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# New Mexico Register

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

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# New Mexico Register

Volume XXVII, Issue 3

February 12, 2016

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

## Notices of Rulemaking and Proposed Rules

### CULTURAL AFFAIRS, DEPARTMENT OF

#### Rule Making Notice

The Administration and Library Development Services Bureau of the New Mexico State Library, a division of the Department of Cultural Affairs, will hold a public hearing to gather comments and consider actions as appropriate on the proposal to repeal and replace its rule 4.5.2 NMAC. This rule governs state grants-in-aid to public libraries.

The meeting will be held on Tuesday, March 15, 2016, beginning at 9:00 a.m., in the Pinon Room of the State Records Center and Archives (SRCA). SRCA is located at 1209 Camino Carlos Rey in Santa Fe.

Any person may appear at the hearing to make oral comments, or submit written comments.

To request a written copy of the proposed rule and meeting agenda, submit your request to the Library Development Services Bureau, New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, NM, 87507. Additionally, copies of the proposed rule and meeting agenda may be obtained from the State Library's website at: [www.nmstatelibrary.org](http://www.nmstatelibrary.org).

Interested persons may submit comments by e-mail at [sl.development@state.nm.us](mailto:sl.development@state.nm.us) or in writing to the above address. The State Library will accept comments for consideration no later than March 14, 2016.

The agenda is subject to change up to 72 hours prior to the meeting. Please contact the Library Development Services Bureau at (505) 476-9742, or the Department's website at [www.nmstatelibrary.org](http://www.nmstatelibrary.org) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Development Services Bureau at 800-340-3890 at least one week prior to the hearing. Public documents, including the agenda and minutes, can be provided in various accessible formats.

### EDUCATIONAL RETIREMENT BOARD

#### Notice of Rulemaking and Public Hearing

**NOTICE IS HEREBY GIVEN** that the New Mexico Educational Retirement Board of Trustees will hold a rulemaking hearing on April 22, 2016. The hearing will be held during the Board's regular business meeting at the ERB's Albuquerque office located at 6201 Uptown Boulevard, Suite 203, Albuquerque, NM 87110 beginning at 9:00 a.m. The purpose of the rulemaking hearing is to consider adoption of proposed revisions to the following rules - 2.28.2 NMAC, 2.28.3 NMAC, 2.28.4 NMAC, 2.28.5 NMAC and 2.28.9 NMAC. The Board will vote on the proposed rules during the meeting.

A summary of the proposed revisions and copies of the proposed rules may be accessed at the ERB's website [www.nmerb.org](http://www.nmerb.org) or by contacting Amanda Olsen at [AmandaSolsen@state.nm.us](mailto:AmandaSolsen@state.nm.us), 701 Camino del Los Marquez, Santa Fe, New Mexico 87505 or (505) 476-6133.

Interested persons may submit their comments on the proposed rules to the Board via email at [rule.change@nmerb.org](mailto:rule.change@nmerb.org) no later than 5 p.m. on March 31. In the subject line, please indicate the number of each rule(s) for which you are providing comments. Oral comments will also be accepted at the April 24, 2015 Board meeting, subject to time limitations.

Any person with a disability who is in need of auxiliary aid or service to attend or participate in the hearing should contact Debbi Lucero at 505-827-8030 one week prior to the meeting.

### OIL CONSERVATION COMMISSION

#### Notice of Meeting and Public Hearing

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **March 10, 2016** in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission.

This public hearing concerns the proposed amendment of 19.15.36, 19.15.35 and 19.15.2 NMAC to amend 19.15.36 allowing for a more efficient permitting process for surface waste management facilities by providing clear guidance for applicants, to amend 19.15.35 by providing clear requirements for waste disposal and defining oil field waste to be consistent with the definition in 19.15.2.7.O NMAC and the language of the Oil and Gas Act, to amend 19.15.2.7.O NMAC by defining oil field waste to reflect the language of the Oil and Gas Act, and otherwise to protect ground water, human health and the environment, help the development of oil and gas, and to protect against waste and protect correlative rights. If additional time is needed, the hearing may continue at a later date announced by the Commission. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing please contact Division Administrator Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) by **March 1, 2016**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division website at [www.emnrd.state.nm.us](http://www.emnrd.state.nm.us).

**STATE OF NEW MEXICO TO:  
All named parties and persons  
having any right, title, interest  
or claim in the following cases  
and notice to the public.**

**CASE 15443:** Proposed amendment to 19.15.36 NMAC amending the provisions of the New Mexico Administrative Code (NMAC) concerning persons engaged in applying for and operating a Surface Waste Management Facility.

The proposed amendment to 19.15.36 NMAC creates a more efficient method of making application that clarifies the administrative approval process and

notice requirements; defines who is the "operator" of a surface waste management facility; clarifies certain provisions of the financial assurance requirements; and otherwise amend rule 19.15.36 NMAC to protect water, public health and the environment, prevent the waste of oil and gas, and to protect correlative rights.

Proposed amendment to 19.15.35 NMAC amending the provisions of the New Mexico Administrative Code (NMAC) concerning disposal of oil field waste.

The proposed amendment to 19.15.35 NMAC provides clear requirements for waste disposal and defines oil field waste to be consistent with the definition in 19.15.2.7.O. NMAC and the language of the Oil and Gas Act; and otherwise amend rule 19.15.35 NMAC to protect water, public health and the environment, prevent the waste of oil and gas, and to protect correlative rights.

Proposed amendment of 19.15.2.7.O NMAC.

The proposed amendment to 19.15.2.7.O NMAC amends the definition of oil field waste to better reflect the language of the Oil and Gas Act.

Copies of the text of the application and proposed amendment are available from commission clerk Florene Davidson at (505) 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd> under "Announcements." If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Written comments on the proposed amendment, pre-hearing statements and notices of recommended modifications must be received no later than 5:00 p.m. on **Thursday, March 3, 2016**. Any person may present non-technical testimony or make an un-sworn statement at the hearing. Any person who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than 5:00 p.m. on **Thursday, March 3, 2016**, file six sets of a pre-hearing statement with Ms. Davidson. The pre-hearing statement shall include the person's name and the name of the person's attorney; the names of all

witnesses the person will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time needed to present the testimony. The person shall attach to the pre-hearing statement any exhibits he or she plans to offer as evidence at the hearing. Any person recommending modifications to a proposed rule change shall, no later than **Monday, February 29, 2016**, file a notice of recommended modifications with Ms. Davidson including the text of the recommended modifications, an explanation of the modifications' impact, and the reasons for adopting the modifications. Written comments, pre-hearing statements and notices of recommended modifications may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462.

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 1st day of February 2016.**

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

**David Catanach  
Director, Oil Conservation Division**

S E A L

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

**Public Rule Hearing and Regular  
Board Meeting**

The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors will hold a Rule Hearing on Tuesday, March 22, 2016. Following the Rule Hearing the New Mexico Professional Surveying Committee will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors Rule Hearing will begin at 10:00 a.m. and the Professional Surveyors Committee Meeting will convene

following the rule hearing. The meeting will be held at the New Mexico Workers' Compensation Administration, 2410 Centre Avenue SE, Albuquerque, NM 87125-7198 in the Training Room.

The purpose of the rule hearing is to consider adoption of proposed amendments, to the following Board Rules and Regulations in 12.8.2 NMAC Minimum Standards for Surveying in New Mexico, 12.8.2.1 NMAC Issuing Agency, 12.8.2.6 NMAC Objective, 12.8.2.7 NMAC Definitions, 12.8.2.9 NMAC Boundary Surveying, 12.8.2.10 NMAC Improvement Location Report, 12.8.2.11 NMAC Topographic Surveying, 12.8.2.12 NMAC Easement Surveying, 12.8.2.13 NMAC Right of Way Surveying, 12.8.2.14 NMAC Controlled Surveying Reporting, 12.8.2.16 NMAC Accuracy, 12.8.2.17 NMAC Monuments.

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4565 or (505) 476-4656 or copies of the proposed rules are available on the BLPEPS board's website: [www.sblpes.state.nm.us](http://www.sblpes.state.nm.us). In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than March 15, 2016. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4565 or (505) 476-4656 at least two weeks prior to the meeting or as soon as possible.

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

## Adopted Rules

### Effective Date and Validity of Rule Filings

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

#### ENERGY, MINERALS AND NATURAL RESOURCES FORESTRY DIVISION

This is an amendment to 3.13.20 NMAC, Sections 7, 10 and 12, effective 2/12/2016.

##### 3.13.20.7 DEFINITIONS:

**A.** "Applicant" means a taxpayer who on or after January 1, 2004, donates or partially donates (or for purposes of 3.13.20.8 NMAC plans to donate or partially donate) through a bargain sale for a conservation or preservation purpose, a perpetual less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land, which is subject to a perpetual conservation easement, to a public or private conservation agency. If more than one taxpayer owns an interest in the land or interest in land that is the donated or partially donated, they shall be considered one applicant, but the application shall include the names and addresses of all taxpayers that own an interest in the donated land or interest in land.

**B.** "Appraisal bureau" means the taxation and revenue department, property tax division, appraisal bureau.

**C.** "Bargain sale" means a sale where the taxpayer is paid less than the fair market value of the land or interest in land.

**D.** "Building envelope" means a designated area within a conservation easement that is identified in the deed of conservation easement that contains existing structures and activities or will contain future structures and activities that are for the grantor's continued use of the property but that are prohibited elsewhere within the conservation easement.

**E.** "Committee" means the committee established pursuant to the Natural Lands Protection Act, NMSA 1978, Sections 75-5-1 *et seq.*

**F.** "Conservation or preservation purpose" means open

space, natural area preservation, land conservation or preservation, natural resource or biodiversity conservation including habitat conservation, forest land preservation, agricultural preservation, watershed preservation or historic or cultural property preservation, or similar uses or purposes such as protection of land for outdoor recreation purposes. The resources or areas contained in the donation must be significant or important.

**G.** "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

**H.** "Development approach" means a method of appraising undeveloped land having a highest and best use for subdivision into lots. This approach consists of estimating a final sale price for the total number of lots into which the property could best be divided and then deducting all development costs, including the developer's anticipated profit. The remaining sum, the residual, represents the raw land's market value.

**I.** "Governmental body" means the state of New Mexico or any of its political subdivisions.

**J.** "Interest in land" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, mineral right, remainder interest or other interest in or right in real property that complies with the requirements of 26 U.S.C. section 170(h)(2) and its implementing regulations, or any pertinent successor of 26 U.S.C. section 170(h)(2).

**K.** "Land" means real property, including rights of way, easements, privileges, water rights and all other rights or interests connected with real property.

**L.** "Less-than-fee interest" means an interest in land that is less than the entire property or all of the rights in the property or a non-possessory interest in land that imposes a limitation or affirmative obligation such as a conservation, land use or preservation restriction or easement.

**M.** "National register of historic places" means the register that

the United States secretary of the interior maintains of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture.

**N.** "Pass-through entity" means a business association other than a sole proprietorship; an estate or trust; a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities.

**O.** "Public or private conservation agency" means a governmental body or a private non-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land or historic conservation purposes and that has tax-exempt status as a public charity under 26 U.S.C. section 501(c)(3) and meets the requirements of 26 U.S.C. section 170(h)(3) and its implementing regulations, and has the power to acquire, hold or maintain land or interests in land.

**P.** "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-13(c)(3) or subsequent amendments and does not use the development approach as the sole means of determining fair market value. The appraisal for a conservation easement or restriction shall state whether the donation increases the value of other property the donor or a related person owns. In accordance with 26 C.F.R. section 1.170A-14(h)(3)(i), if the donation increases the value of other property the donor or a related person owns the appraisal shall reflect the ~~[increase by reducing the value of the conservation contribution by the amount of the increase in value to the other property]~~ value of enhancement, whether or not the other property is contiguous with the donated property. The conservation contribution shall be reduced by the amount of the increase in value to the other property.

**Q.** "Qualified appraiser"



means a qualified appraiser as defined in 26 C.F.R. section 1.170A-13(c)(5) or subsequent amendments and who is a certified general real estate appraiser.

**R.** “Qualified intermediary” means any person who has not been previously convicted of a felony, who has not had a professional license revoked, who is not engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is not identified in the NMSA 1978, Section 61-29-2, which governs real estate brokers and salespersons, or who is not an entity owned wholly or in part by or employing a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is identified in NMSA 1978, Section 61-29-2.

**S.** “Taxpayer” means a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate, including a foreign estate, or a trust. A non-profit may be a taxpayer if organized as a United States domestic partnership, a limited liability company, a United States domestic corporation or a trust. A governmental body or other governmental entity is not a taxpayer.

**T.** “Tax filer” means a New Mexico taxpayer who files a New Mexico tax return claiming a tax credit pursuant to the Land Conservation Incentives Act together with valid numbered documentation from the taxation and revenue department or valid sub-numbered documentation from a qualified intermediary.

**U.** “Secretary” means the secretary of energy, minerals and natural resources department or his or her designee.  
[3.13.20.7 NMAC - Rp, 3.13.20.7 NMAC, 6-16-2008; A, 12-30-2010; A, 2/12/2016]

### **3.13.20.10 APPLICATION FOR CERTIFICATION OF ELIGIBILITY:**

**A.** An applicant who submitted an assessment application to the energy, minerals and natural resources department and received a finding from the secretary that the donation or proposed donation is for a conservation or preservation purpose and will protect that conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important may apply for certification

of eligibility for a land conservation incentives tax credit. An applicant may not apply for certification of eligibility for a land conservation incentives tax credit without first submitting an assessment application pursuant to 3.13.20.9 NMAC and receiving a favorable finding from the secretary. The applicant shall certify in writing that the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application. If the applicant has made such changes the applicant shall submit a new assessment application pursuant to 3.13.20.9 NMAC and receive a favorable finding from the secretary before applying for certification of eligibility.

**B.** The applicant may obtain a land conservation incentives tax credit certification of eligibility application form from the energy, minerals and natural resources department.

**C.** An applicant shall submit the certification of eligibility application package, which shall include one signed, completed paper original and two paper copies of the application package, to the energy, minerals and natural resources department. Any photographs shall be provided in color. The applicant shall certify that the information and documents included in the application for certification of eligibility are true and correct.

**D.** The completed application for certification of eligibility shall contain the applicant’s name, address, telephone number, e-mail address if available, signature, federal employer identification number or social security number, and, if available, the New Mexico combined reporting system (CRS) identification number as well as the certifications, information and attachments required by Subsections E through I of 3.13.20.10 NMAC, as applicable. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer’s federal employer identification number or social security number and, if available, New Mexico CRS identification number. The applicant shall indicate on the application whether the applicant is a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate or a trust. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer’s status.

**E.** The application shall state whether the applicant made the donation as part of a bargain sale. If the applicant made the donation as part of a bargain sale, the application shall include the amount the applicant received from the sale of the land or interest in land.

**F.** The applicant shall certify on the certification of eligibility application that none of the taxpayers listed on the certification of eligibility application is or was a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land. If an individual and a domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as owners on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that the individual is not a partner, manager, member, shareholder or beneficiary of the domestic partnership, limited liability company, domestic corporation or pass-through entity. If more than one domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as an owner on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that none of the named entities is a subsidiary, partner, manager, member, shareholder or beneficiary of any of the other entities listed on the deed.

**G.** The certification of eligibility application package shall consist of a land conservation incentives tax credit application form, with the following required attachments as well as any attachments required in Subsection H of 3.13.20.10 NMAC for fee donations or Subsection I of 3.13.20.10 NMAC for less-than-fee donations:

- (1) a copy of the letter from the secretary stating that after reviewing the applicant’s assessment application that the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important;
- (2) written certification signed by the applicant that the applicant has not changed the donation or proposed donation, donation

assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;

(3) a copy of the conservation easement or deed recorded with the county clerk of the county or counties where the land is located, which reflects the ownership interest of each individual or entity conveying the land or interest in land;

(4) a qualified appraisal of the land or interest in land donated that a qualified appraiser prepared showing the fair market value of the land or interest in land with a statement from the appraiser that prepared the appraisal certifying that the appraisal is a qualified appraisal and that the appraiser is a qualified appraiser; the appraisal shall not be made more than 60 days prior to the date of the donation; the appraisal shall ~~[either be a self-contained appraisal or, if a summary appraisal, shall include a copy of the appraiser's work file]~~ be a fully documented appraisal report commensurate with the complexity of the assignment;

(5) if the donation is to a private conservation agency, a copy of that agency's 501(c)(3) certification from the United States internal revenue service;

(6) a signed statement from the applicant certifying that the applicant did not donate the land or interest in land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;

(7) if the applicant owns other properties within a 10 mile radius of the donated land or interest in land, a legal description of those properties;

(8) signed authorization from the applicant that authorizes personnel from the appraisal bureau to contact the appraiser that prepared the appraisal for the donation;

(9) a title opinion certifying that the applicant owned the donated land or interest in land as of the date of the donation or a title insurance policy for the land or interest in land showing that the applicant owned the donated land or interest in land as of the date of the donation;

(10) if the applicant owns the mineral interest under the land or the interest in land, a title opinion certifying such ownership, other documentation establishing such ownership, or a report from a professional

geologist that the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed that prohibits any extraction or removal of minerals by any surface mining method; methods of mining that have limited, localized negative effects on the land and that are not irremediably destructive of significant conservation interests may be allowed if the secretary finds that the methods will have limited, localized negative effects and are not irremediably destructive of significant conservation interests; and

(11) if the ownership of the surface estate and mineral interest has been separate and remains separate, a report, satisfactory to the secretary, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; the secretary may have a geologist that the state employs review the report; if the secretary finds the report unsatisfactory the secretary's letter denying certification of eligibility shall state the reasons that the report is unsatisfactory.

