal support.

The Department proposes to have 8.281.500 NMAC effective August 14, 2015. A public hearing to receive testimony on these proposed amendments will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on July 16, 2015 at 10 a.m. Mountain Daylight Time (MDT).

Interested persons may address written comments to Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division-Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on July 16, 2015. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Medical Assistance Division toll free at 1-888-997-2583 and ask for extension 7-7743. In Santa Fe call 827-7743. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available upon request by providing either copies directly to a requestor or by making them available on the Department's website or at a location within the county of the requestor.

PUBLIC EDUCATION DEPARTMENT

Notice of Proposed Rulemaking

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, July 20, 2015 from 1:00 p.m. to 3:00 p.m.. The purpose of the public hearing will be to obtain input on the proposed new rule 6.32.3 NMAC (SEAL OF BILINGUALISM-BILITERACY ON NEW MEXICO DIPLOMA OF EXCELLENCE).

Interested individuals may provide comments at the public hearing and/

or submit written comments to Dr. Icela Pelayo, Director, Bilingual Multicultural Education Bureau, via email at rule.feedback@state.nm.us, fax (505) 827-6725, or directed to Dr. Icela Pelayo, Director, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Public Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained from Ms. Kirsi Laine, Bilingual Multicultural Education Specialist, by calling (505) 827-6505.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Laine at (505) 827-6505 as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

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

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.

EDUCATIONAL RETIREMENT BOARD

2 NMAC 82.7, Annuitants and Disability Recipients (filed 6-17-1999) is being repealed and replaced by 2.82.7 NMAC, Annuitants and Disability Recipients, effective 6-16-2015.

2 NMAC 82.10, Retirement Reciprocity (filed 6-17-1999) is being repealed and replaced by 2.82.10 NMAC, Retirement Reciprocity, effective 6-16-2015.

EDUCATIONAL RETIREMENT BOARD

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL
RETIREMENT
PART 7 ANNUITANTS AND
DISABILITY RECIPIENTS

2.82.7.1 ISSUING AGENCY:
Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129.
[2.82.7.1 NMAC - Rp, 2 NMAC 82.7.1, 6-16-2015]

2.82.7.2 SCOPE: This rule applies to members receiving disability benefits.
[2.82.7.2 NMAC - Rp, 2 NMAC 82.7.2, 6-16-2015]

2.82.7.3 STATUTORY AUTHORITY: The Educational Retirement Act, Section 22-11-1 to 22-11-53, NMSA 1978.
[2.82.7.3 NMAC - Rp, 2 NMAC 82.7.3, 6-16-2015]

2.82.7.4 DURATION:
Permanent.
[2.82.7.4 NMAC - Rp, 2 NMAC 82.7.4, 6-16-2015]

2.82.7.5 EFFECTIVE DATE:
June 16, 2015, unless a later date is cited at the end of a section.
[2.82.7.5 NMAC - Rp, 2 NMAC 82.7.5, 6-16-2015]

2.82.7.6 OBJECTIVE:
Clarifies requirements for disability retirement.
[2.82.7.6 NMAC - Rp, 2 NMAC 82.7.6, 6-16-2015]

2.82.7.7 DEFINITIONS:
[RESERVED]

2.82.7.8 BENEFIT PAYMENTS:

A. After the initial payment of benefits, payments shall be processed or mailed monthly, not later than the last day of the month for which they are paid.

B. At the time of death, a retired member's benefit shall be paid in accordance with the option selected, or if none was selected, the member's beneficiary who shall have been named at the time of retirement, shall receive the benefit for the month of the member's death or the excess of total contributions over total benefits received by the member, whichever is greater.

C. Upon the death of a member who is receiving disability benefits and who has rejected the coverage of option B, the member's surviving beneficiary shall receive the benefit due the member from the first day of the month of death to the date of death, inclusive, or the excess of total contributions over total benefits received by the member, whichever is greater.

(1) A member eligible to receive disability benefits, shall receive unmodified benefits as set forth in Section 22-11-37 NMSA 1978, until the member attains age 60, at which time the benefit will be modified in accordance with option selected at that time, if any, and the modifications will be based upon the then attained ages of the member and beneficiary.

(2) Upon the death prior to age 60 of a member receiving disability benefits who has option B coverage, the beneficiary of such member shall be entitled to the benefits provided by Section 22-11-29(D) NMSA 1978.

D. Upon the request of a member receiving retirement or disability

benefits, the director may deposit the member's monthly benefit payments directly to member's bank account provided the bank is located within the state of New Mexico, and to out-of-state banks only if officials of the bank sign the depository agreement approved by the board.
[2.82.7.8 NMAC - Rp, 2 NMAC 82.7.8, 6-16-2015]

2.82.7.9 EMPLOYMENT:

A. Once each calendar quarter, administrative units shall be required to report to the educational retirement board "the full-time equivalency" of members retired for age or service and members receiving disability benefits.

B. A member receiving disability benefits may engage in employment in the same manner and such employment shall be considered as partial evidence of ability to return to regular employment, and this, together with medical evidence, may be considered by the board in determining whether the member's disability benefit should continue.

C. Members retired for age or service may reside anywhere they choose, and engage in any employment which is not covered by the Educational Retirement Act, without affect to their retirement status.

D. If a member who returns to employment and is removed from a retirement status wishes to retire again, he may do so in accordance with the statute and 2 NMAC 82.5.9.4 [now Subsection D of 2.82.5.9 NMAC].

E. Retired members who perform services for local administrative units as an independent contractor must meet the criteria set forth for an independent contractor in 2 NMAC 82.2.11.4 (now Subsection D of 2.82.2.11 NMAC).

[2.82.7.9 NMAC - Rp, 2 NMAC 82.7.9, 6-16-2015]

HISTORY OF 2.82.7 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and

Archives under:

ERB 67-3, Rules and Procedures, filed 6/30/67;

ERB 78-1, Rules and Procedures, filed 8/7/78;

ERB Rule VII, Annuitants and Disability Recipients, filed 7/2/82.

History of Repealed Material:

2 NMAC 82.7, Annuitants and Disability Recipients - Repealed 6-16-2015.

EDUCATIONAL RETIREMENT BOARD

TITLE 2 PUBLIC FINANCE
CHAPTER 82 EDUCATIONAL
RETIREMENT
PART 10 RETIREMENT
RECIPROCITY

2.82.10.1 ISSUING AGENCY:
Educational Retirement Board, P. O. Box 26129, Santa Fe, New Mexico 87502-0129
[2.82.10.1 NMAC - Rp, 2 NMAC 82.10.1, 6-15-2015]

2.82.10.2 SCOPE: This rule applies to retirees combining service from PERA and ERA for retirement purposes. The governing boards of both systems must adopt these rules.
[2.82.10.2 NMAC - Rp, 2 NMAC 82.10.2, 6-15-2015]

2.82.10.3 STATUTORY AUTHORITY: The Educational Retirement Act, Sections 22-11-1 to 22-11-53, NMSA 1978, the Retirement Reciprocity Act, Sections 10-13A-2 to 10-13A-3, NMSA 1978.
[2.82.10.3 NMAC - Rp, 2 NMAC 82.10.3, 6-15-2015]

2.82.10.4 DURATION:
Permanent.
[2.82.10.4 NMAC - Rp, 2 NMAC 82.10.4, 6-15-2015]

2.82.10.5 EFFECTIVE DATE:
June 16, 2015, unless a later date is cited at the end of a section.
[2.82.10.5 NMAC - Rp, 2 NMAC 82.10.5, 6-15-2015]

2.82.10.6 OBJECTIVE:
Clarification of reciprocity retirement requirements adopted by the ERA and PERA boards.
[2.82.10.6 NMAC - Rp, 2 NMAC 82.10.6, 6-15-2015]

2.82.10.7 DEFINITIONS:
[RESERVED]

2.82.10.8 RETIREMENT RECIPROCITY:
A. "Salary" is defined by each state system for that state system. Each system shall certify the member's salary as defined by that system to the payor system, and the payor system shall accept that salary for pension calculation purposes where applicable.

B. The Public Employees Retirement Reciprocity Act applies to normal retirement only, and does not apply to disability retirement or pre-retirement survivor pensions.

C. If a retired member whose service credit at retirement was acquired only under PERA, is subsequently employed by an employer covered under ERA; and the retired member becomes a contributing member of ERA; and the retired member's PERA pension is suspended for the period of membership under ERA; and the retired member acquires service credit under ERA; the subsequently acquired service credit is eligible reciprocal service credit. When the member terminates the subsequent employment and retires again, the subsequent retirement shall be governed by the provisions of the Public Employees Retirement Reciprocity Act.

D. If a retired member whose service credit at retirement was acquired only under ERA is subsequently employed by an employer covered under PERA; the member may remove himself from a retirement status and become a contributing member of PERA; and the member may acquire service credit under PERA which shall be eligible for reciprocity service credit. When the member terminates the subsequent employment and retires again, the subsequent retirement shall be governed by the provisions of the Public Employees Retirement Reciprocity Act.

E. If a member has service credit for the same period of time for employment by public employers covered under different state systems, service credit may only be acquired under one state system for the period of overlapping service credit.

F. If a member retires with service credit under more than one state system for an overlapping period, the member shall be granted service credit for this overlapping period as follows:

(1) PERA
shall grant service credit earned for the months the member was employed by an employer covered under PERA in

accordance with all applicable PERA statutes and rules.

(2) ERA shall grant service credit for the quarters of ERA service credited to the member in accordance with all applicable ERA statutes and rules less the amount of service credit granted by PERA in subsection 8.6.a (now Paragraph (1) of Subsection F of 2.82.10.8 NMAC) above.

(3) In no case shall a member be credited with more than one month of service credit for all service in any calendar month.

G. Free or purchased military service credit under any state system may only be considered eligible reciprocal service credit under one state system for reciprocity retirement purposes.

H. When a member retires according to the provisions of the Public Employees Retirement Reciprocity Act, each state system under which the member has acquired eligible reciprocal service credit shall furnish the payor system with a certified statement of the member's service credit, and other pertinent data necessary to compute the member's pension.

I. A member retired according to the provisions of the Public Employees Retirement Reciprocity Act shall receive the same cost-of-living adjustments provided by each state system under which the retired member acquired eligible reciprocal service credit. Each state system shall pay the cost-of-living adjustment due under the provisions of that state system for the portion of the total pension attributable to service credit acquired under that state system.

J. A member retiring according to the provisions of the Public Employees Retirement Reciprocity Act shall only elect a form of payment option with the payor system. Each state system shall calculate benefits according to the same form of payment, except in the case of a member who retires under PERA and elects form of payment D, in which case the ERA component of the pension shall be calculated according to form of payment A.

K. Amendments to this rule shall be adopted by the educational retirement board and the public employees retirement board.
[2.82.10.8 NMAC - Rp, 2 NMAC 82.10.8, 6-15-2015]

HISTORY OF 2.82.10 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and

Archives under:
 ERB 67-3, Rules and Procedures, filed 6/30/67.
 ERB 78-1, Rules and Procedures, filed 8/7/78.
 ERB Rule X, Retirement Reciprocity, filed 10/3/83.
 ERB Rule X, Retirement Reciprocity, filed 2/4/85.
 ERB Rule X, Retirement Reciprocity, filed 9/21/93.

History of Repealed Material:
 2 NMAC 82.10, Retirement Reciprocity - Repealed 6-16-2015.

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.1 NMAC, Sections 15 and 17, effective 6-16-15.

2.82.1.15 MEDICAL REVIEW COMMITTEE [~~AND APPEAL OF RECOMMENDATIONS~~]:

A. The board shall engage a medical review committee composed of three physicians well qualified in general medical knowledge. The committee shall review all disability examination reports and advise the board of the nature and extent of disability for all applicants for disability benefits and the nature and extent of disability for those members already approved for benefits when it becomes necessary to determine their continued eligibility. The committee shall also render advice to the board on the selection of physicians or other qualified persons to perform tests and examinations upon applicants for disability, if necessary, and other medical matters.

B. The director may engage physicians and other qualified persons throughout the state to perform tests and examinations upon applicants for disability, if necessary. Results of such examinations shall be reported in detail to, and reviewed by, the medical review committee. The director is authorized to pay a reasonable fee for the reports and examinations requested by the committee.

C. [Appeals of recommendations by the medical review committee that the board not grant a disability retirement may be conducted by a panel of three (3) members of the educational retirement board appointed by the chairman and approved by the board. The appointments by the chairman shall take place at the regular October meeting each year. In the event that a member of

the appeals panel resigns from the panel, the chairman may appoint a member of the board to serve for the remaining portion of the one (1) year term. The appointment shall become effectively immediately; provided, however, that it shall be subject to approval by the board at its first meeting occurring after said appointment. The actions of this panel shall be governed by the statutes and administrative rules and regulations adopted by the board.] Applicants for disability benefits and recipients of disability benefits whose benefits are subject to re-examination shall be given written notice of those recommendations of the medical review committee which propose denial of the application for disability or termination of disability benefits. The written notice shall contain the following:

- (1) the recommendation of the medical review committee, and a clear and concise statement of the reasons supporting the recommendation;
- (2) a statement that the applicant or disability recipient may appeal the recommendation within thirty (30) days after receipt of the notice in accordance with 2.82.11 NMAC. [2.82.1.15 NMAC - Rp, 2.82.1.14 NMAC, 11-15-12; A, 6-16-15]

2.82.1.17 CONDUCT OF BUSINESS:

A. The business affairs of the board shall be conducted by the director within the authority outlined by the Educational Retirement Act and rules and procedures adopted by the board.

B. On behalf of the board, the director is authorized to execute vouchers, delegate others to execute vouchers, buy and sell, or assign, or otherwise acquire or dispose of stocks, bonds, notes, or other securities held by the board, and execute such other documents as may be necessary to the administration of the Educational Retirement Act.

C. The director shall obtain the board's approval before requesting a formal opinion interpreting the law from the attorney general. The director may, however, obtain advice, either oral or written, from the attorney general as the need may arise.

~~D.~~ A final decision of the director may be appealed by an affected party. All appeals must comply with the following procedure:

- (1) The appeal shall be initiated by the affected party serving on the director a notice of appeal

within ninety (90) days of the date of the letter in which the member received notice of the director's final decision. The notice of appeal must state the reasons for claiming the denial is improper. If the claimant fails to submit a notice of appeal as provided herein, the director's decision shall constitute the final order of the board:

(2) The appeal shall be heard by a hearing officer designated to represent the board, unless otherwise provided by the board or the rules and regulations adopted by the board:

(3) Procedure: (a) The office of general counsel will establish internal procedures for processing appeals within the parameters set by this rule.

(b) Discovery and evidence: (i)

Following the filing of an appeal, the parties must submit to the hearing officer, with a copy to the other parties, including copies separately addressed to the director and to the general counsel, at least fifteen (15) days prior to the scheduled hearing, any documentary evidence a party may wish to present for consideration at the de novo hearing. The hearing officer may grant a request for extension of time to submit documentary evidence for good cause, if such extension is not prejudicial to another party. This documentary evidence shall include all documents that will be introduced as exhibits at the hearing. Failure to comply with the requirements of this paragraph may result in the appeal proceeding without consideration of that documentary evidence. It shall not be considered error for the appeal to proceed without consideration of documentary evidence where a party did not timely submit such evidence as provided for in this paragraph:

(ii) At the same time documentary evidence is due to be submitted, the director or the general counsel may, but are not required to, file a written response to claimant's notice of appeal:

(iii) Upon the written request of any party, the parties shall provide to the other parties the names and addresses of persons that may be called as witnesses at the hearing:

(iv) Upon the written request of any party, pre-hearing discovery permitted by the rules of civil procedure for the district courts in New Mexico shall be allowed as authorized by the hearing officer.

Upon the request of any party in writing, the hearing officer also may authorize depositions.

(v) Upon request, the claimant shall provide to the director authorizations for the release of records regarding the claimant's employment (whether self-employed or as an employee or an independent contractor).

(vi) The rules of evidence do not apply, but the hearing officer may admit all relevant evidence which in the hearing officer's opinion is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness. Such evidence shall be given the weight the hearing officer deems appropriate.

(vii) The hearing officer may, upon good cause shown, remand the matter back to the director for reconsideration.

(c) Hearing:

(i) A hearing shall be held within sixty (60) days of receipt of the notice of appeal unless the parties agree to an extension of time and the extension is approved in writing by the hearing officer. The hearing officer also may grant an extension upon good cause shown by one party, without the agreement of other parties. The parties shall be given at least thirty (30) days' written notice of the scheduled hearing.

(ii) The board's authority to administer oaths is delegated to the hearing officer for the purpose of conducting the hearing.

(iii) The parties have the right to present argument and evidence orally, to present or cross-examine witnesses, and to be accompanied by counsel.

(iv) Failure of the party bringing the appeal or that party's representative to appear at the hearing, without prior approval from the hearing officer, shall result in automatic final denial of the appeal and any claims previously asserted.

(v) If the party bringing the appeal or that party's representative requests rescheduling of a hearing so close to the time of the hearing that additional costs are incurred, any such additional costs shall be assessed against that party.

(d) Burden of persuasion. Unless otherwise established by law, the party bringing the appeal has the burden of proving by a preponderance of the evidence the facts

relied upon to show that such party is entitled to relief or the benefit denied.

(e) Record. The hearing shall be recorded, and copies of all evidence offered shall be maintained by the director for a period of five (5) years. Any party desiring a transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such transcript. A party appealing the decision of the board to the district court shall make arrangements with the director for the preparation of transcripts for that appeal.

(f) Recommended decision:

(i) The hearing officer shall prepare a recommended decision for the board's consideration. The hearing officer shall provide the parties a copy of the recommended decision upon its completion. The hearing officer's recommended decision shall be based upon the evidence adduced at the hearing and shall be issued within sixty (60) days following the close of the record.

(ii) The hearing officer shall propose findings of fact and conclusions of law as part of the recommended decision.

(g) Exceptions to recommended decision:

(i) The parties may file exceptions to the hearing officer's recommended decision with the board within fifteen (15) days of the date of issuance of the recommended decision. Upon the written request of a party, and for good cause shown, the hearing officer may extend the time to file exceptions.

(ii) Copies of such exceptions and any briefs shall be served on all parties and the hearing officer, and a statement of such service shall be filed with the exceptions.

(iii) Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken and shall be based solely on the evidence and arguments presented at the hearing.

(iv) Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded.

(v) The hearing officer may file with the board a response to any exceptions filed within fifteen (15) days of the date of filing of the exceptions and shall serve copies of the response on all parties.

(4) Final action by the board:

(a) The board shall consider the hearing officer's recommended decision, any exceptions to the recommended decision together with supporting briefs, and the hearing officer's response to the exceptions, if any. The board may review all of the record made before the hearing officer.

(b) The board shall not consider any additional oral argument, evidence or affidavits not in the record before the hearing officer, or pleadings not filed in accordance with these rules.

(c) The board may request that the hearing officer be present at the time the board reviews a recommended decision and may discuss the recommended decision with the hearing officer. The board members may discuss the recommended decision during consideration of the recommended decision and may consult with counsel to the board.

(d) The board's final action shall be rendered no later than 180 days after the date the hearing officer's recommended decision was issued. Board members who need additional time to review the record before taking final action may ask the board chairman for additional time to complete the review. If additional time is requested, the deadline for the board's final action shall be extended for one month.

(e) Ex parte communication with board members or the hearing officer concerning a decision that is on appeal is prohibited.

(f) The board may remand a recommended decision to the hearing officer for additional findings, conclusions, clarification and/or the taking of additional evidence. Such a remand shall restart the time frames contained in this rule.

(g) The board shall approve, disapprove or modify the recommended decision, and shall enter a final order concerning the matter being appealed. The board may modify the proposed conclusions of law based on the proposed findings of fact. If the board wishes to modify the proposed findings of fact, it may do so only after review of the record before the hearing officer. The board shall provide a reasoned basis for changing the hearing officer's recommendation.]

[E:] D. The rules and procedures of the board may be amended or expanded in the following manner:

(1) At any regular meeting, the board may request the director to prepare amendments or new rules for action at a subsequent meeting of the board.

(2) The director may, at any time, propose amendments or new rules for action at any meeting of the board.

(3) Any proposed amendment or new rule shall be drafted by the director and sent to each board member with the agenda for the meeting at which the proposal will be considered, and all proposed rule changes will be sent to all local administrative units, within a reasonable time, prior to being considered by the board.

~~F.~~ E. Interest rates that are to be set by the board under the Educational Retirement Act may be changed at any meeting of the board but shall at a minimum be set at a board meeting held in the final fiscal quarter of the year.
[2.82.1.17 NMAC - Rp, 2.82.1.16 NMAC, 11-15-12; A, 6-16-15]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.2 NMAC, Section 11, effective 6-16-2015.

2.82.2.11 EMPLOYEES EXCLUDED FROM COVERAGE:

A. Any person enrolled as a student in any of the local administrative units outlined in Subsection A of 2.82.2.8 NMAC, and who is also employed by the local administrative unit in which he is enrolled, shall be considered a student and not eligible for either "regular" or "provisional" membership under the Educational Retirement Act, except that members of the faculty or full-time staff, who may be incidentally enrolled in classes, shall not be affected by this rule. Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the Educational Retirement Act. This includes any and all participation in the teacher enhancement program or participation in similar graduate programs.

B. Any person whose full time equivalency ("FTE") is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. Any person employed on July

1, 1994 who was then covered under the Educational Retirement Act shall continue to be covered for the duration of that employment.

~~(1) A retired member may return to employment (includes "substitution") and earn up to \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without effecting the retired member's retirement benefit.~~

~~(2) In the event that a retired member enters into an agreement which provides for earnings in excess of the above limits or the retired member actually has earnings in excess of the above limits, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status.]~~

C. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" and shall not be covered under the Educational Retirement Act. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" and must be covered under the Educational Retirement Act.

D. Independent contractors who perform services for local administrative units on a fee basis are not eligible for membership under the Educational Retirement Act as a result of having performed such service, and sums paid for such service shall not be covered for purposes of contributions. The following factors shall be considered in determining whether an individual qualifies as an independent contractor:

(1) registration with the New Mexico department of taxation and revenue to pay gross receipts tax;

(2) the existence of a written contract with the local administrative unit setting forth the services to be provided and the compensation to be paid;

(3) whether the person receives benefits such as paid annual or sick leave, health insurance and other benefits that the local administrative unit provides its regular employees or is paid as an employee by the local administrative unit;

(4) whether the person satisfies internal revenue service guidelines for determining that an individual is an independent contractor rather than an employee;

(a) as necessary, the director shall make available forms for use by local administrative units for use in making this determination;

(b) the board reserves the right to examine the complete forms, contracts and other agreements, and any other materials as may be necessary for the purpose of determining whether an individual is an independent contractor or employee.

E. All students enrolled in any public school, grade 1-12.

F. Employees who have a portion of their salaries paid through the Comprehensive Employment and Training Act (Public Law 95-524) shall not be covered for contributions on that portion except those employees who have vested.
[6-30-99; 2.82.2.11 NMAC - Rn, 2 NMAC 82.2.11, 11-30-2001; A, 10-31-2002; A, 9-15-2006; A, 5-31-2012; A, 6-16-2015]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.4 NMAC, Section 8, effective 6-16-2015.

2.82.4.8 EARNED SERVICE CREDIT:

A. Earned service credit shall be granted for prior employment on the basis of one month of credit for each month worked in regular employment, and when a regular work year consisted of a period of time less than 12 months, such period of time shall be considered a full year.

B. Earned service credit shall be granted for employment after July 1, 1957, on a quarterly basis. ~~and~~ A member shall receive one quarter of credit for each calendar quarter in which ~~he~~ the member has earnings from regular employment and renders services for a minimum of 16 days. Four calendar quarters ~~if~~ or credit shall constitute one year. The calendar quarters of a year shall begin and end as follows: July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30.

C. Members who are granted paid sabbatical leave shall receive one calendar quarter of earned service credit for each quarter in which they receive pay for such leave after July 1, 1957. Members who received pay for sabbatical leave prior to July 1, 1957 shall receive one month of earned service

credit for such month during which they received pay for such leave.

D. If a member is granted earned service credit while on paid sabbatical leave and that sabbatical leave is subsequently revoked, with salary payments returned to, or demanded by the administrative unit, under the terms of the leave agreement between the administrative unit and the member, the earned service credit granted during such sabbatical leave shall be revoked.

E. In the event of revocation of earned service credit as provided in Subsection D of 2.82.4.8 NMAC, disposition of contributions made by the member and administrative unit relating to the revoked period of earned service credit shall be as follows:

(1)

Administrative unit contributions shall be credited to the administrative unit to be used against future contribution costs.

(2)

Before the member contribution shall be disbursed, or credited, the administrative unit shall furnish the board with proof of the settlement which has been made with the member. Following the receipt of this proof, the member contributions shall be handled as follows:

(a)

If the administrative unit has completed the financial settlement with the member without being reimbursed for member contributions relating to the leave and paid to the board, the administrative unit shall be granted credit for such member contributions to be used against the future administrative unit contribution costs.

(b)

If the administrative unit has been reimbursed by the member for member contributions relating to the leave and paid to the board, such member contributions shall be paid to the member on a refund voucher separate from any other refund which might be requested by the member.

F. An exchange teacher who is working outside the New Mexico public schools, but who is being paid a regular salary by a "local administrative unit," shall receive earned service credit for such service.

G. Public school nurses whose first employment commenced after July 1, 1957 and prior to June 12, 1959 may acquire earned service credit for such employment if the contributions required by law are made. Such nurses are considered to have been provisional members prior to June 12, 1959.

H. Provisional members who were employed between July 1, 1957 and July 1, 1961 and who were

not covered at that time, may receive earned service credit for such service if the contributory requirements set forth in Section 22-11-17 are met, and if such provisional members do not exempt themselves.

I. A provisional member who has exempted himself, may revoke such exemption by filing ERA form #42 with his employer and by commencing regular contributions to the educational retirement fund on the first day of the month following the filing of ERA form #42, and earned service credit shall commence on that date.

J. A provisional member who exempted himself during the period July 1, 1957 to July 1, 1961 may receive earned service credit for service rendered prior to July 1, 1957 if he became covered under ERA subsequent to July 1, 1961 in lieu of exemption as provided in Section 22-11-17 as amended July 1, 1961. If a provisional member exempted himself from ERA coverage on or after July 1, 1961, he shall not be entitled to receive earned service credit for service rendered prior to July 1, 1957 by reason of later revoking the exemption or otherwise becoming covered.

K. The board shall not allow contributory service credit when token salaries are paid or when gratuitous service is performed. The ERB shall rule on each case involving gratuitous service or token salaries when each case is presented.

L. Notwithstanding Section 22-11-17(B) NMSA, 1978, a member may purchase any or all of the time that the member was exempt from ERA coverage. The cost of purchase shall be as prescribed in Section 22-11-17(C) or (D), NMSA, 1978, except that if the member purchases only a portion of the total exempt time, the cost shall be calculated by multiplying the cost of the exempt time by the ratio of time purchased to the total exempt time. Prior service, which was canceled due to the member's exemption, shall be restored in the same proportion as the exempt time purchased to the total exempt time. Any contribution paid through a payroll deduction plan as prescribed in Section 22-11-21.3 must be done under the local administrative unit's payroll deduction plan, and not through partial payments made to ERB. ERB shall not accept such partial payments as any service time purchased under Section 22-11-17(C) or (D) must be paid to ERB in a lump sum.

M. In the event that a member was neither covered nor exempt from coverage under ERA, the member

shall have the right to purchase such service, or portion thereof, at a cost calculated in the same manner as for the purchase of exempt service delineated in Section 22-11-17(C). In such cases, the local administrative unit must pay the employer cost, but only if the member purchases non-covered time.

N. The board may accept rollover and employer payroll deduction contributions for the restoration of withdrawn earned service credit if the following conditions are met:

(1)

The payments must be all or a portion of the member's interest qualified under Section 401(a) of the Internal Revenue Code.

(2)

The payments shall contain only tax-deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases or indemnification to the board against any and all liabilities that may be connected with the transfer, verifying that the proposed transfer is a qualifying contribution under the Internal Revenue Code.

(3)

Payroll deductions and employer pickups are authorized by the governing body of the ERA employer.

(4)

The board may not accept rollover or employer pickup payroll deduction contributions in excess of the amount required to restore the withdrawn earned service credit.

O. For payments to restore earned service credit which commence on and after January 1, 2002, the board may accept rollover and transfers if the following conditions are met:

(1)

Rollovers must be eligible rollover distributions that are not includable in the income of the member by reason of Internal Revenue Code sections 402(c), 403(b)(8), 408(d) or 457 (e)(16).

(2)

Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Internal Revenue Code section 401(a) or 403(a), an annuity contract described in Internal Revenue Code section 403(b) to the extent permitted by Internal Revenue Code section 403(b)(13), or an eligible plan under Internal Revenue Code section 457(b) to the extent permitted by Internal Revenue Code section 457(e)(13).

(3)

The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit

satisfactory documentation, releases, or indemnification to the board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

(4) Payroll deduction contributions shall no longer be allowed for the purchase of earned service credit if the contributions would commence on or after July 1, 2002.

(5) The board may not accept rollovers or transfers in excess of the amount required to restore the withdrawn earned service credit. [6-30-99; 2.82.4.8 NMAC - Rn, 2 NMAC 82.4.8, 11-30-2001; A, 4-15-2002; A, 7-15-2003; A, 6-16-2015]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.5 NMAC, amending Sections 9 and 15-20, effective 6-16-2015.

2.82.5.9 APPLICATIONS:

A. Retirement application forms furnished by the director and made available in each local administrative unit, may be initiated by the member or his employer. The member may also write to the director to apply for benefits. In either case, the application must be signed by the member.

B. If a member seeking retirement is not employed at the time of application, the director shall deal directly with the member in processing the application, without reference to, or concurrence of the last employer.

C. The application for retirement (being the completed form supplied by the director) must be filed in the office of the director prior to the desired effective date of benefits.

D. A member who has been re-employed following a previous retirement shall make application for benefits in the same manner as one who has not previously been retired.

E. Any member with an effective retirement date on or after July 1, 2015 shall provide authorization to the director for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed in the form prescribed by the director. The director may waive this requirement upon a showing of exceptional circumstances.

[E:] E. In order to implement

Section 22-11-32, the director shall, at the time of the member's application for benefits, obtain the member's written statement that he or his beneficiary does or does not receive any other benefit from any public agency which would be adversely affected by his or his beneficiary's receipt of benefits pursuant to the Educational Retirement Act. If he or his beneficiary does, or will receive such benefits, the director shall make the benefit adjustment called for in this section.

[6-30-99; 2.82.5.9 NMAC - Rn, 2 NMAC 82.5.9, 11-30-2001; A, 6-16-2015]

2.82.5.15 RETURN TO WORK PROGRAM:

A. In order to qualify to return to employment (hereinafter "return to work") as provided for in Subsections A and E of Section 22-11-25.1, NMSA 1978, a retired member must have a period of at least twelve consecutive months in which they have not been employed as an employee or independent contractor by a local administrative unit (hereinafter, a "break in service").

(1) To satisfy the requirements of a "break in service," the retired member must not have rendered service of any nature whatsoever to a local administrative unit for the twelve consecutive month period. "Service" shall be defined to include, without limitation, all employment whether full time, part-time including service allowed under Paragraph (1) of Subsection B of 2.82.2.11 NMAC, substitute teaching, performing duties as a volunteer, which would otherwise be, or in the past have been, performed for the local administrative unit by a paid employee or independent contractor, or services rendered as an independent contractor, an employee of an independent contractor, or any other employment as described in Subsections A through D of 2.82.2.11 NMAC. A "local administrative unit" shall include any entity controlled by or subject to the control of a local administrative unit, including without limitation, a corporation or other entity regardless of legal form and of whether such corporation or entity is created for profit or non-profit purposes.

(2) The break in service must have commenced after the effective date of retirement and been completed prior to the first day of re-employment, but need not have been the twelve consecutive months immediately prior to the first day of such re-employment (i.e. the break in service could have occurred at any time

during the period after the effective date of retirement and before the first day of re-employment but must have been at least twelve consecutive months within that period). After completing a twelve consecutive month break in service, a retired member may work .25 FTE or less as provided by Paragraph (1) of Subsection B of ~~[2.82.2.11]~~ 2.82.5.16 NMAC, without ~~[effecting]~~ affecting that member's eligibility for the return to work program.

B. In addition to a break in service of at least twelve consecutive months, in order to satisfy the provisions of Section 22-11-25.1 (E), a member who retired on or before January 1, 2001, and who subsequently removed him or herself from retirement (also referred to as "suspending retirement") pursuant to Section 22-11-25, NMSA 1978, and thereafter re-retired, must complete an additional period of at least ninety days after the re-retirement, during which the retired member has not been employed as an employee or an independent contractor by a local administrative unit. During the ninety day period, the retired member must satisfy the same requirements regarding employment by a local administrative unit as must be satisfied for a twelve consecutive month break in service. The ninety day period shall not include any portion of the period used to satisfy the twelve consecutive month break in service. In addition, the ninety day period shall not include any scheduled breaks, vacations, paid administrative or sick leave, or holidays consisting of more than two business days.

C. Any and all time that a retired member has provided service to a local administrative unit under the return to work program cannot be used in the calculation of retirement benefits and a retired member is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's re-employment with a local administrative unit under the return to work program.

D. No retired member is eligible for the return to work program until the member submits a completed, signed and notarized return to work form as supplied by ERB, (the "return to work application"), verifying their eligibility for the return to work program.

E. The date of suspension of retirement for any retired member shall be the last day of the month in which the member suspended retirement.

F. Any retired member who is participating in the return to work

program who has violated the provisions of the program, failed to submit the required return to work application, or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to the ERB that they have terminated any and all employment that would disqualify them from retirement under the Educational Retirement Act. To re-qualify for the return to work program, the retired member must complete the minimum break in service as described in Subsection A of 2.82.5.15 NMAC, calculated from the date of reinstatement of retirement.

G. A retired member is qualified under Section 22-11-25.1(B) to return to full time employment without being required to suspend retirement benefits if the member:

- (1) retired on or before January 1, 2001; and
- (2) did not work more than .25 FTE at any time after January 1, 2001 or provide any other service to a local administrative unit after that date that would have required the member to suspend retirement benefits under the act; and
- (3) did not suspend retirement after January 1, 2001; and
- (4) completed a return to work application with ERB.

H. Member's qualifying under Section 22-11-25.1(B) may begin full time employment immediately after ERB approval without any additional waiting period.
[2.82.5.15 NMAC - N, 11-30-2001; A, 12-14-2001; A, 10-31-2002; A, 7-15-2003; A, 12-31-2008; A, 6-16-2015]

2.82.5.16 RETURN TO WORK EXCEPTION:

A. A retired member may return to employment (includes "substitution") and earn up to \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without affecting the retired member's retirement benefit. For purposes of this provision, earnings shall include bonuses, annual and sick leave payouts, and any other form of cash remuneration for services rendered except

for reimbursements and allowances for expenses.

B. In the event that a retired member enters into an agreement which provides for earnings in excess of the above limits or the retired member actually has earnings in excess of the above limits, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member has earnings in excess of the above limits. The retired member shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work exception plus interest at a rate to be set by the board.

C. A retiree who is participating under the return to work program may elect to switch to the return to work exception. Such election shall be effective the first day of the quarter following the date of the election.
[2.82.5.16 NMAC - N, 6-28-13; 2.82.5.16 NMAC - N, 6-16-2015]

[2.82.5.16] 2.82.5.17

TERMINATION OF PLAN;

ACCRUED RIGHTS OF MEMBERS:

The rights of members to benefits accrued, to the extent funded, will become vested to the extent required by and upon the events set forth in Treas. Reg. Section 1.401-6(a)(1). See 26 CFR 1.401-6.
[2.82.5.17 NMAC - Rn, 2.82.5.16 NMAC, 6-16-2015]

2.82.5.18 INTERNAL

REVENUE CODE SELECTION:

The Educational Retirement Act of New Mexico is intended to satisfy Section 401(a) of the Internal Revenue Code and to be a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code.

[2.82.5.18 NMAC - N, 6-16-2015]

2.82.5.19 ROLLOVER

DISTRIBUTIONS FOR NON-SPOUSE

BENEFICIARIES: The Educational Retirement Act shall allow direct rollovers to non-spouse beneficiaries for lump sum distributions only, and such distributions must be requested before the end of the year after the year of the member's death. No partial rollovers shall be permitted. A direct rollover by a non-spouse beneficiary must be made into a traditional or roth IRA established on behalf of the designated beneficiary and that will be treated as an inherited

individual retirement account (IRA) pursuant to the provisions of Section 402(c)(11) of the Internal Revenue Code. The distribution must also otherwise satisfy the definition of an "eligible rollover distribution" under Section 401(a)(31) of the Internal Revenue Code. All other current rules applicable to rollover distributions under the Educational Retirement Act, or adopted by the board pursuant to the Educational Retirement Act, must be followed. The non-spouse beneficiary shall be notified that he or she is responsible for following the applicable minimum required distribution rules under Section 401(a)(9) of the Internal Revenue Code.
[2.82.5.19 NMAC - N, 5-31-2015]

2.82.5.20 DEATH BENEFITS WHILE PERFORMING MILITARY SERVICE:

In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service not otherwise credited under the terms of the Educational Retirement Act) provided under the plan as if the participant had resumed and terminated employment on account of death.

[2.82.5.20 NMAC - N, 5-31-2015]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.8 NMAC, Sections 2, 9-11, effective 6-16-2015.

2.82.8.2 SCOPE: This rule establishes guidelines for investment of the [ERA fund for] educational retirement fund under management by the educational retirement board (ERB), and it applies to the educational retirement board, the director of the agency, the investment committee and the investment division staff.
[6-30-99; 2.82.8.2 NMAC - Rn, 2 NMAC 82.8.2, 1-30-2004; A, 6-16-2015]

2.82.8.9 INVESTMENT DIVISION:

A. The investment division of ERB shall be managed by the chief investment officer [and the equity investment officer] under the direction of the director.

B. The [primary] role

of the investment division is detailed in the investment policy. [to manage the assets of the retirement fund. Further, the objectives shall be to provide significant real returns (inflation adjusted) over long periods of time (5-10 years), as set forth in the ERB investment objectives and guidelines.

C. The investment officers shall be responsible for proposing changes to the long-term investment philosophy and investment guidelines. In addition, the investment officers shall implement strategic and tactical decisions which aid in achieving the objectives of the fund.

D. Within the guidelines set forth by the board and the state statutes regulating investments, the investment officers are authorized to purchase, sell or exchange securities as, in their judgment, market conditions dictate and such transactions are in the best interest of the fund. The final investment decision rests with the investment officers. Investment management firms shall have full discretion to manage the assets allocated to their management, within the directives of the board.

E. Additional responsibilities for the investment division include:

- (1) monitoring the activities of ERB's fiscal agent in order to insure proper settlement of transactions and crediting of interest/dividends;
- (2) administering the securities lending program so as to maximize income and insure that sufficient collateral is available at all times;
- (3) preparing following reports for approval by the investment committee and board:
 - (a) asset listing (monthly);
 - (b) investment summary reports (quarterly);
 - (c) proxy report (quarterly);
 - (d) broker commission report (annually);
 - (e) soft dollar report (annually);
 - (f) other reports as requested:
 - (4) coordinating with the accounting division to insure proper recording of securities transactions;
 - (5) voting proxies;
 - (6) administering the "soft dollar" program in accordance with ERB's written policy.]

[6-30-99; 2.82.8.9 NMAC - Rn, 2 NMAC 82.8.9, 1-30-2004; A, 6-16-2015]

2.82.8.10 INVESTMENT PHILOSOPHY:

[A.] Recognizing the important and perpetual nature of the fund and the fiduciary responsibilities of the board, the primary goal in investing the assets shall be to provide significant real returns adjusted for inflation with acceptable risk (volatility). The "prudent [man] investor" standard, as defined in the state statutes, shall apply to the investment activities of the educational retirement board. [At the same time, with the dramatic growth of the fund and changes and volatility in the securities markets, the investment division must explore new areas of investment for purposes of diversification.

B. The primary equity strategy shall be to build a high-quality, diversified portfolio of stocks. Both growth and value styles shall be included in the equity structure. A mid-cap or small-cap equity portfolio can add diversification to the board's equity strategy. Exposure to international equity investing can further add diversification benefits to the equity strategy.

C. Fixed income securities shall be managed using a rate anticipation style. The duration of the portfolio will be lengthened or shortened based on the outlook for interest rates. In addition, sector analysis, spread analysis and swaps will be used to increase the return on the portfolio. Exposure to international fixed income investing can add diversification benefits to the fixed-income strategy.]

[6-30-99; 2.82.8.10 NMAC - Rn & A, 2 NMAC 82.8.10, 1-30-2004; A, 6-16-2015]

2.82.8.11 [POLICIES] INVESTMENT POLICY:

A. [Investment guidelines] The board shall adopt a written investment policy as required by Section 22-11-13(B) NMSA 1978 which establishes a policy for the investment and management of the educational retirement fund. At least annually, the board shall review, ratify and provide its written investment policy to the legislative finance committee and the department of finance and administration.

- (1) Fixed income securities:
 - (a) Eligible fixed income investments include the following:
 - (i) US treasury;

- (ii) federal agencies;
- (iii) US government sponsored enterprises (FNMA, FHLMC, etc.);
- (iv) US corporations;
- (v) repurchase agreements;
- (vi) prime bankers' acceptances;
- (vii) yankee bonds;
- (viii) collateralized obligations held in trust that are publicly traded and are registered with the United States securities and exchange commission; and have underlying collateral that is either an obligation of the United States government or else has a credit rating above or equal to BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system;
- (ix) bills, bonds or notes of governments other than the United States or their political subdivisions, agencies or instrumentality's;
- (x) bonds, notes or commercial paper of any corporation organized outside of the United States:
 - (b) Domestic fixed income securities, managed internally by the investment division, at the time of purchase, must have at least a Baa3/Moody's and BBB-/S & P rating; Yankee bonds, at the time of purchase, must have at least an A/Moody's and A/S & P rating; and international fixed income securities, at the time of purchase, must have a minimum rating equivalent to A/Moody's and A/S & P rating:
 - (c) At least 90 percent of domestic fixed income securities, managed externally by a paid investment manager, at the time of purchase, may have a minimum rating of at least a Caa3-Moody's and a CCC-S&P rating:
 - (d) Not more than 2 percent of the fund (at market value) may be invested in a single corporate issuer:
 - (2) Equities:
 - (a) Eligible equity investments include the following:
 - (i) common stock or preferred stock of U.S. corporations. Stock must be listed on a national exchange or on the N.A.S.D. national market;

(ii) American depositary receipts of foreign corporations. Securities must be listed on a national stock exchange or on the N.A.S.D. national market;

(iii) common stock or preferred stock of corporations organized outside of the United States. Stock must be listed on a national or foreign stock exchange.