**H.** If the applicant donated the land in fee, the applicant shall also include the following attachments with the application package:

(1) a statement from the public or private conservation agency to which the applicant donated the land, that the applicant donated the land for conservation or preservation purposes and the public or private conservation agency will hold the land for such purposes;

(2) a copy of United States internal revenue service form 8283 for the donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation; and

(3) to ensure the land will be used in perpetuity for the purposes of the donation, documentation in the form of a conservation easement that complies with 26 U.S.C. section 170(h) and its implementing regulations placed on the land that contains a provision in the conservation easement that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose (separate donees must hold the fee and conservation easement).

**I.** If the applicant donated a less-than-fee interest in land, the applicant shall also include the following

attachments with the application package:

(1) a copy of United States internal revenue service form 8283 for that donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation;

(2) a provision in the conservation easement that identifies the donation's conservation or preservation purpose or purposes;

(3) a provision in the conservation easement that provides that the conveyance of the less-than-fee interest does not and will not adversely affect contiguous landowners' existing property rights;

(4) if a conservation or preservation purpose is for the conservation or preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement that provides for the general public's substantial and regular use;

(5) if a conservation or preservation purpose is for the protection of a relatively natural habitat, a provision in the conservation easement that describes the habitat;

(6) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement identifying such policy and identifying the significant public benefit;

(7) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement stating how the easement or restriction provides for the general public's scenic enjoyment and identifies the significant public benefit;

(8) if a conservation or preservation purpose is for the property's continued use for irrigated agriculture, a provision that provides that sufficient water rights will remain with the property;

(9) a provision in the conservation easement that the conservation restrictions run with the land in perpetuity;

(10) a provision in the conservation easement that any reserved use shall be consistent with the conservation or preservation purpose;

(11) a provision in the conservation easement that prohibits

the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requires that the conservation or preservation purposes for which the donation was originally intended continue to be carried out;

(12) a provision in the conservation easement that provides that the donation of the less-than-fee interest is a property right, immediately vested in the donee, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation or preservation purposes and judicial proceedings extinguish the easement or restrictions then the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;

(13) if the applicant reserves rights that if exercised may impair the conservation interests associated with the property, documentation sufficient to establish the property's condition at the time of the donation and a provision in the conservation easement whereby the applicant agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes; and

(14) if the interest in land is subject to a mortgage, a subordination agreement, recorded with the county clerk of the county or counties where the land that is located, from the mortgage holder that the mortgage holder subordinates the mortgage holder's rights in the interest in land to the right of the public or private conservation agency to enforce the conservation or preservation purposes of the donation in perpetuity. [3.13.20.10 NMAC - Rp, 3.13.20.9 NMAC, 6-16-2008; A, 12-30-2010; A, 2/12/2016]

### 3.13.20.12 NOTICE TO APPLICANT OF PROPOSED REJECTION OF CERTIFICATION OF ELIGIBILITY APPLICATION;

#### APPLICANT RESPONSE; FINAL ACTION:

A. If after review of a certification of eligibility application, the secretary determines that there is cause to reject the certification of eligibility application, the secretary shall issue a letter advising the applicant that the secretary is proposing to reject the certification of eligibility application and stating the specific reasons for the proposed rejection. If the proposed rejection involves an unfavorable preliminary review of the appraisal from the appraisal bureau, the energy, minerals and natural resources department shall include a copy of the unfavorable preliminary review of the appraisal with the secretary's letter.

B. The applicant shall have 45 days after the issuance of the letter to respond in writing to the reasons for the proposed rejection and [offer] submit a revised appraisal, information or [documents] other documentation that demonstrates [that] the application meets the requirements.

C. If the secretary's proposed rejection involves an unfavorable preliminary review of the appraisal from the appraisal bureau and the applicant responds to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall forward the applicant's response to the appraisal bureau for review of the response and issuance of the appraisal bureau's final review of the appraisal. If the applicant does not respond to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall notify the appraisal bureau that the energy, minerals and natural resources department did not receive a response to the preliminary review of the appraisal from the applicant. After reviewing the applicant's response, if any, the appraisal bureau shall issue a final review of the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and whether the appraiser used proper methodology and reached a reasonable conclusion concerning value.

D. After reviewing the applicant's response, if any, and the appraisal bureau's final review of the appraisal the secretary shall determine whether the information or documents

the applicant has supplied satisfactorily address and resolve the specific reasons for the proposed rejection and issue a letter either rejecting the certification of eligibility application or approving the certification of eligibility application. If the secretary determines that the applicant's response does not satisfactorily resolve the reasons for the rejection or if the appraisal bureau has issued a final unfavorable recommendation of the appraisal, the secretary shall issue a letter denying the certification of eligibility application. The secretary's letter shall state the specific reasons why the secretary rejected the certification of eligibility application.

[3.13.20.12 NMAC - N, 6-16-2008; A, 12-30-2010; A, 2/12/2016]

### ENVIRONMENTAL IMPROVEMENT BOARD

The Environmental Improvement Board, at its 12/18/2015 hearing, to repeal its rule 7.6.2 NMAC, Food Service And Food Processing (filed 7/13/2000) and replace it with 7.6.2 NMAC, Food Service And Food Processing, effective 3/1/2016.

### ENVIRONMENTAL IMPROVEMENT BOARD

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

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

[7.6.2.1 NMAC - Rp, 7.6.2.1 NMAC, 3/1/2016]

**7.6.2.2 SCOPE:** All food service establishments and food processing establishments.  
[7.6.2.2 NMAC - Rp, 7.6.2.2 NMAC, 3/1/2016]

**7.6.2.3 STATUTORY AUTHORITY:** Section 74-1-8 NMSA 1978 directs the environmental improvement board to promulgate regulations and standards for food protection. Section 74-1-9 NMSA 1978 directs the procedures for adoption. Section 25-1-4 delineates requirements of food service establishments to prepare and serve food in a manner safe for human consumption, free from

adulteration, spoilage, contamination and unwholesomeness. Section 25-1-7 NMSA 1978 authorizes the department of environment to execute any provisions of the Food Service Sanitation Act (Chapter 25, Article 1 NMSA 1978).  
[7.6.2.3 NMAC - Rp, 7.6.2.3 NMAC, 3/1/2016]

**7.6.2.4 DURATION:**  
Permanent.  
[7.6.2.4 NMAC - Rp, 7.6.2.4 NMAC, 3/1/2016]

**7.6.2.5 EFFECTIVE DATE:**  
March 1, 2016, unless a later date is cited at the end of a section.  
[7.6.2.5 NMAC - Rp, 7.6.2.5 NMAC, 3/1/2016]

**7.6.2.6 OBJECTIVE:** The objective of these regulations is to protect the public health by establishing standards and provisions for the safe operation of food establishments to assure that consumers are not exposed to adverse environmental health conditions.  
[7.6.2.6 NMAC - Rp, 7.6.2.6 NMAC, 3/1/2016]

**7.6.2.7 DEFINITIONS:**  
**A.** Adoption of Food Code definitions. Except as otherwise provided below, Part 1-2 (Definitions) of the 2013 United States food and drug administration model Food Code (“Food Code”) is hereby adopted and incorporated in its entirety.

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

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

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

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

**(4)** “Drinking water” means water that meets criteria

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

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

**(a)** Food establishment includes:  
**(i)** an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; or

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

**(b)** Food establishment does not include:  
**(i)** an establishment that offers only prepackaged foods that are not time/temperature control for safety (TCS) foods;

**(ii)** a produce stand that only offers whole, uncut fresh fruits and vegetables;

**(iii)** a food processing plant; including those that are located on the premises of a food establishment;

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

subject to regulation and inspection by the regulatory authority;

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

**(vi)** a kitchen in a private home, such as a facility licensed by or registered with the department of health (DOH), or the children, youth and families department (CYFD), or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority;

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

**(viii)** non-paying guests in private homes;

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

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

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

**(xii)** a dairy establishment as defined in the New Mexico Food Act;

**(xiii)** an animal slaughter facility;

**(xiv)** an aquaculture facility that raises fish;

**(xv)** a “pure honey” processing facility; “pure honey” refers to natural liquid or solid honey extracted from the combs or in the comb taken from beehives with no processing or adding of additional ingredients; or

**(xvi)** an operation that offers to consumers whole raw agricultural products.

**(6)** “Hazard

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

(7)

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

(8)

“Public water system” has the meaning stated in 20.7.10 NMAC.

(9)

“Regulatory authority” means the New Mexico environment department.

(10)

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

C. Additions to Food

Code definitions. The following terms not defined in Food Code Part 1-2 have the meanings set forth herein when the terms are used in this part.

(1)

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

(2)

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

(3)

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

(4)

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

(5)

“Deviation” means failure to meet a critical limit.

(6)

“Food Code” means the 2013 United States food and drug administration model Food Code.

(7)

“Food handler card” means a card issued to an individual after successful completion of a food handler training program to function

as a food employee.

(8)

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

(9)

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

(10)

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

(11)

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

(12)

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

(13)

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

(14)

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

(15)

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

(16)

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

(17)

“Mobile support unit” means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle used in conjunction with a New Mexico based servicing area that travels to, and services,

other mobile food establishments as needed to replenish supplies, including food and potable water, clean the interior of the unit, or dispose of liquid or solid wastes.

(18)

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

(19)

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

(20)

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

(21)

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

(22)

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

(23)

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

(24)

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

(25)

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

(26)

“Shelf-stable product” means a product that is hermetically sealed and, when stored at

room temperature, should not demonstrate any microbial growth.

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

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

(29) “Sub-ingredient” means an ingredient within another ingredient that has been added to a food and is declared parenthetically following the name of the ingredient or by dispersing each ingredient in its order of predominance in the ingredient statement without naming the original ingredient.

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

(31) “Verification” means those activities, other than monitoring, that establish the validity of the HACCP plan and that the system is operating according to the plan. It includes validation procedures. [7.6.2.7 NMAC - Rp, 7.6.2.7 NMAC, 3/1/2016]

**7.6.2.8 FOOD ESTABLISHMENT REQUIREMENTS:**

**A.** Adoption of Food Code. Except as otherwise provided, the 2013 United States food and drug administration model Food Code and the supplement to the 2013 Food Code are hereby adopted and incorporated in their entirety.

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

(1) 2-102.12 Certified food protection manager. (a) At least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.

(b) This section applies to food establishments, food processing plants, temporary food establishments, and mobile food establishments.

(c) This section does not apply to certain types of food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation.

(d) The effective date of Paragraph (1) of Subsection B of 7.6.2.8 NMAC shall be one year from the effective date of 7.6.2.8 NMAC.

(2) 3-201.15 Molluscan shellfish.

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

(b) Molluscan shellfish shall be from sources that are listed in the interstate certified shellfish shippers list.

(3) 3-202.18 Shellstock identification.

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

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

(ii) except as specified in Subparagraph (d) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, on each dealer’s tag or label, the following information in the following order: the dealer’s name and address, the certification number assigned by the shellstock control authority, the original shipper’s certification number including the abbreviation of the name of the state or country in which the shellfish are harvested, the same information as specified for a harvester’s tag under Item (i) of Subparagraph (a) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, and the following statement in bold, capitalized type: “this tag is required to be attached until container is empty and thereafter kept on file for 90 days.”

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

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

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

(4) 3-502.11 Variance requirement. A food establishment shall obtain a variance from the regulatory authority as specified in Sections 8-103.10 and 8-103.11 of the Food Code before:

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

(b) curing food;

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

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

(ii) to render a food so that it is not TCS food; (d) packaging TCS food using a reduced

oxygen packaging method except where the growth of and toxin formation by clostridium botulinum and the growth of listeria monocytogenes are controlled as specified under Section 3-502.12 of the Food Code;

(e)

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

(f)

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

(g)

sprouting seeds or beans.

(5) 4-205.10

Food equipment, certification and classification.

(a)

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

(b)

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

(6) 4-301.11

Cooling, heating, holding capacities and use.

(a)

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

(b)

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

(7) 5-102.11

Standards. Except as specified under Section 5-102.12 of the Food Code:

(a)

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

(b)

Water from a non-public water system shall meet:

(i)

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

(ii)

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

(8) 5-102.13

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

(9) 5-203.13

Service sink.

(a)

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

(b)

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

(c)

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

(10) 6-501.115

Prohibiting animals.

(a)

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

(b)

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

(i)

edible fish or decorative fish in aquariums, shellfish or crustaceans on ice or under refrigeration, and shellfish and crustaceans in display tank systems;

(ii)

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

(iii)

in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health

or safety hazard will not result from the presence or activities of the service animal;

(iv)

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

(v)

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

(vi)

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

(c)

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

(11) 8-103.10

Modifications and waivers.

(a)

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

(b)

The regulatory authority shall grant the variance, grant the variance subject to conditions, or deny the variance within 15

working days following the receipt of the variance request.

(12) 8-201.11

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

(a) the construction of a food establishment;

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

(c) the remodeling of a food establishment or a change of type of food establishment or food operation as specified under Subparagraph (c) of Paragraph (16) of Subsection B of 7.6.2 NMAC if the regulatory authority determines that plans and specifications are necessary to ensure compliance with the Food Code; or

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

(13) 8-301.11

Prerequisite for operation.

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

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

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

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

(14) 8-302.11

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

(15) 8-302.13

Qualifications and responsibilities of applicants. To qualify for a permit, an applicant shall:

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

(b) comply with the requirements of the Food Code;

(c) as specified under Section 8-402.11 of the Food Code, agree to allow access to the food establishment and to provide required information; and

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

(16) 8-302.14

Contents of the application. The application shall include:

(a) the name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;

(b) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(c) a statement specifying whether the food establishment:

(i) is mobile or stationary and temporary or permanent;

(ii) prepares, offers for sale, or serves time/temperature control for safety food only to order upon a consumer's request, or in advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or using time as the public health control as specified under Section 3-501.19 of the Food Code;

(iii) prepares time/temperature control for safety food in advance using a food preparation method that involves two or more steps which may include combining time/temperature control for safety food ingredients, cooking, cooling, reheating, hot or cold holding, freezing or thawing;

(iv) prepares food as specified under Item (ii) of Subparagraph (c) of Paragraph (16) of Subparagraph B of 7.6.2.8 NMAC for delivery to and consumption at a location off the premises of the food establishment where it is prepared;

(v) prepares food as specified under Item (ii) of Subparagraph (c) of Paragraph (16) of Subparagraph B of 7.6.2.8 NMAC for service to a highly susceptible population;

(vi) prepares only food that is not time/

temperature control for safety food;

(vii) does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;

(d) the name, title, address, and telephone number of the person directly responsible for the food establishment;

(e) the name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under Subparagraph (d) of Paragraph (16) of Subsection B of 7.6.2.8 NMAC, such as the zone, district, or regional supervisor;

(f) the names, titles, and addresses of the persons comprising the legal ownership as specified under Subparagraph (b) of Paragraph (16) of Subsection B of 7.6.2.8 NMAC, including the owners and officers, and the local resident agent if one is required based on the type of legal ownership;

(g) a statement signed by the applicant that attests to the accuracy of the information provided in the application and affirms that the applicant will comply with the Food Code, and allow the regulatory authority access to the food establishment as specified under Section 8-402.11 of the Food Code and to the records specified under Sections 3-203.12 and 5-205.13 of the Food Code and Subparagraph (6) of Paragraph (D) of Section 8-201.14 of the Food Code; and

(h) other information required by the regulatory authority.

(17) 8-303.20

Existing establishments, permit renewal, and change of ownership.

(a) The regulatory authority may renew a permit for an existing food establishment upon submission of a renewal form provided by the regulatory authority and the required fee(s) as specified in Section 8-303.15 of the Food Code prior to the expiration date of the permit. Permit renewals that are not submitted before the expiration date shall be assessed a late fee as specified in Section 8-303.15 of the Food Code, regardless of whether a permit fee is required.

(b) The regulatory authority may issue a permit to a new owner of an existing food establishment, mobile food establishment, servicing area, or food processing plant upon completion of requirements



as specified in Sections 8-201.11 and 8-302.11 of the Food Code, and an inspection shows it is in compliance with the Food Code.

**(18)** 8-401.10  
Establishing inspection interval.

**(a)**  
Except as specified in Subparagraph (b) of Paragraph (18) of Subsection B of 7.6.2.8 NMAC, the regulatory authority shall inspect a food establishment, mobile food establishment, food processing plant, or home-based food processing operation at least annually to determine compliance with the Food Service Sanitation Act, the New Mexico Food Act, and the Food Code.

**(b)**  
The regulatory authority may periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature control for safety food and that:

**(i)**  
has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or

**(ii)**  
has inexperienced food employees.

**(c)**  
When an inspection conducted under Subparagraph (a) of Paragraph (18) of Subsection B of 7.6.2.8 NMAC reveals a violation, or repeat violation of priority items of the Food Code and a re-inspection is scheduled by the regulatory authority, a re-inspection penalty fee shall be assessed by the regulatory authority and paid by the operator as specified in Section 8-303.15 of the Food Code.

**(19)** 8-401.20  
Performance- and risk-based. The regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with the Food Code and the establishment's potential as a vector of foodborne illness by evaluating:

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

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

**(c)**  
past performance, for complaints investigated and found to be valid;

**(d)**  
the hazards associated with the particular foods that are prepared, stored, or served;

**(e)**  
the type of operation including the methods and extent of food storage, preparation, and service;

**(f)**  
the number of people served; and

**(g)**  
whether the population served is a highly susceptible population.

**(20)** 8-402.11  
Allowed at reasonable times after due notice.

**(a)**  
After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment, mobile food establishment, food processing plant, or home-based food processing operation is in compliance with the Food Code by allowing access to the establishment, allowing inspection, and providing information and records specified in the Food Code and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

**(b)**  
The regulatory authority shall be allowed to copy any records pertaining to the manufacture, processing, packing, distribution, receipt, holding, or importation of food maintained by or on behalf of a food establishment, mobile food establishment, food processing plant, or home-based food processing operation in any format, including paper and electronic formats, and at any location.

Proprietary documents shall be protected by the regulatory authority as specified in Section 8-202.10 of the Food Code.

**(21)** 8-402.20  
Refusal, notification of right to access, and final request for access. If a person denies access to the regulatory authority, the regulatory authority shall:

**(a)**  
inform the person that:

**(i)**  
the permit holder is required to allow access to the regulatory authority as specified under Section 8-402.11 of the Food Code;

**(ii)**  
access is a condition of the acceptance and retention of a food establishment permit

to operate as specified under Section 8-304.11 of the Food Code;

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

**(iv)**  
refusal to allow access is grounds for immediate permit suspension or revocation;

**(b)**  
make a final request for access.  
**(22)** 8-403.30

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

**(23)** 8-801.10  
Proper methods. A notice issued in accordance with the Food Code shall be considered to be properly served if it is served by one of the following methods:

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

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

**(24)** 8-801.20  
Restriction or exclusion order, hold order or immediate suspension. An employee restriction or exclusion order, an order to hold and not distribute food, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order, or an immediate suspension order shall be:

**(a)**  
served as specified in Section 8-801.10 of the Food Code; or

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

(25) 8-901.10  
 Conditions warranting remedy. The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of the Food Code if a person operating a food establishment or employee:

(a)  
 fails to have a valid permit to operate a food establishment as specified under Section 8-301.11 of the Food Code;

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

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

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

(e)  
 fails to comply with a hold order as specified in Section 8-903.10 of the Food Code;

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

(g)  
 Fails to comply with an immediate suspension order issued by the regulatory authority as specified in Sections 8-801.20 and 8-904.10 of the Food Code.

(26) 8-903.10  
 Hold order, justifying conditions and removal of food.

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

(i)  
 originated from an un-approved source;

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

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

(iv)  
 is otherwise not in compliance with the

Food Code.

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

(27) 8-903.20  
 Hold order, warning or hearing not required.

(a)  
 The regulatory authority may issue a hold order to a permit holder or to a person who owns or controls the food, as specified in Section 8-903.10 of the Food Code, without prior warning, notice of a hearing, or a hearing on the hold order.

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

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

(28) 8-903.60  
 Examining, sampling, and testing food. The regulatory authority may examine, sample, and test food in order to determine its compliance with the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978; the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; and the Food Code.

(29) 8-903.80  
 Destroying or denaturing food. When any food is found, by examination or laboratory analysis, to be in violation of safe health standards, the regulatory authority may order condemnation and disposal of the product lot, at the expense of the permit holder.

(30) 8-904.10  
 Conditions warranting action. The regulatory authority may immediately suspend a permit if it determines through inspection, or examination of employees, food records, or other means as specified in the Food Code, that an imminent health hazard exists.

(31) 8-904.20  
 Immediate suspension, warning or hearing not required. The regulatory authority may immediately suspend a person's permit as specified in Section 8-904.10 of the Food Code by providing written notice as specified in Section 8-801.20 of the Food Code of the immediate suspension to the permit holder or person in charge, without prior warning, notice of a hearing, or a

hearing.

(32) 8-904.30  
 Contents of the notice. An immediate suspension notice shall state:

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

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

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

(d)  
 that the permit holder may request an appeal hearing by submitting a timely request as specified in Sections 8-905.10 and 8-905.20 of the Food Code.

(33) 8-904.50  
 Term of suspension, reinstatement of permit.

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

(b)  
 The suspended permit shall be reinstated immediately if the regulatory authority determines that the public health hazard or nuisance no longer exists. A notice of the reinstatement shall be provided to the permit holder or person in charge.

(34) 8-905.10  
 Response to notice of hearing or request for hearing, basis and time frame.

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

(b)  
 A permit holder may request a hearing to address concerns about the regulatory authority's denial of application for a permit or request for a variance, or compliance actions, except that a hearing request does not stay the regulatory authority's restriction or exclusion of employees specified in Section 8-904.10 of the Food Code.

(c)  
 A person desiring a hearing in response to a denial of an application for permit or an adverse administrative determination

shall submit a hearing request to the regulatory authority within 10 calendar days of the date of the denial, inspection, or compliance action.

(35) 8-905.20  
Request for hearing, required form and contents. A request for hearing as specified in Section 8-905.10 of the Food Code shall be in written form and contain the following information.

(a) If a request for hearing:

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

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

(b) If either a response to notice of hearing or a request for a hearing:

(i) a statement indicating whether the presence of witnesses for the regulatory authority is required; and

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

(36) 8-905.60  
Notice, contents. A notice of hearing shall contain the following information:

(a) time, date and place of the hearing;

(b) purpose of the hearing;

(c) the rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in Section 8-907.10 of the Food Code; and

(d) the consequences of failing to appear at the hearing.

(37) 8-905.100  
Record of proceeding. A complete digital recording of a hearing shall be made and maintained as part of the regulatory authority's records.

(38) 8-907.10  
Rights of parties.

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

(b) Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support

of their position.

(39) 8-907.30  
Evidence to be excluded. Evidence shall be excluded that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege.

(40) 8-909.10  
Gaining access to premises and records. The regulatory authority may seek access for one or more of the following purposes, according to law for gaining access:

(a) if admission to the premises of a food establishment, mobile food establishment, temporary food establishment, food processing plant, or home-based food processing operation is denied or other circumstances exist that would justify an inspection order under law, to make an inspection including taking photographs;

(b) to examine and sample the food or other substances found on the premises; and

(c) to examine and copy the records on the premises relating to food as specified in Section 8-402.11 of the Food Code.

C. Omissions. The following provisions are omitted from the incorporated Food Code:

(1) 8-7  
Authority.

(2) 8-902.20  
Content of inspection order.

(3) 8-905.30  
Provided upon request.

(4) 8-905.40  
Provided in accordance with law.

(5) 8-905.50  
Timeliness, appeal proceeding within five business days, other proceeding within 30 calendar days.

(6) 8-905.70  
Proceeding commences upon notification.

(7) 8-905.80  
Procedure, expeditious and impartial.

(8) 8-905.90  
Confidential.

(9) 8-906.10  
Appointment by regulatory authority and purpose.

(10) 8-906.20  
Qualifications.

(11) 8-906.30  
Powers, administration of hearings.

(12) 8-906.40  
Powers, administrative remedies.

(13) 8-909.20  
Contents of court petition.

(14) 8-909.30  
Sworn statement of denied access.

(15) 8-909-40  
Contents of an order.

(16) 8-909.50  
Optional contents of an order.

(17) 8-910.10  
Institution of proceedings.

(18) 8-911.10  
Authorities, methods, fines, and sentences.

(19) 8-912.10  
Petitions of injunction.

(20) 8-913.10  
Petitions, penalties, and continuing violations.

D. Additional requirements. Except as otherwise provided, the following additions are made to the incorporated Food Code:

(1) 2-104.11  
Food handler cards.

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

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

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

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

(e) An employee or person in charge at any food establishment, food processing plant, temporary food establishment, or mobile food establishment must provide information or training regarding pertinent safe food handling practices to food employees prior to beginning food handling duties, if the food employee does not hold a valid food handler card.

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

(g)

<p>This paragraph does not apply to:</p> <p>(i) food employees who comply with Sections 2-102.12 and 2-102.20 of the Food Code;</p> <p>(ii) food employees who comply with Subparagraph (b) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;</p> <p>(iii) food employees of temporary food establishments, provided that at a minimum the person in charge during hours of operation complies with Sections 2-102.12 and 2-102.20 of the Food Code or has a valid food handler card, either of which shall be obtained prior to issuance of a temporary food establishment permit;</p> <p>(iv) food employees or volunteers working as food employees for charitable organizations serving the needy, provided that at a minimum the person in charge during hours of operation complies with Sections 2-102.12 and 2-102.20 of the Food Code; or</p> <p>(v) employees who do not function as food employees.</p>	<p>(ii) \$100.00 for home-based food processing operations; and</p> <p>(iii) \$25.00 for temporary food establishments for each single event or celebration.</p> <p>(b) Permit fees shall be waived for food establishments, mobile food establishments, and temporary food establishments that provide food to consumers at no charge, as well as temporary food establishments that serve only non-TCS food or operate no more than two days in a calendar month.</p> <p>(c) In addition to the permit fees specified above, a \$25 late fee shall be added to the permit fee if the permit is not renewed on or before the expiration date of the permit.</p> <p>(d) A re-inspection penalty fee of \$100 shall be assessed by the regulatory authority and paid by the operator when a re-inspection is scheduled by the regulatory authority as specified in Subparagraph (c) of Paragraph (18) of Subsection B of 7.6.2.8 NMAC.</p> <p>(e) If a permit is not renewed as specified in Section 8-303.20 of the Food Code, and applicable re-inspection penalty fees are not paid within 30 days after the expiration of the permit, a new permit shall not be issued except upon completion of requirements specified in Section 8-303.10 of the Food Code.</p>	<p>and shall be posted or removed only by the regulatory authority.</p> <p>(b) An “approved” emblem shall be posted at a food establishment that is operated in compliance with the Food Code.</p> <p>(c) An “unsatisfactory” emblem may be posted at a food establishment when any priority items are out of compliance during an inspection; or any priority item, priority foundation item, or core item is out of compliance on a repeated basis within the last 25 months.</p> <p>(d) Removal, defacing, or obstruction of an emblem by any person other than the regulatory authority shall result in immediate permit suspension or revocation.</p> <p>(e) Food processing plants and temporary food establishments are exempt from the posting of compliance emblems.</p>
<p>(2) 8-301.12 Responsibility for operation.</p>	<p>(f) Permits issued by the regulatory authority shall include an expiration date, which shall be:</p> <p>(i) The last day of the anniversary month of the date of original issue for food establishments, mobile food establishments, servicing areas, and food processing plants.</p> <p>(ii) The last day of the single event or celebration for temporary food establishments.</p>	<p>(5) 8-901.201 Permit suspension and revocation.</p> <p>(a) The regulatory authority may suspend or revoke a permit for reasons specified in Section 8-901.10 of the Food Code.</p> <p>(b) The regulatory authority shall conduct a hearing as specified in Section 8-905 of the Food Code prior to suspending or revoking a permit.</p>
<p>(a) Except as specified in Subparagraphs (b) and (c) of Paragraph (2) of Subsection D of 7.6.2.8 NMAC, the permit holder shall be responsible for all food operations conducted on the premises for which a permit is issued.</p> <p>(b) Permit holders shall not be responsible for food operations on the premises when another permit holder is operating with a permit.</p>	<p>(g) No discount or refund shall be made for partial years or for permit suspension or revocation.</p> <p>(4) 8-407.11 Posting of compliance emblems.</p>	<p>(c) The permit holder shall be notified of the hearing at least seven days prior to the hearing as specified in Section 8-905.60 of the Food Code.</p> <p>(d) Failure by the permit holder to appear shall result in immediate suspension or revocation of the permit.</p> <p>(e) The suspension of a permit shall remain in effect until the conditions leading to the suspension no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and other means as appropriate.</p>
<p>(3) 8-303.15 Permit fees, late fees, penalty fees, and expiration dates.</p>	<p>(a) Except as specified in Subparagraph (e) of Paragraph (4) of Subsection D of 7.6.2.8 NMAC, an emblem indicating the compliance status of a food establishment shall be posted in a conspicuous place at each entrance to the food establishment where it can be easily seen by consumers</p>	<p>(f) A permit shall only be revoked if a permit has previously been suspended.</p> <p>(g) A permit that has been revoked shall not be considered for reapplication until the permit holder has demonstrated to the satisfaction of the regulatory authority that the food establishment will comply with the Food Code.</p>
<p>(i) \$200.00 for food establishments, mobile food establishments, servicing areas, and food processing plants;</p>	<p>(i) \$200.00 for food establishments, mobile food establishments, servicing areas, and food processing plants;</p>	<p>[7.6.2.8 NMAC - N, 3/1/2016]</p>

**7.6.2.9 MOBILE FOOD ESTABLISHMENT REQUIREMENTS:**

**A.** In addition to meeting the applicable requirements of Chapters 1-8 of the Food Code, with the exception of Section 5-203.12 of the Food Code, mobile food establishments shall comply with the requirements specified in this section.

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

- (1) limiting or restricting the number and type of food items to be prepared and served;
- (2) limiting or restricting preparation steps;
- (3) limiting or restricting hours of operation, or hours of operation before returning to a servicing area; or
- (4) requiring a servicing area or mobile support unit.

**C.** The regulatory authority may modify or waive requirements for mobile food establishments as specified in Sections 8-103.10 and 8-103.11 of the Food Code.

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

- (1) the location of the potable water source;
- (2) the location and method of solid and liquid waste disposal; and
- (3) the identifying system used to distinguish the permitted unit from others.

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

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

**G.** The operation of mobile food establishments shall be conducted within the enclosure of the permitted unit. During a single event

or celebration, certain operations (e.g., additional covered storage, additional food preparation area, outdoor serving counter) may be conducted outside of the enclosure, when approved. If approved, an additional temporary food establishment permit shall be required.

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

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

- (1) meet all of the equipment requirements of the Food Code;
- (2) include adequate storage facilities on the unit for all food, equipment, utensils, supplies, potable water, and waste water used in the operation of the unit;
- (3) be capable of accomplishing all steps of the operation, including required food preparation and warewashing, within the enclosure of the unit;
- (4) provide, as specified in Paragraph (F) of Section 8-201.12 of the Food Code, how and where the unit will be cleaned and serviced and where it will be stored during non-operating hours; and
- (5) notify the regulatory authority office of jurisdiction at least 24 hours in advance before operating in a jurisdictional area outside of the permitting office.

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

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

- (a) the days and hours the servicing area will be used;
- (b) the extent of support services to be provided; and
- (c) a copy of the current servicing area permit.

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

(3) Non-self-contained mobile units and pushcarts shall

operate within a reasonable distance, and report at least daily, to the servicing area for support services.

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

**K.** Additional pushcart requirements.

(1) Pushcarts are limited to:

- (a) serving non-TCS foods or drinks;
  - (b) serving individually commercially packaged TCS foods in the original packaging and maintained at proper temperatures; and
  - (c) assembling and serving of pre-cooked sausage (e.g., hot dog, bratwurst, frankfurter) with commercially prepared toppings (e.g., chili, sauerkraut, relish).
- (2) Pre-preparation, such as washing, slicing, peeling, cutting of food intended for use on a pushcart, shall occur at the servicing area.

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

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

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

- (a) food, utensils, single service articles, and cleaning supplies;
- (b) handwashing sink as specified in Section 5-202.12 of the Food Code with a minimum of five gallons of potable water; and
- (c) wastewater holding tank meeting the requirements of Section 5-401.11 of the Food Code.

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

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

[7.6.2.9 NMAC - Rp, 7.6.2.11 NMAC, 3/1/2016]

**7.6.2.10 TEMPORARY FOOD ESTABLISHMENT REQUIREMENTS:**

**A.** In addition to meeting the applicable requirements of Chapters 1-8 of the Food Code, with the exception of Section 5-203.12 of the Food Code, temporary food establishments shall comply with the requirements specified in this section.

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

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

**C.** The regulatory authority may modify or waive requirements for temporary food establishments as specified in Sections 8-103.10 and 8-103.11 of the Food Code.

**D.** Temporary food establishment requirements.

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

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

- (a) the food establishment has adequate equipment for the type and volume of food and preparation steps required; and
- (b) the temporary food establishment operator provides to the regulatory authority a letter of agreement between the operator and the food establishment that includes:
  - (i) the days and hours the food establishments will be used;
  - (ii) a list of tasks that will be performed at the food establishments; and
  - (iii) a copy of the current food establishment

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

- (a) location of the approved potable water source;
  - (b) location and method of solid waste disposal; and
  - (c) location and method of liquid waste disposal.
- (4) Temporary food establishments shall supply a handwashing sink, located as specified in Section 5-204.11 of the Food Code, for employee hand washing. At a minimum, a handwashing sink shall consist of a container with a faucet-type spigot filled with warm water and a catch bucket for the wastewater. The water shall be maintained at a minimum of 100 degrees fahrenheit as specified in Section 5-202.12 of the Food Code.

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

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

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

(8) Temporary food establishments shall provide an adequate supply of ice, as necessary, to maintain TCS food at temperatures as specified in Section 3-501.16 of the Food Code.

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

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

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

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

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

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

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

(16) Temporary food establishments shall provide separation (e.g. table) to keep consumers from entering the food operation.