(b) Not more than 10 percent of the voting stock of a corporation may be owned by the fund.]

B. Broker policy: Given the fiduciary responsibilities of the board and the chief investment [officers'] officer with regard to the management of the assets of the retirement fund, the board adopts the following policies relating to the execution of the securities orders:

(1) Equities.

The brokerage community provides important services necessary for the successful management of the retirement fund. Recognizing that the value of the services varies widely from firm to firm, the [equity] chief investment officer is directed to allocate commission business based on his/her [judgement] judgment of the overall quality of service provided by each brokerage firm. The SEC, in release no. 34-23170 dated April 23, 1986, states that in judging the quality of service consideration should be given to "the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness to the money manager." When all factors are equal within the above guidelines, preference shall be given to brokerage firms with offices in New Mexico.

(2) Fixed income. Recognizing the difference in the nature of the equity and fixed income markets, i.e., no central market for fixed income securities, fixed income trades will be executed through firms, [which] that originate ideas and are able to offer/bid securities on a continuing competitive basis. When market conditions permit in the judgment of the fixed income investment officer [market conditions-permit], offerings and bids will be solicited on a competitive basis.

(3) Soft dollar policy. The chief investment [officers] officer, with approval of the director, and concurrence by the legislature, [are] is authorized to use "soft dollars" to pay for research services and equipment [which] that assist in the investment decision - making process as related to

the management of the assets of the ERB retirement fund. Section 28(e) of the SEC Act of 1934, SEC interpretive release no. 34-23170 dated April 23, 1986 and any subsequent interpretative releases shall be used as guidelines in this procedure. [6-30-99; 2.82.8.11 NMAC - Rn & A, 2 NMAC 82.8.11, 1-30-2004; A, 6-16-2015]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.11 NMAC, Part Name and Sections 2 and 8-12, effective 6-16-2015.

PART 11 [DISABILITY] ADMINISTRATIVE APPEALS

2.82.11.2 SCOPE: [This rule applies to the appeal process after a denial of disability benefits.] This rule sets forth the process for appealing a denial of a claim for retirement benefits or a recommended denial of a claim for disability benefits. [6/30/99; 2.82.11.2 NMAC - Rn, 2 NMAC 82.11.2, 3-14-2008; A, 6-16-2015]

2.82.11.8 [PROCEDURES TO INITIATE APPEAL

A. Applicants for disability benefits and recipients of disability benefits whose benefits are subject to re-examination shall be given written notice of those recommendations of the medical review board which propose denial of the application for disability or termination of disability benefits. The written notice shall contain the following:

- (1) the recommended action, and a clear and concise statement of the reasons supporting the recommendation;
- (2) a statement that the applicant or disability recipient may request a hearing within thirty (30) days after receipt of the notice;
- (3) a statement that, unless the applicant or recipient requests a hearing by timely filing a request for hearing within thirty (30) days of service of the notice, the educational retirement board may take the recommended action without further right of appeal to the board.

B. Any notice required to be served, including notice of final decision, may be served personally or by certified mail, return-receipt-requested, directed to the applicant's or recipient's last known address as shown by the

educational retirement board's ("ERB's") records. Where notice is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery or refusal to accept delivery.

C. A request for hearing must be initiated by filing a request for hearing with ERB, by delivering such request to the ERB's administrative offices, addressed to ERB's director. "Filing" occurs when the request for hearing is received at ERB's offices; provided, however, that where a request for hearing is properly addressed with sufficient postage and mailed at least three (3) days before the expiration of the thirty (30) day period within which to request a hearing, filing will be deemed timely if received by ERB, notwithstanding that receipt by ERB may occur after the thirty (30) day period has expired. The request for hearing must contain the following:

- (1) the reasons the applicant or recipient disagrees with the recommended action;
- (2) a statement whether additional evidence will be submitted at the hearing; such evidence must be submitted within twenty (20) days of filing the request for hearing;
- (3) the name and address of any representative of appellant.

D. If the applicant or recipient does not request a hearing in the manner and within the time stated in this rule, the educational retirement board may adopt the recommendation of the medical review board. No further right of appeal exists.] **GENERAL PROVISIONS:**

A. A final written decision of the director which results in a denial of a claim for retirement-related benefits or a recommendation of the medical review committee for a denial of an application for disability or termination of disability benefits may be appealed by an affected member.

B. The appeal shall be initiated by the affected party serving on the director a notice of appeal within thirty (30) days of the date of the letter in which the member received notice of the final decision or recommendation. The notice of appeal must state the reasons for claiming the decision or recommendation is improper. If the claimant fails to submit a notice of appeal as provided herein, the decision or recommendation shall become final.

C. The appeal shall be heard by a hearing officer designated by the board, unless otherwise provided by the board.

D. Procedure.

(1) The office of general counsel will establish internal procedures for processing appeals within the parameters set by this rule.

(2) Discovery and evidence.

(a) Following the filing of an appeal, the parties must submit to the hearing officer, with a copy to the other parties, including copies separately addressed to the educational retirement board's (ERB) office of general counsel, at least fifteen (15) days prior to the scheduled hearing, any documentary evidence a party may wish to present for consideration at the de novo hearing. The hearing officer may grant a request for extension of time to submit documentary evidence for good cause, if such extension is not prejudicial to another party. This documentary evidence shall include all documents that will be introduced as exhibits at the hearing. Failure to comply with the requirements of this provision may result in the appeal proceeding without consideration of the documentary evidence.

(b) At the same time documentary evidence is due to be submitted, the ERB may, but is not required to, file a written response to claimant's notice of appeal.

(c) The parties shall provide to the other parties the names and addresses of persons that may be called as witnesses at the hearing.

(d) Upon the written request of any party, pre-hearing discovery permitted by the rules of civil procedure for the state district courts in New Mexico may be allowed as authorized by the hearing officer.

(e) Upon request, the claimant shall provide to the director authorizations for the release of records regarding employment (whether self-employed or as an employee or an independent contractor) and, in the case of a disability appeal, the claimant's health care records.

(f) The rules of evidence do not apply, but the hearing officer may admit all relevant evidence which in the hearing officer's opinion is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness. Such evidence shall be given the weight the hearing officer deems appropriate.

(g) The hearing officer may, upon good cause

shown, remand the matter back to the director or the medical review committee for reconsideration.

(3) Hearing.

(a) A hearing shall be held within ninety (90) days of receipt of the notice of appeal unless the parties agree to an extension of time and the extension is approved in writing by the hearing officer. The hearing officer also may grant an extension upon good cause shown by one (1) party, without the agreement of other parties. The parties shall be given at least thirty (30) days written notice of the scheduled hearing.

(b) A hearing involving the denial of disability benefits shall not be open to the public.

(c) The board's authority to administer oaths is delegated to the hearing officer for the purpose of conducting the hearing.

(d) The parties have the right to present argument and evidence orally, to present or cross-examine witnesses, and to be accompanied by counsel.

(e) Failure of the party bringing the appeal or that party's representative to appear at the hearing, without prior approval from the hearing officer, shall result in automatic final denial of the appeal and any claims previously asserted.

(f) If the party bringing the appeal or that party's representative requests rescheduling of a hearing so close to the time of the hearing that additional costs are incurred, any such additional costs may be assessed against that party, such as court reporting or other costs.

(4) Burden of persuasion. Unless otherwise established by law, the party bringing the appeal has the burden of proving by a preponderance of the evidence the facts relied upon to show that such party is entitled to relief or the benefit denied.

(5) Record. The hearing shall be recorded, and copies of all evidence offered shall be maintained by the director for a period of five (5) years. Any party desiring a transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such transcript. A party appealing the decision of the board to the district court shall make arrangements with the director for the preparation of transcripts for that appeal.

(6) Recommended decision.

(a) The hearing officer shall prepare a recommended decision for the board's consideration. The hearing officer shall provide the parties a copy of the recommended decision upon its completion. The hearing officer's recommended decision shall be based upon the evidence adduced at the hearing and shall be issued within sixty (60) days following the close of the record.

(b) The hearing officer shall propose findings of fact and conclusions of law as part of the recommended decision.

(7) Exceptions to recommended decision.

(a) The parties may file exceptions to the hearing officer's recommended decision with the board within fifteen (15) days of the date of issuance of the recommended decision. Any other party may file a response to exceptions within fifteen (15) days of the date such exceptions were filed. Upon the written request of a party, and for good cause shown, the hearing officer may extend the time to file exceptions and responses.

(b) Copies of such exceptions and any briefs shall be served on all parties and the hearing officer, and a statement of such service shall be filed with the exceptions.

(c) Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken and shall be based solely on the evidence and arguments presented at the hearing. Any exception that fails to comply with the foregoing requirements may be disregarded.

(d) The hearing officer may file with the board a response to any exceptions filed within fifteen (15) days of the date of filing of the exceptions and shall serve copies of the response on all parties.

E. Final action by the board.

(1) The board shall consider the hearing officer's recommended decision, any exceptions to the recommended decision together with supporting briefs, and the hearing officer's response to the exceptions, if any. The board may review all of the record made before the hearing officer.

(2) The board shall not consider any additional oral argument, evidence or affidavits not in the record before the hearing officer, or pleadings not filed in accordance with

these rules.

(3) The board may request that the hearing officer be present at the time the board reviews a recommended decision and may discuss the recommended decision with the hearing officer. Board deliberations regarding the recommended decision and consultations with counsel to the board shall occur in closed session in accordance with the Open Meetings Act.

(4) The board's final action shall be rendered in an open meeting no later than one hundred eighty (180) days after the date the hearing officer's recommended decision was issued. Board members who need additional time to review the record before taking final action may ask the board chairman for additional time to complete the review. If additional time is requested, the deadline for the board's final action shall be extended until the next regularly scheduled board meeting.

(5) Ex parte communication with board members or the hearing officer concerning a decision that is on appeal is prohibited.

(6) The board may remand a recommended decision to the hearing officer for additional findings, conclusions, clarification or the taking of additional evidence. Such a remand shall restart the time frames contained in this rule.

(7) The board shall approve, disapprove or modify the recommended decision, and shall enter a final order concerning the matter being appealed. The board may modify the proposed conclusions of law based on the proposed findings of fact. If the board wishes to modify the proposed findings of fact, it may do so only after review of the record before the hearing officer. The board shall provide a reasoned basis for changing the hearing officer's recommendation.

F. A refund of a member's contributions pending appeal shall result in the forfeiture of service credit and the automatic dismissal of an appeal and issuance of a notice of dismissal.
[6/30/99; 2.82.11.8 NMAC - Rn, 2 NMAC 82.11.8, 3-14-2008; Repealed, 6-16-2015; 2.82.11.8 NMAC - N, 6-16-2015]

[2.82.11.9 PRE-HEARING PROCEDURES:

A. Upon receipt of a timely filed request for hearing, ERB staff shall confer with the chairman of the educational retirement board. The chairman is authorized to determine

whether the hearing will be held before a medical appeals hearing officer or before a medical appeals panel of not less than two (2) board members and is authorized to appoint the hearing officer or panel members to conduct the hearing:

B. Within fifteen (15) days from the date a request for hearing is filed, ERB shall mail to the applicant or recipient, hereinafter "appellant", notice of appointment of the medical appeals hearing officer or medical appeals panel. A lawyer or non-lawyer may serve as hearing officer. The director may serve as a member of the medical appeals panel.

C. ERB shall set a date for the hearing, which hearing must occur within sixty (60) days from the date of the filing of the request for hearing, except that continuances may be granted by the medical appeals hearing officer or medical appeals panel upon a showing of good cause. Notice of the date, time and place of the hearing must be mailed by certified mail to the appellant at least twenty (20) days prior to the date of the hearing.]
[6/30/99; 2.82.11.9 NMAC - Rn, 2 NMAC 82.11.9, 3-14-2008; Repealed, 6-16-2015]

[2.82.11.10 HEARING PROCEDURES:

A. The hearing shall not be open to the public.

B. The rules of evidence do not apply. The medical appeals hearing officer or the medical appeals panel may admit any evidence and may give probative effect to evidence that is of a kind commonly relied upon by reasonably prudent people in the conduct of serious affairs. The medical appeals hearing officer or the medical appeals panel may, in their discretion, exclude incompetent, irrelevant or unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. Physician reports, medical treatises, guidelines established by the social security administration, vocational opinions, guides, books or reports and any other relevant information may be considered.

C. An appellant, either personally and/or by means of a representative, including counsel, may present evidence and state his/her position, present a written summary of his/her case, enter written statements about the facts and law material to his/her case, submit and examine documentary evidence, and present and question witnesses.

D. Appellant's failure to appear at the hearing, either personally or by means of a representative, shall result in the recommendation becoming final.

E. The medical appeals

hearing officer and the medical appeals panel have the duty to undertake a full inquiry and to fully and fairly develop the facts on both sides. The medical appeals hearing officer and the medical appeals panel are the only presenters of evidence that is against the appellant. All evidence that is against the appellant must be introduced by the medical appeals hearing officer or the medical appeals panel. If the medical appeals hearing officer or the medical appeals panel know of or require information that will be useful in making a decision, they have a duty to assure that it is received and taken into account.

F. Subpoenas, if necessary for a full presentation of the case and to obtain evidence not otherwise available, may be issued by ERB at the direction of the medical appeals hearing officer or medical appeals panel. Any enforcement must occur through the courts.

G. A record of the proceedings shall be made by either tape recording or by using a court reporter. An appellant must make arrangements with ERB or the court reporter, if applicable, to receive a transcript or duplicate tapes and copies of evidence.

H. The medical appeals hearing officer or the medical appeals panel may continue a hearing to a later date, or may reopen a hearing before a recommended decision is issued, if additional evidence should be received.]
[6/30/99; 2.82.11.10 NMAC - Rn & A, 2 NMAC 82.11.10, 3-14-2008; Repealed, 6-16-2015]

[2.82.11.11 RECOMMENDED DECISION:

A. The medical appeals hearing officer or the medical appeals panel will issue to the educational retirement board a recommended decision, based on the record, which will be filed at ERB's offices and a copy mailed by certified mail to the appellant.

B. The medical appeals hearing officer or the medical appeals panel will propose findings of fact and conclusions of law as part of the recommended decision.

C. Exceptions to the recommended decision may be filed at ERB's offices with supporting briefs within thirty (30) days from the date of issuance of the recommended decision.

D. Exceptions to the recommended decision shall state the precise issue to which exception is made and shall be based solely on evidence contained in the hearing record. Any exception not made in the manner

required by this rule is waived.

~~E.~~ The medical appeals hearing officer or the medical appeals panel may file a response to the exceptions within fifteen (15) days from the date of filing of the exceptions.]

[6/30/99; 2.82.11.11 NMAC - Rn, 2 NMAC 82.11.11, 3-14-2008; Repealed, 6-16-2015]

~~2.82.11.12~~ DECISION BY THE EDUCATIONAL RETIREMENT BOARD:

~~A.~~ As a general rule, the educational retirement board shall only consider the medical appeals hearing officer's or the medical appeals panel's recommended decision, exceptions, briefs, and response to exceptions, if any. Where circumstances warrant, the board may review all or a portion of the hearing record.

~~B.~~ The board shall not consider any additional oral argument, evidence or affidavits in the hearing record.

~~C.~~ The board will deliberate the matter in closed session. Any final action must occur in open session.

~~D.~~ Under appropriate circumstances, the board may remand a recommended decision to the medical appeals hearing officer or the medical appeals panel for additional findings.

~~E.~~ If the board wishes to modify proposed findings of fact, it may do so only after a review of the hearing record.

~~F.~~ The medical appeals hearing officer's or the medical appeals panel's written recommendation is a public record.]

[6/30/99; 2.82.11.12 NMAC - Rn, 2 NMAC 82.11.12, 3-14-2008; Repealed, 6-16-2015]

ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 11.5.1 NMAC, Section 16, effective 7/16/2015.

11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ~~[AND]~~ ILLNESSES AND FATALITIES:

A. General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: www.osha.gov), are hereby incorporated into this section.

B. Exception: ~~[Fatalities and multiple hospitalization accidents]~~ Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box ~~[26440]~~ 5469, Santa Fe, NM 87502, Tel: (505) 476-8700, Fax: (505) 476-8734.

[10/9/75, 9/3/78, 3/21/79, 5/10/81, 11/17/83, 7/19/94, 1/1/96, 8/15/98; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/08; A, 7/16/15]

**HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.200.520 NMAC, Sections 11 and 15, effective June 16, 2015.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. 100% federal poverty limits (FPL):

Size of budget group	FPL per month
1	[\$973*] <u>\$981*</u>
2	[\$1,344*] <u>\$1,328*</u>
3	[\$1,650] <u>\$1,675</u>
4	[\$1,988] <u>\$2,021</u>
5	[\$2,326] <u>\$2,368</u>
6	[\$2,665] <u>\$2,715</u>
7	[\$3,003] <u>\$3,061</u>
8	[\$3,341] <u>\$3,408</u>

Add ~~[\$338]~~ \$347 for each additional person in the budget group.

*Use only these two standards for the qualified medicare beneficiary (QMB) program.

B. 120% FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient	Amount
1. Individual	At least [\$973] <u>\$981</u> per month but no more than [\$1,167]
<u>\$1,177</u> per month.	
2. Couple	At least [\$1,344] <u>\$1,328</u> per month but no more than [\$1,573]
<u>\$1,593</u> per month.	

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. 133% FPL:

Size of budget group	FPL per month
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1	[\$1,294] \$1,305
2	[\$1,744] \$1,766
3	[\$2,194] \$2,227
4	[\$2,644] \$2,688
5	[\$3,094] \$3,149
6	[\$3,544] \$3,610
7	[\$3,994] \$4,071
8	[\$4,444] \$4,532

Add \$[450] 461 for each additional person in the budget group.

D. 135% FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (Q11) applicant or eligible recipient. For purposes of this eligibility calculation, “couple” means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient	Amount
1. Individual	At least \$[1,294] \$1,177 per month but no more than \$[1,313] 1,325 per month.
2. Couple	At least \$[1,744] \$1,593 per month but no more than \$[1,770] \$1,793 per month.

E. 185% FPL:

Size of budget group	FPL per month
1	[\$1,800] \$1,815
2	[\$2,426] \$2,456
3	[\$3,051] \$3,098
4	[\$3,677] \$3,739
5	[\$4,303] \$4,380
6	[\$4,929] \$5,022
7	[\$5,555] \$5,663
8	[\$6,181] \$6,304

Add \$[626] 641 for each additional person in the budget group.

F. 200% FPL:

Size of budget group	FPL per month
1	[\$1,945] \$1,962
2	[\$2,622] \$2,655
3	[\$3,299] \$3,349
4	[\$3,975] \$4,042
5	[\$4,652] \$4,735
6	[\$5,329] \$5,429
7	[\$6,005] \$6,122
8	[\$6,682] \$6,815

Add \$[677] 693 for each additional person in the budget group.

G. 235% FPL:

Size of budget group	FPL per month
1	[\$2,286] \$2,305
2	[\$3,081] \$3,120
3	[\$3,876] \$3,935
4	[\$4,671] \$4,749
5	[\$5,466] \$5,564
6	[\$6,261] \$6,379
7	[\$7,056] \$7,193
8	[\$7,851] \$8,008

Add \$[795] 815 for each additional person in the budget group.

H. 250% FPL:

Size of budget group	FPL per month
1	[\$2,432] \$2,453
2	[\$3,278] \$3,319
3	[\$4,123] \$4,186
4	[\$4,969] \$5,053
5	[\$5,815] \$5,919
6	[\$6,661] \$6,786
7	[\$7,507] \$7,653
8	[\$8,353] \$8,519

Add \$[846] 866 for each additional person in the budget group.

[8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 1-1-14; A, 5-1-14; A/E, 4-1-15; A, 6-16-15]

8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:

A. Individual living in his or her own household who own or rent:
 Payment amount: [\$721] \$733 Individual

- [~~\$1,082~~] \$1,100 Couple
- B. Individual receiving support and maintenance payments:** For an individual or couple living in his or her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).
 Payment amount: [~~\$721 - \$240 = \$481~~] \$733 - \$244 = \$489 Individual
 [~~\$1,082 - \$361 = \$721~~] \$1,100 - \$367 = \$733 Couple
- C. Individual or couple living household of another:** For an individual or couple living in another person's household and not contributing his or her pro-rata share of household expenses, subtract the VTR.
 Payment amount: [~~\$721 - \$240 = \$481~~] \$733 - \$244 = \$489 Individual
 [~~\$1,082 - \$361 = \$721~~] \$1,100 - \$367 = \$733 couple
- D. Child living in home with his or her parent:**
 Payment amount: [~~\$721~~] \$733
- E. Individual in institution:**
 Payment amount: \$30.00
- [8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 1-1-14; A/E, 4-1-15; A, 6-16-15]

HUMAN SERVICES DEPARTMENT
 MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.291.430 NMAC, Section 10, effective June 16, 2015.

8.291.430.10 FEDERAL POVERTY LEVEL (FPL): This part contains the monthly federal poverty level table for use in determining monthly income standards for categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[\$973] <u>\$981</u>	[\$1,294] <u>\$1,305</u>	[\$1,343] <u>\$1,354</u>	[\$1,848] <u>\$1,864</u>	[\$2,334] <u>\$2,354</u>	[\$2,432] <u>\$2,453</u>	[\$2,918] <u>\$2,943</u>
2	[\$1,311] <u>\$1,328</u>	[\$1,744] <u>\$1,766</u>	[\$1,809] <u>\$1,832</u>	[\$2,491] <u>\$2,523</u>	[\$3,146] <u>\$3,186</u>	[\$3,278] <u>\$3,319</u>	[\$3,933] <u>\$3,989</u>
3	[\$1,650] <u>\$1,675</u>	[\$2,194] <u>\$2,227</u>	[\$2,276] <u>\$2,311</u>	[\$3,134] <u>\$3,181</u>	[\$3,959] <u>\$4,019</u>	[\$4,123] <u>\$4,186</u>	[\$4,948] <u>\$5,023</u>
4	[\$1,988] <u>\$2,021</u>	[\$2,644] <u>\$2,688</u>	[\$2,743] <u>\$2,789</u>	[\$3,777] <u>\$3,840</u>	[\$4,770] <u>\$4,850</u>	[\$4,969] <u>\$5,053</u>	[\$5,963] <u>\$6,063</u>
5	[\$2,326] <u>\$2,368</u>	[\$3,094] <u>\$3,149</u>	[\$3,210] <u>\$3,268</u>	[\$4,420] <u>\$4,499</u>	[\$5,582] <u>\$5,682</u>	[\$5,815] <u>\$5,919</u>	[\$6,978] <u>\$7,103</u>
6	[\$2,665] <u>\$2,715</u>	[\$3,544] <u>\$3,610</u>	[\$3,677] <u>\$3,746</u>	[\$5,062] <u>\$5,157</u>	[\$6,395] <u>\$6,515</u>	[\$6,661] <u>\$6,786</u>	[\$7,993] <u>\$8,143</u>
7	[\$3,003] <u>\$3,061</u>	[\$3,994] <u>\$4,071</u>	[\$4,144] <u>\$4,224</u>	[\$5,705] <u>\$5,816</u>	[\$7,206] <u>\$7,346</u>	[\$7,507] <u>\$7,653</u>	[\$9,008] <u>\$9,183</u>
8	[\$3,341] <u>\$3,408</u>	[\$4,444] <u>\$4,532</u>	[\$4,611] <u>\$4,703</u>	[\$6,348] <u>\$6,475</u>	[\$8,018] <u>\$8,178</u>	[\$8,353] <u>\$8,519</u>	[\$10,023] <u>\$10,223</u>
+1	[\$338] <u>\$347</u>	[\$450] <u>\$461</u>	[\$467] <u>\$479</u>	[\$643] <u>\$659</u>	[\$812] <u>\$832</u>	[\$846] <u>\$866</u>	[\$1,015] <u>\$1,040</u>

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 1-1-14; A, 5-1-14; A/E, 4-1-15; A, 6-16-15]

**BOARD OF LICENSURE
FOR PROFESSIONAL
ENGINEERS AND
PROFESSIONAL
SURVEYORS**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING
AND SURVEYING PRACTITIONERS
PART 6 LICENSURE FOR
MILITARY SERVICE MEMBERS,
SPOUSES AND VETERANS**

16.39.6.1 ISSUING AGENCY:
State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505)476-4565. [16.39.6.1 NMAC - N, 7/1/2015]

16.39.6.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses and veterans. [16.39.6.2 NMAC - N, 7/1/2015]

16.39.6.3 STATUTORY AUTHORITY: Section 61-23-10 (B) NMSA 1978 prescribes that “the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.” 16.39.1 NMAC applies to both engineering and surveying. [16.39.6.3 NMAC - N, 7/1/2015]

16.39.6.4 DURATION:
Permanent.
[16.39.6.4 NMAC - N, 7/1/2015]

16.39.6.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[16.39.6.5 NMAC - N, 7/1/2015]

16.39.6.6 OBJECTIVE:
The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to Section 61-23-10 (B) NMSA 1978.
[16.39.6.6 NMAC - N, 7/1/2015]

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

B. Recent veteran:
means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.
[16.39.6.7 NMAC - N, 7/1/2015]

16.39.6.8 APPLICATION REQUIREMENTS:

A. Applications for licensure shall be completed on a form provided by the department.

B. The information shall include:

- (1) completed application and fee;
- (2) satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Article 23 NMSA 1978.
[16.39.6.8 NMAC - N, 7/1/2015]

16.39.6.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Article 23 NMSA 1978.

B. The licensee must submit the following documents at the time of renewal:

- (1) applicants, with board-approved engineering/surveying degrees shall submit their official transcript(s) provided directly from the university;
- (2) applicants with an accreditation board for engineering and technology (ABET) accredited engineering technology degree shall submit their official transcript(s) provided directly from the university;
- (3) acceptable replies from five (5) references, pursuant to Section 61-23-10 (B) NMSA 1978.

C. Every license shall automatically expire if not renewed on

or before December 31 of the applicable biennial period pursuant Section 61-23-10 (B) NMSA 1978.
[16.39.6.9 NMAC - N, 7/1/2015]

HISTORY OF 16.39.6 NMAC:
[RESERVED]

**BOARD OF LICENSURE
FOR PROFESSIONAL
ENGINEERS AND
PROFESSIONAL
SURVEYORS**

This is an amendment to 16.39.1 NMAC, Sections 1, 7, 8, 12, 14, 15 and 17, effective 07/1/2015.

16.39.1.1 ISSUING AGENCY:
State Board of Licensure for Professional Engineers and Professional Surveyors, [4001 Office Court Drive, Suite 903] 2550 Cerrillos Road, Santa Fe, NM [87507] 87505, telephone no. (505) [827-7564] 476-4565.
[16.39.1.1 NMAC - Rp, 16 NMAC 39.1.1, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

16.39.1.7 DEFINITIONS:
[RESERVED]

A. “Category” means
professional engineer or professional surveyor.

B. “Branch” means
discipline.

[16.39.1.7 NMAC - Rp, 16 NMAC 39.1.7, 1/1/2002; A, 7/1/2015]

16.39.1.8 THE BOARD:

A. The name of this board shall be the state board of licensure for professional engineers and professional surveyors hereinafter referred to as the “board”.

B. [The headquarters of the board shall be at Santa Fe, New Mexico:

— ~~C~~] The official seal of the board shall be an embossed circular seal one and three-quarter inches in diameter consisting of two concentric circles; the outer circle to be one and three-quarter inches in diameter. The inner circle is to be one and one-quarter inches in diameter. The inner circle shall contain the seal of the state of New Mexico and the words, “State of New Mexico.” The words, “Board of Licensure for Professional Engineers and Professional Surveyors”, shall be contained between the two (2) concentric circles.

[~~D~~] **C.** The fiscal year of the

board shall be July 1, through June 30 of the following calendar year.
[16.39.1.8 NMAC - Rp, 16 NMAC 39.1.8, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

16.39.1.12 DUTIES OF THE BOARD, OFFICERS OF THE BOARD, AND THE EXECUTIVE DIRECTOR:

A. The board shall act as a whole in all administrative, financial and personnel matters and any other activity not specifically related to the practices of engineering or surveying.

B. The board shall appoint an executive director who shall serve [as an exempt employee] at the pleasure of the board.

C. The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of licensure, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the chair.

D. The vice-chair [of the board] shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

E. The secretary of the board shall co-sign all certificates of licensure and in the absence or incapacity of the chair and vice-chair, exercise the duties and shall possess all the powers of the chair.

F. The executive director shall perform [and/or] and supervise the following for the board and professional engineering and professional surveying committees:

(1) conduct and care for all correspondence in the name of the board, the professional engineering committee and the professional surveying committee;

(2) record and file all applications, certificates of licensure, examinations, licenses and revocations for both professional engineering and professional surveying committees;

(3) [possess the official seal and affix same to all official documents upon order of the chair of the board] prepare and submit to the board, at the first meeting of each fiscal year for review and approval, an annual report of board activities and statistics for the preceding fiscal year, including a financial report; prepare the approved annual report for transmittal to the governor;

(4) keep a record of all meetings of the board and committees and maintain a proper account of the business of the board; a draft of

the meetings' minutes shall be [mailed] provided to each member for comment within [two weeks] ten (10) working days after each meeting [with]; a final [copy-to-be typed and furnished] draft shall be provided to each board member at the next meeting for final approval [and recording];

(5) receive and account for all funds and transfer same to state treasurer within twenty-four (24) hours of receipt; [only those invoices and vouchers for expenditures included in the board's approved operating budget shall be approved and signed by the executive director; approved vouchers and invoices shall be transmitted to the department of finance and administration; a tabulation of each financial transaction is to be maintained on a quarterly basis and submitted to the board at the next scheduled meeting for its information and approval; these tabulations are to be made part of the board's minutes] authorize and approve payment by department of finance and administration invoices and vouchers for only those expenditures included in the board's approved operating budget;

(6) present and submit to the board at the first meeting of [the] each fiscal year a financial report prepared by the rules of generally accepted accounting principles as of the preceding June 30th, such report to include the reporting of the transactions of the board during the preceding fiscal year, and a complete statement of the receipts, expenses and expenditures of the board [and]; upon being approved by the board, shall be included in the annual report and submitted to the governor;

(7) [gather information and if necessary conduct interviews of applicants for licensure to insure that applications are sufficiently and accurately completed] receive and review licensure applications for completeness for consideration by the respective committees;

(8) schedule and arrange for the administration of written examinations provided for in the Engineering and Surveying Practice Act, content of which having been approved by the board or respective professional engineering or professional surveying committees; when requested by the applicant, the director shall make reasonable accommodations for the testing of an applicant with a certified disability in accordance with the provisions of the Americans with Disabilities Act and who meets the minimum qualifications in the Engineering and Surveying Practice Act and these rules; when necessary qualified assistance, approved by the board, may be

retained for conduct of examinations;

(9) prepare [the] and maintain a current roster on the board's website, and furnish copies to the public upon request and payment of a fee as determined by the board; [and supplemental roster] in accordance with Section 61-23-13 NMSA 1978; [include in the roster and supplement only the names of those engineering interns and surveying interns who have been enrolled during that fiscal year;

(10) maintain a current roster on the board's website and make available in hard copy to a licensee if requested; file a copy with the secretary of state and other required agencies, and furnish copies to the public upon request and payment of a fee as determined by the board and in accordance with the Inspection of Public Records Act;

(11) report to and inquire of the national council of examiners for engineering and surveying violations of state engineering and surveying laws;

(12) furnish to the press and state engineering and surveying societies lists of newly qualified licensees and enrolled engineering interns or surveying interns;]

(13) (10) [distribute] provide one (1) week in advance of each meeting, [copies] drafts of the agenda of the meeting to each member of the board;

(14) (11) [distribute twice in each fiscal year a newsletter regarding board actions and items of interest to licensees] publish an annual newsletter at a minimum;

(15) (12) direct investigations of any alleged violations or infringements of the Engineering and Surveying Practice Act; a written report covering status of protest actions and alleged violations shall be presented to the appropriate committee at each meeting; this may be in the form of appropriate commentary recorded in the minutes, supported by a separate file on the case; when necessary, qualified assistance, approved by the board, may be retained for conduct of investigations;

(16) (13) file formal disciplinary actions upon approval by the board with the appropriate jurisdiction for prosecution of alleged violations of the act and/or the board's rules.

[16.39.1.12 NMAC - Rp, 16 NMAC 39.1.12, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

**16.39.1.14 PROCEDURES
AT BOARD MEETINGS AND
COMMITTEE MEETINGS:**

A. The order of business may be as follows:

- (1) **board meetings:**
- (a) ~~[approval of agenda]~~ public notice;
 - (b) ~~[approval of minutes]~~ approval of agenda;
 - (c) ~~[reports of committees]~~ approval of minutes;
 - (d) ~~[communications]~~ reports of committees;
 - (e) ~~[old business]~~ communications;
 - (f) ~~[new business]~~ old business;
 - (g) ~~[complaints and violations]~~ new business;
 - (h) ~~[adjournment]~~ complaints and violations;
 - (i) adjournment;
- (2) **committee meetings:**
- (a) ~~[approval of agenda]~~ public notice;
 - (b) ~~[approval of minutes]~~ approval of agenda;
 - (c) ~~[reports of sub-committees]~~ approval minutes;
 - (d) ~~[communications]~~ reports of sub-committees;
 - (e) ~~[old business]~~ communications;
 - (f) ~~[new business]~~ old business;
 - (g) ~~[complaints and violations]~~ new business;
 - (h) ~~[applications]~~ complaints and violations;
 - (i) ~~[adjournment]~~ applications;
 - (j) adjournment.

B. *Roberts' rules of order* shall generally govern the procedure of the board and committee meetings except as otherwise provided for in Title 16, Chapter 39 of the New Mexico administrative code or the Engineering and Surveying Practice Act.

C. Board members may participate in a meeting of the board or committees by means of a telephone conference or similar communications equipment and participation by such means shall constitute presence in person at the meeting. Participation by telephone may only occur when it is difficult or

impossible for board members to attend. [16.39.1.14 NMAC - Rp, 16 NMAC 39.1.14, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

16.39.1.15 ROSTER:

~~[A.]~~ The roster shall contain the following information for each licensee: legal name, street address or post office box number, city, state, zip code, class of licensure, ~~[branch]~~ discipline, status, and license number.

~~[B.]~~ ~~Anyone may obtain a copy of the roster by paying the established fee. Also see Section 61-23-13, NMSA, 1978:]~~

[16.39.1.15 NMAC - Rp, 16 NMAC 39.1.15, 1/1/2002; A, 7/1/2015]

**16.39.1.17 STATUS OF
LICENSURE:**

A. Retired status - a licensee shall become eligible for retired status with a waiver of renewal fees after meeting all the following qualifications:

- (1) retired from active practice;
- (2) at least sixty (60) years of age; and
- (3) have been a licensee for a continuous period of twenty (20) years, at least ten (10) of which must have been in New Mexico.

B. Licensees shall request retired status by letter. In the event the licensee on retired status desires to return to practice, the licensee shall apply to the board, comply with the continuing professional development requirements; and if approved shall pay the appropriate fee.

C. Professional engineers and professional surveyors on "retired status" with the board may use the titles "engineer", "surveyor", "professional engineer", "professional surveyor", PE or PS after their names and shall add "(Ret.)" or "(Retired)" after such title.

D. Inactive status - a licensee shall become eligible for inactive status with a waiver of renewal fees and professional development requirements after meeting all the following qualifications:

- (1) the licensee is not engaged in the respective professions (engineering or surveying) which requires licensure in this jurisdiction;
- (2) the licensee ~~[have]~~ has been a licensed professional engineer or surveyor in this jurisdiction for ten (10) consecutive years;
- (3) the licensee has filed an application and application fee

prescribed by the board for inactive status prior to the expiration of the license ~~[and the 60 day grace period].~~

E. In the event a licensee on inactive status desires to return to practice within six (6) years of acquiring inactive status, the licensee shall make proper application to the board, comply with the continuing professional development requirements (a minimum of thirty (30) PDHs) and if approved shall pay the appropriate fee.

F. An inactive licensee who has ~~[enjoyed]~~ maintained inactive status in excess of six (6) consecutive years may be readmitted to active practice of the profession only upon making proper application and completion of the requirements as prescribed by the board. (In the event an inactive licensee does not maintain a current license in any jurisdiction for the six (6) previous years prior to requesting active status, that person will be required to take the principles and practice of engineering (PE) examination or the principles and practice of surveying (PS) examination and the New Mexico surveying state specific exam.

[16.39.1.17 NMAC - Rp, 16 NMAC 39.1.17, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

**BOARD OF LICENSURE
FOR PROFESSIONAL
ENGINEERS AND
PROFESSIONAL
SURVEYORS**

This is an amendment to 16.39.2 NMAC, Part name and Sections 1, 7 & 8, effective 7/1/2015.

**PART 2 CONTINUING
PROFESSIONAL DEVELOPMENT**

16.39.2.1 ISSUING AGENCY:
State Board of Licensure for Professional Engineers and Professional Surveyors, ~~[4001 Office Court Drive, Suite 903]~~ 2550 Cerrillos Road, Santa Fe, NM [87507] 87505, telephone no. (505) ~~[827-7564]~~ 476-4565.

[16.39.2.1 NMAC - Rp, 16 NMAC 39.2.1, 12/01/2001; A, 7/01/2006; A, 7/1/2015]

16.39.2.7 DEFINITIONS:

A. Professional development hour (PDH) - a contact hour (nominal) of instruction or presentation - the common denominator for other units of credit.

B. Continuing education unit (CEU) - unit of credit customarily [used] earned for continuing education courses. One (1) continuing education unit equals ten (10) hours of class in approved continuing education course.

C. College/unit semester/quarter hour - credit for course from ABET approved curriculum or other related college course approved in accordance with Subsection E of 16.39.2.8 NMAC.

D. Course/activity - any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

E. Dual licensee - a person who is licensed as both a professional engineer and a professional surveyor.

F. Ethics training - course content that addresses ethics in the engineering and in the surveying fields. [16.39.2.7 NMAC - Rp, 16 NMAC 39.2.7, 12/01/2001; A, 7/01/2006; A, 7/1/2015] [These definitions were moved from Paragraphs (1)-(5) of Subsection C of 16.39.2.8 NMAC.]

16.39.2.8 CONTINUING PROFESSIONAL DEVELOPMENT - [MANDATORY PROGRAM]

REQUIREMENTS: The purpose of the continuing professional development requirement is to [demonstrate a] enhance the continuing level of professional development of professional engineers and professional surveyors.

A. Introduction - Every licensee shall meet the continuing professional development requirements of these regulations for professional development as a condition for license renewal.

B. Failure to meet requirements - Submission of professional development hours (PDHs) shall be made concurrently with license renewal failure to meet the PDH requirements will result in the rejection of renewal [and correction of the deficiency must be made by submission of the appropriate PDHs and payment of the processing fee within 1 year of renewal date].

C. [Reserved]

D. Requirements - [every] each licensee is required to obtain thirty (30) professional development hours (PDH) units during a biennium at least [four] two (2) of which shall be in ethics. A maximum of ten (10) PDH units may be earned in self-directed study. If a licensee

exceeds the biennial requirement in any biennial cycle, a maximum of fifteen (15) PDH units may be carried forward into the subsequent biennium in accordance with what has been previously reported to the board. PDH units may be earned from participation in qualifying activities as follows:

(1) successful completion of college courses relevant to engineering and surveying;

(2) successful completion of continuing education courses;

(3) successful completion of [~~correspondence, televised, videotaped, and other short courses/ tutorials~~] short courses/tutorials and distance-education courses offered for self-study, independent study or group study through synchronous or asynchronous delivery method such as live correspondence, archival or internet based instruction;

(4) presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;

(5) teaching or instructing in Paragraphs (1) through (4) of Subsection D of 16.39.2.8 NMAC;

(6) authoring published papers, articles, or books;

(7) active participation in professional or technical societies and their committees;

(8) patents;
(~~9~~) ~~subscription to a technical journal or trade publication during the first twelve (12) month of the biennium reporting period;~~

(~~10~~) (2) technical reviews, including articles from periodicals, books, video/audio cassettes, tutorials and other sources, which contribute to the technical or professional education or competency of the licensee;

(~~11~~) (10) participation in civic or community activities, relevant to the engineering and surveying professions, as a speaker, instructor, presenter or panelist;

(~~12~~) (11) successful completion of ethics training, up to four (4) hours per biennial renewal.

E. Units - the conversion of other units of credit to PDH units is as follows:

(1) one (1) college or unit semester

45 PDH;

(2) one (1) college or unit quarter hour

30 PDH;

(3) one (1) continuing education unit

10 PDH;

(4) one (1) hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences

1 PDH;

(5) for teaching, apply multiple of two (2) (teaching credit is valid for teaching a course or seminar for the first time only; teaching credit does not apply to full-time faculty);

(6) each

published paper, article, or book in the licensee's area of professional practice 10 PDH;

(7) active participation in professional and technical societies (each organization) 2 PDH/yr;

(8) each patent

10 PDH;

(9) [1-yr-

Subscription
1-PDH (max 2-PDH/ biennium);

(~~10~~) one (1) hour of literature review 1

PDH (max 6 PDH/biennium);
[~~11~~] (10)

one (1) hour of each civic or community activity 1 PDH (max 4 PDH/ biennium);

[~~12~~] (11)
one (1) hour of ethics training [4-PDH/biennium] 1 PDH(max 4 PDH/biennium).

F. Determination of credit - the board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit:

(1) credit for college or community college approved courses will be based upon course credit established by the college;

(2) credit for qualifying seminars, workshops, professional conventions, and courses/ activities may be recommended by the professional societies;

(3) additional criteria for credit determination shall be included in the board policy.

G. Record keeping - [~~licensees are charged with the responsibility of their own professional activities. The responsibility of maintaining records to be used to~~] each licensee is responsible for maintaining records that support credits claimed is the responsibility of the licensee. Records required include but are not limited to:
1) a log showing the type of activity

claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; 2) attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance; 3) ~~verification of subscription to a publication in the form of a paid receipt or~~ proof of membership in a technical organization issuing a publication as a part of its membership fee; 4) a log indicating the medium used for a technical review, the subject of the review, the author or sponsoring organization, the date the review was conducted, a brief written summary of the contents of the reviewed material and the time spent on the review; and 5) the organization sponsoring a civic or community activity, the date and location of the activity, the subject of the activity and the licensee's involvement in the activity. These records must be maintained for a period of three (3) years and copies may be requested by the board for audit verification purposes.

H. Exemptions - a licensee may be exempt from the professional development educational requirements for one (1) of the following reasons:

(1) new licensees by way of examination or comity/endorsement shall be exempt for the first year directly following the issuance of their license; PDH requirements will be prorated for any remaining portion of the licensing period beyond one (1) year from the date of initial licensure;

(2) a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year; supporting documentation shall be furnished to the board;

(3) licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt; supporting documentation must be furnished to the board;

(4) licensees who have been approved for "retired status" by the board shall be exempt from the professional development hours required; in the event such a person elects to return to active practice of professional engineering or professional surveying, professional development hours must be earned before returning to active practice

for the preceding biennial cycle.

I. Reinstatement - a licensee may bring ~~an expired~~ a lapsed license to active status by obtaining all delinquent PDH units outstanding from the last biennium and complying with all other reinstatement requirements in the Engineering and Surveying Practice Act and the board's rules and regulations; however, if the total number required to become current exceeds thirty (30), then thirty (30) shall be the maximum number required.

J. Comity/out-of-jurisdiction resident - licensees who are residents of other jurisdictions shall meet the continuing professional development ~~[(CPD)]~~ requirements of this board. These requirements may be deemed satisfied when a non-resident licensee provides evidence of having met requirements for another state engineering/surveying licensing board that are equal to or exceed the requirements of this board.

K. Dual licensees - the number of PDH units required shall remain the same for persons who hold a dual license as a professional engineer and professional surveyor; ~~[holders of dual licenses are free to utilize PDH units approved for either field at their sole discretion;]~~ for persons who hold a dual license, half of the PDH units shall be in each profession.

L. Forms - all renewal applications will require the ~~[completion of a continuing education form specified by the board PDH credit claimed]~~ number of earned PDH units. The licensee must sign the ~~[continuing education form]~~ renewal application, and submit with the ~~[renewal application and]~~ appropriate fee. [16.39.2.8 NMAC - Rp, 16 NMAC 39.2.8, 12/01/2001; A, 7/01/2006; A, 7/1/2015]

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.3 NMAC, Part name and Sections 1 & 6-13, effective 7/1/2015.

PART 3 ENGINEERING ~~[CERTIFICATES OF]~~ LICENSURE, DISCIPLINES, APPLICATIONS, EXAMS, PRACTICE, SEAL OF LICENSEE AND ENDORSEMENTS

16.39.3.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, ~~[4001 Office Court Drive, Suite 903]~~ 2550 Cerrillos Road, Santa Fe, NM [87507] 87505, telephone no. (505) ~~[827-7564]~~ 476-4565.

[16.39.3.1 NMAC - Rp, 16 NMAC 39.3.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.3.6 OBJECTIVE: The objective of Part 3 of Chapter 39 is to clearly define the procedure for granting ~~[certificates of]~~ licensure to practice engineering or ~~[certificates]~~ certification as engineer interns, identify and provide procedures for engineering disciplines, applications and examinations, practice of engineering, seal of licensees and application by endorsement guidelines. [16.39.3.6 NMAC - Rp, 16 NMAC 39.3.6, 1/01/2002; A, 7/1/2015]

16.39.3.7 DEFINITIONS: Board-approved, four-year curriculum in engineering is defined as:

~~[A. ——— engineering curriculum accredited by the engineering accrediting commission (EAC) of the accreditation board for engineering and technology (ABET);~~

~~B. ——— graduation from an engineering curriculum that receives ABET accreditation within three years of the applicant's graduation;~~

~~C. ——— non-ABET accredited engineering degree curriculum with the minimum number of engineering credits as required in an ABET-accredited degree (32 semester or 48 quarter credit hours in math/science including 12 semester credits of calculus terminating with differential equations; 32 semester or 48 quarter credit hours of engineering science; 16 semester or 24 quarter credits of engineering design; and 16 semester or 24 quarter credits of humanities/social science);~~

~~D. ——— graduate degree (master or doctoral) from an engineering program where the bachelor's degree is ABET-accredited and the candidate has completed all the BS deficiencies (confirmation letter from graduate committee), even though the applicant's bachelor's degree was earned in a non-engineering program.]~~ A. ——— "ABET" is defined as the accreditation board for engineering and technology.

B. ——— "Board-approved, four (4) -year curriculum in engineering" is defined as:

(1) ——— engineering curriculum of at least four (4) years that has been accredited by ABET within at

least three (3) years of the applicant's graduation with a bachelor's degree in engineering:

(2) curriculum not accredited by ABET but with the minimum number of engineering credits required for accreditation by ABET; and
 (3) Curriculum required for graduate degree (master or doctoral) in engineering from an engineering program with an ABET-accredited bachelor's degree has successfully completed (as confirmed by letter from graduation committee) all requirements deficient to bachelor's degree in engineering.

C. "Engineering discipline" is defined as a designated area of proficiency and competence in the practice of engineering.

D. "FE exam" refers to the fundamentals of engineering exam.

E. "PE exam" refers to the principles and practice of engineering exam.

F. "NCEES" refers to the national council of examiners for engineering and surveying.

G. "Category" refers to the type of license such as professional engineer or professional surveyor as referred to in Subsections L and P of Sections 61-23-23 NMSA 1978.

H. "Branch" refers to engineering disciplines as referred to in 16.39.3.8 NMAC. [16.39.3.7 NMAC - Rp, 16 NMAC 39.3.7, 1/01/2002; A, 7/01/2006; A, 1/01/2007; A, 7/1/2015]

16.39.3.8 ENGINEERING DISCIPLINES:

A. Licensure is granted as a professional engineer and shall be so stated on the certificate. Although the Engineering and Surveying Practice Act makes no specific designation as to the disciplines of engineering practice on the certificates as issued by the board, the records and roster of the board shall indicate the discipline(s) in which the licensee is competent to practice in accordance with this section. Only the discipline(s) of engineering for which the applicant has successfully been examined or approved by the professional engineering committee will be recorded.

B. Requests for engineering disciplines will be accepted from the following list; and the board's records and roster will be annotated with the corresponding alphabetical code:

- (1) architectural A
- (2) aeronautical B
- (3) civil C

- (4) agricultural D
- (5) electrical and computer E
- (6) network engineer [F] Nw
- (7) geological G
- (8) chemical H
- (9) industrial I
- (10) mechanical M
- (11) mining N
- (12) metallurgical [NN] Nn
- (13) petroleum P
- (14) control systems Q
- (15) structural R
- (16) nuclear T
- (17) fire protection U
- (18) environmental V
- (19) construction W
- (20) naval architecture and marine Nn
- (21) software Sw

C. Other disciplines may be considered as reviewed and approved by the board.

[E:] D. A licensee may be listed in no more than three (3) disciplines of engineering. Subsequent to initial licensure, a licensee may apply for licensure in another discipline of engineering. The licensee shall demonstrate competence in that discipline and may be required to appear before the board. Demonstration of competence may be accomplished by presenting evidence as follows:

- (1) the licensee shall file a separate application for the additional discipline requested and pay an application fee for the additional application; and
- (2) complete the application forms to indicate clearly the education, experience, and three (3) acceptable personal references which will substantiate proficiency in the discipline for which the licensee is applying; experience and personal references must be stated;
- (3) an applicant for licensure by endorsement may initially apply for the three disciplines.

[D:] E. Structural discipline - except for an applicant with a B.S. degree with a structural option and a minimum of four (4) years of post-baccalaureate structural engineering experience, listing as a structural engineer may be obtained by having gained an acceptable engineering degree which included a minimum of six (6) hours of structural design; having licensure as a professional engineer; and having four (4)

years of structural experience gained after licensure and acceptable to the board.

(1) Passing the NCEES structural tests part I & II may be substituted for two (2) years of the required experience.

(2) A master's degree in structures may be substituted for one (1) year of the required experience.

(3) An applicant for licensure as a structural engineer by endorsement shall meet the requirements of Paragraphs (1) and (2) of Subsection D of 16.39.3.8 NMAC.

[E:] E. Specialty sub-disciplines - The professional engineering committee of the board may determine that the special practice of engineering within one (1) or more of the engineering disciplines in Subsection B of 16.39.3.8 NMAC requires unique training/education and experience to adequately protect the public safety and health, and the professional engineering committee of the board shall declare this special practice of engineering to be a specialty sub-discipline. The declaration of a specialty sub-discipline shall be based on a need identified by the state or any of its political subdivisions, availability of appropriate and timely training/education within the state of New Mexico, and the ability of the identification of a specialty sub-discipline to inform the public of the needed special practice of engineering. If the professional engineering committee of the board declares a specialty sub-discipline, after a rules hearing, the requirements for the special practice of engineering shall be included in Title 16, Chapter 39 of the New Mexico administrative code for engineering and surveying:

(1) the specialty sub-discipline rules shall specify the training/education and experience requirements to obtain certification for the special engineering practice, including provisions for equivalent training when a particular course of training/education is specified; in anticipation that more than one (1) discipline identified in Subsection B of 16.39.3.8 NMAC will qualify for the specialty sub-discipline, the rules shall identify which engineering disciplines in Subsection B of 16.39.3.8 NMAC, are most likely to qualify for the specialty sub-discipline;

(2) the board shall maintain a list of engineers who have been certified as meeting the requirements for the specialty sub-discipline; the list shall be available to the public upon request and pursuant to the inspection of public records; the professional

engineering committee of the board shall establish a form for the application to obtain a certification for the specialty sub-discipline; upon approval by the professional engineering committee of the board, the qualified licensee's name shall be added to the list of licensees having the specialty sub-discipline;

(3) a licensee's name may be removed from the list of persons certified for the specialty sub-discipline, upon determination [of] by the professional engineering committee of the board that the licensee no longer qualifies for the certification specialty sub-discipline; such removal shall be only after the appropriate process/hearing by the professional engineering committee of the board;

(4) the failure to obtain certification for the specialty sub-discipline shall not limit the practice of engineering within any of the engineering disciplines identified in Subsection B of 16.39.3.8 NMAC, and the failure to obtain certification in the specialty sub-discipline shall not constitute practice outside the licensee's area of competence; however, the failure to obtain certification for a specialty sub-discipline and a determination by the professional engineering committee of the board of inappropriate practice of engineering within the engineering specialty may be cause for determination that the engineering practice is not within the licensee's authorized discipline, and that appropriate disciplinary action can be taken;

(5) the certification of a specialty sub-discipline shall be for a period established by the professional engineering committee of the board, but not less than two (2) years or more than six (6) years; renewal of the specialty sub-discipline shall be concurrent with license renewal;

(6) the professional engineering committee of the board may remove the specialty sub-discipline from the rules for engineering and surveying, after a rules hearing, upon the finding that the training/education is no longer available or that the designation of the specialty sub-discipline in no longer needed to protect the public safety and health.

[F:] G. Establishment of specialty sub-disciplines - The following specialty sub-discipline(s) for the practice of engineering are established. On-site wastewater engineering.

(1) Area of practice - the design of septic tank systems, on-site wastewater treatment

plants, leach fields, evapotranspiration fields, and similar structures that do not discharge wastewater effluent directly to a surface watercourse or stream.

(2) New Mexico governmental agency identifying the need for this specialty sub-discipline - New Mexico environment department.

(3) Training/education within New Mexico - a course of training/education conducted in cooperation with the New Mexico environment department and approved by the professional engineering committee of the board. The course content shall include NM laws, unique NM conditions requiring special design practice, site testing that must be performed, procedures of approval of plans and specifications, and requirements for certification of construction.

(4) The engineering disciplines in Subsection B of 16.39.3.8 NMAC that may be applicable to this specialty sub-discipline are: architectural, civil, agricultural, geological, industrial, petroleum, environmental and construction.

(5) The certification of specialty sub-discipline for on-site wastewater engineering shall expire at the end of the license renewal period that is three (3) years after the granting of the certification for specialty sub-discipline. The certification may be renewed by submitting documentation of updated training/education.

[G:] Fire protection discipline - professional responsibility for professional engineers practicing fire protection engineering - the overall design of a fire protection system involves a broad range of hazards and protection schemes in the development of a workable, integrated solution to a fire system problem. This process includes the practice of engineering as defined by Section 61-23-3(E), NMSA 1978 (New Mexico Engineering and Surveying Practice Act). This rule clarifies the practice of engineering relating to fire protection systems:

(H) Licensed professional engineers, who design fire detection, fire alarm, or fire sprinkler systems including the identification of the water source shall sign, seal and prepare all plans in accordance with the New Mexico Engineering and Surveying Practice Act, Title 16, Chapter 39 of the New Mexico administrative code as it pertains to the practice of engineering:

(a) prepare construction plans and documents that depict all required components and

devices for a complete fire detection, fire alarm, and/or fire sprinkler system in accordance with the applicable codes and standards;

(b) be responsible for any change orders, additions or corrections to bring a deficient layout into compliance with the applicable national fire protection association (NFPA) standard(s) and/or applicable local or state codes;

(2) Licensed professional engineers shall specify the installation of fire detection, fire alarm and/or fire sprinkler systems. A professional engineer's responsibilities are to identify on the construction plans/design drawings and documents/specifications the following:

(a) the applicable prescriptive codes and/or standards;

(b) the specific building use and/or occupancy classification; and/or;

(c) describe the function, placement, performance and operation of the devices and components to correctly layout the system(s);

(d) sprinkler system: the density and water flow and pressure requirements of the sprinkler system design, classification of the commodities to be protected, and confirmation of the water supply, hydraulic data and preliminary hydraulic design as shown on plans and documents signed and sealed by an engineer; the plans prepared by the engineer shall include details, location and design of the fire sprinkler riser, fire department connections, test station and sprinkler head location;

(e) alarm system: appropriate building system interfaces, effect of construction on system design, selection of devices and systems, device location and spacing, control panel location, and preliminary riser diagrams as shown on plans and documents signed and sealed by an engineer.

(3) Engineering for fire detection, fire alarm, and/or fire sprinkler systems by a New Mexico licensed professional engineer shall be limited to:

(a) those engineers who have been approved by the board to practice in the discipline of fire protection engineering, or

(b) an engineer who is competent by experience or education in designing such systems and can demonstrate continuing professional competency by attending and reporting sufficient professional development hours including, but not limited to, the fire protection codes and standards.]

[16.39.3.8 NMAC - Rp, 16 NMAC 39.3.8, 1/01/2002; A, 7/01/2006; A, 1/01/2007; A, 7/1/2015]

16.39.3.9 APPLICATION - ENGINEERING INTERN AND PROFESSIONAL ENGINEER:

A. Board members may not be used as references.

B. A copy of the New Mexico Engineering and Surveying Practice Act and Title 16, Chapter 39 of the New Mexico administrative code shall be provided to each applicant.

C. Applications for the fundamentals of engineering examination will be accepted from the following undergraduates: A person who has obtained at least a senior status in a board-approved four-year curriculum in engineering, or in a board-approved four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; applications may be submitted on the short form.

D. Applicants, with board-approved engineering degrees, wishing to take the fundamentals of engineering examination shall submit their application on the long application form with official transcript(s) provided directly from the university.

E. Applicants for the principles and practices of engineering examination with an accreditation board engineering and technology (ABET) accredited engineering curriculum of four years or more or equivalent as determined by the board shall have a minimum of two years of post-baccalaureate experience acceptable to the professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. Applicants with an ABET accredited engineering technology degree shall have a minimum of four years of post-baccalaureate experience acceptable to the professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. To satisfy the statutory requirement for board-approved engineering experience prior to licensure, a candidate with an ABET accredited engineering curriculum of four years or more or equivalent as determined by the board shall have four years of post-baccalaureate experience acceptable to the professional engineering committee, and a candidate with an ABET accredited engineering technology degree shall have six years of post-baccalaureate experience acceptable to the professional

engineering committee. After successfully completing the professional engineering examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 16.39.3.9 NMAC.

F. Any application, to be complete, other than those referred to in Subsection C of 16.39.3.9 NMAC above, must include acceptable replies from five references, pursuant to Section 61-23-14.1(A)(2), NMSA 1978 official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other states.

G. No applicant will be eligible to take any examination whose application for eligibility has not been completed as set forth in Subsection F of 16.39.3.9 NMAC for professional engineering committee approval no less than thirteen (13) weeks prior to the next scheduled examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must be completed and examination fees paid on or before the date specified by the board.

H. To update a professional engineer (PE) application file in relation to experience, the applicant must complete the appropriate portions of the application form and provide references acceptable to the professional engineering committee to verify each additional experience record.

I. Applications for licensure or certification by examination or comity/endorsement which have been approved by the professional engineering committee shall remain valid for three years from the date of approval.

J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional engineering committee's satisfaction, evidence that the applicants' qualifications are equal to, or exceed those in New Mexico.

K. All applicants shall also show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of an engineer who will attest to the applicant's ability and knowledge as a competent engineer.]

A. Types of applications- licensure as a professional engineer or certification as an engineer intern require that an applicant present his or her qualifications on forms prescribed

by the board.

B. Any application, to be complete, must include acceptable replies from references, official transcripts provided directly from the colleges or universities attended; and if applicable, verification of prior examinations taken in other states.

C. Board members shall not be used as references.

D. Applications for engineering intern certification will be accepted after applicant has passed the fundamentals of engineering exam and graduated from a board-approved, four (4)-year engineering curriculum; or graduated from a four (4)-year engineering technology program that is accredited by the technical accreditation commission of the ABET, augmented by at least two (2) years of board-approved, post graduate engineering experience. Applications to take the fundamentals of engineering exam administered by the NCEES will not be required from the state board. Successful passing of the fundamentals of engineering exam does not ensure certification as an engineer intern.

E. Applicants for the principles and practices of engineering examination with an ABET accredited engineering curriculum of four (4) years or more or equivalent as determined by the board shall have a minimum of two (2) years of post-baccalaureate experience acceptable to the professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. Applicants with an ABET accredited engineering technology degree shall have a minimum or four (4) years of post-baccalaureate experience acceptable to the board at the date of application and shall have passed the fundamentals of engineering examination.

F. No applicant will be eligible to take the professional engineering examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.3.9 NMAC.

G. Applicants for the professional engineering license will be accepted after applicant has passed the professional engineering exam and has fulfilled the education and experience requirements. Successful passing of the professional engineering exam does not ensure licensure as a professional engineer. To satisfy the statutory requirement for board-approved engineering experience prior to licensure, a candidate with an ABET accredited

engineering curriculum of four (4) years or more or equivalent as determined by the board shall have four (4) years of post-baccalaureate experience acceptable to the professional engineering committee, and a candidate with an ABET accredited engineering technology degree shall have six (6) years of post-baccalaureate experience acceptable to the professional engineering committee. After successfully completing the professional engineering examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 61.39.3.9 NMAC.

H. To update a professional engineer (PE) application file in relation to experience, the applicant must complete the appropriate portions of the application form and provide references acceptable to the professional engineering committee to verify each additional experience record.

I. Applications for licensure or certification by examination or comity/endorsement which have been approved by the professional engineering committee shall remain valid for three (3) years from the date of approval.

J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional engineering committee's satisfaction, evidence that the applicant's qualifications are equal to, or exceed those in New Mexico.

K. All applicants for PE licensure shall also show proficiency in the English language and shall have a minimum of four (4)-years experience working in the United States under the direction of an engineer who will attest to the applicant's ability and knowledge as a competent engineer.

[16.39.3.9 NMAC - Rp, 16 NMAC 39.3.9, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.3.10 EXAMINATIONS- -ENGINEERING INTERN AND PROFESSIONAL ENGINEER:

A. Regularly scheduled written examinations shall be held biannually in the spring and autumn respectively. Other examinations may be held at times and places as determined by the professional engineering committee.

B. Any applicant that fails any written examination will be notified of the next. A written request to retake the examination and payment of the examination fee shall be received on or before the date specified by the board.

C. An examinee that

has made three unsuccessful attempts at achieving a passing score on an examination, shall only be eligible to take the next scheduled examination after providing documentation to the board of further study in preparation of the exam.

D. The type of examination will be disclosed to the examinee at a time to be set by the professional engineering committee. Type of examination will be one of the following:

(1) an "open book" examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;

(2) a "closed book" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination;

(3) the examinations given by the professional engineering committee may be "open" or "closed book" or any combination thereof;

(4) only calculators specified by the national council of examiners for engineering and surveying shall be admitted in the examination room during the administration of the licensing examinations;

E. An examinee who has a question regarding the completed examination, shall put the matter in writing to the professional engineering committee; it will be considered at the next professional engineering committee meeting; the professional engineering committee's answer to the examinee shall be in writing. **A.** Regularly scheduled examinations shall be held in accordance with NCEES examination schedules.

B. Any applicant that fails an examination will be notified by NCEES.

C. An applicant that has not achieved a passing score on an examination within the three (3) year application period shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.

D. The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one (1) of the following:

(1) an "open book" examination shall be an

examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying:

(2) a "closed book" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or

(3) a "computer based" examination.

E. Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.

F. Questions regarding the completed fundamentals of engineering examination or the principles and practice of engineering examination shall be directed to NCEES.

[16.39.3.10 NMAC - Rp, 16 NMAC 39.3.10, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.3.11 PRACTICE OF ENGINEERING:

A. Neither a person nor an organization shall advertise, accept work or offer to practice engineering work in a discipline of engineering unless the person or a member of the organization has been approved by the professional engineering committee in the appropriate discipline and who is legally able to bind that organization by contract.

B. Neither persons nor organizations shall circumvent these rules. Licensees or organizations may advertise for work only in those disciplines of engineering in which they are approved by the professional engineering committee to practice. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

C. In the event a question arises as to the competence of a licensee in a specific technical field which cannot be otherwise resolved to the board's satisfaction, the board shall, either upon request of the licensee or of its own volition, require the licensee to pass an appropriate examination.

D. The professional engineering committee will consider the use of the terms, "engineer", "engineering", or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of engineering. The board will also consider the use of these terms or any modification or derivative of such terms in a corporation's name or its articles of

incorporation or in a foreign corporation's certificate of authority as published by the New Mexico public regulation commission to constitute the offering of engineering services.

[16.39.3.11 NMAC - Rp, 16 NMAC 39.3.11, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.3.12 SEAL OF LICENSEE:

A. Each licensed professional engineer shall obtain a seal/stamp, which ~~[must]~~ shall appear on all final engineering design drawings, ~~[and]~~ the certification page of all specifications and engineering reports prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps signatures are not acceptable. Electronic signatures as provided by law and board's policy shall be acceptable.

B. The seal/stamp shall be ~~[either]~~ the impression type seal, the rubber type, or a computer-generated facsimile. Computer generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

C. The design of the seal/stamp shall consist of three (3) concentric circles, the outermost circle being one (1) and one-half (1/2) inches in diameter, the middle circle being one (1) inch in diameter, and the innermost circle being one-half (1/2) inch in diameter. The outer ring shall contain the words, "PROFESSIONAL ENGINEER" and the licensee's name. The inner ring shall contain the words "NEW MEXICO". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable.

D. Professional engineers who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

E. For the purposes of the Engineering and Surveying Practice Act, a licensee of this board has "responsible charge of the work" as defined in Subsection M of Section 61-23-3 ~~[(M)]~~, NMSA 1978 and may sign, date and seal/stamp plans, specifications, drawings or reports which the licensee did not personally prepare when plans, specifications, drawings or reports have been sealed only by another licensed engineer, and the licensee or persons directly under his personal supervision

have reviewed the plans, specifications, drawings or reports and have made tests, calculations or changes in the work as necessary to determine that the work has been completed in a proper and professional manner.

~~**F.** [The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services. A licensed professional engineer may apply photogrammetric methods to derive topographic and other data and shall certify the work by affixing the licensee's seal and signature.] The seal and signature shall be placed on work only when it is under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.~~

G. When the document contains more than one (1) sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two (2) or more licensees may affix their signatures and seals provided it is designated by a note under the seal specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet.

H. An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature.

I. The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. An engineer may densify, augment and enhance previously performed survey work by a surveyor for a project as defined in Subsection S of Section 61-23-3 of the Practice Act.

[16.39.3.12 NMAC - Rp, 16 NMAC 39.3.12, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.3.13 ENDORSEMENTS: For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional engineering committee will only recognize licensure granted by those authorities when the professional engineering committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineering and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-14 and 61-23-14.1, NMSA 1978". Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the District of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional engineer shall be as follows:

A. graduation from an approved engineering curriculum, four (4) years of experience satisfactory to the professional engineering committee, and passing of the eight (8)-hour fundamentals and eight (8)-hour professional examinations; (1979 law and 1987 law);

B. graduation from an ABET accredited engineering technology program, six (6) years of experience satisfactory to the professional engineering committee, and passing of the eight (8)-hour fundamentals examination and 8-hour professional examination (1993 law);

~~[B.]~~ **C.** licensure prior to July 1, 2002 graduation from an ABET accredited engineering technology program or from an engineering or related science curriculum approved by the committee, six (6) years of experience satisfactory to the professional engineering committee, and passing of the eight (8)-hour fundamentals and eight (8)-hour professional examination (1993 law);

~~[C.]~~ **D.** licensure prior to July 1, 1993 by graduation from an engineering or related science curriculum other than the ones approved by the committee, eight (8) years of experience satisfactory to the professional engineering committee, and passing of the eight (8)-hour fundamentals and eight (8)-hour professional examination (1979 law and 1987 law);

~~[D.]~~ **E.** licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum, twenty (20)-years experience satisfactory to the professional engineering committee, and passing the eight (8)-hour professional examination (1979 law and 1987 law);

~~[E.]~~ **F.** licensure prior to

July 1, 1940, by twelve (12) years of experience satisfactory to the professional engineering committee (1934 law);

[~~F~~] G. licensure prior to July 1, 1957, by graduation from an approved curriculum, and four (4) years or more of experience satisfactory to the professional engineering committee (1935 law);

[~~G~~] H. licensure prior to July 1, 1957, by passing a written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved curriculum, and four (4) years or more of experience satisfactory to the professional engineering committee (1952 law);

[~~H~~] L. licensure prior to July 1, 1967, by twenty-four (24) years of experience satisfactory to the professional engineering committee, and by passing an oral examination (1957 law);

[~~I~~] J. licensure prior to July 1, 1967, by graduation from an approved curriculum prior to July 1, 1957, and passing the eight (8)-hour professional examination (1957 law);

[~~J~~] K. licensure prior to July 1, 1979, by eight (8) years of experience satisfactory to the professional engineering committee, and by having passed the eight (8)-hour fundamentals and 8-hour professional examinations (1969 law);

[~~K~~] L. licensure prior to July 1, 1979, by thirty (30) years of experience, the last twelve (12) years of which must have been of outstanding nature and by having been nationally eminent among his peers (1967 law);

[~~L~~] M. for the purposes of endorsement, an approved engineering curriculum shall be an ABET accredited engineering curriculum of four (4) years or more or equivalent as determined by the board.

[16.39.3.13 NMAC - Rp, 16 NMAC 39.3.13, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.4 NMAC, Sections 1 and 8, effective 7/1/2015.

16.39.4.1 ISSUING AGENCY:
State Board of Licensure for Professional Engineers and Professional Surveyors, [4001 Office Court Drive, Suite 903] 2550

Cerrillos Road, Santa Fe, NM [87507] 87505, telephone no. (505) [827-7561] 476-4565.

[16.39.4.1 NMAC - Rp, 16 NMAC 39.4.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.4.8 INCIDENTAL PRACTICE OF ARCHITECTURE AND ENGINEERING - as defined in Section 61-23-22(A) NMSA 1978 means:

A. architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than [~~four~~] six hundred thousand dollars (\$[~~400,000~~] 600,000) and having a total occupant load not greater than fifty (50);

B. engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than [~~four~~] six hundred thousand dollars (\$[~~400,000~~] 600,000) and having a total occupant load not greater than fifty (50);

C. all buildings and related structures within the regulatory provisions of the New Mexico Uniform Building Code (NMUBC) will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than [~~four hundred thousand dollars (\$400,000)~~] six hundred thousand dollars (\$600,000) or having a total occupant load greater than fifty (50), with the exception of:

(1) single-family dwellings not more than two (2) stories in height;

(2) multiple dwellings not more than two (2) stories in height containing not more than four (4) dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four (4) dwelling units each to form apartment or condominium complexes where the total exceeds four (4) dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two (2) stories in height which are appurtenant to buildings described in [~~16.39.4.8-C(1) and 16.39.4.8-C(2)~~] Paragraph (1) and (2) of Subsection C of 16.39.4.8 NMAC; or

(4) nonresidential buildings, as defined in the uniform building code, or additions having a total occupant load of ten (10) or

less and not more than two (2) stories in height, which shall not include E-3 (Day Care), H (Hazardous), or I (Institutional) occupancies;

(5) alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

D. the owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project;

E. occupant load shall be defined and determined by the method set forth in Table 33-A of the Uniform Building Code (UBC).

[16.39.4.8 NMAC - Rp, 16 NMAC 39.4.8, 1/01/2002; A, 7/1/2015]

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

This is an amendment to 16.39.5 NMAC, amending Sections 1, 7-11 and adding Section 12, effective 07/1/2015.

16.39.5.1 ISSUING AGENCY:
State Board of Licensure for Professional Engineers and Professional Surveyors, [~~4001 Office Court Drive, Suite 903~~] 2550 Cerrillos Road, Santa Fe, NM [87507] 87505, telephone no. (505) [827-7561] 476-4565.

[16.39.5.1 NMAC - Rp, 16 NMAC 39.5.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.5.7 DEFINITIONS:
[RESERVED]

A. "ABET" is defined as the accreditation board for engineering and technology.

B. "Board-approved, four (4)-year curriculum in surveying" is defined as:

(1) surveying curriculum of at least four (4) years that has been accredited by ABET within at least three (3) years of the applicant's graduation with a bachelor's degree in surveying;

(2) curriculum not accredited by ABET but with a minimum number of surveying credits required for accreditation by ABET;

C. "Board-approved related science degree" is defined as:

(1) A four (4)-year bachelor of arts or science degree that

contains a minimum of eighteen (18) core curriculum hours in surveying, twelve (12) hours of higher mathematics and six (6) hours of basic science.

(2) Core surveying classes shall include a minimum of a three (3)-hour semester course in each of the following areas:

(a) boundary law/ legal principles of land surveying;

(b) public land surveying system (PLSS);

(c) plane surveying;

(d) geodesy or photogrammetry.

(3) The remainder of the eighteen (18) core curriculum hours in surveying may include classes in route surveying, geographic information systems, land development, global positioning systems, photogrammetry or geodesy, mapping, professional ethics and remote sensing.

(4) Twelve (12) hours of higher mathematics may include college algebra, trigonometry, analytical geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistic and advanced calculus.

(5) Six (6) hours of basic science may include physics, chemistry, geology, physical geography, biology and astronomy. [16.39.5.7 NMAC - Rp, 16 NMAC 39.5.7, 1/01/2002; A, 7/1/2015]

16.39.5.8 APPLICATION - SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:

A. Board members may not be used as references.

B. A copy of the New Mexico Engineering and Surveying Practice Act and the Title 16, Chapter 39 of the New Mexico Administrative Code shall be provided to each applicant.

C. Any application, to be complete, must include acceptable replies from references, official transcript(s) provided directly from the university, and if applicable, verification(s) of prior examinations taken in other states.

D. An applicant whose application for eligibility has not been completed as set forth in Subsection D of 16.39.5.8 NMAC thirteen (13) weeks prior to the examination will not be eligible to take any examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must

be completed and examination fees paid on or before the specified date set by the board.

E. To update an application file in relation to experience, the candidate must complete appropriate portions of the application form and provide references acceptable to the professional surveying committee to verify each additional experience record.

F. Applications for the principles & practice of surveying and the fundamentals of surveying examinations which have been approved by the board shall remain valid for three (3) years.

G. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional surveying committee's satisfaction, evidence that the applicant's qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico at the time of application. All applicants shall show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of a licensed professional surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.] **A.** Types of application - licensure as a professional surveyor or certification as a survey intern require that an applicant present his or her qualifications on forms prescribed by this board.

B. Any application, to be complete, must include acceptable replies from references, official transcript(s) provided directly from the university, and if applicable, verification(s) of prior examinations taken in other state(s).

C. Board members shall not be used as references.

D. Applications for surveying intern certification will be accepted after an applicant has passed the fundamentals of surveying exam and has graduated from a board-approved, four (4)-year surveying curriculum or an approved four (4)-year curriculum in a related science as defined by Subsection C of 16.39.5.7 NMAC above and augmented with four (4) years of combined office and field board approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the four (4) years of experience, but work prior to or while attending school may be counted toward the four (4) years of required experience at the discretion of the board.

E. Applicants for the principles and practices of surveying examination having graduated with a

board-approved four (4)-year surveying curriculum of four (4) years or more, or with a related-science degree, as determined by the board shall have a minimum of four (4) years of experience acceptable to the professional surveying committee at the date of application and shall have passed the fundamentals of surveying examination.

F. No applicant will be eligible to take the professional surveying examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.5.8 NMAC.

G. Applicants for the professional surveying license will be accepted after applicant has passed the professional surveying exam and has fulfilled the education and experience requirements. Successful passing of the professional surveying exam does not ensure licensure as a professional surveyor. To satisfy the statutory requirement for board-approved surveying experience prior to licensure, a candidate with a board-approved surveying curriculum of four (4) years or more as determined by the board shall have four (4) years of experience acceptable to the professional surveying committee, and a candidate with a related science degree shall have four (4) years of surveying experience acceptable to the professional surveying committee. After successfully completing the professional surveying examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 61.39.5.8 NMAC.

H. To update a professional survey (PS) application file in relation to experience, the applicant must complete an application update form and provide references acceptable to the professional surveying committee to verify each additional experience record.

I. Applications for licensure or certification by examination, comity or endorsement which have been approved by the professional surveying committee shall remain valid for three (3) years from the date of approval.

J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional surveying committee's satisfaction, evidence that the applicant's qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico at the time of application.

K. All applicants for professional surveyor license shall show

proficiency in the English language and shall have a minimum of four (4) years of experience working in the United States under the direction of a licensed professional surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.

[16.39.5.8 NMAC - Rp, 16 NMAC 39.5.8, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.5.9 EXAMINATIONS-SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:

A. Regularly scheduled [written] examinations shall be held [biannually in the spring and autumn respectively] in accordance with NCEES examination schedules. Other examinations may be held at times and places as determined by the professional surveying committee.

B. An applicant that fails [any written] the New Mexico state specific surveying examination will be notified of the next available examination sessions. A written request to retake the examination and payment of the examination fee shall be on or before the specified date set by the board. Any applicant that fails a NCEES examination will be notified by NCEES.

C. An examinee that has made three unsuccessful attempts at achieving a passing score on an examination shall only be eligible to take the next scheduled examination after providing documentation to the board of further study in preparation of the exam.

D. An examinee who has a question regarding an examination shall put the question in writing to the professional surveying committee. The question will be considered at the next professional surveying committee meeting. The committee's answer to the examinee shall be in writing. **C.**

An applicant that has not achieved a passing score on an examination within the three (3) year application period shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.

D. The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one of the following:

(1) an "open book" examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;

(2) a "closed book" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or

(3) a "computer based" examination.

E. Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.

F. An applicant who has a question regarding the New Mexico state specific surveying examination shall put the question in writing to the professional surveying committee. The question will be considered at the next professional surveying committee meeting. The committee's answer to the examinee shall be in writing. Questions regarding the completed fundamental of surveying examination or the principles and practice surveying examination shall be directed to NCEES.

[16.39.5.9 NMAC - Rp, 16 NMAC 39.5.9, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.5.10 PRACTICE OF SURVEYING:

A. A person or any organization shall not advertise or offer to practice surveying work or accept such work unless that person or a member of the organization is licensed by the board and is legally able to bind that organization by contract.

B. Neither persons nor organizations shall circumvent these rules.

C. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

D. The board will consider the use of the terms, "surveyor", "surveying" or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of surveying services. The board also considers the use of these terms or any modification or derivative of such terms in a domestic corporation's articles of incorporation or in a foreign corporation's certificate of authority as published by the New Mexico's [public regulation commission] secretary of state to constitute the offering of surveying services.

[16.39.5.10 NMAC - Rp, 16 NMAC 39.5.10, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.5.11 SEAL OF LICENSEE:

A. Each licensed professional surveyor shall obtain a seal/stamp which must be impressed on all plats, reports, etc., prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps and all facsimiles of signatures are not acceptable. Electronic signature as provided by law and board's policy shall be acceptable.

B. The seal/stamp shall be either the impression type seal, the rubber type, or a computer-generated facsimile. Computer-generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

C. The design of the seal/stamp shall consist of three concentric circles, the outermost one (1) being one and one-half (1 ½) inches in diameter, the middle circle being one (1) inch in diameter and the innermost circle being one-half (½) inch in diameter. The outer ring shall contain the words, "Professional Surveyor", and the licensee's name. The inner ring shall contain the words "New Mexico". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable.

D. Professional surveyors who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

E. The seal and signature shall be placed on work only when it was under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.

F. When the document contains more than one (1) sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two (2) or more licensees may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet.

G. An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature.

[16.39.5.11 NMAC - Rp, 16 NMAC 39.5.11, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.5.12 ENDORSEMENTS:

For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional surveying committee will only recognize licensure granted by those authorities when the professional surveying committee has determined that the applicant possesses qualifications which “do not conflict with the provisions of the Engineer and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-27.3 and 61-23-27.4 NMSA 1978”. Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the District of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional surveyor shall be as follows:

A. Graduation from a four (4)-year board-approved surveying curriculum, four (4) years of experience satisfactory to the professional surveying committee, and passing of the fundamentals of surveying and professional surveying examinations (1995 law).

B. Graduation from an engineering or related science curriculum that are approved by the committee and augmented with eighteen (18) semester hours of surveying, eight (8) years of experience satisfactory to the professional surveying committee, and passing of the eight (8) hour fundamentals and eight (8) hour professional examinations (1995 law).

C. Licensure prior to July 1, 1995 by graduation from a two (2) year board-approved surveying or associated curriculum, eight (8) years of experience satisfactory to the professional surveying committee and passing of the eight (8) hour fundamentals and eight (8) hour professional examination.

D. Licensure prior to July 1, 1995 by graduation from a board-approved surveying or associated curriculum of at least forty-five (45) semester hours, eight (8) years of experience satisfactory to the professional surveying committee, and passing of the eight (8) hour fundamentals and eight (8) hour professional examination;

E. Licensure prior to July 1, 1979, eight (8) years of experience satisfactory to the professional surveying

committee and passing of the eight (8) hour fundamentals and eight (8) hour professional examinations.

[16.39.5.12 NMAC - N, 7/1/2015]

**BOARD OF LICENSURE
FOR PROFESSIONAL
ENGINEERS AND
PROFESSIONAL
SURVEYORS**

This is an amendment to 16.39.7 NMAC, Sections 1, 8 and 9, effective 7/01/2015.

16.39.7.1 ISSUING AGENCY:

State Board of Licensure for Professional Engineers and Professional Surveyors, [4001 Office Court Drive, Suite 903] 2550 Cerrillos Road, Santa Fe, NM [87507] 87505, telephone no. (505) [827-7561] 476-4565.

[16.39.7.1 NMAC - Rp, 16 NMAC 39.7.1, 1/01/2002; A, 7/01/2006; A, 7/01/2015]

**16.39.7.8 REVOCATION,
SUSPENSION, IMPOSITION OF
FINES, REISSUANCE OF LICENSES
AND CERTIFICATES AND
DISCIPLINARY ACTION:**

A. The board may impose fines as may be determined by the nature of the violation pursuant to Section 61-23-24 and 61-23-27.11 NMSA 1978.

B. A lost, mutilated or destroyed certificate shall be replaced only upon the written request of the licensee and payment of the required fee. The reissued certificate shall show the original license number and original date, shall be signed by the current chair and secretary of the board in office at that date, and shall carry the notation “Reissued (DATE) .” [16.39.7.8 NMAC - Rp, 16 NMAC 39.7.8, 1/01/2002; A, 7/01/2015]

16.39.7.9 VIOLATIONS:

A. For organizations using the words “engineering” or “surveying” in their titles or offering engineering or surveying services, the board’s executive director shall write the organization, enclosing an affidavit to be completed which identifies the member of the organization who is licensed to practice in the state of New Mexico and who is legally able to bind the organization by contract. If no response to this request is received within thirty (30) days, a second letter shall be sent by certified mail, return receipt requested. If the second letter does not result in a response thirty (30) days from the receipt

of a refusal, the matter may be turned over to the attorney general’s office for action.

B. It shall be considered [“misconduct”] “a violation” under [NMSA 1978, Sections 61-23-24 (A)(1)-(2005) and 61-23-27.11(A)(1)-(2005)] Paragraph (1) of Section 61-23-24 (A) (2005) and Paragraph (1) of Section 61-23-27.11(A) NMSA 1978 of the Engineering and Surveying Practice Act for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence or in contravention of any of the provisions of these rules. It shall also be considered [“misconduct”] “a violation” under [NMSA 1978, Sections 61-23-23.1(A)-(2003) and 61-23-27.15(A)-(2003)] Section 61-23-23.1 (A) (2003) and Section 61-23-27.15(A) (2003) NMSA 1978 of the Engineering and Surveying Practice Act for any person to act in the capacity of a professional engineer or a professional surveyor without being licensed by the board.