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

- (a) cover tightly from ceiling to floor;
  - (b) use an approved counter-serving opening with tight fitting screened doors or air curtain; counter-serving openings shall be kept closed, except when in use; and
  - (c) when approved for use, screening shall be 16 mesh to 1 inch.
- (18) In

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

**Table 10-1**

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

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

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

[7.6.2.10 NMAC - Rp, 7.6.2.11 NMAC, 3/1/2016]

**7.6.2.11 GENERAL FOOD PROCESSING REQUIREMENTS:**

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

(1) All food processing plants shall comply with all applicable provisions of Chapters 1-8 of the Food Code.

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

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

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

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

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

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

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

**C.** Labeling requirements.

(1) All packaged food shall be labeled in accordance with the applicable requirements of the Federal Food, Drug and Cosmetic Act as amended, the Fair Packaging and Labeling Act, regulations developed thereunder, and the New Mexico Food Act. Details concerning type, size and location of required labels are contained in FDA regulations covering the requirements of the federal acts (Code of Federal Regulation, Title 21, Part 101.)

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

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

(b) an accurate statement of the net amount of food in the package, in terms of weight

measure, volume measure (listed in both “English” and metric units) or numerical count;

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

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

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

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

**D.** Standards if identity.

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

(2) Any food product that is represented as, or purports to be, a food for which a standard of identity has been promulgated, must comply with the specifications of the standard in every respect. A food product that does not comply fully with the applicable standard is misbranded, unless its label bears the word “imitation” or meets the descriptive label requirements in the CFR, Title 21, Part 101.

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

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

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

C Street, SW, Washington, D.C. 20204.

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

**F.** Operational plans.

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

(a) names of the ingredient(s);

(b) the final product pH if appropriate;

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

(d) names of preservative(s);

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

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

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

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

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

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

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

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

(3) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, state the intended process (cooking time and temperatures). This information may be included in the flow chart required in Subparagraph (f) of Paragraph (1) of Subsection F of 7.6.2.11 NMAC.



Consideration must be given to those steps that lead to the destruction or inhibition of disease causing or spoilage organisms if done properly, or the growth of such organisms if done improperly.

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

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

(a) for each new product, the same information as specified for the initial application in Paragraphs (1), (2), (3) and (4) of Subsection F of 7.6.2.11 NMAC; and

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

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

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

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

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

States department of agriculture (USDA) of any recalls; and for implementing recall programs.

(10) Whenever the regulatory authority finds or has probable cause to believe that any food processing plant's product fails to meet standards or is adulterated with any substance that may be injurious to human health, the suspected lot of product shall be embargoed or detained at the food processing plant, if not yet distributed to consumers or retail outlets, until a determination of ultimate disposition is made.

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

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

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

G. Compliance with accepted operational procedures.

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

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

(3) Routine inspections of facilities, equipment and operations will be conducted as specified in this section. In addition, HACCP

evaluations will be conducted by the regulatory authority or the food processing plant as needed to identify hazards, critical control points, and daily monitoring requirements.

[7.6.2.11 NMAC - Rp, 7.6.2.12 NMAC, 3/1/2016]

#### 7.6.2.12 JERKY MANUFACTURED FOOD REQUIREMENTS:

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

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

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

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

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

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

E. Food establishments that produce jerky shall:

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

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

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

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

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

[7.6.2.12 NMAC - Rp, 7.6.2.13 NMAC, 3/1/2016]

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

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

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

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

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

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

**D.** Analytical requirements. Unless otherwise provided, samples shall be collected, prepared, and examined using the most current methods for the examination of drinking water listed in 40 CFR Part 141 or by other methods for the examination of drinking water approved by the United States environmental protection agency. Examination of samples shall be performed by an approved laboratory.

**E.** Monitoring requirements.

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

**(2)** Bottled

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

[7.6.2.13 NMAC - Rp, 7.6.2.14 NMAC, 3/1/2016]

**7.6.2.14 SHELLFISH REQUIREMENTS:**

Adoption of national shellfish sanitation program (NSSP) guide for control of molluscan shellfish. Except as otherwise provided, the 2013 NSSP guide for control of molluscan shellfish is hereby adopted and incorporated in its entirety.

[7.6.2.14 NMAC - Rp, 7.6.2.15 NMAC, 3/1/2016]

**7.6.2.15 HOME-BASED FOOD PROCESSING:**

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

**(1)** No person shall operate a home-based food processing operation without a permit.

**(2)** In addition to meeting the applicable requirements of Chapters 1-8 of the Food Code and 7.6.2.11 NMAC, home-based food processing operations shall comply with the requirements specified in this section.

**(3)** Home-based food processing operations shall meet the specifications of Part 2-1 of the Food Code.

**(4)** The permit issued shall be displayed at the home-based food processing operation. A copy of the permit shall be displayed at places at which the operator sells food at times when the operator is selling the home-based processed foods.

**B.** Food protection requirements.

**(1)** Home-based processed food products and components shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.

**(2)** Home-based food processing operations must keep a sample of each processed food batch for 14 days. The samples shall be labeled with the production date and time.

**(3)** Vehicles

used in transporting home-based processed food products shall be maintained in a safe and sanitary manner. Vehicle compartments used to transport animals shall not be used for transporting home-based processed foods.

**C.** Exceptions and limitations.

**(1)** The following provisions from the Food Code shall not apply to home-based food processing operations:

- (a)** 8-407.11;
  - (b)** 4-301.12(A);
  - (c)** 5-501.11;
  - (d)** 4-903.11;
  - (e)** 4-803.11;
  - (f)** 6-202.112;
  - (g)** 4-803.13(A);
  - (h)** 4-402.11;
  - (i)** 4-402.12;
  - (j)** 4-205.10;
  - (k)** 8-101.10(B);
  - (l)** 6-202.14;
  - (m)** 6-201.14;
  - (n)** 6-201.13;
  - (o)** 4-701.10;
  - (p)** 5-204.11;
  - (q)** 6-301.12(A);
  - (r)** 2-401.11;
  - (s)** 6-501.115; and
  - (t)** 5-501.10.
- (2)** Food products processed by home-based food processing operations shall not be potentially hazardous foods and shall be approved by the regulatory authority.
- (3)** Home-based food processing operations shall only sell their products at farmer's markets, roadside stands, festivals, or other venues in which the producer sells directly to the consumer.
- (4)** Products

processed by a home-based food processing operation shall not be sold, used, or offered for consumption in food establishments including, but not limited to, restaurants, grocery stores and convenience stores, by internet sales, or sold in interstate commerce.

(5) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based food processing related activities.

(6) Non-employees shall not be allowed entry into the kitchen during home-based food processing related activities. Home-based food processing operations shall not wash out or clean pet cages, pans or similar items in the kitchen.

(7) Household cooking may not occur in the kitchen during home-based food processing-related activities.

(8) The following provisions from the Food Code are applicable to home-based food processing operations only during home-based food processing related activities:

- (a) 3-304.11;
- (b) 5-205.11;
- (c) 6-301.12;
- (d) 2-401.11;
- (e) 6-501.115; and
- (f) 5-501.13.

(9) Home-based food processing operations shall submit a detailed procedure to be used to clean and sanitize the kitchen sink before and during home-based food processing related activities.

(10) Home-based food processing operations shall comply with Section 5-402.11 of the Food Code unless an alternative method is approved.

**D.** Home-based food labeling. A home-based food processing operation shall properly label all foods in accordance with Subsection C of 7.6.2.11 NMAC and include the words “home produced” in bold conspicuous 12 point type on the principal display panel. [7.6.2.15 NMAC - Rp, 7.6.2.16 NMAC, 3/1/2016]

**HISTORY OF 7.6.2 NMAC:**

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

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

**History of Repealed Material:**

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

**GAME AND FISH,  
DEPARTMENT OF**

On January 14, 2016, the State Game Commission repealed its rule entitled Natural Resources and Wildlife, Wildlife Administration, Aquatic Invasive Species, 19.30.14 NMAC (filed 05/29/2009), and replaced it with, Natural Resources and Wildlife, Wildlife Administration, Aquatic Invasive Species, 19.30.14 NMAC, effective 02/12/2016.

**GAME AND FISH,  
DEPARTMENT OF**

**TITLE 19 NATURAL  
RESOURCES AND WILDLIFE  
CHAPTER 30 WILDLIFE  
ADMINISTRATION  
PART 14 AQUATIC  
INVASIVE SPECIES**

**19.30.14.1 ISSUING AGENCY:** New Mexico Department of Game and Fish. [19.30.14.1 NMAC - Rp, 19.30.14.1 NMAC, 2-12-2016]

**19.30.14.2 SCOPE:** Providing for the control and prevention of the spread of aquatic invasive species in New Mexico. [19.30.14.2 NMAC - Rp, 19.30.14.2 NMAC, 2-12-2016]

**19.30.14.3 STATUTORY AUTHORITY:** Chapter 17, including 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game

commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to aquatic invasive species. [19.30.14.3 NMAC - Rp, 19.30.14.3 NMAC, 2-12-2016]

**19.30.14.4 DURATION:** Permanent. [19.30.14.4 NMAC - Rp, 19.30.14.4 NMAC, 2-12-2016]

**19.30.14.5 EFFECTIVE DATE:** February 12, 2016, unless a later date is cited at the end of a section. [19.30.14.5 NMAC - Rp, 19.30.14.5 NMAC, 2-12-2016]

**19.30.14.6 OBJECTIVE:** To establish and define the procedures and restrictions for controlling or preventing aquatic invasive species. [19.30.14.6 NMAC - Rp, 19.30.14.6 NMAC, 2-12-2016]

**19.30.14.7 DEFINITIONS:**  
**A. “Department”** shall mean the New Mexico department of game and fish.

**B. “Director”** shall mean the director of the New Mexico department of game and fish.

**C. “Warning tag”** as used herein, shall mean a document or tag issued by the department or other state or federal agency and affixed to a conveyance or equipment that prohibits a conveyance or equipment from entering into a water body until being properly decontaminated or otherwise approved for re-entry.

**D. “Impound”** shall mean to detain or subject to temporary control of the state other than detention for purposes of inspection a conveyance or equipment until the owner or person in control thereof shall meet all conditions for release of such conveyance or equipment.

**E. “Decontaminate”** shall mean to clean, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director, including minimum standards as described in the Uniform Minimum Protocols and Standards for Watercraft Inspection Program for Dreissenid Mussels in the Western United States (2012) or versions thereafter in order to remove or destroy an aquatic invasive species.

**F. “Proof of decontamination”** shall mean verifiable

documentary proof, official marking or tag affixed to the conveyance or equipment, or otherwise provided to the owner or person in control of a conveyance or equipment trained personnel to effect decontamination of the conveyance or equipment, or otherwise demonstrate compliance with the decontamination requirement established by the director; such certification shall be valid only until the conveyance or equipment re-enters a water body.

**G. “Trained personnel”** means individuals who have successfully completed the United States fish and wildlife service’s aquatic invasive species watercraft inspection and decontamination training, level I, level II or an equivalent training recognized by the director.

**H. “Watercraft inspection and decontamination seal”** shall mean a device issued by trained personnel that attaches the conveyance or equipment to the trailer to indicate that the conveyance or equipment has not been launched since it was last inspected or decontaminated, and is accompanied by a receipt.

[19.30.14.7 NMAC - Rp, 19.30.14.7 NMAC, 2-12-2016]

**19.30.14.8 WARNING TAG:** The director shall prescribe and procure the printing of warning tags to be used for the state to identify any conveyance or equipment known or believed to contain an aquatic invasive species or a conveyance or equipment leaving an infested water body without being decontaminated.

**A.** Trained personnel may affix a warning tag to any conveyance or equipment known or believed to contain aquatic invasive species, based upon its point of origin or exposure to infested water, unless the person in control of such equipment or conveyance has proof of decontamination, or can otherwise demonstrate that the equipment or conveyance is not infested.

**B.** Trained personnel may affix a warning tag to a conveyance or equipment if they have reason to believe aquatic invasive species may be present and the person operating or in control of such conveyance or equipment refuses inspection.

**C.** Each warning tag shall be affixed on boats and other similar vessels within 12” of the boat number on the port (left) side, to the windshield of the conveyance or equipment, or in the case where a transport company is transferring the conveyance or equipment,

via United States mail, electronic mail or hand delivery to both owner and transport company. In cases where no boat number is found the warning tag shall still be affixed in the same general location.

**D.** Each warning tag shall be individually affixed to all other conveyances and equipment in the most visible manner possible.

**E.** No warning tag may be removed except by trained personnel or a person or entity certified by the director and only if the respective personnel, person or entity is acting in their official capacity and has inspected the conveyance or equipment, satisfied that proper decontamination or elimination of aquatic invasive species has occurred.

[19.30.14.8 NMAC - Rp, 19.30.14.8 NMAC, 2-12-2016]

**19.30.14.9 IMPOUNDMENT OF CONVEYANCE OR EQUIPMENT:**

**A.** Any law enforcement officer may impound any conveyance or equipment if warning tagged and the conveyance or equipment is currently in or entering a water body.

**B.** Any law enforcement officer may impound any conveyance or equipment known or believed to contain aquatic invasive species if such conveyance or equipment is currently in a water body or the person operating or in control of such conveyance or equipment fails to follow the enforcement officer’s command to immediately prevent such from entering or remaining in a water body.

**C.** A warning tag shall be immediately affixed to any conveyance or equipment impounded pursuant to Subsection B above.

**D.** Any impounded conveyance or equipment shall only be released from impoundment:

**(1)** upon receipt of satisfactory proof that decontamination requirements as prescribed by the director have been met; or

**(2)** upon receipt of a conditional release from the director wherein the owner or person responsible for the conveyance or equipment agrees to the specific terms and conditions that require immediate decontamination followed by an inspection to verify decontamination has occurred.

**E.** It shall be the responsibility of the owner of any impounded conveyance or equipment to pay all costs, including storage fees, decontamination charges and towing associated with the impoundment and

to reimburse any agency that incurs expenditures for the impoundment. [19.30.14.9 NMAC - Rp, 19.30.14.9 NMAC, 2-12-2016]

**19.30.14.10 LIMITED TRANSPORT:** The department’s employees, agents or designees, or employees of other state or federal agencies while acting in their official capacity may authorize an owner or person in control of a warning tagged conveyance or equipment to transport the conveyance or equipment to a location approved by the department or their designee.

[19.30.14.10 NMAC - Rp, 19.30.14.10 NMAC, 2-12-2016]

**19.30.14.11 WAIVER AND RELEASE OF LIABILITY:** Prior to being eligible for decontamination by the state or its designee the owner or person in control of a warning tagged conveyance or equipment shall sign and deliver to the department a release of liability in a form approved by the director.

[19.30.14.11 NMAC - Rp, 19.30.14.11 NMAC, 2-12-2016]

**19.30.14.12 INSPECTION AND DECONTAMINATION PROGRAM:**

**A.** Trained personnel may conduct mandatory inspections of all conveyances or equipment prior to entering, being launched onto or being directly exposed to any water body of the state.

**B.** All conveyances or equipment transported into New Mexico or registered in a state other than New Mexico shall be inspected by trained personnel prior to entering, being launched or being directly exposed to any water body of the state. Proof of decontamination may be used in lieu of an inspection at the discretion of trained personnel.

**C.** The owner of a conveyance or equipment that is greater than or equal to twenty-six (26) feet in length and will be transported into or within New Mexico shall notify the department aquatic invasive species program coordinator at least fourteen (14) days prior to the anticipated date of transport.

**D.** Upon completion of any conveyance or equipment inspection, trained personnel may require decontamination, re-inspection and additional drying time prior to the conveyance or equipment entering any water body of the state.

**E.** Trained personnel may affix a watercraft inspection and decontamination seal to a conveyance or equipment to serve as proof of decontamination or inspection. Conveyances or equipment with an intact watercraft inspection and decontamination seal may be allowed to enter a water body of the state without further inspection or decontamination upon verification by trained personnel.

**F.** The owner or operator of any conveyance or equipment transported in New Mexico shall remove any plug or other barrier that prevents water drainage, drain bilge lines, ballast tanks and live wells and take reasonable measures to decontaminate all equipment, compartments or spaces that are wet or hold water.

**G.** Trained personnel may not self-inspect, decontaminate or attach a seal to their own conveyance or equipment.  
[19.30.14.12 NMAC - N, 2-12-2016]

**HISTORY OF 19.30.14 NMAC:**  
**History of Repealed Material:**  
19.30.14 NMAC, Aquatic Invasive Species, filed 5/29/2009 - Repealed effective 2/12/2016.

**HEALTH, DEPARTMENT OF**

**TITLE 7 HEALTH  
CHAPTER 1 HEALTH  
GENERAL PROVISIONS  
PART 28 HEALTH  
INFORMATION SYSTEM  
ADVISORY COMMITTEE  
RESPONSIBILITIES AND DUTIES**

**7.1.28.1 ISSUING AGENCY:**  
New Mexico Department of Health.  
[7.1.28.1 NMAC - N, 02/12/2016]

**7.1.28.2 SCOPE:** This rule establishes the membership, duties, and responsibilities of the health information system advisory committee.  
[7.1.28.2 NMAC - N, 02/12/2016]

**7.1.28.3 STATUTORY AUTHORITY:** The requirements set forth herein are promulgated by the secretary of the department of health pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978, and the Health Information System Act, 24-14A-1 et seq. NMSA 1978.  
[7.1.28.3 NMAC - N, 02/12/2016]

**7.1.28.4 DURATION:**  
Permanent.  
[7.1.28.4 NMAC - N, 02/12/2016]

**7.1.28.5 EFFECTIVE DATE:**  
February 12, 2016, unless a later date is cited at the end of a section.  
[7.1.28.5 NMAC - N, 02/12/2016]

**7.1.28.6 OBJECTIVE:**  
The objective of this rule is to establish membership, duties, and responsibilities that govern the health information system advisory committee.  
[7.1.28.6 NMAC - N, 02/12/2016]

**7.1.28.7 DEFINITIONS:**  
**A. "Advisory committee"** means the health information system advisory committee.

**B. "Data source" or "data provider"** means a person that possesses health information, including any public or private sector licensed health care practitioner, primary care clinic, ambulatory surgery center, ambulatory urgent care center, ambulatory dialysis unit, home health agency, long-term care facility, hospital, pharmacy, third-party payer and any public entity that has health information.