C. The practice or offer to practice engineering [and/or surveying] by a licensee of the board in any state, territory [and/or] or country where the licensee [is] has been determined to be in violation of that jurisdiction’s licensing requirement shall be considered to be professional misconduct which may be actionable by the board. The practice or offer to practice surveying by a licensee of the board in any state, territory, or country where the licensee has been determined to be in violation of that jurisdiction’s licensing requirement shall be considered to be professional misconduct which may be actionable by the board.

D. Each applicant or licensee shall notify the board, in writing, within ninety (90) days, of the imposition of any disciplinary action by any other applicable licensing board or any conviction of or entry of plea of nolo contendere to any crime under the laws of the United States, or any state, territory or county thereof, which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is moral turpitude, or which is directly related to the practice of engineering or surveying.

E. The board shall comply with the provisions of the Parental Responsibility Act as they relate to the denial, suspension or revocation of certificates of licensure for non-payment of child support.

[16.39.7.9 NMAC - Rp 16 NMAC 39.7.9, 1/01/2002; A, 7/01/2006; A, 7/01/2015]

**BOARD OF LICENSURE
FOR PROFESSIONAL
ENGINEERS AND
PROFESSIONAL
SURVEYORS**

This is an amendment to 16.39.8 NMAC, Sections 1 and 9, effective 7/1/2015.

16.39.8.1 ISSUING AGENCY:
State Board of Licensure for Professional Engineers and Professional Surveyors, [4001 Office Court Drive, Suite 903] 2550 Cerrillos Road, Santa Fe, NM [87507] 87505, telephone no. (505) [827-7564] 476-4565.

[16.39.8.1 NMAC - Rp, 16 NMAC 39.8.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

**16.39.8.9 RULES OF
PROFESSIONAL CONDUCT:**

A. The protection of the public safety, health, welfare and property in the performance of professional duties.

(1) In order to protect public safety, health, welfare and property in the performance of their professional duties, licensees shall at all times:

(a) Perform those duties in conformance with accepted engineering and surveying practices.

(b) Notify their employer or client and such other authority as may be appropriate of any instance in which their professional judgment is overruled under circumstances endangering the public safety, health, welfare or property.

(c) Approve and seal only those engineering and surveying documents [and surveys] which conform to [accepted] applicable engineering and surveying standards.

(d) [~~Refuse to associate in a business venture with any person or firm which they may have reason to believe is engaging in fraudulent or dishonest business or professional practices as an engineer or surveyor and refuse to use or permit the use of their name or firm in connection with any such business venture.~~

(e) ~~Inform the Board of any known violation of these Rules of Professional Conduct. Cooperate with the Board in furnishing information or assistance as may be requested by the Board in matters concerning violations.] Shall not reveal privileged or confidential facts, data or information without prior consent of the~~

~~client or employer except as authorized or required by law or this code.~~

(e) ~~Refuse to associate in a business venture with any person or firm whom they may have reason to believe is engaging in fraudulent or dishonest business or professional practices as an engineer or surveyor and refuse to use or permit the use of their name or firm in connection with any such business venture.~~

(f) ~~Inform the board of any violation of this code. Cooperate with the board in furnishing information or assistance as may be requested by the board in matters concerning violations.~~

(g) ~~Shall not assist or participate in the unlawful practice of engineering and surveying by a person or firm.~~

B. Specialization and the performance of services only in specific areas of competence.

(1) Licensees shall undertake assignments only when qualified by education, experience or examination in the specific technical fields of engineering or surveying involved.

(2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competency, nor to any such plan or documents not prepared under their responsible charge.

(3) Licensees may accept an assignment when the total work involves technical fields beyond those in which they are qualified, providing their services are limited to those phases in which they are qualified and that the phases in which they are not qualified are performed by licensees who are properly qualified. In this instance, each qualified licensee will sign and seal the documents for their phase of the assignment.

C. The issuance of public statements.

(1) Licensees shall be objective and truthful in professional reports, statements or testimony. A professional report or professional opinion issued by or under the responsible charge of a licensee shall not contain any intentionally false, misleading or deceitful statements or testimony. Any report, statement or testimony by a licensee shall contain all relevant and pertinent information as required by accepted engineering or surveying principles.

(2) If a licensee issues statements on technical matters

in his or her capacity as a professional engineer or professional surveyor on behalf of an interested party, the licensee must expressly preface his or her remarks by identifying said interested party and by revealing the existence and nature of any interest the licensee may have in the matter.

(3) A licensee who is competent in the subject matter may express publicly technical opinions that are found upon knowledge of the facts.

D. Professional relationships with employer or client.

(1) Licensees shall act in professional matters for each employer or client as fiduciaries and shall avoid conflicts of interest. Licensees shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest or other circumstances which could reasonably be expected to influence their judgment or the quality of their services.

(2) Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(3) Licensees shall not solicit or accept any gratuity, material favor, or any valuable consideration, directly or indirectly, from contractors, their agents, servants or employees or from any other party dealing with his client or employer in connection with any project for which he is performing or has contracted to perform engineering or surveying services. (The phrase "valuable consideration" is defined to mean any act, article, money or other material possession which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his ability to exercise his own judgment.)

(4) Licensees in public service as a member or employee of a governmental body, agency or department shall not participate, directly or indirectly in deliberations or actions which would constitute a conflict of interest with respect to services offered or provided by him, his associates, or the licensee's organization to such governmental body, agency or department.

(5) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member, except upon public disclosure of all pertinent

facts and circumstances and consent of appropriate public authority.

(6) Licensees shall not reveal privileged or confidential facts, data or information obtained in a professional capacity without prior consent of the client or employer except:

(a) As provided in [16.39.8.A(1)(b) & (c) of this section] Subparagraph (b) and (f) of Paragraph (1) of Subsection A of 16.39.8.9 NMAC.

(b) As authorized or required by law.

(c) Any document that is a matter of public record by virtue of it being on file with a public agency.

(d) Any fact, data or information which is clearly the property of the engineer or surveyor.

E. Solicitation of professional employment.

(1) Licensees shall not falsify or permit misrepresentation of their, or their associates' academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other representations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments with the intent and purpose of enhancing their qualifications and their work.

(2) Licensees shall not offer, give, solicit or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure or influence the award of work and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, and which may be reasonably construed by the public as having the effect or intent to influence the award of a contract.

F. Avoiding conduct or practice that deceives the public.

(1) Licensees shall avoid the use of a statement containing a material misrepresentation of a fact or omitting a material fact.

(2) Consistent with the foregoing, licensees may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

G. Interaction with other licensees.

(1) Licensees

shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other licensees.

(2) Licensees in private practice shall not review the work of another licensee for the same client, except with the knowledge of such licensees, or unless the connection of such licensee with the work has been terminated.

(3) Licensees in governmental, industrial, or educational employment are entitled to review and evaluate the work of other licensees when so required by their employment duties. [16.39.8.9 NMAC - Rp, 16 NMAC 39.8.9, 1/01/2002; A, 7/1/2015]

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

16.2.18 NMAC, Expanded Practice Educational Courses, (filed 1-9-2013) repealed and replaced by 16.2.18 NMAC, Educational Courses for Expanded Practice Certification, effective 06-16-2015.

16.2.19 NMAC, Expanded Practice Certifications, (filed 10-29-2009) repealed and replaced by 16.2.19 NMAC, Expanded Practice Certifications, effective 06-16-2015.

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 18 EDUCATIONAL COURSES FOR EXPANDED PRACTICE CERTIFICATION

16.2.18.1 **ISSUING AGENCY:** New Mexico Board of Acupuncture and Oriental Medicine. [16.2.18.1 NMAC - Rp, 16.2.18.1 NMAC, 06-16-2015]

16.2.18.2 **SCOPE:** All doctors of oriental medicine who are certified for expanded practice or who are applicants for certification for expanded practice,

as well as all educational courses and applicants for approval of educational courses. [16.2.18.2 NMAC - Rp, 16.2.18.2 NMAC, 06-16-2015]

16.2.18.3 **STATUTORY AUTHORITY:** This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1. [16.2.18.3 NMAC - Rp, 16.2.18.3 NMAC, 06-16-2015]

16.2.18.4 **DURATION:** Permanent. [16.2.18.4 NMAC - Rp, 16.2.18.4 NMAC, 06-16-2015]

16.2.18.5 **EFFECTIVE DATE:** June 16, 2015, unless a later date is cited at the end of a section. [16.2.18.5 NMAC - Rp, 16.2.18.5 NMAC, 06-16-2015]

16.2.18.6 **OBJECTIVE:** Part 18 lists the prerequisites, educational course approval requirements, class hours, curriculum knowledge and skills for certification in each of the four (4) following expanded practice categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy. [16.2.18.6 NMAC - Rp, 16.2.18.6 NMAC, 06-16-2015]

16.2.18.7 **DEFINITIONS:** Refer to definitions in 16.2.1.7 NMAC. [16.2.18.7 NMAC - N, 06-16-2015]

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

A. The educational course shall provide at least the minimum number of hours of education in the areas listed for the specific category of educational course hours. One (1) hour of education shall be equal to that defined by the accreditation commission for acupuncture and oriental medicine (ACAOM). The education shall be in addition to the education required to

meet the minimum educational program requirements for licensure as a doctor of oriental medicine.

B. The educational course application shall include a description of the education being provided as required by the educational course general curriculum defined in 16.2.18.11 NMAC and the educational course curriculum defined for the specific category of expanded practice for which the educational course is applying for approval.

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

(1) the education in the pharmacology of the authorized substances shall be taught by a licensed pharmacist, Pharm D or a Ph.D. in pharmacology; and

(2) the education in the clinical therapeutic use of the authorized substances shall be taught by a licensed health care practitioner with appropriate training and a minimum of five (5) years experience using the authorized substances.

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

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

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

G. Each educational course shall be completed within two (2) years of commencement of that course.

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

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

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

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

- (1) ownership;
- (2) faculty; and
- (3) curriculum.

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

- (1) name;
- (2) address; and
- (3) phone

number.

[16.2.18.8 NMAC - Rp, 16.2.18.7 NMAC, 06-16-2015]

16.2.18.9 EDUCATIONAL COURSE APPROVAL BOARD REQUIREMENTS:

A. The board shall have final authority for approval of all educational courses including classes and teachers.

B. The board shall notify the applicant in writing by mail postmarked no more than seventy five (75) days after the receipt of the initial application as to whether the application is complete or if not complete, what documentation is needed to complete the application.

C. If the requested information is not received at the board office within seventy five (75) days after notification the board shall notify the applicant in writing by mail that the application has expired.

D. Teaching must commence for an approved course within six (6) months of approval.

E. In the interim between regular board meetings the

expanded practice Rx committee or an authorized representative of the board shall issue an interim temporary educational course approval to a qualified applicant who has filed, with the board, a complete application and complied with all requirements for educational course approval. The interim temporary educational course approval shall automatically expire on the date of the next regular board meeting and final educational course approval shall only be granted by the board. If the application is denied, the notice of denial shall state the reason the application was denied.

F. If the application is expired or is denied, the applicant will have to reapply as a new applicant. [16.2.18.9 NMAC - Rp, 16.2.18.8 NMAC, 06-16-2015]

16.2.18.10 EDUCATIONAL COURSE PREREQUISITES:

A. An applicant for an educational course in expanded practice leading to certification must be a NM licensed doctor of oriental medicine in good standing.

B. The basic injection course is a prerequisite to injection therapy certification and intravenous therapy certification.

C. Prior to enrolling in any expanded practice educational course, the applicant shall submit proof of completion of at least three (3) college or university credit hours (30-45) contact hours in a course in pharmacology from an accredited institution. A board approved on-line course is acceptable or the applicant may sit for a pharmacology final exam at an accredited institution to satisfy this requirement.

D. If applying for basic injection therapy, injection therapy or intravenous therapy, the applicant shall submit proof of completion of a four (4) hour American heart association approved CPR or basic life support (BLS) course; a current card that shall remain current until the next July 31 annual renewal cycle will serve as proof.

[16.2.18.10 NMAC - Rp, 16.2.18.9 NMAC, 06-16-2015]

16.2.18.11 EDUCATIONAL COURSE GENERAL CURRICULUM:

Each educational course shall provide the doctor of oriental medicine, who successfully completes the course, with the following entry level general knowledge and skills, as well as the specific knowledge and skills, at the current professional standard of care within the context of an integrative

healthcare system, defined for each specific category of expanded practice education.

A. Expanded practice and prescriptive authority and oriental medicine: knowledge of how the principles of the developmental system of oriental medicine such as yin, yang, qi and xue apply to the expanded practice certifications.

B. Biomedical knowledge: anatomy, physiology, pathology, endocrinology, biochemistry, pharmacology and diagnostic options sufficient to provide a foundation required for the specific category of expanded practice.

C. Pharmacology knowledge:
(1) of the biochemistry, pharmacology, clinical application, safety and handling, side effects, interactions, contraindications, safeguards and emergency procedures for all authorized substances in the formulary defined for the relevant specific category of expanded practice;

(2) of how to make a differential diagnosis relative to the prescription or administration of authorized substances in the formulary defined for the relevant specific category of expanded practice;

(3) of the potency and appropriate dosage of single and combined authorized substances in the formulary defined for the relevant specific category of expanded practice;

(4) and skill in utilizing appropriate clinic based aseptic technique; and

(5) of the compounding requirements of the USP797 with regard to the authorized substances in the formulary defined for the relevant specific category of expanded practice.

D. Referral:
(1) knowledge and understanding of the limits of their training, and skill and when it is appropriate to refer; and
(2) knowledge of the options available regarding referral including an understanding of the potential benefit or contraindications of all categories of expanded practice.

E. Emergency care (previous CPR/BLS certification):
(1) knowledge of how to recognize a medical emergency situation arising in the clinic and what emergency outcomes may arise relative to performing the authorized diagnostic and therapeutic procedures and the prescription or administration of the

specifically authorized substances, what procedures and substances are best for managing each emergency situation and whom to contact for emergency support and care;

(2) skill in providing first aid and basic life support until the medical emergency team arrives;

(3) appropriate initial screening for potential allergic or adverse reactions;

(4) skill in identifying and responding to adverse or allergic reactions or mild to severe; vasovagal reactions with knowledge of appropriate support measures depending on the type of reaction:

(a) patient reassurance;
(b) patient positioning;
(c) oral OTC diphenhydramine (benadryl) if appropriate;

(d) inhaled oxygen;
(e) inhaled OTC epinephrine (primatine mist) or IM injected epinephrine if appropriate; and
(f) emergency ambulance transport;

(5) the immediate and longer term indications of inadvertent pneumothorax and the appropriate procedure for patient care and guidance in such situations.

F. Record keeping, storage and dispensing of dangerous drugs and controlled substances and knowledge of:

(1) the proper storage requirements in the clinic for the drugs, dangerous drugs and controlled substances in the specifically authorized formulary;

(2) how to keep accurate records of all authorized drugs, dangerous drugs and controlled substances obtained, stored, compounded, administered or dispensed; and

(3) skill in handling and using appropriate clean or aseptic technique for all drugs, dangerous drugs and controlled substances in the specifically authorized formulary.

G. Pharmaceutical law knowledge of:

(1) the appropriate areas of New Mexico pharmaceutical law;
(2) USP-797 that relates to compounding of the authorized substances in the formulary defined for the relevant specific category

of expanded practice; and
(3) drugs, dangerous drugs, and controlled substances and what dangerous drugs or controlled substances are or are not authorized under the provisions of the specific category or categories of expanded practice for which he is certified.

H. Scope of practice knowledge:
(1) of the areas of the New Mexico Acupuncture and Oriental Medicine Practice Act and rules that are appropriate to the scope of practice of a doctor or oriental medicine certified for the specific category of expanded practice;

(2) understanding of what diagnostic or therapeutic procedures are authorized by the specific category of expanded practice; and
(3) understanding what substances in a specific formulary are authorized for use by doctors of oriental medicine certified for the specific category of expanded practice.

[16.2.18.11 NMAC - Rp, 16.2.18.10 NMAC, 06-16-2015]

16.2.18.12 BASIC INJECTION THERAPY EDUCATIONAL COURSE

APPROVAL: The board shall approve a basic injection therapy educational course after the educational course provider submits to the board:

A. the completed application form provided by the board;

B. the payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;

C. documentation of having complied with all educational course approval general requirements defined in 16.2.18.8 NMAC;

D. documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.11 NMAC;

E. documentation demonstrating that it will provide the basic injection therapy educational course hours defined in 16.2.18.13 NMAC; and

F. documentation demonstrating that it will provide the basic injection therapy educational course curriculum defined in 16.2.18.14 NMAC; and

G. documentation demonstrating that proposed test instruments have been reviewed and approved by a credentialed PhD

psychometrician, as described in the ICE credentialing standards. A passing grade of seventy (70) percent is required for certification to demonstrate learned knowledge.

[16.2.18.12 NMAC - Rp, 16.2.18.11 NMAC, 06-16-2015]

16.2.18.13 BASIC INJECTION THERAPY EDUCATIONAL COURSE

HOURS: The education offered shall consist of a minimum total of fifty eight (58) contact hours with at least the minimum number of hours of education in the areas listed below:

A. eight (8) hours in pharmacology and biomedical differential diagnosis relative to the prescription, administration, compounding and dispensing of the authorized substances in the basic injection therapy formulary including homeopathic medicines;

B. two (2) hours in the drawing and compounding of the authorized substances intended for injection in compliance with USP 797, utilizing approved aseptic technique and proper record keeping and, storage of substances; at least half of the required hours shall be clinical practice;

C. fourteen (14) hours in orthopedic and neurological evaluation; at least half of these required hours shall be clinical practice;

D. two (2) hours in the theory and practice of vapocoolant spray and stretch techniques using the authorized vapocoolants; at least half of these required hours shall be clinical practice;

E. twenty eight (28) hours in the theory and practice of injection therapy including: eleven (11) hours of trigger point therapy and injection of acupuncture points; eleven (11) hours of basic mesotherapy; six (6) hours of basic neural therapy, and therapeutic injections (vitamins), using the authorized substances in the basic injection therapy formulary; at least half of these required hours shall be clinical practice;

F. one (1) hour in pharmaceutical law as provided by the New Mexico board of pharmacy;

G. one (1) in oriental medicine scope of practice relative to the authorized substances and techniques; and

H. a minimum of two (2) hours in the use of inhaled oxygen O₂ and IM epinephrine for emergency use.

[16.2.18.13 NMAC - Rp, 16.2.18.12 NMAC, 06-16-2015]

16.2.18.14 BASIC INJECTION

THERAPY EDUCATIONAL COURSE

CURRICULUM: The basic injection therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in 16.2.18.11 NMAC and the following specific skills and knowledge of:

A. orthopedic and neurological physical exam and differential diagnosis:

(1) anatomy regions to be examined and treated;

(2) the most common orthopedic pain differential diagnoses for these areas as well as other medical differential diagnoses that should be ruled out;

(3) skill in interpreting physical exam signs in context as evidence for or against the differential diagnoses;

(4) the most important treatment options for these differential diagnoses including but not limited to injection therapy, spray and stretch therapy, exercise, physical medicine, manipulation, manual medicine, acupuncture, moxibustion, medical therapy with herbal medicine, supplements, homeopathic medicines and diet therapy;

(5) which basic imaging methods, if any, are useful in the examination of the above differential diagnoses; and

(6) and skill in selecting and performing the most appropriate basic orthopedic and neurologic physical examination methods including but not limited to the most basic forms of reflex testing, motor power testing, sensory exam, common orthopedic provocations, ligament stretch testing, accurate palpation and marking of anatomic landmarks, ligament and tendon compression testing and myofascial trigger point compression;

B. general injection therapy knowledge of:

(1) the needles, syringes and other equipment used to perform the various types of injection therapy;

(2) appropriate aseptic techniques and clean needle procedures and techniques, and necessity of compliance with USP 797;

(3) the various solutions used in the various styles of injection therapy and skill in properly drawing and compounding into syringes the authorized substances intended

for injection, using approved aseptic technique; in compliance with USP 797;

(4) how to generate and carry out a comprehensive treatment plan that addresses the causative factors leading to pain and dysfunction from the perspective of the understanding of each style of injection therapy, offers post treatment palliation and provides post therapy recommendations to support rehabilitation and prevent recurrence;

(5) how to explain to the patient the purpose of the therapy, the expected outcome and possible complications of the therapy that could occur;

(6) understanding that injection therapy techniques authorized for the basic injection therapy certification are limited to intradermal, subcutaneous and intramuscular, injections; and

(7) the anatomical locations that are relatively safe for injection therapy, as well as those locations that should be avoided for injection therapy;

C. acupuncture point injection therapy knowledge of:

(1) how acupuncture point injections can complement traditional acupuncture;

(2) the conditions that can be treated with acupuncture point injections; and

(3) skill in injecting acupuncture points;

D. trigger point therapy knowledge of:

(1) what a trigger point is, what the causative factors leading to trigger points are, what the most common perpetuating factors are and how to recognize and identify the most common pain referral patterns in the head, back, hip and extremities;

(2) how to locate and palpate trigger points; and

(3) skill in locating, injecting and spraying and stretching the most commonly treated trigger points and muscles;

E. neural therapy knowledge of:

(1) the relationship between interference fields, the autonomic nervous system, pain and disease;

(2) skill in identifying common interference fields in the body; and

(3) skill in injecting common neural therapy injection sites such as peripheral nerves, scars, tonsils, intercutaneous and subcutaneous sites;

F. mesotherapy knowledge of:
(1) the mechanism of action of mesotherapy injections for pain and sports medicine and cosmetic treatment; and
(2) skill in injecting using mesotherapy methodology;

G. therapeutic injections knowledge of:
(1) how to evaluate the patient and determine a treatment plan with appropriate dosage, using appropriate authorized substances; and
(2) skill in performing therapeutic injections at appropriate anatomical locations and depths.

[16.2.18.14 NMAC - Rp, 16.2.18.13 NMAC, 06-16-2015]

16.2.18.15 INJECTION THERAPY EDUCATIONAL COURSE

APPROVAL: The board shall approve an injection therapy educational program requirements:

- A.** the completed application form provided by the board;
- B.** payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;
- C.** documentation that it will comply with all educational course approval general requirements defined in 16.2.18.8 NMAC;
- D.** documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.11 NMAC;
- E.** documentation demonstrating that it will provide the injection therapy educational course hours defined in 16.2.18.17 NMAC;
- F.** documentation demonstrating that it will provide the injection therapy educational course curriculum defined in 16.2.18.18 NMAC; and
- G.** documentation demonstrating that proposed test instruments have been reviewed and approved by a credentialed PhD psychometrician as described in the ICE credentialing standards. A passing grade of seventy (70) percent is required for certification to demonstrate learned knowledge.

[16.2.18.15 NMAC - Rp, 16.2.18.14 NMAC, 06-16-2015]

16.2.18.16 INJECTION THERAPY COURSE

PREREQUISITES: only a New Mexico

licensed DOM, in good standing, and board certified in basic injection therapy, may apply for an injection therapy educational course.
 [16.2.18.16 NMAC - Rp, 16.2.18.15 NMAC, 06-16-2015]

16.2.18.17 INJECTION THERAPY EDUCATIONAL COURSE HOURS:

The education shall be completed within two (2) years of commencement of the course as specified in Subsection G of 16.2.18.7 NMAC and consists of a minimum total of one hundred fifteen (115) hours and with at least the minimum number of hours of education in the areas listed below:

- A.** eight (8) hours in pharmacology and relevant pharmaceutical law, including compliance with USP seven hundred ninety seven (797) differential diagnosis relative to the selection, prescription, compounding and administration, of the authorized substances in the injection therapy formulary listed in Paragraph (2) of Subsection F of 16.2.20.8 NMAC, and the use of some of these substances as pain medicine: upon completion and certification in injection therapy some of these substances can be used with previously learned basic injection techniques including trigger point, mesotherapy, and neural therapy techniques;
- B.** four (4) hours in the art and practice of phlebotomy in order to safely perform injection of ozone or platelet rich plasma when considered as appropriate therapeutic intervention and at least half of the required hours shall be in clinical practice; a certificate of completion of a board approved course in phlebotomy is acceptable;
- C.** fifteen (15) hours in a board approved course in oxidative medicine;
- D.** fifty two (52) hours to include:
 - (1)** the scientific principles of prolotherapy;
 - (2)** aseptic technique as it relates to injecting a joint;
 - (3)** detailed anatomy of joints, supporting soft tissue structures, and specific injection sites;
 - (4)** orthopedic and neurological functional evaluation;
 - (5)** the use of platelet rich plasma and prolozone;
 - (6)** theory and practice of advanced neural therapy techniques;
 - (7)** differentiation and selection of authorized

substances in the injection therapy formulary as defined in Paragraph (2) of Subsection F of 16.2.20.8 NMAC; and
(8) at least half of these required hours shall be clinical practice;

E. thirty (30) hours of diagnostic musculoskeletal ultrasound and ultrasound guided musculoskeletal procedures from a board approved course; and

F. six (6) hours in the theory and practice of advanced injection therapy techniques including: mesotherapy for cellulite reduction, refer to Subsection F of 16.2.18.14 NMAC and apitherapy: at least half of these hours shall be in clinical practice; a certificate of completion from a board approved course in advanced mesotherapy or apitherapy will be considered to meet these hours.
 [16.2.18.17 NMAC - Rp, 16.2.18.16 NMAC, 06-16-2015]

16.2.18.18 INJECTION THERAPY EDUCATIONAL COURSE CURRICULUM:

The injection therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in 16.2.18.11 and 16.2.18.14 NMAC and the following specific knowledge and skills in:

- A.** regenerative injection therapy (RIT or prolotherapy):
 - (1)** understanding of the scientific principles of prolotherapy, its application, alternatives, risks and consequences;
 - (2)** recognizing the most common pain patterns generated from injured and lax ligaments of the joints of the extremities, lumbar and sacral regions;
 - (3)** the concept of tissue regeneration and proliferation and how it can be promoted in the body;
 - (4)** injecting some of the most commonly treated ligamentous, tendonous, and cartilaginous and intra-articular structures of the joints of the extremities, lumbar and sacral regions;
 - (5)** how to perform regional anesthesia or a nerve block for pain relief; and
 - (6)** the use of diagnostic musculoskeletal ultrasound and ultrasound guided procedures;
- B.** orthopedic and neurological physical exam and differential diagnosis:
 - (1)** anatomy of

the regions to be examined and treated;

(2) selecting and performing orthopedic and neurologic physical examination methods including but not limited to reflex testing, motor power testing, sensory exam, common orthopedic provocations, ligament stretch testing, accurate palpation and marking of anatomic landmarks, ligament and tendon compression testing;

(3) interpreting physical exam signs in context as evidence for or against the differential diagnoses;

(4) most common orthopedic pain differential diagnoses for these areas as well as other medical differential diagnoses that should be ruled out; and

(5) the most important treatment options for these differential diagnoses;

C. how to generate and carry out a comprehensive treatment plan that addresses the causative factors leading to pain and dysfunction from the perspective of the understanding of each style of injection therapy, offers post treatment palliation and provides post therapy recommendations to support rehabilitation and prevent recurrence:

(1) how to explain to the patient the purpose of the therapy, the expected outcome and possible complications of the therapy that could occur; and

(2) anatomical locations that are relatively safe for injection therapy, as well as those locations that should be avoided for injection therapy;

D. perform phlebotomy and collect and centrifuge blood to be used for platelet rich plasma injection; knowledge of diagnostic and physical exam findings which indicate the need for platelet rich plasma as a treatment modality;

E. advanced neural therapy techniques; knowledge and skills as described in 16.2.18.14 NMAC of basic injection;

F. advanced mesotherapy;

(1) how to evaluate and treat the patient with cellulite including determination of a treatment plan, utilizing appropriate substance(s) and dosing to accomplish treatment goals;

(2) how to evaluate and treat fat;

(3) technique of injections to reduce fat or cellulite; and

(4) mechanisms of action of substances used for cellulite

and fat reduction;

G. apitherapy;
(1) knowledge of and skill in performing apitherapy; and
(2)

understanding theory and application of apitherapy, expected outcomes, benefits and potential risks and complications. [16.2.18.18 NMAC - Rp, 16.2.18.17 NMAC, 06-16-2015]

16.2.18.19 INTRAVENOUS THERAPY EDUCATIONAL COURSE APPROVAL REQUIREMENTS

FOR CERTIFICATION: The board will approve an intravenous therapy educational course for certification after the educational course provider submits to the board:

A. the completed application form provided by the board;

B. the payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;

C. documentation of having complied with all educational course approval general requirements defined in 16.2.18.8 NMAC;

D. documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.10 NMAC;

E. documentation demonstrating that it will provide the intravenous therapy educational course hours defined in 16.2.18.20 NMAC;

F. documentation demonstrating that it will provide the intravenous therapy educational course curriculum defined in 16.2.18.21 NMAC; and

G. documentation that proposed test instruments have been reviewed and approved by a credentialed PhD psychometrician, as described in the ICE credentialing standards.

[16.2.18.19 NMAC - N, 06-16-2015]

16.2.18.20 INTRAVENOUS THERAPY COURSE

PREREQUISITES: Only a New Mexico licensed DOM, in good standing, and board certified in basic injection therapy, may apply for an intravenous therapy educational course in expanded practice.

A. Proof of current BLS/CPR certification that will be current for two (2) years from an American heart association provider.

B. Proof of completion of at least three (3) semester hours of college level biochemistry from an accredited institution that provides evaluation of competencies by examination. A board

approved college level on line course is acceptable.

[16.2.18.20 NMAC - N, 06-16-2015]

16.2.18.21 INTRAVENOUS THERAPY EDUCATIONAL

COURSE HOURS: The intravenous therapy educational coursework shall be completed within two (2) years of commencement of the course, Subsection G of 16.2.18.8 NMAC, and shall consist of a minimum of one hundred thirty seven (137) total hours and with the minimum number of hours of education in the areas listed below:

A. eight (8) hours in the pharmacology, biochemistry, relevant pharmaceutical law, including 16.19.36 NMAC, differential diagnosis and clinical application relative to the selection, prescription, compounding and administration of the authorized substances in the intravenous therapy formulary;

B. ten (10) hours in the studying, drawing and sterile compounding, (in compliance with USP-797) of the authorized substances intended for infusion and injection utilizing approved aseptic technique and proper record keeping, and storage of substances. At least half of these required hours shall be clinical practice;

C. twenty-four (24) hours in all aspects of safely performing phlebotomy, intravenous infusions and intravenous pushes including calculation of osmolarity. At least half of these required hours shall be clinical practice with documented evidence of having prepared and started at least 10 IV's. Proof of completion of a board approved phlebotomy course may be applied toward a portion of these hours;

D. twenty-four (24) hours in oxidative medicine as defined in Paragraph (39) of Subsection B of 16.2.1.7 NMAC, including; ozone therapy, ultraviolet blood irradiation (photoluminescence), hyperbaric oxygen therapy and the use of oxygen therapeutically. At least half of these required hours shall be in clinical practice;

E. twenty-four (24) hours in nutritional IV's; vitamin C, meyers cocktails, vitamins, minerals, and amino acids;

F. twenty four (24) hours in detoxification, utilizing glutathione, phosphatidylcholine and calcium EDTA including practice standards that meet the requirement guidelines from the College of Physician and Surgeons of Alberta, on file in the board office;

G. sixteen (16) hours

in blood chemistry analysis: including instruction of normal value ranges, critical values, clinical implications of abnormal values, and whether these values warrant reconsideration of proceeding with any intravenous therapy;

H. five (5) hours in urine analysis: including evaluation of unprovoked and provoked nutrient and toxic element testing;

I. one (1) hour in pharmaceutical law as provided by the New Mexico board of pharmacy; and

J. one (1) hour in oriental medicine scope of practice relative to the authorized substances and techniques.

[16.2.18.21 NMAC - N, 06-16-2015]

16.2.18.22 INTRAVENOUS THERAPY EDUCATIONAL COURSE CURRICULUM:

The intravenous therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the knowledge and skills defined in Section 10 of 16.2.18 NMAC and the following specific knowledge and skills.

A. Pharmaceutical law: knowledge of compatibility and sterile compounding procedures of authorized substances in the intravenous therapy formulary in compliance with the compounding requirements of the USP-797.

B. Diagnostic phlebotomy knowledge of:
(1) and skill in drawing blood for diagnostic purposes using appropriate aseptic procedure;

(2) needles, lancets, winged sets, syringes, vacutainer tubes, and other equipment used to draw blood for diagnostic purposes; and
(3) the various blood tests most relevant to the protocols being taught.

C. Intravenous therapy knowledge of:

(1) and skill in the use of the equipment used for intravenous infusions;
(2) equipment used for an intravenous push;
(3) equipment used for injecting a bolus into an infusion;
(4) local anatomy of common infusion sites and skill in selecting an appropriate infusion site;

(5) authorized substances that are appropriate or not appropriate for intravenous infusion or injection from the intravenous therapy

formulary;

(6) concept and importance of osmolarity, pH and skill in determining pH and calculating a given solution's osmolarity using an osmolarity chart simple algebraic equation or computer software;

(7) prerequisite lab tests that should be evaluated prior to initiating intravenous therapy of any kind;

(8) and skill in preparing and administering an intravenous push, intravenous infusion and injecting a bolus into an IV infusion; and

(9) possible complications that could occur during an intravenous infusion or push and how to identify, treat and manage these complications.

D. Oxidative medicine, photo-oxidation and the use of oxygen therapeutically knowledge of:

(1) biochemistry of oxidative medicine including the biological electron transfer sequence (BETS) oxidation and reduction (redox) reactions;

(2) and skill in the relevant clinical application and use of the authorized substances in the intravenous therapy formulary;

(3) history, physics, equipment and therapeutic use of ultraviolet blood irradiation (photoluminescence);

(4) history, physics, physiology and therapeutic use, contraindications and safety considerations of hyperbaric oxygen chamber therapy; and
(5) blood borne pathogen training.

E. Detoxification and chelation therapy knowledge of:

(1) diagnostic tools available for determining and tracking the therapeutic elimination of body burden of toxic elements including hair analysis, blood analysis and urinalysis with provocation agents;

(2) how to determine that the kidneys, colon and liver are functioning appropriately prior to commencement of detoxification or chelation diagnostic and therapeutic procedures;

(3) critical importance of, and methods for, optimizing kidney and bowel function, and phase 1/phase 2 liver detox pathways, prior to and during detoxification or chelation therapy, how to recognize when these systems are overburdened and what to do if they are overburdened;

(4) biochemistry, clinical use, and safety concerns relevant to all modes of administration of the authorized substances used in detoxification or chelation therapy; and

(5) how to explain to the patient the purpose of the therapy, the expected outcome, alternatives and possible complications of the therapy that could occur.

[16.2.18.22 NMAC - N, 06-16-2015]

16.2.18.23 INTRAVENOUS THERAPY EXPANDED PRACTICE CERTIFICATION:

The board shall only issue certification to applicants after successful completion of the Intravenous Therapy Expanded Practice Course, and successful completion and documentation of a practicum to include one hundred fifty (150) hours under the supervision of a board approved physician and three hundred (300) individual patients to be completed within two (2) years of completion of the coursework.

[16.2.18.23 NMAC - N, 06-16-2015]

16.2.18.24 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE

APPROVAL: The board shall have final authority for approval of a bioidentical hormone educational program upon completion of the following requirements. The educational course shall submit to the board:

A. the completed application form provided by the board;

B. payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;

C. documentation that it will comply with all educational course approval general requirements defined in 16.2.18.8 NMAC;

D. documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.11 NMAC;

E. documentation demonstrating that it will provide the bioidentical hormone therapy educational course hours defined in 16.2.18.25 NMAC;

F. documentation demonstrating that it will provide the bioidentical hormone therapy educational course curriculum defined in 16.2.18.26 NMAC; and

G. documentation demonstrating that proposed test instruments have been reviewed and approved by a credentialed PhD psychometrician, as described in the

ICE credentialing standards. A passing grade of seventy (70) percent is required for certification to demonstrate learned knowledge.

[16.2.18.24 NMAC - Rp, 16.2.18.19 NMAC, 06-16-2015]

16.2.18.25 BIOIDENTICAL HORMONE THERAPY

EDUCATIONAL COURSE HOURS:

The bioidentical hormone educational course shall consist of a minimum total of eighty (80) hours of education, with at least twenty four (24) hours of practical experience defined in Subsections B, E and F of 16.2.18.26 NMAC in the areas listed below:

- A.** eight (8) hours in the pharmacology of bioidentical hormones;
- B.** eighteen (18) hours in an overview of the endocrine system, including the anatomy and interactive physiology of the hypothalamic-pituitary-adrenal-thyroid (HPAT) and gonadal axis, the stress response and normal adrenal and thyroid function; also to include normal male and female sex hormone physiology; at least half of these hours shall be in practice or review of case studies;
- C.** twenty (20) hours in theory and practice of endocrinology including evaluation and treatment of the patient with hormonal dysfunction and imbalances including but not limited to; adrenal fatigue, auto-immune endocrine disorders, hypothyroid, hyperthyroid, men's hormone imbalances and women's hormonal imbalances pre, peri and post menopause and consideration and assessment for treatment with bio-identical hormone replacement therapy, BHRT; at least half of these hours will be in practice or review of case studies;
- D.** fourteen (14) hours in blood chemistry analysis including but not limited to; CBC, CMP, LFT, lipids, ferritin, homocysteine, vitamin D, iodine, hs CRP, fibrinogen, ANA, ESR, HgBAIC, insulin antibodies;
- E.** two (2) hours in urine analysis;
- F.** sixteen (16) hours in the assessment and treatment of hormone and neurotransmitter imbalances through blood, urine and saliva hormone testing and evaluation; appropriate treatment options for the biomedical differential diagnoses including, but not limited to; adrenal fatigue, thyroid imbalances, andropause, menopausal syndrome, and other male and female hormone imbalances; at least half of these hours shall be in practice or case study review;
- G.** one (1) hour in pharmaceutical law as provided by the

New Mexico board of pharmacy; and

H. one (1) hour in oriental medicine scope of practice relative to the prescription or administration of the authorized substances.

[16.2.18.25 NMAC - Rp, 16.2.18.20 NMAC, 06-16-2015]

16.2.18.26 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE

CURRICULUM: The bioidentical hormone therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in 16.2.18.11 NMAC and the following specific knowledge and skills:

- A.** bioidentical hormone therapy;
 - (1)** anatomy, physiology, endocrinology, pathology, biochemistry, pharmacology, diagnostic and referral options including imaging, and clinical strategies with a focus on hormone pathways, neurotransmitter imbalances, precursors and intermediaries relevant to bioidentical hormone therapy;
 - (2)** how to perform a diagnosis of the various aspects of the endocrine and neurotransmitter system using blood, urine, and saliva testing;
 - (3)** the application, clinical use, dosage, dosage adjustment or discontinuation consequences and safety concerns relevant to all modes of administration of the authorized substances; and
 - (4)** how to explain to the patient the purpose, expected outcome, risks and possible complications of bioidentical hormone therapy as well as the advantages of bioidentical hormone therapy, relative to non bioidentical hormone therapy;
 - B.** non-hormone therapy:
 - (1)** how to optimize hormone balance using authorized substances that are not hormones or are hormone precursors, and the benefits and limits of such therapy; and
 - (2)** how to explain to the patient the purpose, expected outcome, risks and possible complications of non-hormone therapy as well as the advantages of non-hormone therapy relative to bioidentical hormone therapy.
- [16.2.18.26 NMAC - Rp, 16.2.18.21 NMAC, 06-16-2015]

HISTORY OF 16.2.18 NMAC:

History of Repealed Material:

16.2.18 NMAC, Expanded Practice Educational Courses, filed 1-9-13, repealed, 06-16-2015.

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 19 EXPANDED PRACTICE CERTIFICATIONS

16.2.19.1 ISSUING AGENCY:

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.19.1 NMAC - Rp, 16.2.19.1 NMAC, 6-16-2015]

16.2.19.2 SCOPE:

All doctors of oriental medicine who are certified for expanded practice or who are applicants for certification for expanded practice, as well as all educational programs and students enrolled in an educational program.

[16.2.19.2 NMAC - Rp, 16.2.19.2 NMAC, 6-16-2015]

16.2.19.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1.

[16.2.19.3 NMAC - Rp, 16.2.19.3 NMAC, 6-16-2015]

16.2.19.4 DURATION:

Permanent.

[16.2.19.4 NMAC - Rp, 16.2.19.4 NMAC, 6-16-2015]

16.2.19.5 EFFECTIVE DATE:

June 16, 2015, unless a later date is cited at the end of a section.

[16.2.19.5 NMAC - Rp, 16.2.19.5 NMAC, 6-16-2015]

16.2.19.6 OBJECTIVE: This part lists the certification requirements for each of the following expanded practice categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

[16.2.19.6 NMAC - Rp, 16.2.19.6 NMAC, 6-16-2015]

16.2.19.7 DEFINITIONS:

A. The definitions in this section are in addition to those in the act and 16.2.1.7 NMAC.

B. The following definition applies to the rules and the act: "educational course" is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice; an educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

C. The following definitions are from 16.19.36 NMAC for clarification of regulations for doctors of oriental medicine, certified in expanded practice;

(1) "Air changes per hour" (ACPH) means the number of times a volume of air equivalent to the room passes through the room each hour.

(2) "Ante-area" means an ISO Class 8 or better area where personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high-particulate generating activities are performed. It is also a transition area that:

(a) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(b) reduces the need for the heating, ventilating, and air-conditioning (HVAC) control system to respond to large disturbances.

(3) "Aseptic Technique" means proper manipulation of preparations to maintain sterility

(4) "ASHP" American Society of Health-Systems Pharmacists.

(5) "Beyond-use date" (BUD) means the date, or as appropriate, date and time, after which a compounded preparation is not to be used and is determined from the date and time the preparation is compounded.

(6) "Biological safety cabinet" (BSC) means a ventilated cabinet that provides ISO Class 5 environment for CSP's, provides personnel, preparation, and environmental protection having an open front with inward airflow for personnel protection, downward high-efficiency particulate air (HEPA)-filtered laminar airflow for preparation protection, and HEPA-

filtered exhausted air for environmental protection.

(7) "Buffer area" means an area where the primary engineering control (PEC) is physically located. Activities that occur in this area include the staging of components and supplies used when compounding CSP's.

(8) "Certification" means independent third party documentation declaring that the specific requirements have been met.

(9) "Cleanroom" means a room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(10) "Closed system vial-transfer device" means a vial-transfer system that allows no venting or exposure of substances to the environment.

(11) "Compounded sterile preparations" (CSP's) include, but are not limited, to the following dosage forms which must be sterile when administered to patients:

(a) parenteral preparations;

(b) aqueous bronchial and nasal inhalations;

(c) injections (e.g. colloidal dispersions, emulsions, solutions, suspensions);

(d) irrigations for wounds and body cavities;

(e) ophthalmic drops and ointments; and

(12) "Compounding aseptic isolator" (CAI) means an enclosed ISO Class 5 environments for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment should not occur unless the air has first passed through a microbial retentive filter (HEPA minimum).

(13) "Critical area" means an ISO Class 5 environment.

(14) "Critical site" means a location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal

secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

(15) "Direct compounding area" (DCA) means a critical area within the ISO Class 5 primary engineering control (PEC) where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(16) "Disinfectant" means an agent that frees from infection and destroys disease-causing pathogens or other harmful microorganisms, but may not kill bacterial and fungal spores. It refers to substances applied to inanimate agents, usually a chemical agent, but sometimes a physical one.

(17) "Home care" means health care provided in the patient's home (not a hospital or skilled nursing facility) by either licensed health professionals or trained caregivers. May include hospice care.

(18) "Immediate use" means administration begins not later than one (1) hour following the start of the compounding procedure. Use of Immediate use products is reserved to those events in which delay in preparation would subject the patient to additional risk due to delay in therapy and meeting USP/NF <797> (Immediate-Use CSP Provision) criteria.

(19) "ISO 5" means air containing no more than one hundred (100) particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3520 particles per cubic meter).

(20) "ISO 7" means air containing no more than ten thousand (10,000) particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (352,000 particles per cubic meter).

(21) "ISO 8" means air containing no more than one hundred thousand (100,000) particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3,520,000 particles per cubic meter).

(22) "Laminar airflow" means a non-turbulent, non-mixing streamline flow of air in parallel layers.

(23) "Laminar airflow workbench" (LAFW) means a ventilated cabinet for compounding of sterile preparations. Provides preparation protection with high-efficiency particulate air (HEPA) filtered laminar airflow, ISO Class 5. Airflow may be horizontal (back to front) or vertical (top to bottom) in direction.

(24) “Media-fill test” means a test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as soybean-casein digest medium is substituted for the actual drug product to simulate admixture compounding. The issues to consider in the development of a media-fill test are media-fill procedures, media selection, fill volume, incubation, time, and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(25) “Multiple-dose container” means a multiple-unit container for articles or preparations intended for parenteral administration only and usually containing antimicrobial preservatives. Once opened or entered, a multiple dose container with antimicrobial preservative has a BUD of 28 days unless otherwise specified by the manufacturer.

(26) “Negative pressure room” means a room that is at a lower pressure than the adjacent spaces and therefore, the net flow of air is into the room.

(27) “Parenteral product” means any preparation administered by injection through one (1) or more layers of skin tissue.

(28) “Personal protective equipment” (PPE) means items such as gloves, gowns, respirators, goggles, face shields, and others that protect individual workers from hazardous physical or chemical exposures.

(29) “Plan of care” means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

(a) description of actual or potential drug therapy problems and their proposed solutions;

(b) a description of desired outcomes of drug therapy provided;

(c) a proposal for patient education and counseling; and

(d) a plan specifying proactive objective and subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and noncompliance) and the frequency with which monitoring is to occur.

(30) “Positive

pressure room” means a room that is at a higher pressure than the adjacent spaces and, therefore, the net airflow is out of the room.

(31) “Preparation” means a CSP that is a sterile drug or nutrient compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber; the article may or may not contain sterile products.

(32) “Product” means a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the FDA. Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer’s labeling or product package insert.

(33) “Quality assurance” means a program for the systematic monitoring and evaluation of the various aspects of a service or facility to ensure that standards of quality are being met.

(34) “Quality control” means a system for verifying and maintaining a desired level of quality in a preparations or process, as by planning, continued inspection, and corrective action as required.

(35) “Single-dose container” means a single-dose, or a single-unit, container for articles or preparations intended for parenteral administration only. It is intended for a single use. Examples of single-dose containers include prefilled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(36) “Secondary engineering control” means the ante area and buffer area or cleanroom in which primary engineering controls are placed.

(37) “Segregated compounding area” means a designated space, either a demarcated area or room, that is restricted to preparing low-risk level CSP’s with twelve (12)-hour or less BUD. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of CSP’s and shall be void of activities and materials that are extraneous to sterile compounding.

(38) “Standard operating procedure” (SOP) means a written protocol detailing the required standards for performance of tasks and operations within a facility.

(39) “Sterile” means free from bacteria or other living microorganisms.

(40) “Sterilization by filtration” means passage

of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

(41) “Sterilizing grade membranes” means membranes that are documented to retain one hundred percent (100%) of a culture of 107 microorganisms of a strain of *Brevundimonas* (*Pseudomonas*) *diminuta* per square centimeter of membrane surface under a pressure of not less than 30 psi. Such filter membranes are nominally at 0.22 µm or 0.2 µm porosity, depending on the manufacturer’s practice.

(42) “Unidirectional flow” means airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(43) “USP 797” United States Pharmacopeia Chapter <797> Pharmaceutical Compounding.

(44) Sterile Preparations- This general Chapter provides procedures and requirements for compounding sterile preparations. General Chapter<797> describes conditions and practices to prevent harm to patients that could result from microbial contamination, excessive bacterial endotoxins, variability in intended strength, unintended chemical and physical contaminants, and ingredients of inappropriate quality in compounded sterile preparations.

(45) “USP/NF standards” means United States pharmacopeia/national formulary. [16.2.19.7 NMAC – Rp, 16.2.19.7 NMAC, 6-16-2015]

16.2.19.8 EXPANDED PRACTICE CERTIFICATION

GENERAL PROVISIONS: The four (4) categories of expanded practice certification authorized by 61-14A-8.1. NMSA 1978 and defined in 16.2.19 NMAC that include, basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy shall all include the following provisions:

A. a doctor of oriental medicine or enrolled in an educational course shall be authorized to perform the techniques and shall have the prescriptive authority, for the duration of the course, to administer and compound the substances that are authorized in the expanded practice formulary for which he is studying under the supervision of the board approved teacher for that educational course; under other circumstances the student shall not be

authorized to obtain, prescribe or dispense such substances;

B. upon receipt of a current copy of CPR/BLS card the board shall annually renew the expanded practice certifications of a doctor of oriental medicine in good standing if the licensee has completed all continuing education required by 16.2.9 NMAC;

C. all expanded practice and prescriptive authority certifications shall automatically terminate when licensure as a doctor of oriental medicine:

(1) is placed on inactive status as specified in 16.2.15 NMAC;

(2) expires as specified in 16.2.8 NMAC; or

(3) is suspended, revoked or terminated for any reason as defined in 16.2.12 NMAC;

D. Proof of completion of an ASHP course relative to USP 797 is required for the first time renewal of basic injection therapy.

E. an expanded practice certification that is revoked or terminated shall not be reinstated; the doctor of oriental medicine must reapply for expanded practice certification as a new applicant;

F. all expanded practice certifications that were automatically terminated due to inactive status, expiration or suspension as specified in Subsection E of 16.2.19.8 NMAC, shall be automatically reinstated when licensure as a doctor of oriental medicine is reinstated, provided that:

(1) all fees required by 16.2.10 NMAC have been paid;

(2) all continuing education requirements specified in 16.2.9 NMAC have been completed; and

(3) all other relevant, reinstatement provisions, required by board rule, have been completed;

G. each year the board may review the expanded practice formularies for necessary amendments; when new substances are added to a formulary, appropriate education in the use of the new substances shall be approved and required by the board and the board of pharmacy for doctors of oriental medicine applying for new certification or as continuing education for renewal of the applicable expanded practice certification or certifications;

H. a doctor of oriental medicine certified for a category of expanded practice under 16.2.19 NMAC

that authorizes the use of testosterone, a controlled substance, and any other drug that is classified as a controlled substance, shall register with the federal DEA (drug enforcement agency) prior to obtaining, prescribing, administering, compounding or dispensing the controlled substance;

I. a doctor of oriental medicine certified for expanded practice, when prescribing, shall use prescription pads printed with his or her name, address, telephone number, license number and his or her specific expanded practice certifications; if a doctor of oriental medicine is using a prescription pad printed with the names of more than one (1) doctor of oriental medicine, the above information for each doctor of oriental medicine shall be on the pad and the pad shall have a separate signature line for each doctor of oriental medicine; each specific prescription shall indicate the name of the doctor of oriental medicine for that prescription and shall be signed by the prescribing doctor of oriental medicine;

J. a doctor of oriental medicine certified for expanded practice shall always, when diagnosing and treating a patient, use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine similarly certified and practicing under similar circumstances, giving due consideration to the locality involved; failure to comply with this fundamental requirement may result in denial, suspension or revocation of licensure or certification, or other disciplinary measures, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.;

K. when a doctor of oriental medicine is certified for injection therapy, this certification automatically supersedes his certification for basic injection therapy; and

L. the provisions for certification transition from extended prescriptive authority (Rx1) and expanded prescriptive authority (Rx2) to the expanded practice categories specified in 16.2.19 NMAC.

[16.2.19.8 NMAC – Rp, 16.2.19.8 NMAC, 6-16-2015]

16.2.19.9 EXPANDED PRACTICE CERTIFICATION BOARD REQUIREMENTS:

A. The board shall have final authority for certification of all applicants.

B. The board shall notify the applicant in writing by mail

postmarked no more than thirty (30) days after the receipt of the initial application as to whether the application is complete or incomplete and missing specified application documentation.

C. The board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the notice of receipt of the complete application sent out by the board, whether the application is approved or denied.

D. If the application is denied, the notice of denial shall state the reason the application was denied.

E. In the interim between regular board meetings the board's chairman or an authorized designee of the board shall approve an expanded practice certification to a qualified applicant who has filed, with the board, a complete application and complied with all requirements for expanded practice certification. The temporary expanded practice certification will be ratified by the board on the date of the next regular board meeting. Final expanded practice certification shall only be granted by the board.

F. the board shall maintain a list of each doctor of oriental medicine who is certified for each expanded practice category and shall notify the New Mexico board of pharmacy of all such certified licensees;

G. The board shall have the authority to deny, suspend, revoke or otherwise discipline an expanded practice certification, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in the act and clarified in 16.2.12 NMAC. [16.2.19.9 NMAC – Rp, 16.2.19.9 NMAC, 6-16-2015]

16.2.19.10 EXPANDED PRACTICE SCOPE OF PRACTICE: (from 16.2.2.10 NMAC):

A. In addition to the scope of practice outlined in section 16.2.2 NMAC for a doctor of oriental medicine in New Mexico, the scope of practice for those certified in expanded practice shall include certification in any or all of the following modules: (61-14A-8.1BNMSA1978) basic injection therapy, injection therapy, intravenous therapy and bio-identical hormone therapy as specified in 16.2.19 NMAC.

B. The scope of practice for those doctors of oriental medicine certified in expanded practice shall also include the expanded practice and prescriptive authority defined in 61-14A-8.1C NMSA1978.

[16.2.19.10 NMAC – Rp, 16.2.19.10 NMAC, 6-16-2015]

16.2.19.11 BASIC INJECTION

THERAPY CERTIFICATION: The board shall issue, to a doctor of oriental medicine, certification for basic injection therapy upon completion of the course prerequisites including 30 hours of Pharmacology as specified in 16.2.18.9 and the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of successful completion of the basic injection therapy educational course specified in 16.2.18 NMAC.

[16.2.19.11 NMAC – Rp, 16.2.19.11 NMAC, 6-16-2015]

16.2.19.12 INJECTION

THERAPY CERTIFICATION: The board shall issue to a doctor of oriental medicine, certification for injection therapy, upon completion of the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of:

(1) current certification by the board for basic injection therapy; or

(2) any course combining basic injection therapy and injection therapy, as they are specified in the board's rules, or otherwise in accordance with law, must be completed within two (2) years of the start of the course.

E. The doctor of oriental medicine shall submit, with the application, proof of successful completion of the injection therapy educational course approved by the board. [16.2.19.12 NMAC – Rp, 16.2.19.12 NMAC, 6-16-2015]

16.2.19.13 INTRAVENOUS

THERAPY CERTIFICATION: The board shall issue to a doctor of oriental medicine, certification for intravenous therapy, upon completion of the course prerequisites including board certification in basic injection therapy, and three (3) hours of college level biochemistry, and the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of successful completion of an intravenous therapy educational course approved by the board. [16.2.19.13 NMAC – Rp, 16.2.19.13 NMAC, 6-16-2015]

16.2.19.14 INTRAVENOUS THERAPY EXPANDED PRACTICE

CERTIFICATION: The board shall only issue certification to applicants after successful completion of the Intravenous Therapy Expanded Practice Course, and successful completion and documentation of a practicum to include three hundred (300) hours under the supervision of a board approved physician and one hundred fifty (150) individual patients to be completed within two (2) years of completion of the coursework.

[16.2.19.14 NMAC – N, 6-16-2015]

16.2.19.15 BIOIDENTICAL HORMONE THERAPY

CERTIFICATION: The board shall issue to a doctor of oriental medicine, certification for bioidentical hormone therapy, upon completion of the following requirements:

A. the doctor of oriental medicine shall be a doctor of oriental medicine in good standing;

B. the doctor of oriental medicine shall submit to the board the completed application form provided by the board;

C. the doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC; and

D. the doctor of oriental medicine shall submit, with the application, proof of successful completion of the bioidentical hormone

therapy educational course approved by the board.

[16.2.19.15 NMAC – Rp, 16.2.19.14 NMAC, 6-16-2015]

16.2.19.16 EXPANDED PRACTICE CERTIFICATION

RENEWAL: If a doctor of oriental medicine certified for expanded prescriptive authority does not complete all expanded prescriptive authority continuing education requirements specified in 16.2.9.9 NMAC before the end of the sixty (60) day grace period, the expanded prescriptive authority certification is expired and that licensee shall not be certified for expanded prescriptive authority until the continuing education is completed. Provided that all other renewal requirements have been received by the board, such a licensee shall continue to be licensed as a doctor of oriental medicine and is authorized for that scope of practice but shall not be authorized for the relevant expanded prescriptive authority scope of practice. For an expired expanded prescriptive authority certification, if a properly completed application for certification renewal, including proof of completion of the required expanded prescriptive authority continuing education, is received at the board office within one (1) year of the last regular renewal date, the expanded prescriptive authority certification shall be renewed if all the requirements of late certification renewal during the sixty (60) day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC, and the licensee also pays the fee for expired certification renewal specified in 16.2.10 NMAC.

The licensee must notify the board of the correct current mailing address and of any address changes within ten (10) days of the change. A doctor of oriental medicine who fails to renew an expired license by the next July 31 annual license renewal date or who fails to complete any required continuing education specific to his prescriptive authority certification shall be required to reapply as a new applicant for expanded practice, certification the expired license number of any doctor of oriental medicine certified in expanded practice who fails to renew in a timely manner in accordance with board rules. The Board will promptly report to the board of Pharmacy when the expired license is renewed or reinstated.

[16.2.19.16 NMAC – Rp, 16.2.19.15 NMAC, 6-16-2015]

16.2.19.17 TRANSITION PROVISIONS:

A. A doctor of oriental medicine, previously certified for extended prescriptive authority including prolotherapy, (Rx1) as of the effective date of this section, shall be automatically certified for basic injection therapy and prolotherapy using previously taught and appropriate injection routes and only substances listed in Paragraph (1) of Subsection F of 16.2.20.8 NMAC under the provisions of 16.2.19.10 NMAC.

B. A doctor of oriental medicine, previously certified for the expanded prescriptive authority (Rx2) as of the effective date of this section, shall be automatically certified for:

(1) injection therapy under the provisions of 16.2.19.11 NMAC basic injection therapy certification is automatically superseded by injection therapy certification;

(2) intravenous therapy under the provisions of 16.2.19.12 NMAC; and

(3) bioidentical hormone therapy under the provisions of 16.2.19.13 NMAC.
[16.2.19.17 NMAC – Rp, 16.2.19.16 NMAC, 6-16-2015]

16.2.19.18 LICENSE

DESIGNATION: The designation for expanded practice shall follow the license number on the license and shall reflect the respective modules of certification: Rx basic injection, Rx injection, Rx intravenous, Rx hormones.
[16.2.19.18 NMAC – Rp, 16.2.19.17 NMAC, 6-16-2015]

16.2.19.19 ULTRASOUND

CREDENTIALING: A licensed doctor of oriental medicine may utilize musculoskeletal diagnostic ultrasound and ultrasound guidance of procedures with the RMSK credential from ARDMS, the American registry of diagnostic medical sonography. A licensed doctor of oriental medicine (DOM) who wishes to practice diagnostic musculoskeletal ultrasound and ultrasound guidance of procedures shall register with the board of acupuncture and oriental medicine (BAOM) to be provisionally credentialed to practice diagnostic musculoskeletal ultrasound and ultrasound guided procedures upon completion of a minimum of thirty (30) hours in BAOM approved courses. Within thirty six (36) months of provisional credentialing, the doctor of oriental medicine shall submit to the BAOM proof of scheduling for RMSK testing with ARDMS. If the provisional credentialing period is continued to thirty six (36) months without ARDMS RMSK credentialing, the provisionally

credentialed DOM shall submit proof of thirty (30) hours of continuing education in courses approved by the BAOM. Provisional credentialing shall lapse within forty eight (48) months of initial provisional credentialing. Ultrasound credentialing does not require certification in expanded practice.

[16.2.19.19 NMAC – Rp, 16.2.19.18 NMAC, 6-16-2015]

History of repealed material.

16.2.19 NMAC, Expanded Practice Certifications, filed 10-29-2009, repealed 6-16-2015

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.1 NMAC, Section 7, effective 6-16-15.

16.2.1.7 DEFINITIONS:

A. The definitions in Subsection B of 16.2.1.7 NMAC are in addition to those in the act.

B. The following definitions apply to the rules and the act.

(1) “A4M” is the American academy of anti-aging medicine.

(2) “ACAM” is the American college of alternative medicine.

(3) “ACAOM” is the accreditation commission for acupuncture and oriental medicine.

(4) “AMA” is the American medical association.

(5) “Act” is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.

(6) “Animal acupuncture” is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1, to 61-14-20) and the rules of the New Mexico board of veterinary medicine (16.25.9.15 NMAC).

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

(8) “Applicant for temporary licensure” is a person who has submitted to the board an application

for temporary licensure as a doctor of oriental medicine.

(9) “Auricular acupuncture detoxification” is an acupuncture related technique used only in the treatment and prevention of alcoholism, substance abuse and chemical dependency. Auricular acupuncture detoxification may be described or referred to as “auricular detoxification”, “acupuncture detoxification”, “auricular acupuncture detoxification”, or “acudetox”.

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

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

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

(13) “Authorized substances” are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to 61-14A-8.1 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific category of expanded practice as defined in 16.2.19 NMAC.

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

(15) “Biomedical diagnosis” is a diagnosis of a person’s medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, ninth revision, clinical modification (ICD-9-CM).

(16) “Biomedicine” is the application of the principles of the natural sciences to

clinical medicine.

~~(13)~~ (17)

“Certified auricular detoxification specialist” is a person certified by the board under the provisions of 16.2.16.10 NMAC to perform auricular detoxification techniques, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. A person certified pursuant to 61-14A-4.1(B) shall use the title of “certified auricular detoxification specialist” or “C.A.D.S.”

~~(14)~~ (18)

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

~~(15)~~ (19)

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

~~(16)~~ (20)

“Clinical experience” is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than five hundred (500) patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least twenty five (25) different patients within that year. One (1) patient hour is defined as one (1) clock hour spent in the practice of oriental medicine with patients.

~~(17)~~ (21)

“Complainant” is the complaining party.

~~(18)~~ (22)

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

~~(19)~~ (23)

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

~~(20)~~ (24)

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

~~(21)~~ (25)

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

~~(22)~~ (26)

“Doctor of oriental medicine” is a physician licensed to practice acupuncture

and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

(27)

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

~~(23)~~ (28)

“Educational course” is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four (4) respective certifications in expanded practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

~~(24)~~ (29)

“Educational program” is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the act and 16.2.7 NMAC.

~~(25)~~ (30)

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

~~(26)~~ (31)

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

~~(27)~~ (32)

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

~~(28)~~ (33)

“Externship supervisor” is a doctor of oriental medicine who has at least five (5) years clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board’s application requirements for an externship supervisor

and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC.

~~(29)~~ (34)

“Good cause” is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

~~(30)~~ (35)

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

(36)

“ICE” is the institute for credentialing excellence.

(37)

“IFM” is the institute for functional medicine.

~~(31)~~ (38)

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

~~(32)~~ (39)

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

~~(33)~~ (40)

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

~~(34)~~ (41)

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

temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

~~(35)~~ (42)

“Live cell products” are living cells from glandular tissues and other tissues.

~~(36)~~ (43)

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

~~(37)~~ (44)

“NCA” is a notice of contemplated action.

(45)

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

~~(38)~~ (46)

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

~~(39)~~ (47)

“Oxidative medicine” is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body’s oxidation and reduction function and health.

~~(40)~~ (48)

“Protomorphogens” are extracts of glandular tissues.

~~(41)~~ (49)

“Respondent” is the subject of the complaint.

~~(42)~~ (50)

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

~~(43)~~ (51)

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

~~(44)~~ (52)

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

~~(45)~~ (53)

“Supervision” is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC. No more than four (4) students shall be under supervision for supervised clinical practice and no more than four students shall be under supervision for supervised

clinical observation by a qualified instructor at any time.

~~(46)~~ (54)

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

~~(47)~~ (55)

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

~~(48)~~ (56)

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

(57) “USP 797”

is the United States pharmacopeia Chapter 797 pharmaceutical compounding.

[11-3-81...7-1-96; N, 8-31-98; A, 2-17-00; 16.2.1.7 NMAC - Rn & A, 16 NMAC 2.1.7, 8-13-01; A, 4-4-02; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10; A/E, 06-15-10; Re-pr & A, 11-28-10; A, 03-02-14; A, 06-16-15]

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**This is an amendment to 16.2.3 NMAC,
Section 10 and 16, effective 6-16-15.**

16.2.3.10 INITIAL LICENSURE APPLICATION: Upon approval of an application for licensure that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure, except that licenses initially issued after May 1 will not expire until July 31 of the next renewal period as defined in 16.2.8.9 NMAC; the application requirements for a license shall be receipt of the following by the board:

- A. the fee for application for licensure specified in 16.2.10 NMAC;
- B. an application for licensure that is complete and in English on a form provided by the board that shall include the applicant’s name, address, date of birth and social security number, if available;
- C. two (2) passport-type photographs of the applicant taken not more than six (6) months prior to the

submission of the application;

D. an affidavit as provided on the “initial licensure application” as to whether the applicant:

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

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

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred;

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules;

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender

Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

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

G. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

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

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within ten (10) days if the applicant's address changes;

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the required program; this copy shall include on it an affidavit certifying that it is a true copy of the original;

I. an official copy of the applicant's transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; or this copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant's application for licensure; and

J. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary

public; the translation of any document relevant to an application shall be at the expense of the applicant.

[11-3-81...7-1-96; 8-31-98; 5-15-99, 12-1-99; 16.2.3.13 NMAC - Rn & A, 16 NMAC 2.3.13, 5-20-00; 16.2.3.10 NMAC - Rn, 16.2.3.13 NMAC, 7-27-01; A, 7-27-01; A, 3-2-03; A, 02-15-05; A, 11-28-09; A, 02-08-13; A,6-16-15]

16.2.3.16 EXPIRATION AND ABANDONMENT OF APPLICATION:

If all application requirements have not been met within twenty four (24) months of the initial application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause.

If the application is abandoned and the applicant wants to reapply for licensure, the applicant shall be required to submit the completed current application form, pay the current application fee and satisfy the requirements for licensure then in effect at the time of the new application.

~~[The board shall notify the applicant of pending abandonment of the application for licensure by mail postmarked at least 60 days before the date of abandonment which is the expiration of the 24 month deadline for completing all requirements for licensure. The board shall notify the applicant of abandonment of the application by mail postmarked no more than 21 days after the date of abandonment.]~~

[11-3-81...7-1-96; 2-17-00; 16.2.3.18 NMAC - Rn & A, 16 NMAC 2.3.18, 5-20-00; 16.2.3.16 NMAC - Rn, 16.2.3.18 NMAC, 7-27-01; A, 7-27-01; A, 02-15-05; A, 11-28-09; A, 6-16-15]

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.4 Section 13 and 14, effective 6-16-15.

16.2.4.13 PAYMENT OF CLINICAL SKILLS EXAMINATION FEE:

The non refundable clinical skills examination fee specified in 16.2.10 NMAC shall be paid by check or money order in U.S. funds and received in the board's office at least [30] forty five (45) calendar days prior to the next scheduled clinical skills examination.

[11-3-81...7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.12 NMAC - Rn & A, 16 NMAC 2.4.12, 5-20-00; 16.2.4.13 NMAC - Rn, 16.2.4.12 NMAC, 7-26-01;

A, 7-26-01; A, 03-02-03; A, 11-28-09; A, 02-08-13; A, 6-16-15]

16.2.4.15 FORFEITURE OF CLINICAL SKILLS EXAMINATION FEE:

Once the clinical skills examination fee is received in the board office, the applicant shall take the next scheduled clinical skills examination or forfeit the clinical skills examination fee.

~~[Exceptions may be made, at the board's discretion, for good cause. If exceptions are made for good cause, under the applicant shall be allowed to take the next subsequent scheduled clinical skills examination without paying an additional examination fee if the examination fee has been paid.]~~

[3-23-93...7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.14 NMAC - Rn & A, 16 NMAC 2.4.14, 5-20-00; 16.2.4.15 NMAC - Rn, 16.2.4.14 NMAC, 7-26-01; A, 7-26-01; A, 03-02-03; A, 6-16-15]

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.8 NMAC, Section 8, 10, 12 and 13, effective 6-16-15.

16.2.8.8 LICENSE RENEWAL GENERAL REQUIREMENTS:

A. ~~[Except as provided otherwise in the act, or in these rules, or pursuant to other state law,] Except as otherwise provided in the act, these rules or state law,~~ including but not limited to the board's right to deny an application for renewal pursuant to Section 61-14A-17 NMSA 1978, and the Parental Responsibility Act, NMSA 1978, Section 40-5A-1, et seq., each licensed doctor of oriental medicine shall be granted renewal of his license for one year upon receipt and approval by the board or its designee of completion of the following requirements.

B. Any applicant for license renewal who is licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act, shall provide an affidavit regarding the disciplinary record of the applicant since last renewing his or her license with the board.

C. Any applicant for

license renewal who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC, may be subject to disciplinary action [~~at any time~~], including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.

D. Any applicant for license renewal who provides the board with false information or makes a false statement to the board may be subject to disciplinary action [~~at any time~~], including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq. [16.2.8.8 NMAC - Rp, 16.2.8.8 NMAC, 02-15-05; A, 11-28-09; A, 6-16-15]

16.2.8.10 ANNUAL LICENSE RENEWAL APPLICATION: [~~Upon approval of an application for license renewal that fulfills the requirements listed below, the board shall renew the license. The application requirements for license renewal shall be receipt of the following documentation by the board: The board will renew a doctor of oriental medicine's license upon receipt of a renewal application with the following supporting documentation, at the board office:~~

A. the license renewal fee specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process;

B. an license renewal application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

C. an affidavit as provided on the "annual license renewal form" as to whether the applicant since receiving or last renewing (whichever is more recent) his license with the board:

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

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

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or as provided on the "annual license renewal form";

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; and

D. an affidavit as provided on the "annual license renewal form" regarding the applicant's license history since last renewing his license with the board stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

E. an affidavit as provided on the "annual license renewal form" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq; and

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

F. an affidavit as

provided on the "annual license renewal form" stating that the applicant understands that:

(1) [~~the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;~~] each licensed doctor of oriental medicine is responsible for the timely submission of the annual renewal application and fees;

(2) [~~the license must be renewed annually by July 31; and] the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;~~

(3) [~~the applicant must notify the board within 10 days if the applicant's address changes; and] the license must be renewed annually by July 31; and~~

(4) the applicant must notify the board within ten (10) days if the applicant's address changes;

G. if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits;

H. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

I. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC; doctors of oriental medicine certified for the expanded practice shall submit satisfactory proof, as determined by the board, of completion of any expanded practice continuing education requirements established by the board in

16.2.9.9 NMAC

[16.2.8.10 NMAC - Rp, 16.2.8.10 NMAC, 02-15-05; A, 11-28-09; A, 6-16-15]

16.2.8.12 EXPIRED

LICENSE: [If a licensee has not renewed his license, including all continuing education requirements specified in 16.2.9.8 NMAC within the 60 day grace period provided by Section 61-14A-15 NMSA 1978, the license is expired and that licensee shall not practice oriental medicine until their expired license is renewed. For an expired license, if a properly completed application for license renewal is received at the board office within one year of the last regular renewal date, the license shall be renewed if all the requirements of late license renewal during the 60 day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC, and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC. For each licensee whose license has expired, the board shall notify the licensee by return receipt mail sent to the address on record that the license has expired and shall notify the licensee that he must not practice oriental medicine until the license is renewed. This notification shall also contain an explanation of the procedures and fees for renewing the license and the consequences of not renewing the license. The board is responsible for sending the notification by return receipt mail in a timely manner to the address on record for the licensee and for maintaining a record of all such notifications sent including the return receipt documents. The board is not responsible for verifying that the return receipt was returned by the post office to the board, for further follow up to verify that the notification was received or to locate and notify a licensee who has changed address without properly notifying the board of the new address. The licensee is responsible for notifying the board of the correct current address and of any address changes. Any former licensee, after being properly notified as described above, who fails to renew his or her expired license by the next July 31 annual license renewal date after the notification shall be required to apply as a new applicant.] At the end of the sixty (60) day grace period provided by Section 61-14A-15 NMSA 1978, a licensee that has not renewed his license, nor completed all continuing education requirements specified in 16.2.9.8 NMAC, the license is expired and the doctor of oriental medicine shall not practice oriental medicine until his expired license

is renewed. For an expired license, if a properly completed application for license renewal is received at the board office within one (1) year of the last regular renewal date, the license shall be renewed, provided all the requirements of late license renewal are completed in addition to the requirements of 16.2.8.11 NMAC and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC. The licensee shall notify the board of his correct and current mailing address and of any address changes within ten (10) days of the change. Any doctor of oriental medicine who fails to renew his expired license by the next July 31 annual license renewal date after the notification shall be required to apply as a new applicant.

[16.2.8.12 NMAC - Rp, 16.2.8.12 NMAC, 02-15-05; A, 9-25-06; A, 11-28-09; A, 6-16-15]

16.2.8.13 [EXPANDED PRACTICE CERTIFICATION RENEWAL:

A. If a doctor of oriental medicine certified for expanded prescriptive authority does not complete all expanded prescriptive authority continuing education requirements specified in 16.2.9.9 NMAC within during the 60 day grace period, the expanded prescriptive authority certification(s) is expired. The doctor of oriental medicine may only practice oriental medicine and that licensee shall not be certified for expanded prescriptive authority until the continuing education is completed. Provided that all other renewal requirements have been received by the board, such a licensee shall continue to be licensed as a doctor of oriental medicine and is authorized for that scope of practice but shall not be authorized for the relevant expanded prescriptive authority scope of practice. For an expired expanded prescriptive authority certification, if a properly completed application for certification renewal, including proof of completion of the required expanded prescriptive authority continuing education, is received at the board office within one year of the last regular renewal date, the expanded prescriptive authority certification or certifications shall be renewed if all the requirements of late certification renewal during the 60 day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC, and the licensee also pays the fee for expired certification renewal specified in 16.2.10 NMAC. [For each licensee whose expanded prescriptive

authority certification has expired, the board shall notify the licensee by return receipt mail sent to the address on record that the expanded prescriptive authority certification or certifications has expired and shall notify the licensee that he or she must not practice those areas authorized by the expanded prescriptive authority certification until the prescriptive authority certification is renewed. This notification shall also contain an explanation of the procedures and fees for renewing the expanded prescriptive authority certification and the consequences of not renewing the expanded prescriptive authority. The board is responsible for sending the notification by return receipt mail in a timely manner to the address on record for the licensee and for maintaining a record of all such notifications sent, including the return receipt documents. The board is not responsible for verifying that the return receipt was returned by the post office to the board, for further follow up to verify that the notification was received or to locate and notify a licensee who has changed address without properly notifying the board of the new address.] The licensee [is responsible for notifying] must notify the board of the correct and current mailing address and of any address changes within ten (10) days of the change. Any licensee, a doctor of oriental medicine [after being properly notified as described above,]who fails to renew, [including completion of any required continuing education, his or her] an expired [expanded prescriptive authority certification]license by the next July 31 annual license renewal date or who fails to complete any required continuing education specific to his [after the notification shall be required to apply as a new applicant for expanded]prescriptive authority certification shall be required to reapply as a new applicant for expanded practice certification. [except that there shall be a limited expanded prescriptive authority certification reinstatement period as defined in 16.2.8.13 NMAC.]

[B.] [The board may, on an individual basis, renew a license that has expired for more than one year if the former licensee can demonstrate good cause as defined in 16.2.1.7 NMAC.]

[C.] The board shall report to the New Mexico board of pharmacy [any expired license that was previously held by a doctor of oriental medicine who was is certified for the expanded prescriptive authority prescriptive authority and shall report to the New Mexico board of pharmacy any renewed or reinstated license of a doctor of oriental medicine who is certified for the expanded

prescriptive authority prescriptive authority.] the expired license number of any doctor of oriental medicine certified in expanded practice who fails to renew in a timely manner in accordance with board rules. The board will promptly report to the board of pharmacy when the expired license is renewed or reinstated.}]

[RESERVED]

[16.2.8.13 NMAC - N, 9-25-06; Repealed, 11-28-09; 16.2.8.13 NMAC - Rn, 16.2.8.12 Subsections B, C & D & A, 11-28-09; Repealed, 6-16-15]

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.9 NMAC, Sections 8 and 9, effective 6-16-15.

16.2.9.8 CONTINUING EDUCATION:

A. A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

(1) proof of continuing NCCAOM recertification in oriental medicine, acupuncture or Chinese herbology; [or]

(2) proof of completion of fifteen (15) hours annually, or sixty (60) hours every four (4) years, of NCCAOM approved continuing education courses or of courses approved by other acupuncture or oriental medicine licensing authorities; or

(3) a course taken for initial certification in expanded practice may not also be used for continuing education required for annual license renewal.

B. A doctor of oriental medicine who is a board approved examiner, examiner supervisor, or examiner trainer, for the clinical skills examination, shall be granted continuing education credit for time spent functioning as an examiner or training to be an examiner. This also applies to an observing board member who has completed the training. The continuing education credit is limited to six (6) hours per year.

C. The board shall annually audit a random ten (10) percent

of continuing education documentation to determine the validity of the documentation.

D. A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

E. A doctor of oriental medicine shall maintain an understanding of the current act and rules. [16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12-1-01; A, 10-1-03; A, 02-15-05; A, 9-25-06; A, 11-28-09; A/E, 06-15-10; A/E, 06-15-10; Re-pr, 11-28-10; A, 02-08-13; A, 03-02-14; A, 6-16-15]

16.2.9.9 CONTINUING EDUCATION FOR LICENSEES CERTIFIED FOR EXPANDED PRACTICE:

In addition to the continuing education requirements listed in 16.2.9.8 NMAC, doctors of oriental medicine previously certified in expanded practice are subject to the following requirements beginning August 1, 2013:

A. a doctor of oriental medicine certified for expanded practice in one (1) or more areas as defined in 16.2.19 NMAC shall complete continuing education hours as follows:

(1) three (3) hours every three (3) years for recertification in basic injection therapy;

(2) seven (7) hours every three (3) years for recertification in injection therapy;

(3) seven (7) hours every three (3) years for recertification in intravenous therapies; and

(4) seven (7) hours every three (3) years for recertification in bioidentical hormone therapy;

(5) except that a doctor of oriental medicine recertifying in injection therapy or intravenous therapy need not complete an additional three (3) hours in basic injection therapy; [and]

(6) a doctor of oriental medicine certified in basic injection therapy, injection therapy or intravenous therapy must complete an America society of health-systems pharmacists (ASHP) accredited course relative to USP 797 prior to July 31, 2016; and every six (6) years thereafter; and

(7) ~~(6)~~ (7) doctors of oriental medicine previously certified as Rx1 shall need seven (7) hours, every

three (3) years, for recertification in prolotherapy as specified in 16.2.19.16 NMAC.

B. license holders who are newly certified for expanded practice shall complete continuing education hours on a prorated basis during the first year(s) of certification, and then shall comply with recertification requirements every three (3) years thereafter;

C. courses approved for recertification taken within one hundred twenty (120) days prior to a renewal cycle may be carried over and applied to the next renewal cycle, but may not be used for both renewal cycles.

~~(C.)~~ **D.** the continuing education shall be about substances in the board approved appropriate expanded practice formulary or formularies defined in 16.2.20 NMAC or updated information in improving current techniques or [new and advanced] other techniques that are part of the expanded practice certification as defined in 16.2.19 NMAC;

~~(D.)~~ **E.** continuing education courses, including teachers, shall be approved by the board:

(1) course providers requesting approval for Rx continuing education certification shall be required to submit the following materials to the board for approval no less than forty five (45) days prior to the date of the course offering and the materials shall include:

(a) an application fee as defined in Subsection C of 16.2.10.9 NMAC;

(b) course description, including objectives, subject matter, number of hours, date time and location; and

(c) curriculum vitae of the instructor(s) including previous experience of at least five (5) years in subjects they are engaged to teach;

(2) courses approved by national providers of continuing medical education(CME) are recognized by the board as approved providers for expanded practice continuing education units (CEU) including but not limited to A4M, ACAM, AMA, IFM;

~~(2.)~~ (3) individual practitioners requesting approval for a specific course that has not already been approved as defined in Paragraph [(+) (2)] of Subsection D of 16.2.9.9 NMAC, for their own personal continuing education shall submit a copy of the course brochure including a course description, subject matter, contact hours, and curriculum

vitae of the instructor forty five (45) days prior to the course offering;

~~(3)~~ **(4)** the continuing education committee shall meet each month on or before the fifteenth (15th) to review course materials if applications have been submitted; electronic review is acceptable;

~~(4)~~ **(5)** a doctor of oriental medicine certified for expanded practice in basic injection, injection or intravenous therapies must remain current in basic life support, BLS, and CPR with proof of having completed an American heart association approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of each triennial expanded practice certification renewal; and

[E.] E. teaching an approved continuing education course shall be equivalent to taking the approved course; the first time that the course is offered continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements for expanded practice continuing education; the board may determine specific mandatory courses that must be completed; specific mandatory courses shall be noticed at least six **(6)** months prior to the date of the course; exceptions to being required to complete a specific mandatory course may be made for good cause.

[16.2.9.9 NMAC - N, 10-1-03; A, 02-15-05; A, 11-28-09; A, 02-08-13; A, 03-02-14; A, 6-16-15]

REGULATION AND LICENSING DEPARTMENT BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.11 NMAC, Section 8, effective 6-16-15.

16.2.11.8 OFFICE: All offices shall be registered with the board. All offices must have a written needlestick policy in place including recommendations for postexposure prophylaxis. When the practice of acupuncture and oriental medicine is conducted in a building used for residential purposes, a room or rooms shall be set apart as an office for the practice and shall be used solely for this purpose. It shall be equipped with a washroom and toilet facilities readily available in the same premises. An office

may be inspected at any time during normal business hours by the board or its agents.

[16.2.11.8 NMAC - Rp 16 NMAC 2.11.8, 12-1-01; A, 6-16-15]

REGULATION AND LICENSING DEPARTMENT BOARD OF OPTOMETRY

This is an amendment to 16.16.3 NMAC, Section 9, effective 06-25-2015.

16.16.3.9 APPLICATION REQUIREMENTS:

In accordance with Section 61-2-8 NMSA 1978, and those qualifications set forth therein, candidates for examination must submit to the board office, at least sixty-five (65) days prior to the announced examination date, a letter of intent applying for the next regularly scheduled board examination accompanied by the required application processing fee. In addition to a completed, board-approved application form, the following documents must be received by the board office no later than forty (40) days prior to the requested examination.

A. A copy of the applicant's birth certificate certified to be a true and correct copy of the original.

B. Letters of reference from two currently licensed optometrists actively engaged in the practice of optometry, and not related to the applicant, written on their letterhead stationery.

C. Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

D. A complete official optometry transcript showing the applicant's graduation sent directly to the board by a college of optometry as approved by the American optometric association's council of optometric education.

(1) An applicant expecting to graduate in the spring or summer prior to the board's examination who does not expect completed transcripts to be available before the documentation deadline, must make arrangements for the school to send a letter directly to the board regarding the applicant's expected graduation.

(2) The letter must be postmarked before the forty-day documentation deadline.

(3) The completed, official transcript must be received by the board before the

scheduled examination date or the application will be considered incomplete, and the applicant will be denied entrance into the examination.

E. A statement and copy of other state license(s) held by the applicant.

F. A recent, passport-type photograph of the applicant. The applicant must sign the back of the photograph in the presence of the notary who is also witnessing the applicant's signature on the board-approved exam application form.

G. An affidavit from the applicant that the applicant has not engaged in any optometry practice of an illegal or unethical nature as defined in the New Mexico Optometry Act, NMSA 1978, Sections 61-2-1 to 61-21-18 (1995 Repl. Pamp.).