**C. "Department"** means the department of health.

**D. "Health information" or "health data"** means any data relating to health care; health status, including environmental, social and economic factors; the health system; or health costs and financing.

**E. "Hospital"** means any general or special hospital licensed by the department, whether publicly or privately owned.

**F. "Long-term care facility"** means any skilled nursing facility or nursing facility licensed by the department, whether publicly or privately owned.

**G. "Secretary"** means the secretary of the New Mexico department of health.

**H. "Third-party payer"** means any public or private payer of health care services and includes health maintenance organizations and health insurers.  
[7.1.28.7 NMAC - N, 02/12/2016]

**7.1.28.8 ADVISORY COMMITTEE MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:**

**A. Advisory committee membership:** The advisory committee

shall be comprised of a minimum of seven individuals, and a maximum of 13, who shall be appointed by the secretary, and shall include:

- (1) the secretary or the secretary's designee, who shall serve as chair of the committee;
- (2) data sources or data providers;
- (3) health care consumers or representatives from health care consumer groups; and
- (4) health data experts.

**B. Duties and responsibilities:** The advisory committee shall convene on at least a quarterly basis to:

- (1) review and recommend to the department methods for the effective dissemination of health information reports, to include the availability of reports that would be of interest to the public;
- (2) review health information reports and recommend amendments for the purpose of rendering reports most useful and understandable to a lay audience;
- (3) recommend reports that will address public concerns regarding health information and access to health care; and
- (4) advise the department in carrying out the provisions of the Health Information System Act.

**C. Final determinations:** The committee shall provide the secretary with written recommendation in accordance with the duties and responsibilities listed above, including any supporting documentation or public commentary. The secretary shall make a final determination on all committee recommendations.

**D. Quorum:** A quorum of the committee membership shall consist of a simple majority.

**E. Advisory board membership term:**

- (1) Members of the committee other than the secretary or secretary's designee shall serve for staggered terms of two years from the date of appointment by the secretary.
- (2) A member may be reappointed to consecutive terms.
- (3) No member may be removed prior to the expiration of his or her term without a showing of good cause by the secretary.
- (4) Members who have not attended at least half of the meetings in a calendar year may

be removed from the committee by the secretary.

(5) Should a member chose to discontinue service on the committee prior to the expiration of his or her term, the member shall submit a request in writing to the secretary.

**F. Advisory meeting structure:** Each member should attend committee meetings in person, but if it is otherwise difficult or impossible to attend in person, then members will have the option to participate in the meeting by conference telephone or similar communications equipment approved by the chair.

**G. Per diem and mileage:** All committee members may receive as their sole remuneration those amounts authorized under the Per Diem and Mileage Act, Sections 10-8-1 *et seq.*, NMSA 1978.  
[7.1.28.8 NMAC - N, 02/12/2016]

**7.1.28.9 ADVISORY BOARD PUBLIC HEARING PROCEDURES:**

**A. Public hearing requirement:** The committee shall convene by public hearing on at least a quarterly basis.

**B. Location of the public hearing:** Hearings shall take place at a location sufficient to accommodate the anticipated audience.

**C. Public hearing notice:** The committee chair or designee shall prepare a notice of public hearing setting forth the date, time and location of the hearing no later than 30 days prior to the hearing date.

**D. Public hearing agenda:** The department shall make available no later than 72 hours prior to the hearing an agenda containing a list of specific items to be discussed or information on how the public may obtain a copy of such agenda. The agenda shall also be posted on the department's website.

**E. Minutes:** The committee shall keep written minutes of all its meetings.  
[7.1.28.9 NMAC - N, 02/12/2016]

**HISTORY OF 7.1.28 NMAC:**  
[RESERVED]

**INSURANCE,  
SUPERINTENDENT OF**

This is an amendment to 13.14.5 NMAC, Section 9, effective 03-01-2016.

**13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:**

**A.** All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein.

(1) Rights or claims of parties in possession not shown by the public records.

(2) Easements, or claims of easements, not shown by the public records.

(3) Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.

(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.

(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

(6) Water rights, claims or title to water.

(7) Taxes for the year \_\_\_\_\_, and thereafter. (See 13.14.5.12 NMAC)

(8) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

[\_\_\_\_\_(9)\_\_\_\_\_] RESERVED  
[\_\_\_\_\_(10)\_\_\_\_\_] RESERVED

**B.** Additionally, each commitment may contain the following statement when said commitment is used to commit for both an owner's policy and a loan policy or a loan policy only: "Exceptions numbered \_\_\_\_\_ will not appear in the loan policy but will appear in the owner's policy, if any." If the commitment is for a construction policy or a loan policy containing a two-year (2) claims made limitation, the following statement must be added: "The construction loan policy or a loan policy containing a two-year (2) claims made limitation will contain an exception limiting its coverage to two (2) years duration pursuant to 13.14.7.18 NMAC."

**C.** Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, and or 4,

may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner's policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. Except for the issuance of a U.S. policy form (NM form 7 or NM form 34), any policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

[6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03; A, 7-1-05; A, 8-17-09; A, 9-15-09; A, 09-15-10; A, 10-1-12; A, 7-31-14; A, 3-1-16]

**PUBLIC SAFETY,  
DEPARTMENT OF**

The Department of Public Safety Cabinet Secretary, by decision and order dated January 26, 2016, repealed 18.19.8 NMAC and replaced it with 18.19.8 NMAC, effective February 12, 2016.

**PUBLIC SAFETY,  
DEPARTMENT OF**

**TITLE 18 TRANSPORTATION  
AND HIGHWAYS  
CHAPTER 19 MOTOR VEHICLE  
PROCEDURES, LICENSES,  
PERMITS  
PART 8 SIZE AND WEIGHT  
OF VEHICLES AND LOADS**

**18.19.8.1 ISSUING AGENCY:**  
Department of Public Safety.

[18.19.8.1 NMAC - Rp, 18.19.8.1 NMAC, 2-12-2016]

**18.19.8.2 SCOPE:** This rule applies to every person or entity involved with the movement on the highways of this state of vehicles, combinations of vehicles or loads that, individually or together, exceed size or weight limitations specified in Sections 66-7-401 through 66-7-416 NMSA 1978 and to all persons charged with enforcing provisions of the Motor Vehicle Code.

[18.19.8.2 NMAC - Rp, 18.19.8.2 NMAC, 2-12-2016]

**18.19.8.3 STATUTORY AUTHORITY:** Section 9-19-6 NMSA 1978; Sections 66-7-401 through 66-7-416 NMSA 1978.

[18.19.8.3 NMAC - Rp, 18.19.8.3 NMAC, 2-12-2016]

**18.19.8.4 DURATION:**

Permanent.

[18.19.8.4 NMAC - Rp, 18.19.8.4 NMAC, 2-12-2016]

**18.19.8.5 EFFECTIVE DATE:** February 12, 2016, unless a later date is cited at the end of a section.

[18.19.8.5 NMAC - Rp, 18.19.8.5 NMAC, 2-12-2016]

**18.19.8.6 OBJECTIVE:**

The objective of this rule is to interpret and implement provisions of the Motor Vehicle Code relating to the movement of oversize and overweight vehicles on the highways of this state.

[18.19.8.6 NMAC - Rp, 18.19.8.6 NMAC, 2-12-2016]

**18.19.8.7 DEFINITIONS:** As used in this rule:

A. **“Accumulated traffic”** means a build-up of six or more vehicles, other than escort vehicles, or any vehicle being detained for more than ten minutes behind a vehicle or load required to be escorted; provided that, if the escorted vehicle or load is traveling consistently at a speed within five miles per hour of the maximum legal speed for the highway being traveled upon, the term means a build-up of eight or more vehicles, other than escort vehicles, or any vehicle being detained for more than ten minutes;

B. **“Applicant”** means a person or entity applying for a special permit;

C. **“Continuous movement”** means movement during

all hours, day or night, on any day of the week except on a holiday; provided that “continuous movement” does not include movement during inclement weather, traffic hazards or other occurrences that affect the safe movement of vehicles on a highway;

D. **“Counter-flow”** means the movement of or obstruction by a vehicle, combination, structure or load upon a roadway designated for traffic flowing in the opposite direction;

E. **“Daylight movement”** means movement 30 minutes before sunrise until 30 minutes after sunset on any day of the week, except on a holiday; provided that “daylight movement” does not include movement during inclement weather, traffic hazards or other occurrences that affect the safe movement of vehicles on a highway;

F. **“Department”** means the department of public safety;

G. **“Height”** means a measurement from the uppermost point of the vehicle, combination of vehicles or load to the roadbed;

H. **“Highway”** or **“street”** means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

I. **“Holiday”** means 12:01 am until 11:59 pm on the calendar day of any of the following holidays:

(1) New year’s day;

(2) Memorial day;

(3) Independence day;

(4) Labor day;

(5) Thanksgiving day;

(6) Christmas day; and

(7) any other holiday that may be designated by the department;

J. **“Inclement weather”** means a natural occurrence that may create dangerous driving conditions and includes any of the following:

(1) snow;

(2) ice;

(3) fog;

(4) rain;

(5) dust;

(6) a weather

condition that limits visibility to less than one thousand feet, or approximately two-

tenths of one mile;

(7) for oversize vehicles, combinations or loads, wind speeds of twenty-five miles per hour or more as determined by the National Weather Service, nearest airport, New Mexico port of entry or government controlled weather station; or

(8) a weather condition that is determined by the department, the department of transportation or a law enforcement official to create a safety hazard;

K. **“Irreducible load”** means a vehicle or load exceeding size or weight limitations that cannot reasonably be reduced to legal limits and that, if separated into multiple or smaller loads or vehicles, would:

(1) compromise the intended use of the vehicle or load, rendering it unable to perform the function for which it was intended;

(2) destroy the value of the vehicle or load, making it unusable for its intended purpose; or

(3) require more than eight work hours to dismantle using appropriate equipment;

L. **“Length”** means a measurement from the foremost point to the rearmost point of a vehicle, combination of vehicles or load;

M. **“Manufactured home”** means a movable or portable housing structure that exceeds either a width of eight feet or a length of forty feet, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy;

N. **“Movement”** or **“move”** means the movement of an oversize or overweight vehicle, combination or load on a highway of this state requiring a special permit;

O. **“Oversize”** or **“overweight”** means exceeding a maximum dimension or weight specified in Sections 66-7-401 through 66-7-416 NMSA 1978;

P. **“Permittee”** means a person or entity that has been issued a special permit to move a specific vehicle, combination or load;

Q. **“Route survey”** means actual physical measurements conducted by an applicant or an applicant’s designee of the width and height of the load or vehicle to be moved compared with actual physical measurements of the width and height of structures and property to be cleared by the load or vehicle throughout the entirety

of the proposed route to be traveled;

R. **“Special permit”** means a written permit issued by the department that authorizes a permittee to move an oversize or overweight vehicle, combination or load on a highway in this state;

S. **“Utility service vehicle”** means a vehicle used in the furtherance of repairing, maintaining, or operating any structure or other physical facility necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, television cable or community antenna service; and

T. **“Width”** means a measurement from the extreme outermost point of one side of the vehicle or combination of vehicles or load to the extreme outermost point of the opposite side of the vehicle, combination of vehicles or load.

[18.19.8.7 NMAC - Rp, 18.19.8.7 NMAC, 2-12-2016]

**18.19.8.8 SPECIAL PERMIT**

**REQUIRED:** Unless specifically exempted by law, a vehicle, combination of vehicles or a load that exceeds a maximum size or weight limitation established by Sections 66-7-401 through 66-7-416 NMSA 1978 shall not move on a public highway or street without a valid special permit issued by the department. [18.19.8.8 NMAC - Rp, 18.19.8.10 NMAC, 2-12-2016]

**18.19.8.9 SPECIAL PERMIT FOR IRREDUCIBLE LOADS - EXCEPTIONS:**

A. Except as otherwise provided in this section, a special permit shall be issued only for an irreducible load. An applicant shall demonstrate that the load to be moved cannot reasonably be dismantled, reduced or disassembled. Reductions shall be made whenever possible, even if use of additional vehicles becomes necessary.

B. The following reducible loads may be issued a special permit:

(1) vehicle or combination of vehicles with a gross weight not exceeding ninety-six thousand pounds within twelve miles of a port of entry on the border with Mexico, and within the area described in Section 66-7-413 NMSA 1978 for the port of entry at Santa Teresa, as provided in Section 66-7-413 NMSA 1978;

(2) an over-width vehicle or load used to transport

loads of hay, as provided in Section 66-7-413.1 NMSA 1978, for a distance up to fifty miles;

(3) liquid hauling tank vehicle, as provided in 66-7-413.4 NMSA 1978;

(4) agricultural products, as provided in Section 66-7-413.7 NMSA 1978;

(5) specialized haul vehicles, as provided in Section 66-7-413.8 NMSA 1978; or

(6) emergency response vehicles, including those loaded with salt, sand, chemicals or a combination and being used for the purpose of spreading the material on highways that are or may become slick or icy.

C. The department may issue special permits for casks designed for the transport of spent nuclear materials and for military vehicles transporting marked military equipment or material.

D. When an integral part of a machine or other equipment is removable, and the load without that part is oversize or overweight, the department may allow that part to be included in the permitted load; provided that the inclusion of the removable part does not increase the dimensions of the load.

[18.19.8.9 NMAC - Rp, 18.19.8.12 NMAC, 2-12-2016]

**18.19.8.10 APPLICATION FOR A SPECIAL PERMIT:**

A. Only a person or entity that owns and operates the transporting vehicle or that operates the transporting vehicle under a lease agreement may apply for a special permit.

B. An applicant for a special permit shall be in compliance with and shall ensure that the transporting vehicle and the specific vehicle, combination or load to be moved is in compliance with motor vehicle registration laws, tax laws and regulations and any applicable public regulation commission rules and requirements.

C. An applicant for a special permit shall:

(1) indicate the type of special permit requested;

(2) provide contact information for the person or entity requesting the permit;

(3) specifically identify the vehicle, combination or load to be moved;

(4) provide the width, length and height of the vehicle, combination or load and identify the size

and location of any overhangs;

(5) provide the gross vehicle weight;

(6) provide all axle information requested, including number and spacing of axles, number and type of tires on each axle and the weight on each axle;

(7) describe the type of load being moved and the type of vehicle;

(8) identify the points of origin and destination;

(9) describe the route of travel;

(10) indicate whether a route survey has been conducted and provide a copy of the route survey, if requested;

(11) indicate whether certified escort vehicle or vehicles will accompany the move, if required;

(12) if required, demonstrate that a feasibility study of the proposed movement has been made or that an engineering analysis or investigation of the route to be traveled has been completed;

(13) provide proof of insurance coverage in accordance with New Mexico’s financial responsibility laws and requirements of the public regulation commission; and

(14) provide other information as requested by the department.

D. An applicant for a special permit shall obtain any required maps, restricted roads, structures or bridges required by the department for the move. Required maps and other documents are available by electronic link on the special permit application. [18.19.8.10 NMAC - Rp, 18.19.8.14 NMAC, 2-12-2016]

**18.19.8.11 PROOF OF FINANCIAL RESPONSIBILITY:**

A. A person applying for a special permit shall submit to the department proof of financial responsibility as required by New Mexico law.

B. An applicant shall submit a certificate of insurance issued by an insurance carrier authorized to transact business in this state in accordance with public regulation commission requirements. The certificate of insurance shall indicate the following minimum coverage:

(1) bodily injury liability in the amounts of \$50,000 for each person and \$100,000 for each



accident; and  
 (2) property damage liability in the amount of \$25,000 for each accident.

C. A certificate of insurance shall identify:  
 (1) the vehicle covered by year, make, type, capacity, license number and serial number or indicate that the vehicle is included under an all owned, non-owned and hired vehicle clause;

(2) the effective dates of coverage; and  
 (3) the name and address of the insured.

D. The department may accept other evidence of financial responsibility that shows compliance with the certification, operating authority and insurance requirements of the public regulation commission; provided that the minimum liability coverage required by this section is met.

E. An applicant or permittee shall notify the department in writing of any material change or cancellation of insurance coverage at least ten days prior to the effective date of such change or cancellation. The department shall void any outstanding special permits if insurance is canceled and not replaced before the expiration date noted on the special permit.