H. Copy of current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be self-study.

I. A verification from an accredited optometry school of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology, as provided in Subsection A of 16.16.7.10 NMAC, and a minimum of twenty (20) post-graduate clock hours in clinical pharmacology as provided in Subsection B of 16.16.7.11 NMAC.

J. Verification directly from the national board of examiners in optometry (NBEO) that the applicant has successfully passed part I, part II, part III, and the TMOD of the NBEO as provided in Subsection B of 16.16.3.8 NMAC.

(1) If NBEO examination results will not be released by the NBEO prior to the documentation deadline, the applicant must submit to the board a copy of the NBEO letter scheduling the applicant for the NBEO exam(s).

(2) Upon receipt of verification of successful completion of the required NBEO exam(s), and upon having met all other requirements stipulated in this regulation, the approved candidate will be scheduled for the next regularly scheduled board examination.

K. A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one

of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination deadline may disqualify the candidate from the exam.

L. Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

~~**M.** **Nationwide criminal history screening.** All applicants for initial licensure in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.~~

~~**(1)** Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.~~

~~**(2)** Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.~~

~~**(3)** If the criminal background screening reveals a felony or a violation of the Optometric Practice Act the applicant will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure.] [11-17-73; 3-8-86; 3-31-91; 8-21-92; 6-24-94; 9-30-95; 10-14-95; 5-31-96; 2-15-99; 16.16.3.9 NMAC - Rn, 16 NMAC 16.3.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012; A, 06-25-2015]~~

REGULATION AND LICENSING DEPARTMENT BOARD OF OPTOMETRY

This is an amendment to 16.16.4 NMAC, Section 9, effective 06-25-2015

16.16.4.9 APPLICATION REQUIREMENTS: At least sixty-five (65) days prior to the next scheduled examination every applicant for licensure by endorsement must submit to the board office the required application-processing

fee with a letter of intent stating the date of examination for which he/she wishes to be scheduled. The following items must be received by the board office at least forty (40) days prior to the regularly scheduled board examination for which the applicant wishes to be scheduled.

A. A copy of the applicant's birth certificate certified to be a true and correct copy of the original.

B. An affidavit that the applicant has not at any time preceding application been engaged in any optometric practice of an illegal or unethical nature as defined in the Optometry Act.

C. Copy(ies) of any other state license(s) held by the applicant.

D. Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

E. A complete, official optometry transcript showing the applicant's graduation sent directly to the board office by a college of optometry as approved by the American optometric association's council on optometric education.

F. Letters of reference from two currently licensed optometrists in the endorsing state of licensure.

G. Verification of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology from an accredited institution.

H. A complete professional resume or curriculum vitae' to date.

I. Copy of current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be self-study.

J. A completed, signed, and notarized board-approved exam application form.

K. The required application and examination fees (16.16.2.8 NMAC and 16.16.2.9 NMAC).

L. A recent, passport-type photograph of the applicant which the applicant has signed on the back in the presence of the notary public who is also witnessing the applicant's signature on the application form.

M. Verifications of licensure status sent directly to the board from all state licensing boards where the applicant is or has ever been licensed. Endorsement candidates will require the following information:

(1) verification

that the applicant has been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made to the board office;

(2) verification that the applicant has completed fourteen (14) days, or one hundred twelve (112) hours of continuing education during the immediate seven years prior to the application, providing that at least twenty-two (22) of those hours were completed within the immediate prior year; and

(3) verification of examination requirements which the applicant met to be licensed to practice in that state (see 16.16.4.8 NMAC).

N. Verification must be provided for pre-1994-1995 academic year optometry school graduates of successful completion of a minimum twenty (20) hour course in clinical pharmacology as set forth in Subsection B of 16.16.7.11 NMAC.

O. A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination may disqualify the candidate from the exam.

P. Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

~~**Q.** **Nationwide criminal history screening.** All applicants for initial licensure in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.~~

~~**(1)** Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.~~

~~**(2)** Applications will be processed pending the completion of the nationwide criminal background~~

screening and may be granted while the screening is still pending:

(3) If the criminal background screening reveals a felony or a violation of the Optometric Practice Act the applicant will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure.] [11-17-73; 12-6-87; 3-31-91; 8-21-92; 6-24-94; 10-18-94; 10-14-95; 5-31-96; 2-15-999; 16.16.4.9 NMAC - Rn, 16 NMAC 16.4.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012; A, 06-25-2015]

REGULATION AND LICENSING DEPARTMENT BOARD OF OPTOMETRY

This is an amendment to 16.16.10 NMAC, Sections 7 and 12, effective 06-25-2015

16.16.10.7 DEFINITIONS:

“Expired license” means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC. [~~Practice under an expired license is not allowed after the thirty-day grace period following the expiration date.~~]

[10-14-95; 16.16.10.7 NMAC - Rn, 16 NMAC 16.10.7, 03-15-2001; A, 03-15-2004; A, 06-25-2015]

16.16.10.12 RENEWAL APPLICATION:

A. A completed license renewal application, verification of continuing education, a current CPR certification and applicable renewal fee must be received in the board office on or before July 1 of every year. The CPR course shall show a current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be a self-study. CPR is not considered continuing education.

B. The board may audit any licensee’s continuing education documentation for the current licensing year and the two (2) previous years. [10-14-95; 16.16.10.12 NMAC - Rn, 16 NMAC 16.10.12, 03-15-2001; A, 03-22-2008; A, 07-06-2012; A, 06-25-2015]

REGULATION AND LICENSING DEPARTMENT BOARD OF OPTOMETRY

This is an Amendment to 16.16.13 NMAC, Section 9, effective 06-25-2015

16.16.13.9 APPROVED CONTINUING EDUCATION: All subjects of education must be directly related to optometry. The New Mexico board of optometry approves the following programs for continuing education credit, as well as those listed on the updated list available on the board’s web site.

A. Any convention of the American optometric association (AOA).

B. Any meeting of an American optometric association affiliated state or regional association meeting, or meeting of the armed forces optometric society (AFOS).

C. Any session of the optometric extension program congress (OEPC).

D. Any state seminar of the graduate clinic foundation of the optometric extension program.

E. Courses sponsored by or given by accredited optometry schools.

F. Courses sponsored by the following organizations.

(1) Optometric councils: mid-west, mountain west, southern, New England, southwest (SWCO).

(2) Optometric contact lens societies: southwest, southern, heart of America.

(3) Optometric congresses: southern, mountain states.

(4) Courses sponsored by the American academy of optometry.

(5) Courses approved by the council on optometric practice education (COPE) or courses approved by the New Mexico optometric association (NMOA).

G. The certificates of attendance required by Subsection C of 16.16.13.8 NMAC shall be signed by the presiding officer or designee of the organization conducting or sponsoring the program and shall identify the therapeutic pharmaceutical agent (TPA) courses.

H. Certificates of attendance for courses approved by COPE must have the COPE trademark and approval number.

I. A maximum of [~~two~~(2)] six (6) hours of internet-type course offerings, approved by COPE or any other

board-approved sponsor, will be allowed for each annual renewal.

[11-17-73; 2-6-87; 8-21-92; 10-14-95; 10-15-97; 16.16.13.9 NMAC - Rn, 16 NMAC 16.13.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012; A, 06-25-2015]

WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.6 NMAC, amending Sections 7, 10, 17, 20, 21, 23-27, 30 & 35, effective 06/16/2015.

20.6.6.7 DEFINITIONS:

A. Terms defined in the Water Quality Act and 20.6.2.7 NMAC shall have the meanings as given in such.

B. As used in 20.6.6 NMAC, but not in other sections of 20.6.2 NMAC, a term defined in this part shall have the following meaning.

(1) “Adjacent” means lying near, but lacking actual contact along a boundary or at a point.

(2) “Applicant” means the person applying for a new, renewed or modified discharge permit.

(3) “Construction quality assurance” or “CQA” means a planned system of activities necessary to ensure that standards and procedures are adhered to and that construction and installation meet design criteria, plans and specifications. A CQA includes inspections, verifications, audits, evaluations of material and workmanship necessary to determine and document the quality of the constructed impoundment or structure, and corrective actions when necessary.

(4) “Construction quality control” or “CQC” means a planned system of operational techniques and activities used to preserve the quality of materials and ensure construction to specifications. Elements of a CQC include inspections, testing, data collection, data analysis and appropriate corrective actions.

(5) “Contiguous” means being in actual contact along a boundary or at a point.

(6) “CQA/CQC Report” means a report that summarizes all inspection, testing, data collection, data analysis and any corrective actions completed as part of CQA or CQC for a project.

(7) “Dairy facility” means the production area and the land application area, where the discharge and associated activities will or

do take place.

(8) “Dairy rule” means 20.6.6 NMAC, as amended.

(9) “Date of postal notice” means the date when the United States postal service (USPS) first makes notice to the applicant or permittee of its possession of certified mail addressed to the applicant or permittee.

(10) “Discharge volume” means the measured daily volume of wastewater actually discharged within the production area. This definition does not include the volume of wastewater discharged to the land application area.

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

(12) “Existing dairy facility” means a dairy facility that is currently discharging, or has previously discharged and has not been issued a notice from the department verifying that closure and post-closure monitoring activities have been completed.

(13) “Existing impoundment” means an impoundment that is currently receiving or has ever received wastewater or collected stormwater and that has not been closed pursuant to a discharge permit.

(14) “Expiration” means the date upon which the term of a discharge permit ends.

(15) “Field” means a unit of irrigated cropland within the land application area cultivated in the same manner to grow a specific crop for the uptake and removal of nutrients.

(16) “Flow meter” means a device used to measure the volume of water, wastewater or stormwater that passes a particular reference section in a unit of time.

(17) “Freeboard” means the vertical distance between the elevation at the lowest point of the top inside edge of the impoundment and the design high water elevation of the water level in the impoundment.

(18) “Impoundment” means any structure designed and used for storage or disposal by evaporation of wastewater, stormwater, or a combination of both wastewater and stormwater [~~or used for solids settling~~]. A multiple-cell impoundment system having at least one shared berm or barrier whose smallest cells have a cumulative constructed capacity of 10 percent or less of the constructed capacity of the largest cell shall be considered a single impoundment for the purposes of the dairy rule. A wastewater or stormwater transfer sump or a solids settling separator is not

an impoundment.

(19) “Land application area” means irrigated and cultivated fields collectively authorized by a discharge permit to receive wastewater or stormwater applications as a source of nutrients managed for crop production.

(20) “Land application data sheet” means a form used to report all nitrogen inputs applied to each field within the land application area, including the cropping status of the field at the time of application (i.e., fallow, corn, wheat, etc.).

(21) “Manure” means an agricultural waste composed of excreta of animals, and residual bedding materials, waste feed or other materials that have contacted excreta from such animals.

(22) “Maximum daily discharge volume” means the total daily volume of wastewater (expressed in gallons per day) authorized for discharge by a discharge permit. This definition does not include the volume of wastewater discharged to the land application area.

(23) “New dairy facility” means a dairy facility that has never before discharged wastewater.

(24) “Permittee” means a person who is issued or receives by transfer a discharge permit for a dairy facility or, in the absence of a discharge permit, a person who makes or controls a discharge at a dairy facility.

(25) “Production area” means that part of the animal feeding operation that includes the following: the animal confinement areas; the manure, residual solids and compost storage areas; the raw materials storage areas; and the wastewater and stormwater containment areas. The animal confinement areas include but are not limited to open lots, housed lots, feedlots, confinement barns, stall barns, free stall barns, milkrooms, milk centers, cowyards, barnyards, hospital pens and barns, and animal walkways. The manure, residual solids and compost storage areas include, but are not limited to, storage sheds, stockpiles, static piles, and composting piles. The raw materials storage areas include, but are not limited, to feed silos, silage storage areas, feed storage barns, and liquid feed tanks. The wastewater and stormwater containment areas include, but are not limited to, settling separators, impoundments, sumps, runoff drainage channels, and areas within berms and diversions which prohibit uncontaminated stormwater from coming into contact with contaminants.

(26) “Spillway”

means a structure used for controlled releases from an impoundment designed to receive stormwater, in a manner that protects the structural integrity of the impoundment.

(27) “Stormwater” means direct precipitation and runoff that comes into contact with water contaminants within the production area of a dairy facility.

(28) “Unauthorized discharge” means a release of wastewater, stormwater or other substances containing water contaminants not approved by a discharge permit.

(29) “Wastewater” means water, that has come into contact with water contaminants as a result of being directly or indirectly used in the operations of a dairy facility including, but not limited to, the following: washing, cleaning, or flushing barns or other roof-covered production areas; washing of animals; spray-cooling of animals (except in open lots); and cooling or cleaning of feed mills and equipment. Wastewater does not include overflow from the drinking water system or stormwater unless overflow or stormwater that is collected is comingled with wastewater, or it comes into contact with water contaminants as a result of being directly or indirectly used in dairy facility operations.

[20.6.6.7 NMAC - N, 01/31/2011; A, 06/16/2015]

20.6.6.10 GENERAL APPLICATION REQUIREMENTS FOR ALL DAIRY FACILITIES: This section specifies the general requirements for discharge permit applications for all types of dairy facilities.

A. In lieu of Subsection F of 20.6.2.3106 NMAC, a permittee shall submit an application for renewal of a discharge permit for a dairy facility to the department at least one year before the discharge permit expiration date, unless closure of the facility is approved by the department before that date. At least 180 days before the due date for an application for renewal, a permittee may request a pre-application meeting with the department. The pre-application meeting shall be held in Santa Fe, unless otherwise agreed by the department. Requests shall be made in writing and submitted to the department by certified mail. If a permittee requests a pre-application meeting, the department shall contact the permittee to discuss and schedule a date for the pre-application meeting. The department shall respond to the permittee’s request in writing

by certified mail to confirm the pre-application meeting date. The pre-application meeting shall occur no less than 60 days before the application due date. If the permittee or his representative fails to participate in the scheduled pre-application meeting, the permittee forfeits the opportunity for a pre-application meeting.

B. For a dairy facility that has not been constructed or operated, a permittee shall submit to the department at least one year before the discharge permit expiration date an application for renewal pursuant to Subsection A of this section or a statement certifying that the dairy facility has not been and will not be constructed or operated and that no discharges have occurred or will occur. Upon the department's verification of the certification, the department shall terminate the discharge permit, if necessary, and retire the discharge permit number from use.

C. Instead of the information required by Subsection C of 20.6.2.3106 NMAC, an applicant:

(1) for a new discharge permit, shall provide the information and supporting technical documentation pursuant to this section and 20.6.6.11 NMAC;

(2) for a renewed or modified discharge permit, shall provide the information and supporting technical documentation pursuant to this section and 20.6.6.12 NMAC; or

(3) for a renewed discharge permit for closure, shall provide the information and supporting technical documentation pursuant to this section and 20.6.6.13 NMAC.

D. The department shall create a discharge permit application form for dairy facilities applying for a new discharge permit, for dairy facilities applying for a renewed, modified or renewed and modified discharge permit, and for dairy facilities applying for a discharge permit for closure to collect the information required by this section. The information requested on the form(s) shall be limited to the information required by this section. An applicant shall use the department's form to provide the information required by this section. An application shall consist of the appropriate form and required supporting documentation, regardless of previous submissions. The applicant shall attest to the truth of the information and supporting documentation in the application, and sign the form. The form shall be signed in the

presence of a notary and notarized. The applicant shall provide to the department a hard copy (paper format) of the original signed and notarized completed application form and all supporting documentation. The applicant shall also provide an electronic copy of the original signed and notarized application and all supporting documentation in portable document format (PDF) on a compact disc (CD) or digital versatile disc (DVD).

E. If an applicant filing an application for a new discharge permit does not certify that the dairy facility complies with the setback requirements of 20.6.6.16 NMAC, as required by Subsection D of 20.6.6.11 NMAC, the department shall reject the application. The department shall provide notice of the rejection to the applicant by certified mail.

F. Within 60 days of the department's receipt of proof of notice pursuant to Subsection D of 20.6.2.3108 NMAC, the department shall review the application for technical completeness. If proof of notice is not submitted to the department pursuant to Subsection D of 20.6.2.3108 NMAC, the department shall notify the applicant by certified mail of the violation and provide 15 days from the date of postal notice for the applicant to submit the proof pursuant to Subsection D of 20.6.2.3108 NMAC. If proof of notice is not submitted to the department following the issuance of a notice of violation, the department may deny the application.

G. For an application to be deemed technically complete, an application shall include the information required by Subsection C of this section. Submittals or supporting documentation that require the certification of persons specified in the dairy rule are deemed technically complete if the documentation is prepared in accordance with the dairy rule and is certified by persons specified in the dairy rule. If the department determines that an application is not technically complete, the department shall provide notice of technical deficiency to the applicant by certified mail within 60 days of receipt of the applicant's proof of notice. The applicant shall have 60 days from the date of postal notice of the technical deficiency correspondence to provide the information required by this section.

(1) If an application is technically complete, the department shall make available a proposed approval of a discharge permit (i.e., draft discharge permit) or denial of a discharge permit application, pursuant to Subsection H of 20.6.2.3108 NMAC.

(2) If an applicant filing an application for a new discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency correspondence, the department shall deny the application. The department shall provide notice of denial to the applicant by certified mail.

(3) If an applicant for a renewed or modified discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency correspondence, the department may deny the application or may propose a discharge permit for approval consistent with the requirements of the dairy rule. If the department denies the application, the department shall provide notice of denial to the applicant by certified mail.

H. An applicant may propose alternate methods and innovative technologies such as new or advanced storage, treatment or disposal methods not directly addressed by this rule or different from those specified in 20.6.6.17, 20 and 21 NMAC. At its discretion, the department may approve an alternate method provided all of the following conditions are met:

(1) A pre-application meeting is held prior to application submittal. The meeting may be held at an appropriate demonstration site to show the suitability/applicability of the proposed method.

(2) A demonstration is made to the department's satisfaction that the proposed alternate method or technology, including its engineering design, equipment, process, operation and maintenance, will not result in an exceedance of the water quality standards of 20.6.2.3103 NMAC.

(3) Plans and specification are submitted that meet the requirements of Subsections A and B of 20.6.6.17 NMAC.

(4) A plan to monitor ground water that may be affected by the alternate method or technology shall be submitted that is consistent with requirements of 20.6.6.23 NMAC.

[H.] I. The department may impose additional conditions on a discharge permit in accordance with Section 74-6-5 NMSA 1978. If the department proposes an additional condition in a discharge permit that is not included in the dairy rule, the department shall include a written explanation of the reason for the additional condition with

the copy of the proposed approval sent to the applicant pursuant to Subsection H of 20.6.2.3108 NMAC. Written comments about the additional condition may be submitted to the department during the 30-day comment period provided by Subsection K of 20.6.2.3108 NMAC. A hearing may be requested about the additional condition as provided by 20.6.6.15 NMAC.

[H.] J. The secretary shall approve a discharge permit provided that it poses neither a hazard to public health nor undue risk to property, and:

(1) the requirements of the dairy rule are met;
 (2) the provisions of 20.6.2.3109 NMAC are met, with the exception of Subsection C of 20.6.2.3109 NMAC; and
 (3) denial of an application for a discharge permit is not required pursuant to Subsection E of 74-6-5 NMSA 1978.

[20.6.6.10 NMAC - N, 01/31/2011; A, 06-16-2015]

20.6.6.17 ENGINEERING AND SURVEYING REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Practice of engineering. All plans and specifications, supporting design calculations, record drawings, final specifications, final capacity calculations, grading and drainage reports and plans, and other work products requiring the practice of engineering shall bear the seal and signature of a licensed New Mexico professional engineer pursuant to the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-32, and the rules promulgated under that authority.

B. Practice of surveying. All surveys of wastewater, stormwater, and combination wastewater/stormwater impoundments, monitoring well locations and casing elevations, and other work products requiring the practice of surveying shall bear the seal and signature of a licensed New Mexico professional surveyor pursuant to the New Mexico Engineering and Surveying Practice, NMSA 1978, Sections 61-23-1 through 61-23-32, and the rules promulgated under that authority.

C. Engineering plans and specifications requirements.

(1) Impoundment plans and specifications. An applicant or permittee proposing or required to construct a new impoundment or to improve an existing impoundment, including relining of an existing

impoundment, shall submit detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.6.20 NMAC. The applicant or permittee proposing or required to construct an impoundment shall document compliance with the requirements of the dam safety bureau of the state engineer pursuant to Section 72-5-32 NMSA 1978, and rules promulgated under that authority, unless exempt by law from such requirements. The construction plans and specifications for an improvement(s) to an existing impoundment shall address the management of wastewater or stormwater during preparation and construction of the improvements.

(a) Construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(b) Construction plans and specifications not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

(2) Impoundment CQA/CQC.

Construction of a new impoundment or improvement to an existing impoundment shall be done in accordance with a construction quality assurance/construction quality control (CQA/CQC) plan. A CQA/CQC plan shall be included as part of the design plans and specifications. The CQA/CQC plan shall outline the observations and tests to be used to ensure that construction of the impoundment meets, at a minimum, all design criteria, plans and specifications. All testing and evaluation reports shall be signed and sealed by a licensed New Mexico professional engineer experienced in lagoon construction and liner installation. The CQA/CQC plan shall include, at a minimum, the following elements.

(a) The identity of persons responsible for overseeing the CQA/CQC program. The person responsible for overseeing with the CQA/CQC plan shall be a licensed New Mexico professional engineer experienced in lagoon construction and liner installation.

(b) A discussion of how inspections will be performed.

(c) The location, availability, applicability

and calibration of testing equipment and facilities, both field and laboratory.

(d) The procedures for observing and testing the liner material.

(e) The procedures for reviewing inspection test results and laboratory and field sampling test results.

(f) The actions to be taken to replace or repair liner material should deficiencies be identified.

(g) The procedures for seaming synthetic liners.

(h) The reporting procedures for all inspections and test data.

(3) Impoundment improvement - wastewater/stormwater management.

An applicant or permittee proposing or required to improve an existing impoundment, including relining of an existing impoundment, shall submit a plan for managing wastewater or stormwater during the improvement as part of the design plans and specifications. The plan for wastewater or stormwater management shall include the following minimum elements and be implemented upon department approval.

(a) A description of how on-going wastewater discharges or stormwater collection will be handled and disposed of during improvement to the impoundment.

(b) A description of how solids and wastewater or stormwater within the impoundment will be removed and disposed of prior to beginning improvement to the impoundment.

(c) A schedule for implementation through completion of the project.

(d) If the plan proposes temporary use of a location for the discharge of wastewater not authorized by the effective discharge permit, the applicant or permittee shall request temporary permission to discharge from the department.

(4) Manure solids separation plans and specifications - new wastewater system.

An applicant or permittee proposing or required to construct a new manure solids separator as a component of a newly designed wastewater storage or disposal system shall submit construction plans and specifications and supporting design calculations that include the separator, pursuant to this section.

(a) Construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(b) Construction plans and specifications not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

(5) **Manure solids separation plans and specifications - existing wastewater system.** An applicant or permittee proposing or required to construct a new manure solids separator as a component of an existing wastewater storage or disposal system shall submit a scaled design schematic and supporting documentation, including design calculations. The separator shall be designed to accommodate, at a minimum, the maximum daily discharge volume authorized by the discharge permit, and the volume of manure solids associated with the wastewater discharge. Components of the separator that collect, contain or store manure solids prior to removal or land application shall be designed with an impervious material(s) to minimize generation and infiltration of leachate.

~~(a)~~ A scaled design schematic and supporting documentation for a proposed separator shall be submitted to the department with the application for a new, renewed or modified discharge permit.

~~(b)~~ A scaled design schematic and supporting documentation for a separator not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.]

(6) **Grading and drainage report and plan.** An applicant shall submit with the application for a new discharge permit, a grading and drainage report and a grading and drainage plan, including supplemental information associated with the plan. The submittal shall include, at a minimum, the following information.

(a) A scaled map showing:
(i) the dairy facility and the property boundaries of the dairy facility;

(ii) all existing and proposed structures at the dairy facility, with the associated finished

floor elevations;
(iii) existing and proposed ground surface contours at two foot vertical intervals; and

(iv) all existing and proposed stormwater management structures at the dairy facility including construction materials, size, type, slope, capacity and inlet and invert elevation of the structures, as applicable.

(b) A copy of the relevant federal emergency management administration, FEMA, flood insurance rate map (FIRM) or flood boundary and floodway map with the dairy facility clearly identified along with all flood zones.

(c) A description of existing drainage conditions at the dairy facility.

(d) A description of the proposed post-development drainage conditions.

(e) Supplemental information supporting the grading and drainage plan shall be submitted to the department with the plan and shall include, at a minimum, the following information:

(i) all hydrologic and hydraulic calculations for design storm events used;

(ii) hydraulic calculations demonstrating capacity or adequacy of existing and proposed stormwater impoundments;

(iii) hydraulic calculations demonstrating capacity of existing and proposed conveyance channels to contain and transport runoff to the stormwater impoundment(s); and

(iv) a description of computer software, documents, circulars, manuals, etc. used to develop the hydrologic and hydraulic calculations.

(7) **Flow metering plans.** An applicant or permittee proposing or required to install a flow meter(s) shall submit documentation to support the selection of the proposed device as appropriate for the expected flow rate along with a description of the location and information on the installation or construction of each device.

(a) Such information proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(b) Such information not proposed by the applicant or permittee but required to

achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

D. Engineering design requirements.

(1) **Impoundment capacity requirements.** Impoundments designed to store wastewater prior to discharging to a land application area or to dispose of wastewater by evaporation shall meet the capacity requirements specified in the dairy rule. The dairy rule does not specify capacity requirements for the containment of stormwater. However, the dairy rule does not exempt a dairy facility from other applicable local, state and federal regulations or laws, including the EPA regulatory requirements for concentrated animal feeding operations pursuant to 40 Code of Federal Regulations, Parts 122 and 412, as amended.

(2) **Impoundment capacities - wastewater or wastewater/stormwater combination.**

(a) Capacity requirements for dairy facilities discharging wastewater to a land application area.

(i) The wastewater impoundments intended to store wastewater prior to discharging to a land application area shall be designed to contain the maximum daily discharge volume authorized by the discharge permit for a minimum period of [60] 21 days to accommodate periods when land application is not feasible, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single wastewater impoundment or by the collective capacity of multiple impoundments intended to store wastewater.

(ii) The combination wastewater/stormwater impoundments intended to contain both wastewater and stormwater runoff for storage prior to discharging to a land application area shall be designed to contain the sum of the maximum daily discharge volume authorized by the discharge permit for a minimum period of [60] 21 days to accommodate periods when land application is not feasible and the additional volume intended for the containment of stormwater runoff and direct precipitation, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single combination wastewater/stormwater impoundment or by the collective capacity of multiple impoundments intended to store wastewater or wastewater/

stormwater.

(b)

Capacity requirements for dairy facilities discharging to an evaporative wastewater or combination wastewater/stormwater disposal system.

(i)

The wastewater impoundments intended to dispose of wastewater by evaporation shall be designed to contain the maximum daily discharge volume authorized by the discharge permit for disposal by evaporation, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single wastewater impoundment or by the collective capacity of multiple impoundments intended to dispose of wastewater by evaporation.

(ii)

The combination wastewater/stormwater impoundments intended to dispose of both wastewater and stormwater runoff by evaporation shall be designed for disposal by evaporation, the sum of the maximum daily discharge volume authorized by the discharge permit and the additional volume intended for the containment of stormwater runoff and direct precipitation while preserving two feet of freeboard. This capacity requirement may be satisfied by a single combination wastewater/stormwater impoundment or by the collective capacity of multiple impoundments intended to dispose of wastewater or wastewater/stormwater by evaporation.

(c)

An impoundment designed and used for solids settling shall not be used to satisfy the impoundment capacity requirements of this subsection.

(d)

Notwithstanding Subparagraphs (a) and (b) of this paragraph, a wastewater impoundment or system of wastewater impoundments existing as of the effective date of the dairy rule may continue to be operated based upon the design capacity required under the applicable discharge permit as last issued or amended before the effective date of the dairy rule.

(3) Stormwater

conveyance channels. Stormwater conveyance channels shall be designed in accordance with the grading and drainage report and plan required by this section.

(4) Impoundment

design and construction - general.

Impoundments required to be [synthetically] lined shall meet the following design and construction requirements.

(a)

The inside slopes of an impoundment shall be a maximum of three (horizontal)

to one (vertical), and a minimum of four (horizontal) to one (vertical).

(b)

The outside slopes of an impoundment shall be a maximum of three (horizontal) to one (vertical).

(c)

The sub-grade of an impoundment shall be compacted to a minimum of 90 percent of standard proctor density. If the existing material is unsuitable for compaction, a minimum depth of 18 inches of suitable material shall be used as sub-grade.

(d)

The sub-grade of an impoundment shall provide a firm, unyielding surface with no sharp changes or abrupt breaks in grade.

(e)

The minimum dike width of an impoundment shall be 12 feet to allow vehicle traffic for maintenance.

(5) Impoundment

design and construction - liner. An applicant or permittee proposing or required to construct a new or to improve an existing impoundment liner, shall at a minimum use a synthetic liner or a two foot thick compacted clay liner with a maximum demonstrated hydraulic conductivity of 1×10^{-2} cm/sec and that is designed, constructed, installed and maintained in accordance with the Guide for Industrial Waste Management, Part IV: Protecting Ground Water, Chapter 7: Section B, Designing and Installing Liners, Technical Considerations for New Surface Impoundments, Landfills and Waste Piles (U.S. environmental protection agency), incorporated herein by this reference. Synthetic impoundment liners shall include a liner component that is at least 60 mil HDPE or other materials having equivalent performance characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance and meet the following additional design and construction requirements.

(a)

The liner shall be installed with sufficient slack in the liner material to accommodate shrinkage due to temperature changes. Folds in the liner material shall not be present in the completed liner.

(b)

The sub-grade shall be free of sharp rocks, vegetation and stubble to a depth of at least six inches below the liner. The surface in contact with the liner shall be smooth to allow for good contact between liner and sub-grade. The surface shall be dry during liner installation. The liner

installer shall provide the owner with a sub-grade acceptance certificate prior to installing the liner indicating acceptance of the earthwork.

(c)

The liner shall be anchored in an anchor trench. The trench shall be a minimum of 12 inches wide, 12 inches deep and shall be set back at least 24 inches from the top inside edge of the impoundment.

(d)

The liner panels shall be oriented such that all sidewall seams are vertical.

(e)

If practicable, decomposing organic materials shall be removed from areas over which a liner will be installed. If such materials remain, a liner vent system shall be installed.

(f)

Any opening in the liner through which a pipe or other fixture protrudes shall be sealed in accordance with the liner manufacturer's requirements. Liner penetrations shall be detailed in the construction plans and record drawings.

(g)

The liner shall be installed by, or the installation supervised by, an individual that has the necessary training and experience as required by the liner manufacturer.

(h)

Manufacturer's installation and field seaming guidelines shall be followed.

(i)

Liner seams shall be field tested by the installer and verification of the adequacy of the seams shall be submitted to department along with the record drawings.

(j)

Concrete slabs installed on top of a liner for operational purposes shall be completed in accordance with manufacturer and installer recommendations to ensure liner integrity.

(6) Impoundment

liner - wastewater or wastewater/stormwater combination. An applicant or permittee proposing or required to construct a new or to improve an existing wastewater or combination wastewater/stormwater impoundment, shall, at a minimum, use a [single liner that is at least 60-mil HDPE or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance] liner that meets the requirements of Paragraph (5) of this subsection.

(7) Impoundment

liner - stormwater. Any applicant or permittee required to improve an existing stormwater impoundment pursuant to Subsection A or B of 20.6.6.27 NMAC shall, at a minimum, use a liner that [~~is at least 60-mil HDPE or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance~~] meets the requirements in Paragraph (5) of this subsection.

(8) Separation between impoundments and ground water.

Impoundments shall not be constructed in a location where the vertical distance between the seasonal high ground water level and the finished grade of the floor of the impoundment is less than or equal to four feet as documented through the most recent ground water data obtained from an on-site test boring(s) or monitoring well(s).

(9) Impoundment

spillways. Impoundments intended to contain only wastewater shall not be designed with a spillway. [20.6.6.17 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

20.6.6.20 OPERATIONAL REQUIREMENTS FOR ALL DAIRY FACILITIES:**A. Notice of presence of lactating cows and wastewater discharge.**

A permittee shall provide written notice to the department of the commencement, cessation, or recommencement of wastewater discharge or the placement, removal, or reintroduction of lactating cows as follows.

(1) For new dairy facilities.

(a) Placement of lactating cows. A permittee shall provide written notice to the department a minimum of 30 days before the placement of lactating cows at the dairy facility. A permittee shall provide written verification to the department of the actual date of placement of lactating cows within 30 days of placement.

(b) Commencement of wastewater discharge. A minimum of 30 days prior to the estimated initial wastewater discharge date a permittee shall provide written notice to the department indicating the date discharge is proposed to commence. A permittee

shall provide written verification to the department of the actual date of discharge commencement within 30 days of commencement.

(2) For existing dairy facilities.

(a) Removal or reintroduction of lactating cows. A permittee shall provide written notice to the department indicating the date of removal of all lactating cows from the dairy facility or the date of reintroduction of any lactating cows at the dairy facility, if all lactating cows were previously removed, within 30 days of lactating cow removal or reintroduction.

(b) Cessation of wastewater discharge. A permittee shall provide written notice to the department indicating the date wastewater discharge ceased at the dairy facility within 30 days of the cessation of discharge.

(c) Recommencement of wastewater discharge. Written notification shall be submitted to the department a minimum of 30 days prior to the date wastewater discharge is expected to recommence. A permittee shall provide written notice to the department of the actual date of discharge recommencement within 30 days of recommencement.

B. Authorized use of new and existing impoundments. Impoundments shall meet the liner, design, and construction requirements of Subsection D of 20.6.6.17 NMAC; except an impoundment in existence on the effective date of the dairy rule that does not meet the requirements of Paragraphs (4) through (9) of Subsection D of 20.6.6.17 NMAC may continue to receive wastewater or stormwater provided the requirements of Paragraphs (1) or (2) of this subsection are met. If the requirements of Paragraph (1) and (2) of this subsection are not met, such an impoundment may continue to receive wastewater or stormwater provided the requirements of Subsection B of 20.6.6.27 NMAC are met.

(1) The water contaminant concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well(s) intended to monitor the impoundment does not exceed any ground water standard of 20.6.2.3103 NMAC.

(2) The water contaminant concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well(s) intended to monitor the impoundment does not exceed the

water contaminant concentration in a ground water sample collected from the upgradient monitoring well, if the water contaminant concentration associated with the upgradient monitoring well exceeds the ground water standard(s) of 20.6.2.3103 NMAC. For the purpose of this subsection, ground water samples obtained from the impoundment monitoring well and the upgradient monitoring well that are used for comparison of water contaminant concentrations shall be collected within two days of each other. In the event ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standard(s) of 20.6.2.3103 NMAC shall be the applicable standard(s) used to assess compliance with the requirements of this subsection.

C. Constructed capacity of existing impoundment - determination. If record drawings are unavailable or have not been completed for an impoundment constructed before the effective date of the dairy rule to indicate the impoundment capacity of each existing wastewater or combination wastewater/stormwater impoundment, the permittee shall complete an up-to-date survey and capacity calculation for each impoundment. The permittee shall submit the survey data and capacity calculations to the department with the application for a renewed or modified discharge permit.

D. Free-liquid capacity of existing impoundment - determination. An applicant or permittee shall measure the thickness of settled solids in each existing wastewater and combination wastewater/stormwater impoundment during the twelve-month period prior to the submission of an application for a renewed or modified discharge permit and in accordance with one of the following procedures.

(1) Measure settled solids when the impoundment contains water using the following method:

(a) The total surface area of the impoundment shall be divided into nine equal sub-areas.

(b) A settled solids measurement device shall be used to obtain one settled solids thickness measurement (to the nearest half-foot) per sub-area. The nine settled solids measurements shall be taken on the same day and the date shall be recorded and submitted to the department with the measurements.

(c) The nine settled solids measurements shall

be averaged.

(d)

The total volume of settled solids in the impoundment shall be estimated by multiplying the average thickness of the solids layer by the area of the top of the settled solids layer. The area shall be calculated using the impoundment dimensions corresponding to the estimated surface of the settled solids layer.

(e)

The estimated volume of settled solids shall be subtracted from the design capacity of the impoundment (less two feet of freeboard) to estimate the actual free-liquid capacity.

(f)

The settled solids measurements, calculations, estimation of total settled solids volume and volume of the actual free-liquid capacity for each impoundment shall be submitted to the department with the application for a renewed or modified discharge permit.

(2) Measure

settled solids when the impoundment has been drained of water to its lowest seasonal level using the following method:

(a)

Place a visible mark on each of the sidewalls of the pond showing the design depth allowed for sludge accumulation, or establish at least two vertical staff gauges marked to show the design depth allowed for sludge accumulation. The design depth shall be determined based upon the design capacity approved in the most recent discharge permit.

(b)

When the pond is drained to its lowest seasonal level, such that the marks showing the depths described above are visible (or would be visible except for sludge accumulation), photograph each of the markings and submit the photographs with the application.

E. Impoundment construction or improvement.

Construction of a new impoundment or improvements to an existing impoundment, including relining of an existing impoundment, shall be performed in accordance with the construction plans and specifications and supporting design calculations submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule. An applicant or permittee shall notify the department at least five working days before starting construction or improvement of an impoundment to allow for an inspection by department personnel. An applicant or permittee shall submit to

the department a construction certification report bearing the seal and signature of a licensed New Mexico professional engineer verifying that installation and construction was completed pursuant to Subsection C of 20.6.6.17 NMAC. The construction certification report shall include: record drawings, final specifications, final capacity calculations and the CQA/CQC report.

(1) For new

dairy facilities, impoundment construction shall be completed as follows.

(a)

Wastewater impoundment construction shall be completed and the construction certification report shall be submitted to the department before discharging wastewater at the dairy facility.

(b)

Combination wastewater/stormwater impoundment construction shall be completed and the construction certification report shall be submitted to the department before placing any livestock at the dairy facility.

(2) For existing

dairy facilities, impoundment construction shall be completed:

(a)

within one year of the effective date of the discharge permit, if construction of a new impoundment or improvement of an existing impoundment is required to achieve compliance with the dairy rule, or pursuant to the contingency timeframe specified in Subsection B of 20.6.6.27 NMAC when invoked after the effective date of a discharge permit issued pursuant to the dairy rule; and

(b)

the construction certification report shall be submitted to the department within 90 days of completion of impoundment construction.

F. Manure solids separator installation. A permittee shall employ manure solids separation. ~~[All wastewater discharges to an impoundment shall be made through a manure solid separator.]~~ If a solid separator with a potential to contaminate ground water is proposed, such as a pond or settling basin, it shall be lined in accordance with Paragraph (5) of Subsection D of 20.6.6.17 NMAC.

(H) A permittee

installing a new wastewater storage or disposal system shall, before discharging to the new system, construct a manure solids separator(s) in accordance with the construction plans and specifications submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a

discharge permit to achieve compliance with the dairy rule. Before discharging to the new system, the permittee shall submit to the department confirmation of solids separator construction, including separator type(s) and location(s).

~~[(2) If an existing dairy facility does not employ manure solids separation, the permittee shall construct a manure solids separator(s) within 150 days of the effective date of the discharge permit. The permittee shall submit confirmation of solids separator construction, including separator type(s) and location(s), to the department within 180 days of the effective date of the discharge permit.]~~

G. Grading and drainage report and plan - submittal and implementation.

A permittee shall complete a new grading and drainage system, in accordance with the grading and drainage report and plan required by Subsection C of 20.6.6.17 NMAC and submitted with the application for a new discharge permit. A permittee shall submit a post-development drainage report, including record drawings, bearing the seal and signature of a licensed New Mexico professional engineer. The grading and drainage system shall be completed and the post-development drainage report shall be submitted to the department before placing any livestock at the dairy facility.

H. Stormwater

conveyance. A permittee shall divert stormwater from the corrals and other applicable areas at the dairy facility (i.e., calf pens, alleys, feed storage and mixing, etc.) in accordance with the grading and drainage plan required by Subsection C of 20.6.6.17 NMAC. Stormwater shall be conveyed in a manner that minimizes ponding and infiltration of stormwater.

I. Stormwater

management - unlined impoundment. A permittee shall transfer stormwater collected in an unlined impoundment(s) to the wastewater impoundment(s) or the distribution system for the land application area after a storm event to minimize the potential for movement to ground water. Operational pumps shall be available at the dairy facility at all times for the transfer of stormwater from stormwater impoundment(s) to the wastewater impoundment(s) or the distribution system for the land application area, as authorized by a discharge permit.

J. Flow meter

installation. A permittee shall employ a flow metering system that uses flow measurement devices (flow meters)

to measure the volume of wastewater discharged at the dairy facility. Flow meters shall be installed in accordance with the plans submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule, pursuant to this section, Subsection C of 20.6.6.17 NMAC, and Subsections G and H of 20.6.6.21 NMAC. Flow meters shall be ~~[physically and permanently]~~ labeled with the discharge permit number, meter identification nomenclature as specified in a discharge permit, and the month and year of meter installation. All flow meters shall be calibrated in accordance with the manufacturer's requirements prior to installation or reinstallation following repair. The permittee shall maintain copies of the manufacturer's certificate of calibration and the manufacturer's recommended maintenance schedule. Confirmation of installation shall include a description of the device type, manufacturer, meter identification, location, record drawings, and ~~[the results of the initial field calibration completed pursuant to Subsection E of 20.6.6.24 NMAC]~~ a copy of the manufacturer's certificate of calibration and a copy of the manufacturer's recommended maintenance schedule.

(1) An applicant or permittee for a new dairy facility shall install flow meters and submit confirmation of flow meter installation to the department before discharging at the dairy facility.

(2) An applicant or permittee for an existing dairy facility shall install flow meters within 150 days of the effective date of the discharge permit and submit confirmation of flow meter installation to the department within 180 days of the effective date of the discharge permit.

K. Flow metering methods. Flow metering shall be accomplished by the following methods.

(1) For pumped flow discharge or transfer situations, an applicant or permittee shall install a closed-pipe velocity sensing totalizing flow meter(s) on the pressurized discharge or transfer line(s).

(2) For gravity flow discharge or transfer situations, an applicant or permittee shall install a closed pipe totaling flow meter or an open-channel primary flow measuring device(s) (flume or weir), equipped with head sensing and totalizing mechanisms, on the discharge or transfer line(s).

(3) An

applicant may propose and the department may accept a proposal to meter flows by metering the water supply. The proposal shall provide specific detail regarding the flow meter to be used and the relationship between the volume of water supplied and wastewater volume.

L. Flow meter locations.

An applicant or permittee shall identify flow meter locations in the application for a new, renewed or modified discharge permit. All flow meters shall be located pursuant to this section and Subsections G and H of 20.6.6.21 NMAC, and indicated on the scaled map required by Subsection U of this section.

M. Authorized use of existing flow meters. An applicant or permittee proposing to use an existing flow meter(s) shall submit documentation demonstrating that the existing flow meter(s) is installed consistent with this section, and Subsections G and H of 20.6.6.21 NMAC, as appropriate. The proposal shall be submitted with an application for a new, renewed and modified discharge permit and shall include the following documentation.

(1) The location of each existing flow meter indicated on the scaled map required by Subsection U of this section and the identification of the wastewater discharge, or wastewater or stormwater application it is intended to measure.

(2) A copy of the record drawings or manufacturer plans and technical specifications specific to each existing flow meter, if available.

~~(3) A field calibration report for each existing flow meter, completed pursuant to Subsection E of 20.6.6.24 NMAC.]~~

N. Flow metering - wastewater to impoundment. A permittee shall install flow meters to measure the volume of wastewater discharged from all wastewater sources to the wastewater or combination wastewater/stormwater impoundment(s). The flow meter(s) shall be installed on the discharge line(s) from all wastewater sources to the wastewater impoundment(s). Meter installation and confirmation of meter installation shall be performed pursuant to this section. Alternatively, a dairy existing on the effective date of the dairy rule that does not utilize flow meters meeting the requirements of the preceding sentence may install a flow meter(s) on the water supply line(s) that serves all wastewater sources. Readings from flow meter(s) on water supply lines shall be used to estimate wastewater volumes discharged

to wastewater or combination wastewater/stormwater impoundment(s) without adjustments or deductions to the meter readings.

O. Flow meter inspection and maintenance. A permittee shall visually inspect flow meters on a weekly basis for evidence of malfunction. If a visual inspection indicates a flow meter is not functioning to measure flow, the permittee shall initiate repair or ~~[replace]~~ replacement of the meter within ~~[30]~~ seven days of discovery. The repaired or replaced flow meter shall be installed and calibrated pursuant to ~~[the dairy rule]~~ Subsection J of this section.

(1) For repaired meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the repair that includes a description of the malfunction, a statement verifying the repair, ~~[and a flow meter field calibration report completed pursuant to Subsection E of 20.6.6.24 NMAC]~~ and a copy of the manufacturer's or repairer's certificate of calibration.

(2) For replacement meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the replacement that includes plans for the device pursuant to Subsection C of 20.6.6.17 NMAC, ~~[and a flow meter field calibration report completed pursuant to Subsection E of 20.6.6.24 NMAC]~~ a copy of the manufacturer's certificate of calibration, and a copy of the manufacturer's recommended maintenance schedule.

P. Impoundment inspection and maintenance. A permittee shall maintain impoundments to prevent conditions which could affect the structural integrity of the impoundments and associated liners. Such conditions include, but are not limited to, erosion damage; animal burrows or other animal damage; the presence of vegetation including aquatic plants, weeds, woody shrubs or trees growing within five feet of the top inside edge of a sub-grade impoundment, within five feet of the toe of the outside berm of an above-grade impoundment, or within the impoundment itself; evidence of seepage; evidence of berm subsidence; and the presence of large debris or large quantities of debris in the impoundments. A permittee shall inspect impoundments and surrounding berms on a monthly basis to ensure proper condition and control vegetation growing around the impoundments in a manner that is protective of the liners. Within 24 hours of discovery, a permittee shall report

to the department any evidence of damage that threatens the structural integrity of a berm or liner of an impoundment or that may result in an unauthorized discharge. A permittee is not required to report routine berm maintenance to the department.

Q. Pipe and fixture inspection and maintenance. A permittee shall maintain pipes and fixtures used for the conveyance or distribution of wastewater or stormwater at the dairy facility to prevent the unauthorized release of wastewater or stormwater. The permittee shall visually inspect pipes and fixtures on a weekly basis for evidence of leaks or failure, and shall maintain written records at the dairy facility of all such inspections including repairs to the pipes and fixtures. Where pipes and fixtures cannot be visually inspected because they are buried, the permittee shall inspect the area directly surrounding the features for evidence of leaks or failure (e.g., saturated surface soil, surfacing wastewater, etc.). If there is evidence an unauthorized discharge has resulted from damaged or faulty pipe(s) or fixture(s), the permittee shall repair or replace the pipe(s) or fixture(s) within 72 hours of discovery. The permittee shall report the unauthorized discharge to the department pursuant to 20.6.2.1203 NMAC.

R. Leachate management - manure solids separation system. A permittee shall manage the solids captured by and removed from the manure solids separation system(s) and stored at the dairy facility before removal or land application to minimize generation and infiltration of leachate. The manure solids removed from the manure solids separation system and leachate generated from those solids shall be collected and contained on an impervious surface before disposal.

S. Leachate management - manure and compost storage. Unless land application of manure solids and composted materials is authorized by a discharge permit, a permittee shall remove manure solids and composted material from the dairy facility. A permittee shall minimize the generation and infiltration of leachate from stockpiled manure solids and composted material before removal from the dairy facility by diverting stormwater run-on and run-off, and preventing ponding within areas used for manure and compost stockpiling.

T. Leachate management - silage storage. A permittee shall minimize the generation and infiltration of leachate from silage storage areas and prevent ponding within

silage storage areas. Leachate generated from the silage storage areas shall be collected and contained on an impervious surface or the stormwater impoundment before disposal.

U. Scaled map of dairy facility. An applicant or permittee shall submit a scaled map of the dairy facility to the department with an application for a new, renewed or modified discharge permit. The map shall be clear and legible, and drawn to a scale such that all necessary information is plainly shown and identified. The map shall show the scale in feet or metric measure, a graphical scale, a north arrow, and the effective date of the map. Multiple maps showing different portions of the facility may be provided using different scales as appropriate to represent the facility. Documentation identifying the means used to locate the mapped objects (i.e., global positioning system (GPS), land survey, digital map interpolation, etc.) and the relative accuracy of the data (i.e., within a specified distance expressed in feet or meters) shall be included with the map. Any object that cannot be directly shown due to its location inside of existing structures, or because it is buried without surface identification, shall be identified on the map in a schematic format and identified as such. The map shall include the following objects:

- (1) the overall dairy facility layout (barns, feed storage areas, pens, etc.);
- (2) the location of all sumps;
- (3) the location of all manure solids separators;
- (4) the location of all wastewater, stormwater, and combination impoundments;
- (5) the location of all mix tanks;
- (6) the location and acreage of each field within the land application area;
- (7) the location of all monitoring wells;
- (8) the location of all irrigation wells;
- (9) the location of all meters measuring wastewater discharges to and from impoundments;
- (10) the location of all meters measuring stormwater applied to the land application area;
- (11) the location of all fixed pumps for discharge and transfer of wastewater or stormwater;
- (12) the location of all wastewater and stormwater distribution pipelines;

(13) the location of each ditch irrigation system, acequia, irrigation canal and drain;

(14) the location of all backflow prevention methods or devices;

(15) all wastewater sampling locations, with the exception of impoundments for disposal by evaporation; and

(16) location of all septic tanks and leachfields.

V. Scaled map of dairy facility - updates. Following completion of additions or changes to the dairy facility layout which affects items required by Subsection U of this section, a permittee shall update and resubmit to the department the dairy facility map required by this section within 90 days of any additions or changes to the dairy facility layout which affects items required by Subsection U of this section.

W. Animal mortality management. All animal mortalities that may legally be disposed of (buried or composted) on a dairy facility shall be managed in accordance with the following requirements.

(1) Only mortalities originating at the dairy facility may be disposed of at the dairy facility.

(2) Mortalities shall not be stored or buried within 200 feet (measured as horizontal map distance) from private or public wells, or any watercourse.

(3) Mortalities shall not be stored or buried within 100 feet (measured as horizontal map distance) from the 100-year flood zone of any watercourse, as defined by the most recent federal emergency management administration, FEMA, map.

(4) Stormwater run-on to disposal areas shall be prevented by use of berms or other physical barriers.

(5) Mortalities disposed of by burial shall be placed in a pit(s) where the vertical distance between the seasonal high ground water level and the floor of the pit(s) is greater than 30 feet as documented through the most recent ground water data obtained from an on-site test boring(s) or monitoring well(s).

X. Determination of ground water conditions. An applicant or permittee for a dairy facility without a monitoring well from which depth-to-most-shallow ground water can be measured in accordance with the procedure required by Paragraph (1) of Subsection F of 20.6.6.23 NMAC shall evaluate ground water conditions by the

following methods.

(1) The applicant or permittee shall obtain records from the office of the state engineer for all wells on file with the office of the state engineer located within one mile of the boundary of the dairy facility. The applicant or permittee shall submit to the department in tabular format the following information obtained from the office of the state engineer records: the well identification information; location of each well by latitude/longitude and township, range, and section; use of each well; depth to ground water in each well; and total depth of each well.

(2) If any well record information submitted pursuant to Paragraph (1) of this subsection indicates that depth to ground water is less than 100 feet, or in lieu of the requirement of Paragraph (1) of this subsection, the applicant or permittee shall conduct the following activities.

(a) The applicant or permittee shall drill one site-specific test boring to the depth of most-shallow ground water or a depth of 75 feet (measured from the ground surface), whichever is encountered first. The test boring shall be drilled in an area of low elevation within the production area outside of an existing or proposed impoundment.

(b) The applicant or permittee shall describe the lithology from the ground surface to the completed borehole depth and document the depth of most-shallow ground water or the absence of ground water within 75 feet of the ground surface. If ground water is encountered within 75 feet of the ground surface, the depth of most-shallow ground water shall be measured immediately upon ceasing drilling of the boring and again 24 hours following ceasing drilling. Lithology shall be characterized pursuant to American society of testing and materials (ASTM) test method D 2487 or D 2488 or characterized using standard visual geologic or soils descriptions that shall include lithology, grain size, color (Munsell soil color charts may be used), texture, sorting, percent gravel and degree of induration. The lithologic log and most-shallow ground water information shall be submitted to the department with the application for a new, renewed or modified discharge permit.

(c) Upon completion of ground water measurements, unless the borehole is completed as a monitoring or production well, the borehole shall be immediately

abandoned by emplacing neat cement grout, bentonite based plugging material, or other sealing material approved by the state engineer in accordance with 19.27.4 NMAC in the borehole from the bottom of the borehole to the ground surface. A written record of borehole abandonment shall be submitted to the department with the application for a new, renewed or modified discharge permit and shall describe the type of grout used and the depth interval sealed with grout. If a monitoring well is constructed in the borehole, the monitoring well shall be constructed in accordance with Subsection D of 20.6.6.23 NMAC, and a construction log including well record information specified by 19.27.4 NMAC shall be submitted to the department with the application for a new, renewed or modified discharge permit.

Y. Domestic

wastewater. Domestic wastewater shall not be commingled with wastewater or stormwater generated at a dairy facility. Domestic wastewater shall be treated or disposed of pursuant to 20.7.3 NMAC or a discharge permit issued solely for the discharge of domestic wastewater, as appropriate. [20.6.6.20 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

20.6.6.21 ADDITIONAL OPERATIONAL REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:

A. Impoundment storage capacity management - wastewater and wastewater/stormwater combination. A permittee shall operate and maintain a wastewater or combination wastewater/stormwater impoundment(s) or a tank for the purpose of storing wastewater prior to discharging to the land application area. A permittee shall manage wastewater or combination wastewater/stormwater impoundments to maintain the capacity and two feet of freeboard required by Subsection D of 20.6.6.17 NMAC.

B. Authorized land application of wastewater and stormwater. A permittee shall apply wastewater and stormwater to fields within the land application area, up to the maximum acreage of irrigated cropland specifically authorized by a discharge permit. Wastewater and stormwater shall be distributed uniformly over the field at the planned rate consistent with the nutrient management plan (NMP); ponding shall be minimized.

C. Land application area - fresh irrigation water required.

Wastewater shall only be applied to fields within the land application area receiving fresh irrigation water. Fresh irrigation water shall be used as the primary source to meet the water consumptive needs of the crop to support crop production and nutrient removal. Wastewater and stormwater are intended as sources of crop nutrients and shall not be used as a primary source to meet the water consumptive needs of the crop. An applicant may propose and the department may accept a proposal to apply wastewater to crops or grazing land without using fresh water for irrigation if the proposal demonstrates to the department's satisfaction that crops or plants to be grazed can be successfully maintained without fresh irrigation water.

D. Wastewater/irrigation water blending. Wastewater may be blended in-line (i.e., fresh irrigation water supply lines) when fresh water irrigation lines are equipped with [~~a reduced pressure principle backflow prevention assembly (RP)~~] backflow prevention that is installed, operated, inspected and maintained in accordance with Subsections L and M of this section. Wastewater may also be blended in a mix-tank(s), applied alternately in the same irrigation line which has been physically disconnected from supply wells, or applied in a separate line, as authorized by a discharge permit. Wastewater may be blended with fresh water in a wastewater impoundment prior to land application so long as:

(1) the permittee maintains an accurate written record of the volume of fresh water added to the wastewater and that volume is accounted for in determining the volumes of wastewater applied for purposes of the nutrient management plan;

(2) fresh water is introduced in a safe manner to prevent scouring of the liner;

(3) the impoundment capacity requirements of this rule are met.

E. Land application area - existing infrastructure. An applicant or permittee shall submit documentation for the existing infrastructure necessary to transfer, distribute and apply wastewater or stormwater to fields within the land application area that will receive wastewater or stormwater to the department with the application for a new, renewed or modified discharge permit. The documentation shall consist of a narrative statement and photographic documentation that confirm the existing

land application distribution system including the type(s) and location(s) of the systems, and the method(s) of backflow prevention employed.

F. Land application area - new infrastructure. Before the initial application of wastewater or stormwater to any field within the land application area that has not previously received wastewater or stormwater, an applicant or permittee shall install a land application distribution system to distribute wastewater and stormwater to those fields. The land application distribution system shall be used to distribute and apply wastewater and stormwater to fields within the land application area to meet the requirements of this section. Before the initial application of wastewater or stormwater to any field within the land application area, an applicant or permittee shall submit documentation confirming installation of the land application distribution system. The documentation shall consist of a narrative statement and photographic documentation that confirms the new land application system including the type(s) and location(s) of the system(s), and the method(s) employed for backflow prevention.

G. Flow metering - wastewater to land application area. A permittee shall install flow meters to measure the volume of wastewater discharged from the wastewater or combination wastewater/stormwater impoundments to the land application area. The flow meter(s) shall be installed on the discharge line(s) from the wastewater impoundment(s) or tank to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

H. Flow metering - stormwater to land application area. For a dairy facility transferring stormwater from a stormwater impoundment directly to a distribution system for the land application area, a permittee shall install flow meters to measure the volume of stormwater applied directly to the land application area. The flow meter(s) shall be installed on the transfer line(s) from the stormwater impoundment(s) to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

I. Nutrient management plan. Nutrients and other constituents required to be monitored

under Subsection C of 20.6.6.25 NMAC and present in wastewater and stormwater shall be applied to irrigated cropland under cultivation in accordance with the requirements of a nutrient management plan (NMP) submitted to the department with the application for a new, renewed, or modified discharge permit. The NMP shall provide for development of a nutrient budget for nitrogen on an annual basis that accounts for the amount of nitrogen from all combined nitrogen sources, including but not limited to, wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), along with residual soil nitrogen and nitrogen credits from leguminous crops[- shall be applied to] and that considers estimated and measured nitrogen removal by harvested crops and other losses, considering the monitoring data required to be collected under Section 20.6.6.25 NMAC. The NMP shall describe how planned total nitrogen application rates shall be determined each year based upon realistic yield goals for the planned crops. The information used to set the crop yield goals shall be identified in the NMP. The NMP shall address how nitrogen application rates will be adjusted based upon the results of soil tests required by Subsections K and L of 20.6.6.25 NMAC, consistent with applicable Natural Resource Conservation Service guidance for normal, high and excessive soil nitrogen levels. The NMP shall specify the maximum application rates for wastewater applied through irrigation so as not to exceed the soil intake/infiltration rate. The application of nitrogen to each field within the land application area shall be in accordance with the NMP, and any departures from the NMP due to growing conditions or other factors shall be addressed in the update to the NMP for the following year. [The NMP shall be developed through utilization of the U.S. department of agriculture natural resources conservation service (USDA-NRCS) national comprehensive nutrient management plan development templates as adopted by the New Mexico office of the USDA-NRCS and in accordance with the USDA-NRCS conservation practice standard for New Mexico, nutrient management - code 590. The NMP shall be developed, signed and dated annually by an individual certified by the American society of agronomy as a certified crop advisor (CCA) or certified professional agronomist (CPAg) and by an individual certified by the New Mexico office of the USDA-NRCS as a nutrient management planner.] Plant material and soil sampling protocols in the NMP

shall be, at a minimum, equivalent to the requirements of Subsections I, K and L of 20.6.6.25 NMAC. The NMP shall identify the ~~[method]~~ method(s) of crop removal to be employed. The NMP shall be developed for the term of the discharge permit and updated annually ~~[and implemented pursuant to the dairy rule].~~ The NMP shall be developed, signed and dated annually by an individual certified by the American society of agronomy as a certified crop advisor (CCA) or certified professional agronomist (CPAg) or by an individual certified by the New Mexico office of the U.S. department of agriculture natural resources conservation service as a nutrient management planner. The permittee may elect to submit an NMP meeting the requirements of this subsection that is incorporated into a broader plan, such as a comprehensive nutrient management plan or a nutrient management plan prepared to meet the requirements of a permit issued by EPA, in which case only the portions of such plan required by this subsection and Section 20.6.6.25 NMAC shall be considered for purposes of the dairy rule. For a renewed permit where the NMP was not submitted in an application, the permittee shall submit the initial NMP by May 1 of the first year the permit is in effect, and the permittee shall submit annual updates to the NMP to the department in the monitoring reports due by May 1 of each year.

J. Crop removal - mechanical or grazing. A permittee shall remove crops from fields within the land application area by mechanical harvest ~~[unless an alternative proposal for the use of grazing is submitted with the application for a new, renewed, or modified discharge permit. If grazing is the method proposed for crop removal, the nutrient management plan (NMP) prepared pursuant to Subsection I of this section shall include a proposal for the use of grazing for crop removal by means of an actively managed rotational grazing system which promotes uniform grazing and waste distribution throughout the field(s) (and pastures within the field). Proposals shall quantify the degree of nitrogen removal expected to be achieved by grazing, and shall provide scientific documentation supporting the estimated nitrogen removal and justification for the selection of input parameters used in calculations or computer modeling. The NMP proposing grazing for crop removal shall be implemented in its entirety. Annual updates to the NMP shall include updates to the grazing plan as well as a report of actual weight gains,~~

actual nitrogen uptake of the crop, and estimated crop and nutrient removal from the previous season.] or grazing. An NMP which proposes grazing for crop removal shall also include, at a minimum, estimated values for the following elements.

- (1) The length of the grazing season.
- (2) The size and number of animals to be grazed.
- (3) The estimated weight gain of animals to be grazed, or estimated intake for maintenance or milk production.
- (4) The calculations to determine stocking rates, total acreage needed and residency period.
- (5) The plant species used to establish pastures and the pasture renovation practices to be employed.
- (6) The yield of plant species grown in each pasture and the forage supplied on a monthly basis.
- (7) The grazing management system employed and a map indicating key features of the system including water tanks, fencing, and pasture layout with numbering system and acreage of each pasture.

~~[K.]~~ **Crop removal - changes to method(s).** If a permittee proposes to change the method(s) (i.e., mechanical versus grazing) of crop removal on any field within the land application area authorized by the discharge permit, the permittee shall apply to modify the discharge permit. The permittee shall submit an application which includes the proposed change(s) pursuant to Subsection I and J of this section. The permittee shall not implement the changes unless the department issues a modified permit approving the changes.

~~[L.]~~ **K. Irrigation ditches - inspection and maintenance.** Irrigation ditches used to land apply wastewater or stormwater at a dairy facility shall be concrete-lined and shall be maintained in good repair. The permittee shall visually inspect the ditch system on a monthly basis to ensure proper maintenance. Any damage to a lined ditch shall be repaired within a reasonable time period. A log shall be kept on-site documenting the inspection findings and repairs made, and the log shall be made available to the department upon request.

~~[M.]~~ **L. Backflow prevention.** A permittee shall protect all water wells used within the land application distribution system from contamination by wastewater or stormwater backflow

by installing and maintaining backflow prevention methods or devices. Backflow prevention shall be achieved by a total disconnect (physical air gap separation of at least two times the pipe diameter or complete piping separation when wastewater is being pumped) or by the installation of ~~[a reduced pressure principle backflow prevention assembly (RP)], at a minimum an air/vacuum relief valve and a low pressure drain valve located immediately upstream of a check valve between [the fresh irrigation water supply] discharge head of the well pump and wastewater and stormwater delivery systems.~~

(1) A permittee for a new dairy facility shall install backflow prevention methods or devices and submit written confirmation of installation to the department before discharging at the dairy facility.

(2) A permittee for an existing dairy facility that lacks backflow protection as required by this subsection shall install backflow prevention methods or devices within 90 days of the effective date of the discharge permit. The permittee shall submit written confirmation of installation to the department within 180 days of the effective date of the discharge permit.

~~[N.]~~ **M. Backflow prevention by [reduced pressure principle backflow prevention assembly] check valve backflow prevention device - inspection and maintenance.** A permittee shall [have each reduced pressure principle backflow prevention assembly (RP)-inspected and tested by a person qualified by the manufacturer at the time of installation, repair, or relocation, and at least on an annual schedule thereafter] inspect each check valve device at least monthly when the well is operating. A malfunctioning [RP] check valve device shall be repaired or replaced within 30 days of discovery, and use of all wastewater supply lines associated with the [RP] check valve device shall cease until repair or replacement has been completed. Copies of the inspection and maintenance records ~~[and test results]~~ for each [RP] check valve device associated with the backflow prevention program for the previous year shall be submitted to the department annually in the monitoring reports due by May 1.

~~[O.]~~ **N. Supply well protection.** With the exception of monitoring wells, all wells located within the land application area of a dairy facility shall have a surface pad constructed in accordance with the recommendations of Subsection G of 19.27.4.29 NMAC and a

permanent well cap or cover pursuant to Subsection I of 19.27.4.29 NMAC. [20.6.6.21 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

20.6.6.23 GROUND WATER MONITORING REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Monitoring wells - required locations. A permittee shall install a sufficient number of monitoring wells at appropriate depths and locations to monitor ground water quality upgradient of the dairy facility and hydrologically downgradient of each source of ground water contamination: wastewater, stormwater, and combination wastewater/stormwater impoundments, and fields within the land application area. Monitoring wells shall be located pursuant to this section in a location that is protective of the well and to detect an exceedance(s) or a trend towards exceedance(s) of the ground water standards at the earliest possible occurrence, so that source control or abatement may be implemented [as soon as possible].

(1) **Ground water monitoring - [wastewater impoundments] installation schedule.** [A minimum of one monitoring well shall be located hydrologically downgradient and within 75 feet (measured as horizontal map distance) of the top inside edge of each wastewater impoundment. For existing dairy facilities, this ground water monitoring requirement additionally applies to wastewater impoundments that received wastewater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.]

(a) For a new dairy facility, monitoring wells shall be installed before discharging at the dairy facility.

(b) For an existing dairy facility, any new monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

~~(c)~~ A permittee constructing a new impoundment at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the impoundments before discharging wastewater to the impoundment or

within 120 days of the completion of the impoundment, whichever occurs first:

(2) **Ground-water monitoring – combination wastewater/stormwater impoundments.** A minimum of one monitoring well shall be located hydrologically downgradient and within 75 feet (measured as horizontal map distance) of the top inside edge of each combination wastewater/stormwater impoundment. For existing dairy facilities, this ground water monitoring requirement additionally applies to combination wastewater/stormwater impoundments that received wastewater or stormwater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(a) For a new dairy facility, monitoring wells shall be installed before placing any livestock at the dairy facility.

(b) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(c) A permittee constructing a new impoundment at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the impoundment before discharging wastewater to the impoundment, before collecting stormwater in the impoundment or within 120 days of the completion of the impoundment, whichever occurs first.

(3) **Ground-water monitoring – stormwater impoundments.** A minimum of one monitoring well shall be located hydrologically downgradient and within 75 feet (measured as horizontal map distance) of the top inside edge of each stormwater impoundment. For existing dairy facilities, this ground water monitoring requirement additionally applies to stormwater impoundments that received stormwater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(a) For a new dairy facility, monitoring wells shall be installed before placing any livestock at the dairy facility.

(b)

For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(c) A permittee constructing a new impoundment at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the impoundment before collecting stormwater in the impoundment(s) or within 120 days of the completion of the impoundment, whichever occurs first.

(4) **Ground-water monitoring – land application area.** Monitoring wells intended to monitor ground water hydrologically downgradient of fields within the land application area shall be installed as follows:

(a) **Flood irrigation.** Ground water monitoring shall be performed hydrologically downgradient of each flood irrigated field or grouping of contiguous flood irrigated fields. For every 40 acres or less of a single flood irrigated field or a single grouping of contiguous flood irrigated fields, a minimum of one monitoring well shall be located hydrologically downgradient and within 50 feet (measured as horizontal map distance) of the downgradient boundary of the single field or single grouping of contiguous fields. Flood irrigated fields separated by ditch irrigation systems, acequias and drains shall be considered contiguous for the purpose of this subsection. For existing dairy facilities, this ground water monitoring requirement additionally applies to single fields or single groupings of contiguous flood irrigated fields that received wastewater or stormwater as authorized by the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(i) For a new dairy facility, monitoring wells shall be installed before placing livestock at the dairy facility.

(ii) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(iii) A permittee activating a new flood

irrigated field at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the field before applying wastewater or stormwater to the field.

(b) **Sprinkler or drip irrigation.** Ground water monitoring shall be performed hydrologically downgradient of each sprinkler or drip irrigated field, or grouping of contiguous sprinkler or drip irrigated fields. For every 160 acres or less of a single sprinkler or drip irrigated field, or a single grouping of 160 contiguous acres of sprinkler or drip irrigated fields, a minimum of one monitoring well shall be located hydrologically downgradient and within 50 feet (measured as horizontal map distance) of the downgradient boundary of the single field or single grouping of contiguous fields. Sprinkler or drip irrigated fields separated by ditch irrigation systems, acequias and drains shall be considered contiguous for the purpose of this subsection. For existing dairy facilities, this ground water monitoring requirement additionally applies to single fields or single groupings of contiguous sprinkler or drip irrigated fields that received wastewater or stormwater as authorized under the most recent discharge permit issued prior to the effective date of the dairy rule but are not proposed for use under the first discharge permit renewal following the effective date of the dairy rule.

(i) For a new dairy facility, monitoring wells shall be installed before placing livestock at the dairy facility.

(ii) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(iii) A permittee activating a new sprinkler or drip irrigated field at an existing dairy facility shall install the monitoring well(s) required to monitor ground water hydrologically downgradient of the field before applying wastewater or stormwater to the field.

(c) **Crop harvest by grazing.** Notwithstanding the requirements of Subparagraphs (a) and (b) of this paragraph, a minimum of one monitoring well(s) shall be located hydrologically downgradient and within 50 feet (measured as horizontal map distance) of the downgradient boundary

of each field where grazing is proposed in a nutrient management plan (NMP) as an alternative to, or in conjunction with, crop removal by mechanical harvest.

(5) **Ground-water monitoring - upgradient.** A minimum of one monitoring well shall be located hydrologically upgradient of all ground-water contamination sources at a dairy facility in order to establish ground-water quality conditions at a location not likely to be affected by contamination sources at the dairy facility.

(a) For a new dairy facility, monitoring wells shall be installed before placing livestock at the dairy facility.

(b) For an existing dairy facility, monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

(6) (2) **Use of existing monitoring wells.** A monitoring well in existence before the effective date of the dairy rule, properly constructed in accordance with department guidelines applicable when the well was constructed, and operating as approved in a previous discharge permit, shall be approved for ground water monitoring at a dairy facility. [provided all of the following requirements are met:

(a) The monitoring well is located at the location previously approved by the department.

(b) The monitoring well:

(i) if intended to monitor ground-water quality near a contamination source, is located downgradient of the source based on current hydrologic conditions and is located no more than 100 feet hydrologically downgradient (measured as a horizontal map distance) from the contamination source; or

(ii) if intended to monitor ground-water quality at a location not likely to be affected by contamination sources, is located hydrologically upgradient of sources at the dairy facility.

(c) The monitoring well is constructed with a screen length consistent with the construction requirements of this section or an alternative screen length previously approved by the department, and the screened interval intersects with the most-shallow ground water, and

(i) the alternative screen length is no greater than 30 feet; or

(ii) the monitoring well has a water column within the screened interval of no more than 25 feet in length based upon the most recent ground-water level obtained with a water level measuring device pursuant to 20.6.6.23 NMAC.

(d) The monitoring well construction log, the scaled dairy facility map and the ground-water elevation contour map, and a copy of the department's written approval of an alternate screen length or recent ground-water level data, as appropriate, is submitted with the application for a renewed or renewed and modified discharge permit verifying that the requirements of Subparagraphs (a), (b), and (c) of this paragraph are met.

(7) (3) **Exceptions to monitoring well requirements.** When appropriate, based on the documented ground water flow direction, one monitoring well may be authorized by a discharge permit to monitor ground water hydrologically downgradient of more than one contamination source under any of the following circumstances.

(a) Contiguous impoundments are oriented along a line that is parallel or approximately parallel to the direction of ground water flow beneath the impoundments.

(b) Adjacent impoundments are oriented along a line that is parallel or approximately parallel to the direction of ground water flow beneath the impoundments and separated by a distance of 50 feet or less as measured from the top inside edge of one impoundment to the nearest top inside edge of the adjacent impoundment.

(c) Adjacent or adjacent groupings of contiguous sprinkler or drip irrigated fields are oriented along a line that is parallel or approximately parallel to the direction of ground-water flow beneath the fields and the average depth-to-most-shallow ground-water measured in on-site monitoring wells pursuant to Subsection F of this section is 300 feet or greater. Where monitoring wells do not exist, depth-to-most-shallow ground-water shall be determined pursuant to Subsection X of 20.6.6.20 NMAC. A monitoring well(s) installed hydrologically downgradient of a sprinkler or drip irrigated field or a grouping of sprinkler or drip irrigated fields pursuant to Paragraph (4) of

this subsection may be authorized by a discharge permit to monitor ground-water hydrologically downgradient of not more than two adjacent sprinkler or drip irrigated fields or adjacent groupings of sprinkler or drip irrigated fields.

(8) **Requirement for third monitoring well.** If fewer than three monitoring wells are needed to satisfy the ground-water monitoring requirements of Paragraphs (1) through (7) of this subsection, a third monitoring well shall be installed within 75 feet of the contamination source and in a location alternate to the downgradient monitoring well required by this subsection. The third monitoring well shall be installed in an alternative location that allows for the determination of ground-water flow direction pursuant to this section.]

B. Monitoring wells

- **location proposals.** An applicant or permittee shall identify monitoring well locations in the application for a new, renewed or modified discharge permit pursuant to Subsection A of this section, and shall include the following information.

(1) The location of each monitoring well relative to the contamination source it is intended to monitor shall be indicated on the scaled map required by Subsection U of 20.6.6.20 NMAC.

(2) A written description of the specific location for each monitoring well including the horizontal map distance (in feet) and compass bearing of each monitoring well from the top inside edge of the impoundment berm or edge of the field it is intended to monitor.

(3) The ground water flow direction beneath the dairy facility used to determine the monitoring well location(s), including supporting documentation used to determine ground water flow direction.

C. Monitoring wells

- **identification tags.** A permittee shall identify all monitoring wells required by the dairy rule with a well identification tag. For above-grade wells, the tag shall be affixed to the exterior of the steel well shroud [using rivets, bolts or a steel band]. For wells finished below-grade, the tag shall be placed inside the well vault next to the well riser. The tag shall be printed adhesive or metal:

- (1) if metal, made of aluminum;
- (2) at least two inches by four inches in size;
- (3) for

monitoring wells installed after the effective date of the dairy rule, the tag shall [be engraved with] include:

- (a) the discharge permit number;
- (b) the well identification nomenclature specified in a discharge permit;
- (c) the name and New Mexico well driller license number of the well driller who drilled the well; and
- (d) the month and year of well installation; and

(4) for monitoring wells installed before the effective date of the dairy rule and satisfying the requirements of Paragraph (6) of Subsection A of this section, the tag shall [be engraved with] include:

- (a) the discharge permit number;
- (b) the well identification nomenclature specified in a discharge permit; and
- (c) if available, the name and New Mexico well driller license number of the well driller who drilled the well, and the month and year of well installation.

D. Monitoring wells - construction and completion – new monitoring wells. A permittee shall construct monitoring wells pursuant to 19.27.4 NMAC and the following requirements.

(1) All well drilling activities shall be performed by an individual with a current and valid well driller license issued by the state of New Mexico pursuant to 19.27.4 NMAC.

(2) The well driller shall employ drilling methods that allow for accurate determinations of water table locations. All drill bits, drill rods, and down-hole tools shall be thoroughly cleaned immediately before drilling. The borehole diameter shall allow a minimum annular space of two inches between the outer circumference of the well materials (casing or screen) and the borehole wall to allow for the emplacement of sand and sealant.

(3) After completion, the well shall be allowed to stabilize for a minimum of 12 hours before development is initiated.

(4) The well shall be developed so that formation water flows freely through the screen and is not turbid, and all sediment and drilling disturbances are removed from the well.

(5) Schedule 40 (or heavier) polyvinyl chloride (PVC)

pipe, stainless steel pipe, or carbon steel pipe shall be used as casing. The casing shall have an inside diameter not less than two inches. The casing material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the dairy facility. The casing material and thickness selected for use shall have sufficient collapse strength to withstand the pressure exerted by grouts used as annular seals and thermal properties sufficient to withstand the heat generated by the hydration of cement-based grouts.

(6) Casing sections shall be joined using welded, threaded, or mechanically locking joints; the method selected shall provide sufficient joint strength for the specific well installation.

(7) The casing shall extend from the top of the screen to at least one foot above ground surface. The top of the casing shall be fitted with a removable cap, and the exposed casing shall be protected by a locking steel well shroud. The shroud shall be large enough in diameter to allow easy access for removal of the cap. Alternatively, monitoring wells may be completed below grade. In this case, the casing shall extend from the top of the screen to six to twelve inches below the ground surface; the monitoring wells shall be sealed with locking, expandable well plugs; a flush-mount, watertight well vault that is rated to withstand traffic loads shall be emplaced around the wellhead; and the cover shall be secured with at least one bolt. The vault cover shall indicate that the wellhead of a monitoring well is contained within the vault.

(8) A 20-foot section (maximum) of continuous well screen shall be installed across the water table. Screen shall consist of continuous-slot, machine slotted, or other manufactured schedule 40 (or heavier) PVC or stainless steel. Screens created by cutting slots into solid casing with saws or other tools shall not be used. The screen material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the dairy facility. The screen slot size shall be selected to retain 90 percent of the filter pack.

(a) Requests for a 30-foot section of continuous well screen may be authorized by a discharge permit when the most recent two years of ground water level data demonstrates a declining water level

trend of at least two feet per year. Data supporting ground water levels shall be specific to monitoring wells located at the dairy facility and obtained with a water level measuring device as required by Subsection F of this section.

(b) Requests for a 30-foot section of continuous well screen shall be submitted to the department in the application for a new, renewed or modified discharge permit.

(9) Screen sections shall be joined using welded, threaded, or mechanically locking joints. The method selected shall provide sufficient joint strength for the specific well installation and shall not introduce constituents that may reasonably be considered contaminants of interest at the dairy facility. A cap shall be attached to the bottom of the well screen. Sumps (i.e., casing attached to the bottom of a well screen) shall not be installed.

(10) The bottom of the screen shall be installed no more than 15 feet below the water table, or no more than 25 feet below the water table when additional screen length is authorized by a discharge permit. The top of the well screen shall be positioned not less than five feet above the water table. The well screen slots shall be appropriately sized for the formation materials.

(11) Casing and well screen shall be centered in the borehole by installing centralizers near the top and bottom of the well screen.

(12) A filter pack shall be installed around the screen by filling the annular space from the bottom of the screen to two feet above the top of the screen with clean silica sand. The filter pack shall be properly sized to exclude the entrance of fine sand, silt, and clay from the formation into the monitoring well. For wells deeper than 30 feet, the sand shall be emplaced by a [tremmie] tremie pipe. The well shall be surged or bailed to settle the filter pack and additional sand added, if necessary, before the bentonite seal is emplaced.

(13) A bentonite seal shall be constructed immediately above the filter pack by emplacing bentonite chips or pellets (three-eighths inch in size or smaller) in a manner that prevents bridging of the chips/pellets in the annular space. The bentonite seal shall be three feet in thickness and hydrated with clean water. Adequate time shall be allowed for expansion of the bentonite seal before installation of the annular space seal.

(14) The annular space above the bentonite seal shall be sealed with cement grout or bentonite-based sealing material acceptable to the state engineer in accordance with 19.27.4 NMAC. A [tremmie] tremie pipe shall be used to emplace the annular space seal (flow by gravity or pumping through the pipe) if the total depth of the well is greater than 20 feet from the land surface. Annular space seals shall extend from the top of the bentonite seal to the ground surface (for wells completed above grade) or to a level three to six inches below the top of casing (for wells completed below grade).

(15) A concrete pad (two-foot minimum radius, four-inch minimum thickness) shall be poured around the shroud or well vault and wellhead. The concrete and surrounding soil shall be sloped to direct rainfall and runoff away from the wellhead.

E. Monitoring wells - office of the state engineer requirements. Should a well permit for a monitoring well be required by the office of the state engineer, the permittee shall obtain the permit prior to well drilling.

F. Ground water sample collection procedure. A permittee shall perform all ground water sample collection, preservation, transport and analysis according to the following procedure.

(1) Depth-to-most-shallow ground water shall be measured from the top of well casing at point of survey to the nearest 0.01 feet using an electronic water level indicator consisting of dual conductor wire encased in a cable or tape graduated to 0.01 feet, a probe attached to the end of the conductor wire, and a visual or audible indicator.

(2) Monitoring wells shall be purged before sample collection by one of the following methods.

(a) Three well volumes of water shall be purged from the well before sample collection.

(b) The monitoring well shall be purged until measurements of indicator parameters (pH, specific conductance, and temperature) have stabilized. Indicator parameters shall be measured periodically during purging. A parameter stabilization log shall be kept during each sampling event for each monitoring well and include: date; water quality indicator parameter measurements; time for all measurements; and the purge volume extracted. Indicator parameters are

considered stable when three consecutive readings made no more than five minutes apart fall within the following ranges: temperature plus or minus 10 percent; pH plus or minus 0.5 units; specific conductance plus or minus 10 percent.

(3) Following purging and immediately before sample collection the following field parameters shall be measured and recorded: pH, specific conductance, and temperature.

(4) In-line flow-through cells shall be disconnected or bypassed during sample collection, if used during purging.

(5) Samples from the well shall be obtained, prepared, preserved and transported to an analytical laboratory for analysis pursuant to the methods authorized by Subsection B of 20.6.6.24 NMAC.

G. Ground water sampling and reporting - routine. A permittee shall collect ground water samples quarterly from all monitoring wells required by Subsection A of this section and Subsection C of 20.6.6.27 NMAC. Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, sulfate and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. A permittee shall submit to the department in the quarterly monitoring reports the depth-to-most-shallow ground water, the field parameter measurements, the parameter stabilization log (if applicable), the analytical results (including the laboratory quality assurance and quality control summary report) and a map showing the location and number of each well in relation to the contamination source it is intended to monitor.

H. Ground water sampling - new monitoring wells. A permittee shall collect ground water samples from all newly installed monitoring wells. Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, sulfate and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC.

(1) Samples shall be collected from the newly installed monitoring wells at new dairy facilities before placing livestock at the dairy facility.

(2) Samples shall be collected from the newly installed monitoring wells at existing dairy facilities within 150 days of the effective date of the discharge permit.

(3) For dairy facilities installing a new monitoring well during the term of a discharge permit, during construction of a new

impoundment, or as a result of required corrective actions, samples shall be collected from the newly installed monitoring wells within 30 days of well completion, provided the department may grant an extension for good cause shown.

I. Monitoring well survey and ground water flow determination. A permittee shall survey monitoring wells to a U.S. geological survey (USGS) benchmark and State Plane coordinates. Survey data shall include northing, easting and elevation to the nearest hundredth of a foot or shall be in accordance with the "Minimum Standards for Surveying in New Mexico", 12.8.2 NMAC. A survey elevation shall be established at the top-of-casing, with a permanent marking indicating the point of survey. The survey shall be completed and bear the seal and signature of a licensed New Mexico professional surveyor. Depth-to-most-shallow ground water shall be measured from the point of survey to the nearest hundredth of a foot in all surveyed wells pursuant to Subsection F of this section, and the data shall be used to develop a map showing the location of all monitoring wells and the direction and gradient of ground water flow at the dairy facility.

(1) For a new dairy facility, monitoring wells shall be surveyed before placing livestock at the dairy facility.

(2) For an existing dairy facility, monitoring wells not previously surveyed in a manner consistent with the requirements of this subsection and Subsection B of 20.6.6.17 NMAC shall be surveyed within 150 days of the effective date of the discharge permit.

J. Monitoring well completion report. A permittee shall submit to the department a monitoring well completion report pertaining to all monitoring wells. For a new dairy facility, the report shall be submitted before placing livestock at the dairy facility. For an existing dairy facility, the report shall be submitted within 180 days after the effective date of the discharge permit or within 60 days of completion as specified in a discharge permit. The report shall contain the following information.