F. If the required insurance coverage is not on file with the department, the special permit application will be held in abeyance until satisfactory proof of coverage is provided.  
 [18.19.8.11 NMAC - Rp, 18.19.8.52 NMAC, 2-12-2016]

**18.19.8.12 NON-TRANSFERABLE:** A special permit is specific to a vehicle, combination or load and is not transferable from carrier to carrier or vehicle to vehicle.  
 [18.19.8.12 NMAC - Rp, 18.19.8.21 NMAC, 2-12-2016]

**18.19.8.13 CARRIED IN VEHICLE:** A special permit shall be carried in the vehicle to which it applies, along with any required surveys, maps or lists of structures, and be presented for inspection to any peace officer, authorized employee of the department or an escort vehicle driver who is escorting the vehicle. The special permit and any other required document may be carried on an electronic device and presented in electronic form as long as it is legible.  
 [18.19.8.13 NMAC - Rp, 18.19.8.20 NMAC, 2-12-2016]

**18.19.8.14 COMPLIANCE WITH OTHER LAWS:** Any movement under a special permit shall comply with all applicable laws, ordinances and regulations. A special permit does not release a permittee from requirements of federal, state or local laws that may apply to the vehicle, the driver or the movement of the vehicle.  
 [18.19.8.14 NMAC - Rp, 18.19.8.22 NMAC, 2-12-2016]

**18.19.8.15 EXCEPTIONS STATED IN SPECIAL PERMIT:** A permittee and an escort vehicle driver shall comply with all applicable provisions of this rule. Any exception or variation is valid only if specifically stated in the special permit.  
 [18.19.8.15 NMAC - N, 2-12-2016]

**18.19.8.16 SURETY BOND MAY BE REQUIRED:** If requested by the department or by a municipality, an applicant shall execute and deliver with the department or municipality a surety bond, cash equivalent or other security satisfactory to the department or municipality in an amount sufficient to cover any damages anticipated to road surfaces, bridges, culverts, structures or appurtenances that may be caused by the proposed movement. The amount of the security shall be determined by the department or municipality following an analysis of the proposed move and the roadways and structures along its route.  
 [18.19.8.16 NMAC - Rp, 18.19.8.15 NMAC, 2-12-2016]

**18.19.8.17 PERMITTEE LIABLE FOR PROPERTY DAMAGE AND PERSONAL INJURY:** The granting of a special permit shall not be construed to relieve a permittee of any responsibility or liability under motor vehicle or other laws. A permittee assumes all responsibility for injury to persons or damage to public or private property, including injury to the driver and damage to the driver's property or the load being transported, caused directly or indirectly by the movement of the vehicle, combination or load. A permittee shall hold the state harmless from all suits, claims, damages or proceedings of any kind and shall indemnify the state for any claim that the state may be required to pay arising from damage or injury caused directly or indirectly by the movement.  
 [18.19.8.17 NMAC - Rp, 18.19.8.25 NMAC, 2-12-2016]

**18.19.8.18 SPECIAL PERMIT NOT GUARANTEE OF INFRASTRUCTURE:** Issuance of a special permit is not a guarantee of the sufficiency or clearance of any highway or structure included in the authorized route of the move. It is an unreasonable use of any bridge or structure to operate a vehicle, load, tractor or engine not in accordance with the provisions of the New Mexico Motor Vehicle Code.  
 [18.19.8.18 NMAC - Rp, 18.19.8.26 NMAC, 2-12-2016]

**18.19.8.19 PRELIMINARY APPROVAL FOR A SPECIAL PERMIT:** A person may request from the department preliminary approval of a proposed movement of an oversize or overweight vehicle, combination or load. Sufficient data shall be submitted to allow the department to evaluate the proposed move. If it is determined that the proposed move is feasible, the mover will be notified that a special permit can be issued upon notification to the department and payment of the proper fee. The department may retract its preliminary approval if circumstances change.  
 [18.19.8.19 NMAC - Rp, 18.19.8.51 NMAC, 2-12-2016]

**18.19.8.20 ENTRY INTO NEW MEXICO:**  
 A. An oversize or overweight vehicle, combination or load shall have a special permit issued by the department before entry into this state. Any required escort vehicle shall be certified by the department before entry into this state.

B. If an escort vehicle is not certified before entry, the escort vehicle and the escorted vehicle or load shall stop outside the state. The escort vehicle driver shall turn off or remove all exterior lighting and equipment, remove or cover any signs and remove the amber lights and flags. The escort vehicle shall then drive to the nearest port of entry where the vehicle and equipment can be checked and verified for certification. After the escort vehicle has been certified, it shall drive back, without display of lighting, signs, flags or equipment, to where the escorted load has stopped outside the state. All required lighting, equipment, flags and signs shall then be repositioned on the escort vehicle, and the permitted load and escort vehicle shall enter the state.

C. A special permit may be obtained by submitting an electronic application over the internet at www.

mtdpermits.dps.state.nm.us.  
[18.19.8.20 NMAC - Rp, 18.19.8.13 NMAC, 2-12-2016]

**18.19.8.21 BEFORE COMMENCEMENT OF MOVE - AMENDED SPECIAL PERMIT:**

A. Prior to starting the move, a permittee shall:

- (1) review the special permit for accuracy of information contained in the special permit;
- (2) ensure that any required survey, maps or lists of structures are included with the special permit;
- (3) fully understand all the conditions and restrictions contained in the special permit;
- (4) know the route to be traveled; and
- (5) be aware, as reasonably possible, of any special circumstances that may be encountered along the route.

B. If a permittee finds that the special permit does not cover the entire move or that it is incorrect, the permittee shall contact the department and request the necessary changes or amendments to the special permit. The permittee shall not commence the move until such changes have been made and a correct or amended special permit has been issued. A special permit that contains incorrect information is void.

C. The department may, depending upon circumstances, issue a supplemental special permit or amend an existing special permit to address a situation that did not exist or was not anticipated at the time of issuance of the original special permit. In such cases, additional documentation may be required by the department to support the issuance of a supplemental special permit or the amendment of an existing special permit.  
[18.19.8.21 NMAC - Rp, 18.19.8.19 NMAC, 2-12-2016]

**18.19.8.22 MOVEMENT LIMITED TO CERTAIN HIGHWAYS:**

A. A special permit authorizes the movement of a vehicle, combination or load only on the highways designated in the special permit as the route of travel. Permission from local authorities may be required if a portion of the move is to be made over local streets.

B. Unless otherwise indicated on a special permit, movement may not be made over a bridge posted for a specific load limit that is less than the

permitted load.  
[18.19.8.22 NMAC - Rp, 18.19.8.23 NMAC, 2-12-2016]

**18.19.8.23 MOVEMENT RESTRICTED TO SINGLE TRAFFIC LANE - FLOW OF TRAFFIC:**

A. Insofar as practical, movement shall be confined to a single traffic lane and shall not unnecessarily obstruct the flow of traffic or the roadway. Other traffic shall be given the right-of-way whenever possible.

B. The driver of a permitted vehicle shall remove the vehicle from the roadway when necessary to allow accumulated traffic to pass or when so directed by a peace officer. The driver shall observe the speed specified in the special permit, maintain a proper interval between vehicles and provide vehicles an opportunity to pass to avoid creating traffic congestion.

[18.19.8.23 NMAC - Rp, 18.19.8.24 NMAC, 2-12-2016]

**18.19.8.24 DAYLIGHT MOVEMENT:**

A. Unless continuous movement is specifically allowed on a special permit, there shall be no movement thirty minutes after sunset until thirty minutes before sunrise.

B. There shall be no movement during inclement weather or on holidays.

C. The department may grant an exception, considering, among other factors:

- (1) the size or weight of the vehicle, combination or load;
- (2) the route to be traveled;
- (3) safety to the motoring public;
- (4) advice of the department of transportation and law enforcement officials; and
- (5) any other consequence of allowing the move during those times.

[18.19.8.24 NMAC - Rp, 18.19.8.34 NMAC, 2-12-2016]

**18.19.8.25 CONTINUOUS MOVEMENT:**

A. A special permit that allows for continuous movement may be issued for a vehicle, combination or load that does not exceed:

- (1) a width of ten feet;
- (2) a height of

fourteen feet six inches;

- (3) a length of one hundred twenty feet; or
- (4) a weight of one hundred forty thousand pounds.

B. Lighting requirements shall be in accordance with the Code of Federal Regulations, Title 49, Section 393.11, and all lights shall meet a five hundred foot visibility requirement. In addition, for an over-width or over-length vehicle, combination or load, at least one rotating, flashing, strobe or LED amber light at the rear of the vehicle and two rotating, flashing, strobe or LED amber lights on the power unit are required.

C. Continuous movement is allowed only if specifically stated on the special permit and does not include movement on holidays or during inclement weather.

D. Additional conditions and requirements may be imposed by the department, including requiring additional equipment or imposing restrictions applicable to specific roads and highways.  
[18.19.8.25 NMAC - Rp, 18.19.8.32 NMAC, 2-12-2016]

**18.19.8.26 MOVEMENT DURING HEAVY TRAFFIC:**

A. Unless otherwise specified in a special permit, movement on weekdays between the hours of 7 a.m. and 9 a.m. and between the hours of 4 p.m. and 6 p.m. is prohibited on:

- (1) interstate highways, U.S. highways and state roads within the city limits of Santa Fe and Las Cruces;
- (2) Interstate 25 between Santa Fe and Los Lunas and within the city limits of Los Lunas;
- (3) U.S. 285 between Santa Fe and Espanola and within the city limits of Espanola; and
- (4) Interstate 10 from mile marker 139 to mile marker 145, and Interstate 25 from mile marker 0 to mile marker 9, in the Las Cruces area.

B. Unless otherwise specified in a special permit, movement on weekdays between the hours of 7 a.m. and 9 a.m. and between the hours of 4 p.m. and 7 p.m. is prohibited on interstate highways, U.S. highways and state roads within the city limits of Albuquerque and Rio Rancho.

C. The department may restrict movement during heavy traffic in other locations or time periods.  
[18.19.8.26 NMAC - N, 2-12-2016]

**18.19.8.27 MOVEMENT**

**OVER BRIDGES:** Two or more permitted vehicles, combinations or loads shall not traverse a bridge or other structure at the same time.  
[18.19.8.27 NMAC - N, 2-12-2016]

**18.19.8.28 CERTAIN VIOLATIONS RENDER SPECIAL PERMIT VOID:**

A. A special permit is null and void if any of the following violations occur:

(1) commencing a move under a special permit that contains incorrect information, unless amendments to the permit have been issued by the department correcting the information;

(2) the movement is made on a highway or street other than those specifically noted on the special permit, unless necessary to detour around construction zones or to avoid obstructions;

(3) movement is made on a highway or street that is closed;

(4) use of a bridge or structure not authorized by the special permit;

(5) size or weight limitations specified in the special permit are exceeded;

(6) improper identification or substitution of a vehicle, combination or load;

(7) the special permit, route survey, bridge map, list of structures or other required document is not in possession of or carried electronically by the driver during the move;

(8) the permittee is not the owner or lessee of the permitted vehicle;

(9) speeds specified in the special permit are not observed;

(10) special provisions contained in the special permit to protect highways and structures are not observed;

(11) the application for the special permit or the special permit contains misrepresentations;

(12) the special permit has been altered, is fraudulent or is used for a fraudulent or unauthorized purpose;

(13) absence or cessation of a required escort vehicle during the movement;

(14) insurance coverage is canceled, expired, insufficient or otherwise does not meet the requirements of law or this rule; or

(15) failure to comply with any condition or restriction specified in the special permit.

B. Violation of a special permit may be cause for suspension or cancellation of all special permit privileges of the permittee. Based on the severity of the violation, the department may cancel any or all special permits issued to the permittee for current or future movements and may suspend the permittee's right to apply for special permits in the future.

C. The effect of a void special permit is the same as if no special permit had been issued, and the violator, in addition to any other violations, may be subject to prosecution pursuant to the provisions of Sections 66-7-413, 66-7-413.2 and 66-7-416 NMSA 1978. No refund shall be made or credit given for fees paid for a special permit that is rendered void. A special permit issued after a violation does not nullify the violation.

[18.19.8.28 NMAC - Rp, 18.19.8.28 NMAC, 2-12-2016]

**18.19.8.29 SECURING A NEW SPECIAL PERMIT FOLLOWING A VOIDED SPECIAL PERMIT:**

A special permit that is void shall be surrendered, upon demand, to a peace officer or authorized department personnel. A new special permit is required before movement move can be resumed. The issuance of a new special permit will be withheld until all conditions that caused the voiding and seizure of the original permit have been corrected to meet the requirements imposed by the department for the move.

[18.19.8.29 NMAC - Rp, 18.19.8.30 NMAC, 2-12-2016]

**18.19.8.30 ROUTE SURVEY MAY BE REQUIRED:**

A. Based on the dimensions of a vehicle, combination or load or the route requested, the department may require that a route survey be conducted and submitted to the department prior to issuance of a special permit. When a route survey is required, it shall be carried in the permitted vehicle at all times during the move.

B. A route survey is valid for a period of fourteen days but is subject to change by the department at any time depending on circumstances, including

inclement weather, highway construction, utility work, roadway design, and traffic patterns.

C. The department may extend the validity period of a route survey at its discretion for carriers engaged in moving the same dimensions or in moving similar loads where there are no structural clearance issues.

D. A route survey shall be in a written form approved by the department.

[18.19.8.30 NMAC - N, 2-12-2016]

**18.19.8.31 TOWING UNIT WHEELBASE AND MIRRORS:**

A. Except for a unit used to move manufactured homes, a towing unit shall have an overall wheelbase of at least ninety-nine inches and shall be of sufficient capacity that the transporting or pulling of an oversize or overweight vehicle or load will not create any unnecessary hazard to the motoring public.

B. A towing unit shall be equipped with two outside rear view mirrors, one on each side, that provide a field of view to the driver of the road on both sides of the load and beyond the rear of the load.

C. A towing unit shall comply with all other safety requirements, equipment and restrictions applicable to the movement of the unit with the vehicle, combination and load being towed.

[18.19.8.31 NMAC - Rp, 18.19.8.39 NMAC, 2-12-2016]

**18.19.8.32 LOADING REQUIREMENTS:**

A. No vehicle or combination shall be driven or moved unless it is constructed, loaded, secured or covered so as to prevent any of its load from dropping, sifting, leaking or otherwise escaping. A load and any covering shall be securely fastened so as to prevent the covering or the load from becoming loose, detached or in any manner hazardous to other users of the highway.

B. Consistent with safety considerations, oversize objects shall be positioned in a manner that:

(1) minimizes the number of dimensions exceeding the legal limit; and

(2) does not result in exceeding the maximum legal gross weight or axle weight.

C. A load having two dimensions that exceed the limitations for width, height or length shall be loaded

in a manner that minimizes the overall combination of dimensions.

D. Positioning of an object in a manner that causes a load to be oversize, but that in another position would remain within the legal limits, is considered a reducible arrangement and a special permit shall not be issued in such cases.

E. Consideration shall be given to the weight and balance of a load to assure stability of the load and safety of the move.

[18.19.8.32 NMAC - Rp, 18.19.8.40 NMAC, 2-12-2016]

**18.19.8.33 FLAGS REQUIRED:**

A. An oversize vehicle, combination or load shall be properly flagged at all times.

B. Flags shall be red, florescent red or florescent orange and square or rectangular measuring no less than eighteen inches on any one side.

C. For single vehicles flags shall be placed as follows:

(1) front and rear: fastened to each corner of the vehicle at the widest points of the vehicle;

(2) side: fastened to mark any extremity of size when wider than the front or rear of the vehicle; and

(3) overhangs: for front overhangs that exceed the vehicle by three feet or more and for rear overhangs that exceed the vehicle by four feet or more, the extreme point of overhang shall be marked with a flag on each corner of the overhang; provided that when the overhang width is less than two feet, it may be marked with only one flag.

D. For combination vehicles, flags shall be placed as follows:

(1) front: fastened to each front corner of the power unit vehicle at the widest points of the vehicle;

(2) at the four corners of the trailer or load, whichever is greater in width: fastened to each front corner of the trailer or load at the forward-most part of the trailer or load and fastened to each rear corner of the trailer or load at the rear-most part of the trailer or load;

(3) sides: fastened to mark any extremity of size if wider than the front or rear of the trailer or load; and

(4) overhangs: for front overhangs that exceed the front of the vehicle combination by two feet or

more and for rear overhangs that exceed the rear of the vehicle combination by four feet or more, the extreme point of overhang shall be marked with a flag on each corner of the overhang; provided that when the overhang width is less than two feet, it may be marked with only one flag. [18.19.8.33 NMAC - Rp, 18.19.8.41 NMAC, 2-12-2016]

**18.19.8.34 OVERSIZE SIGNS REQUIRED:**

A. Oversize signs shall be properly affixed on the front and rear of all oversize vehicles, combinations or loads. The signs shall read "OVERSIZE", "OVERWIDTH", "OVERLENGTH" or "OVERHEIGHT". An "OVERSIZE" sign may be used to designate an over-width, over-length or over-height vehicle or load.

B. The signs shall be at least five feet wide by twelve inches high with a bright yellow background and black lettering. The letters shall be at least one inch wide by ten inches high.

C. The front sign shall be placed on the front of the foremost vehicle or on top of the cab of the power unit in the foremost position. The front sign shall be mounted or affixed in a position that is visible to motorists and that does not interfere with the clearance lights located on the top of the power unit vehicle in accordance with lighting requirements for commercial vehicles.

D. The rear sign shall be placed on either the rear of the load or the rear of the rearmost vehicle as long as it is clearly visible to motorists and does not obscure any required equipment or license plates.

[18.19.8.34 NMAC - Rp, 18.19.8.42 NMAC, 2-12-2016]

**18.19.8.35 OVERWIDTH MEASUREMENT - BLOCKING OF ATTACHMENTS:**

A. The overall width of a vehicle, combination or load includes any projections, lashing, chains, cables, load binders, or any object or device that constitutes the extreme width unless such devices are used exclusively to secure the load and do not exceed three inches on either side.

B. When an overwide load includes a bulldozer or construction equipment with a blade or other attachments, such attachments shall be completely lowered and angled as much as possible to minimize the width and shall be secured to the vehicle.

[18.19.8.35 NMAC - Rp, 18.19.8.43 NMAC, 2-12-2016]

**18.19.8.36 OVERHEIGHT VEHICLES OR COMBINATIONS:**

A. Special permits may be issued for vehicles, combinations or loads in excess of the statutory limit for heights of fourteen feet. When the substitution of a different type of trailer would make the vehicle or load fourteen feet or less in height, then the load shall be considered reducible and such substitution shall be made.

B. If a special permit is requested for a height greater than fourteen feet but less than fifteen feet six inches, the applicant shall check the desired route for clearance of overhead structures such as traffic signals, wires, utility lines, bridges and overpasses.

C. If a special permit is requested for a height of fifteen feet six inches or greater, a route survey is required. The applicant shall check the desired route and conduct a route survey for clearance of overhead structures such as traffic signals, wires, utility lines, bridges and overpasses.

D. Certification in writing from utility companies is required for a vehicle or load that exceeds a height of eighteen feet. No person, other than the utility owner, shall move, lift or in any fashion displace an overhead wire.

E. Movements that will not clear highway construction, wires, utility lines, bridges, overpasses or other overhead structures shall be rerouted. Use of off-ramps or frontage roads to clear overhead and other obstacles is permitted, provided overall traffic flow is not adversely affected and traffic safety is not jeopardized.

F. A permittee shall protect all overhead wires, structures and roadside property. Any damage to these or to the roadway, pavement, road guards or shoulders shall be restored at the sole expense of the permittee.

G. The department may require a flagman or an escort to check all overhead clearances during a move. Such requirement shall be stated on the special permit.

[18.19.8.36 NMAC - Rp, 18.19.8.45 NMAC, 2-12-2016]

**18.19.8.37 OVERLENGTH VEHICLES OR COMBINATIONS:**

A. A single vehicle, including front and rear overhang, shall not exceed forty feet in length except by special permit.

B. A combination, including front and rear overhang, shall not exceed sixty-five feet in length except

by special permit. A special permit may be issued for a combination that cannot be readily disassembled or dismantled.

C. Overlength special permits shall be denied when:

(1) pipe, when welded together, is in excess of eighty feet in length; or

(2) crane or tower booms, when bolted or pinned, are in excess of forty feet in length.

[18.19.8.37 NMAC - Rp, 18.19.8.46 NMAC, 2-12-2016]

#### **18.19.8.38 ACCESS TO FACILITIES FOR OVERLENGTH COMBINATIONS:**

In accordance with safety considerations and any county or municipal restrictions, a truck tractor semitrailer combination or a truck tractor semitrailer-trailer combination that exceeds an overall length of sixty-five feet pursuant to the provisions of Subsection D of Section 66-7-404 NMSA 1978 may travel a distance not to exceed twenty miles from the designated highway for:

A. access to facilities offering food, fuel, repairs and rest;

B. access to terminals for the purpose of loading or unloading; or

C. delivery of the load or partial load.

[18.19.8.38 NMAC - Rp, 18.19.8.9 NMAC, 2-12-2016]

#### **18.19.8.39 SPECIAL PERMIT REQUIRED FOR PROJECTING LOADS:**

A. A special permit is required for a projecting load that extends:

(1) more than three feet beyond the foremost part of a vehicle or the foremost part of the front vehicle of a vehicle combination; or

(2) more than seven feet beyond the rearmost part of a vehicle or the rearmost part of the rear vehicle of a vehicle combination.

B. This section applies even if the overall length of the vehicle, combination or load would not require a special permit for movement.

C. A projecting load or overhang shall not cause excessive axle weight that would diminish the effectiveness of the steering axle or axles and shall not constitute a hazard.

D. When the substitution of an articulated vehicle for a single vehicle would make the load a smaller dimension, then the load shall be considered reducible and such substitution shall be made.

E. The department may require an escort as a condition of issuing

a special permit for movements with a projecting load.

[18.19.8.39 NMAC - Rp, 18.19.8.47 NMAC, 2-12-2016]

#### **18.19.8.40 ENGINEERING ANALYSIS FOR VEHICLES OR LOADS IN EXCESS OF ONE HUNDRED SEVENTY THOUSAND POUNDS:**

A. An application for a special permit for a vehicle, combination or load with a gross weight in excess of one hundred seventy thousand pounds shall be forwarded to the department of transportation for approval.

B. No special permit shall be issued for a vehicle, combination or load with a gross weight in excess of one hundred seventy thousand pounds unless an engineering analysis has been conducted for the proposed route and the move has been approved by the department of transportation.

C. An engineering analysis shall determine if the roads on the proposed route, including any bridges, culverts, overpasses and other structures, are adequate and capable of handling the overweight movement. The analysis may require specific restrictions to be imposed on the movement, such as requiring the overweight vehicle, combination or load to significantly reduce its speed at certain structures, requiring a different route or requiring other maneuvers.

D. Data required from the applicant for an engineering analysis includes:

- (1) tire sizes;
- (2) axle loads;
- (3) axle

spacings;

- (4) desired

route to be traveled;

- (5) clearance documents if movement is overheight or overwide; and

(6) any additional information requested by the department or the department of transportation.

E. Unless an applicant submits an engineering analysis of the route to be traveled that is satisfactory to the department of transportation, the department of transportation shall perform its own analysis. The department of transportation may assess a fee for the cost of performing the analysis and such a fee shall be charged to the applicant as an added cost to the permit fee.

F. Once an engineering analysis has been conducted and the movement approved by the department of

transportation, the department may issue a special permit upon payment of the proper fee.

[18.19.8.40 NMAC - Rp, 18.19.8.48 NMAC, 2-12-2016]

#### **18.19.8.41 - 18.19.8.49 [RESERVED]**

#### **18.19.8.50 SINGLE-TRIP SPECIAL PERMIT:**

Special permits for single-trip movements are issued for a single, one-way movement. A single-trip special permit is valid for five days.

[18.19.8.50 NMAC - Rp, 18.19.8.82 NMAC, 2-12-2016]

#### **18.19.8.51 MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit allows the movement of a specific vehicle, combination or load multiple times in a specific area of the state consisting of four contiguous counties and three interstates. A multiple-trip special permit is valid up to one year from the date of issue or until the end of the coverage period noted on the applicant's certificate of insurance, whichever is earlier. An expiration date will be noted on the permit.

B. A multiple-trip special permit is specific for a particular vehicle or combination of vehicles and a particular load. It is not valid for any other vehicle or combination or any other type of load. Use of a multiple-trip special permit by other than the vehicle or combination for which it was issued or for a different type of load renders the multiple-trip special permit void.

C. A multiple-trip special permit may be issued for a vehicle, combination or load up to the following maximum size and weight limitations:

(1) a width of fourteen feet, a height of fifteen feet and a maximum overall length of one hundred twenty feet that may include a front overhang up to fifteen feet and a rear overhang up to twenty-five feet; and

(2) a weight of no more than one hundred forty thousand pounds; provided that the vehicle, combination or load has the proper number of axles and spacing between each axle to carry the weight.

D. When a multiple-trip special permit allows for excessive weight, the permittee will be furnished with locations of restricted structures in the area of operation.

E. Conditions or restrictions associated with a multiple-trip special permit, including specific routes,

route surveys, bridge maps and restricted structures, are an integral part of the special permit and shall be attached to the permit at all times. Required documents, conditions and restrictions may be carried electronically. Violation of any condition or restriction renders the multiple-trip special permit void.

F. Multiple-trip special permits may be issued for daylight movement or for continuous movement.

G. The provisions of this section apply to all multiple-trip special permits, unless specifically provided otherwise.

[18.19.8.51 NMAC - Rp, 18.19.8.80 NMAC, 2-12-2016]

**18.19.8.52 WRECKER SERVICE - MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit may be issued to a wrecker service, commensurate with the class of service authorized. A commercial motor carrier that operates wreckers for towing its own vehicles may also apply for this multiple-trip special permit.

B. A multiple-trip special permit for a wrecker service authorizes continuous movement and movement on holidays and during inclement weather on an emergency basis. The multiple-trip special permit may exclude movement over certain highways or structures.

C. The maximum width allowed when towing vehicles under a multi-trip special permit is twelve feet, including towing on a dolly. This limit includes the width of the towed vehicle plus all load binders or other equipment required to tie or hold the unit together.

D. The maximum height allowed when towing vehicles under a multi-trip special permit is fourteen feet. If damage to the wrecked or disabled vehicle causes protruding pieces that cannot be reasonably removed before towing, a height up to fifteen feet is allowed.

E. A disabled or wrecked vehicle that exceeds the maximum width or height provided in this section shall not be moved under a multiple-trip special permit. A single-trip special permit shall be obtained for the movement. The department may require an escort as a condition of the single-trip special permit.

F. In addition to any other restrictions, the following apply to a wrecker service operating under a multiple-trip special permit:

(1) the towing of one motor vehicle and one trailer in

combination is allowed;

(2) a second trailer of a three-unit combination may be towed in combination to the nearest point of safety where it shall be disconnected from the combination being towed;

(3) movement during inclement weather is restricted to movement from the site of disablement or crash to the nearest point of safety;

(4) when towing a single vehicle or combination of vehicles, the driver shall comply with all safety regulations with respect to both the equipment and the driver;

(5) when towing a single vehicle or a combination of vehicles, the wrecker vehicle and the towed vehicle or combination shall be properly flagged and equipped with oversize load signs and any other required warning devices;

(6) unless the towed vehicle or combination has been issued a valid oversize or overweight special permit, the combined weight of the wrecker and the towed vehicle or combination shall not exceed the weight of the wrecker plus eighty-six thousand four hundred pounds and the overall length shall not exceed one hundred twenty-five feet.

(7) if the towed vehicle or combination has been issued a valid oversize or overweight special permit and the combined length of the vehicle or combination plus the length of the wrecker exceeds one hundred twenty-five feet or the combined weight of the towed vehicle or combination and the wrecker exceeds the weight of the wrecker plus eighty-six thousand four hundred pounds, the vehicle or combination may be towed only to the nearest point of safety. Towing such a vehicle or combination beyond the nearest point of safety requires a single-trip special permit to be issued based on the combined length and weight of the wrecker and the towed vehicle or combination.

G. This section does not authorize trespass on private property.

H. The provisions of this section apply to all classes of wreckers and wrecker services.

I. As used in this section:

(1) "movement on an emergency basis" means the towing from a highway or right-of-way of a wrecked or disabled vehicle that cannot be moved under its own power, when such movement is necessary for the safety and convenience of the public, or when

directed by a police officer. Unless other laws or regulations provide otherwise, "movement on an emergency basis" includes the movement of the vehicle from the site of the crash or disablement to the vehicle owner's premises, a repair facility or a storage facility operated by the wrecker service; and

(2) "nearest point of safety" is the closest area where the vehicle or combination can be temporarily parked clear of any motor vehicle traffic and at least thirty feet from the outer edge of the nearest traffic lane of any road or highway at the closest point. Private land shall not be used as the nearest point of safety without permission of the owner.

[18.19.8.52 NMAC - Rp, 18.19.8.49 NMAC, 2-12-2016]

**18.19.8.53 OILFIELD EQUIPMENT TRANSPORT VEHICLE - MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit may be issued for an oilfield equipment transport vehicle, combination or load used exclusively for hauling equipment or materials used in the production of oil or gas.

B. A multiple-trip special permit for an oilfield equipment transport vehicle includes all the requirements, conditions and restrictions applicable to multiple-trip special permits, except that this permit may be issued for the following dimensions:

(1) a maximum width of twenty-two feet;

(2) a maximum height of twenty feet; and

(3) a maximum length of one hundred ten feet.

C. An oilfield equipment transport vehicle issued a multi-trip special permit shall abide by all other requirements and restrictions provided by law and in this rule.

[18.19.8.53 NMAC - N, 2-12-2016]

**18.19.8.54 UTILITY SERVICE VEHICLE - MULTIPLE-TRIP SPECIAL PERMIT:**

A multiple-trip special permit for a utility service vehicle authorizes continuous movement and movement on holidays and during inclement weather on an emergency basis. The multiple-trip special permit may exclude movement over certain highways or structures. Under certain circumstances, a single-trip special permit may be issued for movement not allowed under the multi-trip special permit.

[18.19.8.54 NMAC - N, 2-12-2016]

**18.19.8.55 SPECIALIZED HAUL VEHICLE - MULTIPLE-TRIP SPECIAL PERMIT:**

A. A multiple-trip special permit may be issued for a specialized haul vehicle pursuant to Section 66-7-413.8 NMSA 1978; provided that the weight of any one axle or wheel does not exceed the limits established by Section 66-7-409 NMSA 1978 for gross weight imposed on the highway.

B. A multiple-trip special permit for a specialized haul vehicle may be obtained for a fee of four hundred dollars (\$400) for movement in four contiguous counties and three interstates. Additional counties may be added to the special permit for a fee of one hundred dollars (\$100) per county.

C. A multiple-trip special permit for a specialized haul vehicle includes all the requirements, conditions and restrictions applicable to multiple-trip special permits and otherwise provided by law and in this rule, except that:

(1) an applicant shall not be required to demonstrate that the load is irreducible; and

(2) restriction on movement during heavy traffic periods, as provided in 18.19.8.26 NMAC, shall not apply to this special permit.

[18.19.8.55 NMAC - N, 2-12-2016]

**18.19.8.56 TRACTOR SEMITRAILER MULTIPLE-TRIP SPECIAL PERMIT:**

A multiple-trip special permit may be issued for a truck tractor semitrailer or a truck tractor semitrailer-trailer combination for statewide movement. All other requirements, conditions and restrictions for multiple-trip special permits and otherwise provided by law and in this rule apply to this special permit.

[18.19.8.56 NMAC - N, 2-12-2016]

**18.19.8.57 OTHER MULTIPLE-TRIP SPECIAL PERMITS:**

A multiple-trip special permit may be issued for:

A. a liquid hauling tank vehicle as provided in Section 66-7-413.4 NMSA 1978;

B. an agricultural product transport vehicle as provided in Section 66-7-413.7 NMSA 1978; or

C. other vehicles, combinations or loads as determined by the department.

[18.19.8.57 NMAC - N, 2-12-2016]

**18.19.8.58 SPECIAL PERMITS IN CASES OF EMERGENCY:**

A. In clear cases of emergency and when it is not possible to follow normal procedures for obtaining a special permit, a special permit may be issued outside of business hours.

B. During business hours, normal procedures shall be followed. If an emergency arises outside of business hours, an applicant for a special permit shall access the department's website and follow instructions for obtaining the special permit.

C. As used in this section, "business hours" means Monday through Friday from 8:00 a.m. to 5 p.m. [18.19.8.58 NMAC - Rp, 18.19.8.38 NMAC, 2-12-2016]

**18.19.8.59 SPECIAL PERMIT TO A GOVERNMENTAL ENTITY:**

A governmental entity, whether federal, state or local, is required to obtain a special permit before moving a vehicle, combination or load that exceeds legal limits. The governmental entity shall comply with all conditions and restrictions on the permit. No fee shall be charged for the issuance of a special permit to a governmental entity; provided that this fee waiver does not apply to a private contractor moving the vehicle, combination or load on behalf of the governmental entity.

[18.19.8.59 NMAC - Rp, 18.19.8.37 NMAC, 2-12-2016]

**18.19.8.60 SPECIAL PERMIT FOR CONSTRUCTION EQUIPMENT:**

The exception provided in Subsection B of Section 66-7-401 NMSA 1978 for road machinery engaged in highway construction or maintenance applies only to movement at a construction site. When road machinery or construction equipment is otherwise being moved, the provisions of Sections 66-7-401 through 66-7-416 NMSA 1978 and this rule apply.

[18.19.8.60 NMAC - Rp, 18.19.8.8 NMAC, 2-12-2016]

**18.19.8.61 IMPLEMENTS OF HUSBANDRY AND SPECIAL MOBILE EQUIPMENT:**

Special mobile equipment and implements of husbandry, as defined in the Motor Vehicle Code, shall not be issued special permits for the transportation of oversize vehicles or loads.

[18.19.8.61 NMAC - N, 2-12-2016]

**18.19.8.62 MOVEMENT OF A HOUSE, BUILDING OR SIMILAR STRUCTURE:**

A. A special permit is required for movement of a house, building or similar structure that exceeds statutory size or weight limitations. Movement of such a structure with a width in excess of thirty feet shall be approved by the department of transportation.

B. Porches or protruding sections are considered reducible and shall be removed to reduce the dimensions of the structure. Loose boards, bricks and similar items shall also be removed for safety.

C. A house, building or similar structure shall be moved in the following manner:

(1) mounted on house-moving dollies equipped with pneumatic tires and towed by a truck or truck tractor;

(2) loaded on a truck, semi-trailer or trailer and transported under the same requirements as the movement of oversize or overweight vehicles and loads; or

(3) by other means approved by the department.

D. A house, building or similar structure shall not be:

(1) pulled or towed by a farm tractor; or

(2) mounted on skids.