(1) Construction and lithologic logs for the new monitoring wells including well record information specified by 19.27.4 NMAC.

(2) Depth-to-most-shallow ground water measured in each new and existing monitoring well.

(3) Survey data and a survey map showing the locations

of each new and existing monitoring well and a ground water elevation contour map developed pursuant to Subsection L of this section.

(4) Analytical results of ground water samples collected from the new monitoring wells, including laboratory quality assurance and quality control summary reports, and field parameter measurements.

K. Monitoring well survey report - existing monitoring wells. For a dairy facility required to survey existing monitoring wells pursuant to this section a permittee shall submit the monitoring well survey report to the department within 180 days of the effective date of the discharge permit, provided the department may grant an extension for good cause shown. The report shall contain the depth-to-most-shallow ground water measured in each monitoring well, a surveyed map showing the locations of the monitoring wells, and the direction and gradient of ground water flow at the dairy facility.

L. Ground water elevation contour maps. A permittee shall develop ground water elevation contour maps on a quarterly basis using data associated with all monitoring wells used for ground water monitoring at the dairy facility. Top of casing elevation data, obtained from monitoring well surveys completed pursuant to this section and quarterly depth-to-most-shallow ground water measurements in monitoring wells, shall be used to calculate ground water elevations at monitoring well locations. Ground water elevations between monitoring well locations shall be estimated using common interpolation methods. Ground water elevations shall be expressed in feet. A contour interval appropriate to the data shall be used, but in no case shall the interval be greater than two feet. Ground water elevation contour maps shall depict the ground water flow direction, using arrows, based on the orientation of the ground water elevation contours, and the location and identification of each monitoring well, impoundment, and field within the land application area. A permittee shall submit ground water elevation contour maps to the department in the quarterly monitoring reports.

[M. Monitoring well inspection. The department may perform downhole inspections of all monitoring wells. At least 60 days before the inspection, the department shall provide written notice to the permittee by certified mail stating the inspection date and identifying the monitoring wells to be

inspected; the 60 day notification period shall start upon the date of postal notice. At least 48 hours before the department's inspection, the permittee shall remove all existing dedicated pumps to allow adequate settling time of sediment agitated from pump removal. If a permittee decides to install a dedicated pump in a monitoring well, the permittee shall notify the department so that the department may have the opportunity to perform a downhole well inspection before pump installation. Alternatively, a permittee may employ a third party to perform downhole monitoring well inspections, provided the department is given at least 60 days written notice by certified mail so that a department representative may be on-site to observe the inspection.

(1) The third party shall make a video recording of the monitoring well inspection using a downhole camera and perform the inspection in accordance with the following requirements:

(a) Depth-to-most-shallow ground water shall be obtained from the well using an electronic water level indicator pursuant to Subsection F of this section, prior to inspection with a downhole camera. Care shall be taken when obtaining this measurement so as to not disturb sediments in the well.

(b) If ground water sample collection is planned during the inspection event, the downhole camera shall be used to inspect a monitoring well prior to sampling the well.

(c) Prior to well inspection with a downhole camera, at the top of the well casing, the totalizing reading on the downhole camera shall be zeroed, or a value other than zero shall be recorded as an initial reading.

(d) All measurements and totalizing readings (with the exception of depth-to-most-shallow ground water obtained pursuant to Subsection F of this section shall be obtained to the nearest 0.1 feet. Downhole cameras that use a measurement system other than 0.1-foot increments are authorized for use; however the permittee shall report the direct measurement/reading obtained and the calculated conversion in 0.1 feet on the written log.

(e) All measurements and totalizing readings shall be obtained at the top of the well casing.

(f) The downhole camera shall be lowered

into the monitoring well at a consistent speed that allows for clear video capture and does not disturb sediments in the well.

(g) Lowering of the downhole camera shall be paused long enough to clearly identify totalizing readings at the following points: depth-to-most-shallow ground water; depth of the top of the screened interval; depth of the bottom of screened interval; and the bottom of the well.

(2) The permittee shall submit written and video monitoring well camera logs for every monitoring well viewed with a downhole camera, along with a copy of an up-to-date facility map showing the location and identification of each monitoring well. The permittee shall submit the logs to the department within 60 days following the date of the well inspection.

(a) The written monitoring well camera log shall include the following general information: name of the dairy facility; discharge permit number; permittee's name; monitoring well identification; date and time of the monitoring well camera inspection; location of the monitoring well relative to a source or facility landmark; camera manufacturer and model; names of camera operator and any technical assistants; diameter of the casing (in inches); and a description of the physical condition of the well's concrete pad, shroud, casing and screened interval. The written log shall include measurements of distance from top of the well casing to the surface of the concrete pad; height from ground surface to the top of the concrete pad; and depth-to-most-shallow ground water measured using an electronic water level indicator pursuant to Subsection F of this section. The written log shall also include totalizing readings obtained from the downhole camera including the initial reading at the top of the well casing; depth-to-most-shallow ground water using the borehole camera; depth of the top of the screened interval; depth of the bottom of screened interval; and the bottom of the well (total depth). The length of the screened interval shall be calculated by subtracting the depth of the top of the screened interval from the depth of the bottom of screened interval and recorded on the log.

(b) The video monitoring well camera log shall display the name of the dairy facility; discharge permit number; permittee's name; monitoring well identification; date and time of the monitoring well camera inspection; and the totalizing readings required by Subparagraph (g)

of Paragraph (1) of this subsection. The permittee shall submit the video to the department in Motion Picture Experts Group (MPEG) video format on a compact disc (CD) or digital versatile disc (DVD).

N.] M. Proposed location of monitoring wells - dispute resolution.

If the department provides a notice of technical deficiency pursuant to Subsection G of 20.6.6.10 NMAC due to a disagreement with the number or location of monitoring wells proposed in the application, or if the department notifies a permittee to replace a monitoring well pursuant to Subsection C of 20.6.6.27 NMAC, the applicant or permittee may notify the secretary by certified mail, sent within 30 days after the date of postal notice of the department's notice, that the applicant or permittee invokes dispute resolution under this subsection. Upon such notice, the department, as represented by the secretary, deputy secretary, or division director and the applicant or permittee shall meet in person within 30 days and shall attempt in good faith to resolve the dispute.

[20.6.6.23 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

20.6.6.24 MONITORING REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Monitoring reports - schedule of submittal. A permittee shall submit monitoring reports to the department on a quarterly schedule and shall contain monitoring data and information collected pursuant to the dairy rule. Quarterly monitoring reports shall be submitted according to the following schedule:

- (1) January 1 through March 31 (first quarter) - report due by May 1;
- (2) April 1 through June 30 (second quarter) - report due by August 1;
- (3) July 1 through September 30 (third quarter) - report due by November 1; and
- (4) October 1 through December 31 (fourth quarter) - report due by February 1.

B. Sampling and analysis methods. A permittee shall sample and analyze water pursuant to Subsection B of 20.6.2.3107 NMAC. Analysis of water for total sulfur shall be accomplished pursuant to environmental protection agency method 200.7 or equivalent. Sampling and analysis of soil shall be conducted in accordance with "methods of soil analysis: part 1.

physical and mineralogical methods," 1986 edition; "methods of soil analysis: part 2. microbiological and biochemical properties," 1994 edition; and "methods of soil analysis: part 3. chemical methods," 1996 edition, published by the American society of agronomy.

C. Wastewater volume measurement and reporting.

A permittee shall measure the volume of all wastewater discharged to the wastewater or combination wastewater/stormwater impoundment(s) using flow meters. Meter readings shall be recorded at intervals not to exceed [seven days] monthly. The average daily discharge volume for each recording interval shall be calculated by dividing the difference between the meter readings by the number of days between meter readings. The permittee shall provide the meter readings including the date, time and units of each measurement, and calculations for the average daily volumes of wastewater discharged to the impoundments, reported in gallons per day, in the quarterly monitoring reports submitted to the department.

D. Stormwater sampling and reporting. A permittee shall collect stormwater samples on a quarterly basis from each stormwater impoundment [~~The samples shall be collected as soon as possible after a storm event and before transferring the stormwater~~] unless the stormwater will be transferred to a wastewater impoundment(s) [or] before being sent to the land application area. The samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to this section. The permittee shall include analytical results, or a statement that stormwater runoff did not occur, in the quarterly monitoring reports submitted to the department.

[E. Flow meter field calibration. All flow meters shall be capable of having their accuracy ascertained under actual working (field) conditions. A field calibration method shall be developed for each flow meter and that method shall be used to check the accuracy of each respective meter. Field calibrations shall be performed upon installation and, at a minimum, annually thereafter. Flow meters shall be calibrated to within plus or minus 10 percent of actual flow, as measured under field conditions. Field calibrations shall be performed by an individual knowledgeable in flow measurement and in the installation/operation of the particular device in use. The permittee shall submit the results of annual field

calibrations to the department annually in the monitoring reports due by May 1. The flow meter calibration report shall include the following:

~~(1) The location and meter identification nomenclature identified by the department through a discharge permit.~~

~~(2) The method of flow meter field calibration employed.~~

~~(3) The measured accuracy of each flow meter prior to adjustment indicating the positive or negative offset as a percentage of actual flow as determined by an in-field calibration check.~~

~~(4) The measured accuracy of each flow meter following adjustment, if necessary, indicating the positive or negative offset as a percentage of actual flow of the meter.~~

~~(5) Any flow meter repairs made during the previous year or during field calibration.]~~
[20.6.6.24 NMAC - N, 01/31/2011; A, 06/16/2015]

20.6.6.25 ADDITIONAL MONITORING REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:

A. Volume of wastewater and wastewater/stormwater land applied - measurement and reporting. A permittee shall measure all wastewater discharges from a wastewater or combination wastewater/stormwater impoundment to each field within the land application area using flow meters. A permittee shall maintain a log recording the date and location of each discharge, flow meter readings immediately prior to and after each discharge, and the calculated total volume of each discharge reported in gallons and acre-feet. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

B. Volume of stormwater land applied - measurement and reporting. A permittee shall measure all stormwater applications from a stormwater impoundment to each field within the land application area using flow meters. A permittee shall maintain a log recording the date and location of each application, flow meter readings immediately prior to and after each application, and the calculated total volume of each application reported in gallons and acre-feet. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

C. Wastewater to be land applied - sampling and reporting.

A permittee shall collect and analyze wastewater samples on [~~a quarterly~~] an annual basis for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. Representative samples shall be collected from the wastewater impoundments unless an alternative method is approved for good cause, including safety. The representative samples shall consist of eight samples taken from eight different locations evenly distributed throughout the impoundment or using an alternative method approved by the department for good cause. A permittee shall submit the analytical results to the department in the quarterly monitoring reports.

D. Manure solids - nitrogen content. The nitrogen content of the manure solids applied to each field within the land application area shall be estimated at 25 pounds of nitrogen per ton. Should a permittee choose to use actual nitrogen content values of on-site manure solids, the permittee shall collect a composite sample on an annual basis. The composite sample shall consist of a minimum of 30 sub-samples collected on the same day and thoroughly mixed. Manure samples shall be analyzed for total Kjeldahl nitrogen and moisture content. The permittee shall submit the analytical results to the department in the quarterly monitoring reports.

E. Irrigation water - sampling, volume applied, and reporting. A permittee shall monitor irrigation wells used to supply fresh water to the fields within the land application area to account for additional potential nitrogen supplied to the land application area in the following manner.

(1) Each irrigation well shall be identified in association with the field(s) to which it supplies fresh water.

(2) An annual sample of irrigation water supplied from each well or a group of physically connected wells shall be collected and analyzed for nitrate as nitrogen and total Kjeldahl nitrogen, pursuant to Subsection B of 20.6.6.24 NMAC. If the results are consistent for the first five years of annual sampling, sampling frequency may be reduced to once every other year.

(3) The annual volume of irrigation water applied to each field within the land application area shall be estimated for each well.

(4) The permittee shall submit the analytical

results and the estimated annual volume of irrigation water applied from each well to each field within the land application area to the department in the monitoring reports due by May 1.

F. Fertilizer application reporting. A permittee shall maintain a log of all additional fertilizer(s) applied to each field within the land application area. The log shall contain the date of fertilizer application, the type and form of fertilizer, fertilizer analysis, the amount of fertilizer applied in pounds per acre to each field, and the amount of nutrients applied in pounds per acre to each field. The permittee shall submit a copy of the log entries to the department in the quarterly monitoring reports.

G. Land application data sheets. A permittee shall complete land application data sheets for each field within the land application area to document the crop grown and amount of total nitrogen applied from wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), and the residual soil nitrogen and nitrogen credits from leguminous crops. The permittee shall submit a land application data sheet or a statement that land application did not occur to the department in the quarterly monitoring reports. The land application data sheet shall include the following elements [~~from the previous six quarters~~].

(1) The total monthly volume, reported in acre-feet, of wastewater and stormwater applied to each field within the land application area. Total monthly volumes shall be obtained from flow meter readings of each application pursuant to Subsections A and B of this section.

(2) The total nitrogen concentration of wastewater and stormwater obtained from the corresponding quarterly or annual analyses collected pursuant to Subsection C of this section and Subsection D of 20.6.6.24 NMAC.

(3) The total monthly volume, reported in tons per acre, of manure solids applied to each field within the land application area.

(4) The total nitrogen content of the manure solids estimated at 25 pounds of nitrogen per ton or determined from analysis of manure solids samples collected pursuant to Subsection D of this section.

(5) The total nitrogen concentration within the irrigation water and the amount of irrigation water applied pursuant to Subsection E of this section.

(6) The amount of nitrogen reported in pounds per acre from additional fertilizer(s) applied pursuant to Subsection F of this section.

(7) The amount of residual soil nitrogen and nitrogen from leguminous crops credited to each field within the land application area pursuant to Subsections K and L of this section.

H. Crop yield documentation. A permittee shall submit crop yield documentation and plant and harvest dates of each crop grown to the department in the quarterly monitoring reports. Crop yield documentation shall consist of copies of scale-weight tickets or harvest summaries based on scale-weights.

I. Nitrogen concentration of harvested crop. A permittee shall determine the total nitrogen concentration of each harvested crop. A composite sample consisting of 15 sub-samples of plant material shall be taken from each field during the final harvest of each crop grown per year. Samples shall be analyzed for percent total nitrogen and percent dry matter. A permittee shall submit the analytical reports to the department in the quarterly monitoring reports.

J. Nitrogen removal summary of harvested crop. A permittee shall develop a nitrogen removal summary to determine total nitrogen removed by each crop grown on each field within the land application area. Nitrogen removal shall be determined using crop yield and total nitrogen concentration information collected pursuant to Subsections H and I of this section. A permittee shall submit the summary to the department in the quarterly monitoring reports.

K. Soil sampling - initial event in a discharge permit term. A permittee shall collect composite soil samples from each field within the land application area for the first soil sampling event during the first year following the effective date of the discharge permit. Composite soil samples shall be collected [~~in the five-month period between September 1 and January 31~~] for all fields regardless of whether the field is cropped, remains fallow, or has received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each field. Composite soil samples shall be collected and analyzed according to the following procedure.

(1) Each surface and sub-surface soil sample shall consist of a single composite of 15 soil

cores collected randomly throughout each field. Should a field consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each field.

(2) Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

(3) Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

(4) Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.

(5) Each surface and sub-surface composite sample shall be analyzed for pH, electrical conductivity, total Kjeldahl nitrogen, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, sulfate, soil texture, and sodium adsorption ratio.

(6) pH, electrical conductivity, sodium, calcium, magnesium, and sulfate shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Nitrate as nitrogen shall be analyzed by a 2 molar KCl extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Total Kjeldahl nitrogen, chloride, organic matter, potassium, soil texture, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

(7) The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each field to the department in the monitoring report due by May 1 following the effective date of the discharge permit.

L. Soil sampling - routine. Beginning in the year following the initial soil sampling required by this section, the permittee shall collect annual soil samples from each field within the land application area that has received or is actively receiving wastewater or stormwater. [~~Composite soil samples shall be collected in the five-month period between September 1 and January 31.~~] For those fields that have never before received wastewater, the permittee shall collect soil samples immediately before initial wastewater application and

annually thereafter. Once a field has received wastewater it shall be sampled annually regardless of whether the field is cropped, remains fallow, or has recently received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each field. Composite soil samples shall be collected and analyzed according to the following procedure.

(1) Each surface and sub-surface soil sample shall consist of a single composite of 15 soil cores collected randomly throughout each field. Should a field consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each field.

(2) Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

(3) Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

(4) Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.

(5) Surface soil samples shall be analyzed for pH, electrical conductivity, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, and sodium adsorption ratio.

(6) Sub-surface soil samples shall be analyzed for electrical conductivity, nitrate as nitrogen, and chloride.

(7) pH, electrical conductivity, sodium, calcium, and magnesium shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Nitrate as nitrogen shall be analyzed by a 2 molar KCl extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Chloride, organic matter, potassium, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

(8) The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each field to the department in the monitoring report due by May 1.

[20.6.6.25 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

20.6.6.26 ADDITIONAL MONITORING REQUIREMENTS FOR DAIRY FACILITIES DISCHARGING TO AN EVAPORATIVE WASTEWATER DISPOSAL SYSTEM: Wastewater to be evaporated - sampling and reporting.

A permittee shall collect a composite wastewater sample on a semi-annual (once every six months) basis from each wastewater or combination wastewater/stormwater impoundment used for disposal by evaporation. [~~The composite sample from each impoundment shall consist of a minimum of six sub-samples collected around the entire perimeter of each impoundment and thoroughly mixed.~~] Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. A permittee shall submit the analytical results to the department in the monitoring reports due by May 1 and November 1.

[20.6.6.26 NMAC - N, 01/31/2011; A, 06/16/2015]

20.6.6.27 CONTINGENCY REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Exceedance of ground water standards - all monitoring wells [~~except impoundment monitoring wells~~]. If the constituent concentration in a ground water sample and in the next ground water sample collected from the same monitoring well intended to monitor a contamination source [~~other than an impoundment~~] exceeds one or more of the ground water standards of 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well, or if the extent or magnitude of existing ground water contamination is significantly increasing, then the permittee shall take the following actions. For the purpose of this subsection, ground water samples obtained from the source monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other, provided that if there is sufficient ground water quality data to demonstrate that samples from different periods should be compared, the department may allow such a comparison. If ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground

water standards of 20.6.2.3103 NMAC shall be the applicable standard used to determine if the requirements of this subsection must be met. The contingency requirements of Paragraphs (1) and (2) of this subsection shall not apply if corrective action previously has been taken to address ground water contamination and constituent concentrations have stabilized or improved, but this exception shall no longer apply if a constituent concentration increases for two consecutive sampling events and exceeds its standard or the upgradient concentration. Once enacted the contingency requirements of this subsection apply until the permittee has fulfilled the requirements of this subsection and ground water monitoring pursuant to 20.6.6.23 NMAC confirms for a minimum of eight consecutive ground water sampling events that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter or until the department requires an abatement plan pursuant to Paragraph (3) of this subsection.

(1) A corrective action plan shall be submitted within 120 days of the subsequent sample analysis date unless a petition for variance is filed in accordance with Paragraph (2) of this subsection. The corrective action plan shall describe any repairs made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

(2) The

permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the source intended to be monitored by the well, the permittee may petition within 120 days of the subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the source intended to be monitored by the well. If the petition is denied the permittee shall submit a corrective action plan meeting the requirements of Paragraph (1) of this subsection within 60 days of the denial.

(3) The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

B. Exceedance of ground water standards - impoundment monitoring well.

If the constituent concentration in a ground water sample ~~[and in the next ground water sample]~~ collected from a monitoring well intended to monitor an impoundment(s) exceeds one or more of the ground water standards of 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well for four consecutive quarters, then ~~[the permittee shall enact]~~ the department may require the permittee, by written notice, to take one of the following measures. Before notifying the permittee that action is required under this subsection, the department shall take into consideration site-specific conditions including, but not limited to, geology, depth to ground water, threats to public health, and the trends in contamination at the site. For the purpose of this subsection, ground water samples obtained from the impoundment monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other, provided that if there is sufficient ground water quality data to demonstrate that samples from different periods should be compared, the department may allow such a comparison. If ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground

water standard(s) of 20.6.2.3103 NMAC shall be the applicable standard(s) used to determine if the requirements of this subsection must be met. The contingency requirements of Subparagraphs (a) through (c) of Paragraph (1) and Sub-subparagraphs (i) through (iii) of Subparagraph (a) of Paragraph (2) of this subsection shall not apply if corrective action previously has been taken to address ground water contamination and constituent concentrations have stabilized or improved, but this exception shall no longer apply if a constituent concentration increases for two consecutive sampling events and exceeds its standard or the upgradient concentration. Once enacted the contingency requirements of this subsection apply until the permittee has fulfilled the requirements of this subsection and ground water monitoring pursuant to 20.6.6.23 NMAC confirms for a minimum of eight consecutive ground water sampling events that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter or until the department requires an abatement plan pursuant to Subparagraph (d) of Paragraph (1) or Sub-subparagraph (iv) of Subparagraph (a) of Paragraph (2) of this subsection.

(1) Clay liner or pre-dairy rule liner not composed of 40/30-mil HDPE (minimum) or equivalent. For impoundments using a clay liner or a liner installed prior to the effective date of the dairy rule and composed of a material that is not, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.

(a) A corrective action plan shall be submitted within 120 days of the ~~[subsequent sample analysis]~~ date of postal notice from the department that action is required under this subsection unless a petition for variance is filed in accordance with Subparagraph (c) of this paragraph. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective

action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include the following items.

(i)

A proposal for reconstruction and relining of an existing impoundment, or construction and lining of a new impoundment utilizing a synthetic liner as specified in Paragraph (5) of Subsection D of 20.6.6.17 NMAC. Reconstruction or new construction shall be completed pursuant to 20.6.6.17 NMAC within one year of the [subsequent sample analysis] date of postal notice from the department that action is required under this subsection. If a new impoundment is constructed, the existing impoundment shall be permanently closed pursuant to 20.6.6.30 NMAC.

(ii)

Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.6.17 NMAC.

(b)

Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised correction action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

(c)

The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the [subsequent sample analysis date] date of postal notice from the department that action is required under this subsection for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any

claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of Subparagraph (a) of this paragraph within 60 days of the denial.

(d)

The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(2) Dairy rule

liner or pre-dairy rule liner composed of 40/30-mil (minimum) HDPE or equivalent.

For impoundments using a liner installed after the effective date of the dairy rule and composed of a material that is, at a minimum, 60-mil HDPE (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), or impoundments using a liner installed prior to the effective date of the dairy rule and composed of a material that is, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.

(a)

Initial liner. For impoundments where the existing liner is the initial liner installed, the following actions shall be taken.

(i)

A corrective action plan shall be submitted within 120 days of the [subsequent sample analysis date] date of postal notice from the department that action is required under this subsection unless a petition for variance is filed in accordance with Subparagraph (iii) of this subparagraph. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The

department shall approve or disapprove the corrective action plan within 60 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include repair or replacement of the existing liner, or construction and lining of a new impoundment. If liner repair is practicable, repairs shall be made pursuant to 20.6.6.17 NMAC or using a material that is equivalent to the existing liner with respect to material thickness and composition. Repairs shall be completed within 240 days of the [subsequent sample analysis date] date of postal notice from the department that action is required under this subsection. If liner repair is not practicable, the corrective action plan shall propose reconstruction and synthetic relining of the impoundment pursuant to 20.6.6.17 NMAC or construction and synthetic lining of a new impoundment pursuant to 20.6.6.17 NMAC within one year of the subsequent sample analysis date. Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.6.17 NMAC and submitted with the corrective action plan. If a new impoundment is constructed the existing impoundment shall be closed pursuant to 20.6.6.30 NMAC.

(ii)

Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

(iii)

The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the [subsequent sample analysis date] date of postal notice from the department that action

is required under this subsection for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of Sub-subparagraph (i) of this subparagraph within 60 days of the denial.

(iv)

The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notification from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(b)

Replacement liner. If source control measures have been previously implemented such that the existing liner replaced a previously installed liner in an impoundment and ground water standard(s) of 20.6.2.3103 NMAC continue to be exceeded, such impoundments are authorized to continue to receive wastewater or stormwater pursuant to the following requirements.

(i)

The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department if abatement has not been previously implemented. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(ii)

If the results of abatement activities indicate that the replacement liner does not successfully control the source of contamination, the department may modify the discharge permit pursuant to Subsection E of 20.6.2.3109 NMAC and include additional conditions pursuant to Subsection H of 20.6.6.10 NMAC. The additional conditions shall address, but are not limited to, further source control measures which may include, but are not limited to, design, installation and construction of a composite liner system consistent with those described in the Guide for Industrial Waste Management, Part IV: Protecting Ground Water, Chapter 7: Section B, Designing and Installing Liners, Technical Considerations for New Surface Impoundments, Landfills and Waste Piles (U.S. environmental protection agency), incorporated herein by this reference. The requirements of

20.6.6.15 NMAC shall apply to hearing requests on the proposed additional discharge permit conditions.

(3) If the department notifies a permittee that action is required under this subsection, the applicant or permittee may notify the secretary by certified mail, sent within 30 days after the date of postal notice of the department's notice, that the applicant or permittee invokes dispute resolution under this paragraph. Upon such notice, the department, as represented by the secretary, deputy secretary, or division director and the applicant or permittee shall meet in person within 30 days and shall attempt in good faith to resolve the dispute.

C. Monitoring well

replacement. If information available to the department indicates that a monitoring well(s) required by 20.6.6.23 NMAC is not located hydrologically downgradient of the contamination source it is intended to monitor, is not completed pursuant to 20.6.6.23 NMAC or contains insufficient water to [effectively] monitor ground water quality effectively, a permittee shall install a replacement monitoring well(s). The replacement monitoring well(s) shall be installed within 120 days of the date of postal notice of notification from the department and a survey of the replacement monitoring well(s) shall be performed within 150 days of the date of postal notice of notification from the department, provided the department may grant an extension for good cause shown. The replacement monitoring well(s) shall be located, installed, completed, surveyed and sampled pursuant to 20.6.6.23 NMAC. The permittee shall develop a monitoring well completion report pursuant to Subsection J of 20.6.6.23 NMAC and submit it to the department within 180 days of the date of postal notice of notification from the department, provided the department may grant an extension for good cause shown.

D. Exceedances of

permitted maximum daily discharge volume. If the maximum daily discharge volume authorized by the discharge permit is exceeded by more than ten percent for any four average daily discharge volumes within any 12-week period, the permittee shall submit within 60 days of the fourth exceedance: a corrective action plan for reducing the discharge volume; or an application for a modified or renewed and modified discharge permit pursuant to 20.6.6.10 NMAC. Within 30 days of postal notice of department approval, the permittee shall initiate implementation of the corrective action plan.

E. Insufficient

impoundment capacity. If a survey, capacity calculations, or settled solids thickness measurements, indicate an existing impoundment is not capable of meeting the capacity requirements required by Subsection D of 20.6.6.17 NMAC, then within 90 days of the effective date of the discharge permit the permittee shall submit a corrective action plan for department approval. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the discharge volume, removing accumulated solids, changing wastewater or stormwater management practices, or installing an advanced treatment system. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Should the corrective action plan include removal of accumulated solids, solids shall be removed from the impoundment in a manner that is protective of the impoundment liner. The plan shall include the method of removal, and locations and methods for storage and disposal of the solids-slurry. If the plan proposes land application of the solids-slurry, the plan must also include the analytical results of total Kjeldahl nitrogen and chloride obtained from a representative sample of the solids-slurry to be applied. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded in monitoring wells installed to monitor the existing impoundment for the four quarters preceding submission of the corrective action plan, the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

F. Inability to preserve

required freeboard. If a minimum of two feet of freeboard cannot be preserved

in the wastewater impoundment, the permittee shall submit a corrective action plan to the department for approval. The corrective action plan shall be submitted within 30 days of the date of the initial exceedance of the freeboard requirement. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the maximum daily discharge volume, changing wastewater management practices, or installing an advanced wastewater treatment system. The corrective action plan shall include actions to be immediately implemented to regain and maintain a minimum of two feet of freeboard until permanent corrective actions have been completed. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded in monitoring wells installed to monitor the existing impoundment for the four quarters preceding submission of the corrective action plan, then the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

G. Impoundment - structural integrity compromised.

Within 24 hours of discovery, a permittee shall report to the department, any damage to the berms or the liner of an impoundment or any condition that exists that may compromise the structural integrity of the impoundment. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the impoundment liner

or berms shall be completed pursuant to 20.6.6.17 NMAC. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. The schedule of corrective actions shall be commensurate to the magnitude and scope of the activities to be completed. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded [~~in monitoring wells installed to monitor the existing impoundment~~] for the four quarters preceding submission of the corrective action plan, then the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

H. Unauthorized discharge - reporting and correction.

In the event of a spill or release that is not authorized by the discharge permit, the permittee shall notify the department and take corrective actions pursuant to 20.6.2.1203 NMAC. Wastewater or stormwater shall be contained and pumped to a permitted sump, impoundment, or land application area pursuant to the dairy rule. Wastewater or stormwater applied to the land application area shall conform to the requirements of 20.6.6.21 and 20.6.6.25 NMAC. The permittee shall repair or replace failed components within 48 hours from the time of failure or as soon as practicable. [20.6.6.27 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

20.6.6.30 CLOSURE REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Permanent closure of dairy facility or impoundments.

The following closure actions shall be performed at dairy facilities.

- (1) For permanent closure of a dairy facility.
- (a)

The department shall be notified no later than 30 days after wastewater discharge has permanently ceased at the dairy facility.

(b) Installation of ~~at least~~ any additional monitoring wells shall be completed pursuant to 20.6.6.23 NMAC.

(c) All wastewater and combination wastewater/stormwater impoundments shall be emptied within six months of permanently ceasing wastewater discharge at the dairy facility; combination wastewater/stormwater impoundments may continue to receive stormwater after removal of the impounded wastewater/stormwater. All stormwater and combination wastewater /stormwater impoundments shall be emptied of stormwater within one year of ~~removing all livestock from the dairy facility~~ cessation of wastewater discharge. Wastewater and stormwater removed from impoundments shall be applied to the designated land application area, as authorized by a discharge permit. In the event that land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

(d) Manure solids and compost shall be removed from surface areas at the dairy facility and applied to the designated land application area, as authorized by a discharge permit, or transferred off-site for proper disposal ~~within one year of removing all livestock from the facility~~.

(e) Complete removal of manure solids from the wastewater impoundment(s) shall be achieved within two years of permanently ceasing wastewater discharge. Complete removal of manure solids from the stormwater and combination wastewater/stormwater impoundment(s) shall be achieved within two years of ~~removing all livestock from the dairy facility~~ cessation of wastewater discharge. Manure solids shall be applied to the designated land application area, as authorized by a discharge permit. In the event that land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

(f) Impoundment liners shall be perforated or removed and the impoundments shall be re-graded with clean fill to blend with surface topography to prevent ponding within two years of permanently ceasing

wastewater discharge [and removing all livestock from the facility].

(2) For closure of an impoundment at a facility not undergoing permanent closure (e.g., existing impoundment replaced with new impoundment).

(a) Impoundments shall be emptied of wastewater and stormwater within six months of ceasing receipt of wastewater or stormwater into the impoundments. Wastewater and stormwater removed from impoundments shall be applied to the designated land application area, as authorized by a discharge permit. If land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

(b) Complete removal of manure solids from impoundments shall be achieved within two years of ceasing receipt of wastewater or stormwater into the impoundments. Manure solids shall be applied to the designated land application area, as authorized by a discharge permit. If land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

(c) Liners in impoundments shall be perforated or removed and the impoundments shall be re-graded with clean fill to blend with surface topography to prevent ponding within two years of ceasing receipt of wastewater or stormwater into the impoundments.

B. Post-closure ground water sampling and reporting. Following completion and confirmation by the department of the requirements of Subsection A of this section, ground water monitoring shall continue pursuant to 20.6.6.23 NMAC until a minimum of eight consecutive ground water sampling events confirm that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter. If monitoring results show that one or more of the standards of 20.6.2.3103 NMAC is exceeded or the total nitrogen concentration in ground water is greater than 10 milligrams per liter, the permittee shall implement contingency requirements pursuant to 20.6.6.27 NMAC. Upon notification from the department that post-closure ground water monitoring may cease, the permittee shall abandon all monitoring wells and

submit a report to the department pursuant to Subsection C of this section.

C. Monitoring well abandonment. Upon notification from the department, the permittee shall abandon monitoring wells pursuant to 19.27.4 NMAC and the following requirements.

(1) The well casing shall be removed and neat cement grout, bentonite based plugging material, or other sealing material approved by the state engineer in accordance with 19.27.4 NMAC shall be placed from the bottom of the borehole to the ground surface using a [tremmie] tremie pipe.

(2) If the casing cannot be removed, neat cement grout, bentonite based plugging material, or other sealing material approved by the state engineer in accordance with 19.27.4 NMAC shall be emplaced in the well using a [tremmie] tremie pipe from the bottom of the well to the ground surface.

(3) A well abandonment report shall be prepared by the permittee and shall provide information equivalent to the plugging record requirements of 19.27.4 NMAC. The well abandonment report shall be submitted to the department within 60 days of completion of well plugging activities.

~~**D. Discontinuance of ground water monitoring - former impoundments.** Ground water monitoring conducted at previously used impoundments pursuant to Subsection A of 20.6.6.23 NMAC may be discontinued following closure of the impoundment pursuant to Subsection A of this section. Upon the achievement of a minimum of eight consecutive ground water sampling events following completion of closure confirming the conditions of Paragraphs (1) and (2) of this subsection, the permittee may request approval to discontinue ground water monitoring at previously used impoundments. Upon approval from the department, the permittee shall abandon the monitoring wells pursuant to Subsection C of this section.~~

~~(1) Ground water samples from the monitoring wells used to monitor the former impoundments confirm that the standards of 20.6.2.3103 NMAC are not exceeded.~~

~~(2) The total nitrogen concentration in ground water samples from monitoring wells used to monitor the former impoundments confirm that the total nitrogen concentration in ground water does not exceed 10 milligrams per liter.~~

~~**E. Discontinuance of ground water monitoring - former fields.** Ground water monitoring conducted at previously used fields within a land application area pursuant to Subsection A of 20.6.6.23 NMAC may be discontinued following cessation of land application of wastewater or stormwater to the field(s). Upon the achievement of a minimum of eight consecutive ground water sampling events following cessation of land application of wastewater or stormwater confirming the conditions of Paragraphs (1) and (2) of this subsection, the permittee may request approval to discontinue ground water monitoring at previously used fields. Upon approval from the department, the permittee shall abandon the monitoring wells pursuant to Subsection C of this section.~~

~~(1) Ground water samples from the monitoring wells used to monitor the former fields confirm that the standards of 20.6.2.3103 NMAC are not exceeded.~~

~~(2) The total nitrogen concentration in ground water samples from monitoring wells used to monitor the former fields confirm that the total nitrogen concentration in ground water does not exceed 10 milligrams per liter.]~~

~~[20.6.6.30 NMAC - N, 01/31/2011; A, 06/16/2015]~~

20.6.6.35 CONTINUING EFFECT OF PRIOR ACTIONS DURING TRANSITION:

A. A discharge permit issued pursuant to 20.6.2.3109 NMAC that has not expired on or before [the effective date of the dairy rule] December 31, 2011, shall remain in effect and enforceable pursuant to the conditions of the discharge permit and for its term as designated by Section 74-6-5 NMSA 1978. If an effective discharge permit contains a permit condition with a time period for submittal of a renewal application that is different from the time period contained in Subsection A of 20.6.6.10 NMAC that condition will remain in effect for two years following the effective date of the dairy rule.

B. If an application for a new discharge permit or an application for a renewed or modified discharge permit was submitted to the department before [the effective date of the dairy rule] December 31, 2011, and the department has not yet proposed a draft discharge permit for the facility, the application shall not be processed by the department [if the application has been deemed administratively complete-

and the requirements of Subsection D of 20.6.2.3108 NMAC have been satisfied]. The applicant shall submit [a permit fee payment equal to one-half of the applicable permit fee from table 1 of 20.6.2.3114 NMAC within 90 days of the effective date of the dairy rule] to the department an application for a new discharge permit or an application for a renewal, modification, renewal and modification or closure discharge permit pursuant to 20.6.6.10 NMAC and a filing fee and permit fee payment pursuant to 20.6.6.9 NMAC within 180 days of August 1, 2015. Application and permit fees already submitted by the facility shall be credited toward the fees required by 20.6.6.9 NMAC.

C. If a discharge permit for a dairy facility [is] was expired on [the effective date of the dairy rule] December 31, 2011, and an application for renewal has not been received by the department, the permittee, owner of record of the dairy facility or the holder of the expired discharge permit:

(1) shall within 90 days of [the effective date of the dairy rule] August 1, 2015, submit to the department an application for a discharge permit renewal, renewal and modification or closure pursuant to 20.6.6.10 NMAC and a filing fee and permit fee payment pursuant to 20.6.6.9 NMAC; or

(2) if the dairy facility has not been constructed or operated, the permittee, the owner of record of the dairy facility or the holder of the expired discharge permit may submit a statement to the department instead of an application for renewal certifying that the facility has not been constructed or operated and that no discharges have occurred. Upon the department's verification of the certification, the department shall retire the discharge permit number from use.

D. [The department shall process submissions meeting the requirements of Subsections B and C of this section according to the following schedule and subject to the public notice requirements of 20.6.2.3108 NMAC. If the department issues a discharge permit, the permittee shall have ninety days from the effective date of the discharge permit to submit all the necessary information to comply with 20.6.6.10 through 20.6.6.13 NMAC.

(1) For a new discharge permit application or for a renewal application for a discharge permit whose term ended on or before December 31, 2005, the department shall propose approval of a discharge permit or

disapproval of an application within 90 days of the effective date of the dairy rule. The department shall notify the applicant of the proposed action by certified mail.

(2) For a renewal application for a discharge permit whose term ended in calendar year 2006, the department shall propose approval of a discharge permit or disapproval of an application within 180 days of the effective date of the dairy rule. The department shall notify the applicant of the proposed action by certified mail.

(3) For a renewal application for a discharge permit whose terms ended in calendar year 2007, the department shall propose approval of a discharge permit or disapproval of an application within 270 days of the effective date of the dairy rule. The department shall notify the applicant of the proposed action by certified mail.

(4) For a renewal application for a discharge permit whose terms ended in calendar year 2008, the department shall propose approval of a discharge permit or disapproval of an application within 360 days of the effective date of the dairy rule. The department shall notify the applicant of the proposed action by certified mail.

(5) For a renewal application for a discharge permit whose term ended in calendar year 2009, the department shall propose approval of a discharge permit or disapproval of an application within 450 days of the effective date of the dairy rule. The department shall notify the applicant of the proposed action by certified mail.

(6) For a renewal application for a discharge permit whose term ended on or after January 1, 2010, but before the effective date of the dairy rule, the department shall propose approval of a discharge permit or disapproval of an application within 540 days of the effective date of the dairy rule. The department shall notify the applicant of the proposed action by certified mail.] The department shall take action on permit applications pending before the department as of August 1, 2015, and shall consider applications to modify final permits issued by the department under the dairy rule prior to August 1, 2015, as follows:

(1) If the department received an application for a discharge permit for a dairy facility after December 31, 2011, which is pending as of August 1, 2015, and the department has not issued a draft permit before August 1, 2015, then the department shall process the application in accordance

with 20.6.6.10 NMAC and take action in accordance with the dairy rule, including the amendments effective as of August 1, 2015.

(2) If the department has issued a draft permit for a dairy facility, but not a final permit, as of August 1, 2015, then on or before September 30, 2015, the applicant may notify the department in writing to review the draft permit for changes to be consistent with the amendments to the dairy rule.

(a) If the department does not receive a written notice from the applicant to review the draft permit by September 30, 2015, then the department may act on the draft permit in accordance with Subsection J of 20.6.6.10 NMAC, including the issuance of a final permit, after considering all comments made on the draft permit and the record of any public hearing.

(b) If the department receives a written notice to review the draft permit by September 30, 2015, then the department may require the applicant to submit additional information, consistent with 20.6.6.12 NMAC, as necessary to reflect the amendments to the dairy rule effective as of August 1, 2015, and the applicant may supplement its permit application. After considering the additional information, the department shall either act on the application in accordance with Subsection G of 20.6.6.10 NMAC or, if the department determines that no significant changes to the draft permit are warranted, the department may proceed with a permit decision in accordance with Subsection J of 20.6.6.10 NMAC and shall explain in writing the reasons for not changing the draft permit. If a request for permit review is filed, any information submitted by an applicant who requested review of the draft permit shall be included in the administrative record filed by the department under Paragraph (2) of Subsection A of 20.1.3.16 NMAC.

(3) If the department has issued a final permit under the dairy rule before August 1, 2015, the permit holder may submit an application to modify the discharge permit to reflect amendments to the dairy rule pursuant to 20.6.6.10 NMAC along with the applicable fee specified in 20.6.6.9 NMAC.

(4) The department shall prioritize its review and permit actions under this subsection based upon potential impacts to ground water quality.

E. Any dairy facility

discharging, capable of recommending discharging, or that has ceased discharging within the term of its most recent discharge permit shall continue all monitoring and submittal of monitoring reports as prescribed in the most recent discharge permit until the department issues a renewed or renewed and modified discharge permit.

~~[F. — Any discharge permit proposed for approval (i.e., draft discharge permit) by the department pursuant to 20.6.2.3109 NMAC, but not made final before the effective date of the dairy rule, is withdrawn. Any permit fee submitted before the withdrawal of such a draft discharge permit shall be applied towards the permit fee for the permit issued pursuant to the dairy rule.]~~

~~[20.6.6.35 NMAC - N, 01/31/2011; A, 06/16/2015]~~

**End Of Adopted Rules
Section**

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Issue 7	April 1	April 16
Issue 8	April 17	April 30
Issue 9	May 1	May 14
Issue 10	May 15	May 29
Issue 11	June 1	June 16
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Issue 24	December 16	December 30

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