E. Vehicles used in moving a house, building or similar structure shall conform to all safety standards prescribed by law. Dollies and tires shall be in good condition and a sufficient number shall be used to carry the weight of the structure. A truck or tractor shall be in good condition and shall have the capacity and power to control the movement of the building or structure.

[18.19.8.62 NMAC - Rp, 18.19.8.50 NMAC, 2-12-2016]

**18.19.8.63 MOVEMENT OF MANUFACTURED HOME - TAX RELEASE REQUIRED:**

A. An applicant for a special permit to move a manufactured home shall provide the department with a tax release document from the appropriate county assessor or treasurer if the origin of the movement of the home is in a county of this state. The tax release document shall contain:

(1) a full description of the manufactured home, including name of the manufacturer,

model, license number and identification number;

(2) a description of the exact location where the manufactured home is being moved from, including street address, city and county;

(3) a description of the exact location where the manufactured home is being moved to, including street address, city and county;

(4) the name of the registered owner of the manufactured home;

(5) a statement by the county assessor, treasurer or an authorized delegate that all applicable property taxes have been paid or there is no liability for the current and previous years;

(6) the date the release was issued; and

(7) the signature of the assessor, treasurer or an authorized delegate of the assessor or treasurer.

B. The provisions of this section do not apply if the movement of the manufactured home originates from the lot or business location of a manufactured home dealer and the home was part of the dealer's inventory prior to the sale.

C. The provisions of this section apply to movement of a manufactured home from a non-dealer owner to a manufactured home dealer. [18.19.8.63 NMAC - Rp, 18.19.8.200 NMAC, 2-12-2016]

**18.19.8.64 DAYLIGHT MOVEMENT ONLY FOR MANUFACTURED HOMES:**

Movement of a manufactured home shall occur only during daylight hours on any day of the week that is not a holiday. No movement shall occur during inclement weather.

[18.19.8.64 NMAC - Rp, 18.19.8.33 NMAC, 2-12-2016]

**18.19.8.65 REQUIRED EQUIPMENT WHEN MOVING A MANUFACTURED HOME:**

A. A towing unit involved in the movement of an oversized manufactured home shall have a wheelbase of at least ninety-nine inches, a minimum of four tires on each drive axle and a gross vehicle weight rating of:

- (1) six thousand pounds or more if the width of the manufactured home is ten feet or less;
- (2) eight thousand pounds or more if the width of the manufactured home is greater than ten

feet but not greater than twelve feet; or

(3) nine thousand pounds or more if the width of the manufactured home is greater than twelve feet.

B. A yellow sign at least five feet wide by twelve inches high reading "WIDE LOAD" or "OVERSIZE LOAD" with black letters at least ten inches high and one inch in thickness shall be displayed on the front of the towing unit and on the rear of the manufactured home.

C. A square or rectangular red or fluorescent orange flag, no less than eighteen inches on any side is required at each corner of the manufactured home and at each front corner of the towing vehicle.

D. The towing unit shall be equipped with two roof-mounted rotating, flashing, strobe or LED amber warning lights at the vehicle width or at a width not to exceed eight feet. At least one amber warning light shall be affixed to the rear of the manufactured home. The amber warning lights shall be of sufficient intensity to be seen at a distance of five hundred feet in bright sunlight.

E. The manufactured home shall be equipped with brake, turn signal and tail lights that are connected to the lighting system of the towing unit in order to warn approaching motorists of any braking or turning of the unit.

F. The towing unit shall be equipped with two outside rear view mirrors, one on each side, that provide a field of view to the driver of the road on both sides of the load and beyond the rear of the load.

[18.19.8.65 NMAC - Rp, 18.19.8.206 NMAC, 2-12-2016]

**18.19.8.66 LARGE MANUFACTURED HOMES - DOLLIES, SKIDS OR HOUSE MOVING EQUIPMENT REQUIRED:**

A manufactured home that exceeds eighteen feet in width or fifteen feet ten inches in height shall be moved on house moving equipment, skids or dollies. Movement of such a home without the required house moving equipment, skids or dollies is not permitted. Awnings, doorknobs or other fixtures extending beyond the body of an overwidth unit shall be included in the overall width measurement.

[18.19.8.66 NMAC - Rp, 18.19.8.201 NMAC, 2-12-2016]

**18.19.8.67 - 18.19.8.79 [RESERVED]**

**18.19.8.80 ESCORTS - PURPOSE AND REQUIREMENT:**

A. The purpose of an escort vehicle is to enhance the safety of moving an oversize vehicle or load over the highways, to reduce delays and inconveniences to the normal flow of traffic and to alert the motoring public to the presence or approach of an oversize vehicle or load.

B. The department, after evaluating the dimensions of a vehicle, combination or load and the route to be traveled, may require that one or more escort vehicles accompany the movement or part of the movement or may require that police escorts accompany the movement.

[18.19.8.80 NMAC - Rp, 18.19.8.100 NMAC, 2-12-2016]

**18.19.8.81 ESCORT REQUIRED FOR CERTAIN OVERWIDTH VEHICLES:**

Escort vehicles are required for the movement of all widths at or exceeding fourteen feet, and may be required for widths less than fourteen feet depending on the routes to be traveled and in accordance with established widths for certain highways identified in the escort vehicle map developed and maintained by the department of transportation. The escort vehicle map is available by electronic link on the special permit application.

[18.19.8.81 NMAC - Rp, 18.19.8.108 NMAC, 2-12-2016]

**18.19.8.82 ESCORT REQUIRED FOR CERTAIN OVERLENGTH VEHICLES:**

Escort vehicles are required for the movement of a vehicle, combination or load that exceeds ninety feet in length. The movement of such a vehicle, combination or load may be restricted to certain highways as designated on the special permit. Determination of the required number of escort vehicles shall be made by the department based on the route to be traveled and other relevant considerations. [18.19.8.82 NMAC - Rp, 18.19.8.109 NMAC, 2-12-2016]

**18.19.8.83 ESCORT REQUIRED FOR CERTAIN OVERHEIGHT VEHICLES:**

An escort vehicle or a person other than the driver of the permitted vehicle may be required to accompany the movement of a vehicle, combination or load that exceeds a height of sixteen feet. The escort or additional person shall make immediate height clearance verifications at each overhead



clearance prior to the over-height vehicle moving through the clearance. The requirement for an additional escort or person will be stated on the special permit. [18.19.8.83 NMAC - Rp, 18.19.8.110 NMAC, 2-12-2016]

**18.19.8.84 POLICE ESCORTS:**

A. In the discretion of the department, police escorts may be required for movement of structures or loads with a width of twenty feet or more. The department may also require police escorts for movement on certain roads or for movement that, in the judgment of the department, may adversely affect traffic, create undue hazards, require counter-flow or in any manner jeopardize the safety of the motoring public.

B. An applicant for a special permit that requires a police escort shall cooperate with the department on the timing of the move and be prepared for special conditions or other factors that may delay the move.

C. The department may coordinate police escorts for the move and may charge a fee for the coordination and provision of police escorts. In certain circumstances, the applicant may be required to coordinate with municipal police for escort services.

D. If a route requiring a police escort moves through a municipality, the applicant shall obtain permission from and make arrangements with the municipality for the move, including obtaining any required permit. A special permit shall not be issued until the department is assured that the applicant has made satisfactory arrangements with the municipality.

E. If a move is entirely within a municipality, a permittee may use a police escort provided by the municipality. However, a special permit shall not be issued until the department is assured that the applicant has arranged with local police for assistance.

[18.19.8.84 NMAC - Rp, 18.19.8.102 NMAC, 2-12-2016]

**18.19.8.85 PERMITTEE TO PROVIDE CERTIFIED ESCORT VEHICLES:**

Unless a police escort is required, a permittee shall furnish New Mexico certified escort vehicles as required by the department and specified on the face of the special permit. An escort vehicle map is available by electronic link on the special permit application.

[18.19.8.85 NMAC - Rp, 18.19.8.100 NMAC, 2-12-2016]

**18.19.8.86 ESCORT VEHICLE CERTIFICATION:**

Only a vehicle certified by the department may operate as an escort vehicle. The vehicle and all required equipment shall be inspected by the department. Upon a satisfactory inspection, an escort vehicle certification will be issued for that vehicle for a period of one year or until insurance coverage expires, whichever occurs first. An escort vehicle shall undergo inspection on an annual basis.

[18.19.8.86 NMAC - Rp, 18.19.8.103 NMAC, 2-12-2016]

**18.19.8.87 ESCORT VEHICLE REQUIREMENTS:**

A. The wheelbase of an escort vehicle shall be at least one hundred inches. Unless otherwise approved by the department upon written application, an escort vehicle shall not exceed a ton and one-half capacity as rated by the manufacturer.

B. An escort vehicle shall be registered in accordance with New Mexico's motor vehicle laws and insured in accordance with New Mexico's financial responsibility laws; provided that minimum coverage shall be:

(1) bodily injury liability in the amounts of \$50,000 for each person and \$100,000 for each accident; and

(2) property damage liability in the amount of \$25,000 for each accident.

C. An escort vehicle shall comply with all requirements imposed by the public regulation commission for escort vehicles.

D. An escort vehicle operated by an escort vehicle service company shall display the name, city, and state of the company on both sides of the vehicle. This information may be displayed using removable, magnetic signs.

E. An escort vehicle shall not display any sign, insignia, device or emblem that is similar in size, shape or color to any police insignia or badge.

F. An the escort vehicle shall not tow a vehicle or trailer and shall not be loaded in a manner that obstructs the driver's vision in any direction.

[18.19.8.87 NMAC - Rp, 18.19.8.103 NMAC, 2-12-2016]

**18.19.8.88 ESCORT VEHICLE EQUIPMENT:**

A. An escort vehicle shall have two rotating, flashing, strobe or LED amber lights on top of the vehicle

at the vehicle width or at a width not to exceed eight feet. The amber lights shall be of sufficient intensity to be visible at a distance of at least five hundred feet in normal sunlight.

B. An escort vehicle shall display a bright yellow sign at least five feet wide by twelve inches high with black lettering reading "OVERSIZE LOAD". The letters shall be at least one inch thick by ten inches high.

C. An escort vehicle shall be equipped with two red or florescent orange flags when escorting a load. The flags shall be square or rectangular and no less than twelve inches on any one side.

D. The required flags and sign shall be mounted on the front bumper of a front escort vehicle, on the rear bumper of a rear escort vehicle, or on the roof of the front or rear escort vehicle, whichever position provides the greatest visibility for the motoring public.

E. An escort vehicle and the escorted oversize vehicle shall be equipped with two-way radios for direct communication between the two vehicles at all times.

F. An escort vehicle shall be equipped with at least one fire extinguisher of minimum size, with a capacity of two and one-half pounds carbon dioxide or dry chemical type, or an extinguisher of another type having equivalent or better extinguishing capacities. Extinguishers shall be mounted so as to be readily accessible for use.

G. An escort vehicle shall have on board at all times the safety equipment specified in Section 66-3-849 NMSA 1978 relating to flares and other warning devices.

H. An escort vehicle shall have on board all the equipment required for flagmen, as provided in 18.19.8.99 NMAC.

I. An escort vehicle shall be equipped with two outside rear view mirrors, one on the driver side and one on passenger side of the vehicle.

J. An escort vehicle shall carry at all times the escort vehicle map developed and maintained by the department of transportation.

[18.19.8.88 NMAC - Rp, 18.19.8.103 NMAC, 2-12-2016]

**18.19.8.89 INSPECTION**

**UPON DEMAND:** An escort vehicle is subject to inspection by a peace officer or authorized department personnel at any time. The escort vehicle certification, escort vehicle map, required equipment,

documentation of vehicle registration and insurance and any documents required by the public regulation commission shall be made available for inspection on demand. [18.19.8.89 NMAC - Rp, 18.19.8.103 NMAC, 2-12-2016]

**18.19.8.90 ESCORT VEHICLE DRIVER REQUIREMENTS:**

A. A driver of an escort vehicle shall be at least eighteen years of age and licensed in accordance with the licensing requirements for escort vehicle drivers in the jurisdiction where the driver resides.

B. At all times during a move, an escort vehicle driver shall carry a current driver's license, the escort vehicle certification issued by the department, an escort vehicle map and any document required by the public regulation commission.

C. Escort vehicle drivers do not have police powers and shall not issue citations, attempt arrest or operate the escort vehicle as an emergency vehicle.

D. While performing escort vehicle services, an escort driver shall not:

- (1) wear a uniform of a color or design similar to uniforms worn by law enforcement officers; or
- (2) display any badge, shield or emblem of a type similar to police badges or emblems.

E. A person employed by the department shall not act as a driver of a private escort vehicle. [18.19.8.90 NMAC - Rp, 18.19.8.104 NMAC, 2-12-2016]

**18.19.8.91 DUTIES OF ESCORT DRIVER BEFORE MOVEMENT BEGINS:**

Before commencement of a move, an escort vehicle driver shall:

A. meet with the driver of the oversize vehicle or load to discuss the various aspects of the move;

B. review the route specified in the special permit and ensure that directions are understood by everyone involved in the move;

C. determine the position of the escort vehicle or vehicles throughout the route;

D. review the special permit for any special requirements, restrictions or instructions; and

E. ensure that all mandatory equipment is in proper working condition and that warning devices are in

place.

[18.19.8.91 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

**18.19.8.92 DUTIES OF ESCORT DRIVER DURING THE MOVE:**

A. Escort vehicle drivers are responsible for controlling the movement of the escorted oversize vehicle in a manner that maximizes the safety of the motoring public and provides for a safe flow of traffic in the immediate area of the move.

B. Escort vehicle drivers and the oversize vehicle driver shall act as a team to ensure that safety of the motoring public is sustained. The escort vehicle shall operate as a warning vehicle to other motorists of the oversize vehicle.

C. An escort vehicle driver shall comply with all escort requirements, restrictions and instructions noted on the special permit issued to the escorted oversize vehicle and shall assist the driver of the oversize vehicle to comply with all applicable traffic laws and with all conditions and restrictions noted on the special permit.

D. No movement shall be made during inclement weather. Movement shall be made only on the route designated in the special permit. The escort vehicle and the escorted oversize vehicle shall obey all traffic laws, signs and signals and shall comply with the speed limit indicated on the special permit.

E. Responsibilities of a front escort vehicle driver include:

- (1) warning oncoming traffic of the presence of an oversize vehicle or load;
- (2) maintaining communication with the driver of the oversize vehicle or load by using two-way radio to warn of hazards, obstructions, pedestrians or other potential problems that may affect the safe movement of the oversize vehicle or load or the motoring public;
- (3) ensuring that the oversize vehicle or load is following the route prescribed on the special permit;
- (4) assisting the driver of the oversize vehicle or load in locating safe places to allow the oversize vehicle or load and escort vehicles to clear the roadway so traffic following the oversize vehicle or load can safely pass; and
- (5) warning motorists to stop at narrow structures and

other roadway restrictions to permit safe passage of the oversize vehicle or load through the obstruction.

F. Responsibilities of a rear escort vehicle driver include:

- (1) warning traffic approaching from the rear of the presence of an oversize vehicle or load ahead;
- (2) maintaining communication with the driver of the oversize vehicle or load by using two-way radio to notify the oversize vehicle driver of flat tires, objects coming loose from the vehicle or load or other occurrences of which the driver may not be aware;
- (3) notifying the front escort driver, when applicable, and the oversize vehicle or load driver of traffic buildup and other delays to the normal flow of traffic;
- (4) notifying the oversize vehicle or load driver of motorists attempting to pass the vehicle or load; and
- (5) warning motorists to stop at narrow structures and other roadway restrictions to permit safe passage of the oversize vehicle or load through the obstruction.

G. A single escort shall travel to the rear of the oversize vehicle on multi-lane highways and in the front of the oversize vehicle on two-lane highways. The oversize vehicle shall travel as near the right side of the roadway as is safely possible to ensure that traffic can pass safely. The escort and oversize vehicle shall not infringe upon the opposite-bound lane unless necessary to avoid obstacles in the path of the movement.

H. Front and rear escort drivers shall maintain a distance between their vehicles and the oversize vehicle or load consistent with the safe operation of the movement. Depending on highway and traffic conditions, a distance of three hundred to one thousand feet is usually appropriate. In urban areas and at narrow bridges, shorter distances are usually desirable. In rural areas or on narrow, winding or hilly roads, a front escort vehicle should travel well ahead of the oversize vehicle or load to warn oncoming traffic of the oversize vehicle and a rear escort vehicle should travel well behind the oversize vehicle or load to warn motorists following the load well in advance of any roadway restrictions.

I. An escort vehicle driver shall use the vehicle's emergency flashers when stopped or slowing down at a traffic hazard or when traveling at a speed of less than thirty miles per hour.

The emergency flashers shall not be used when driving at a speed of thirty miles per hour or more.

J. An oversize vehicle shall not park on the traveled portion of a highway unless absolutely necessary or in case of an extraordinary emergency. Any time an oversize vehicle is parked on a traveled portion of a highway, it shall be adequately protected by flares, flags, flagmen or other appropriate emergency warning devices.

[18.19.8.92 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

**18.19.8.93 PASSING AND INTERSECTIONS:**

A. A rear escort vehicle driver shall not prevent a motorist from passing the oversize vehicle but shall inform the driver of the oversize vehicle by two-way radio that a motorist is attempting to pass so appropriate precautions can be taken. Advance warning is especially important when large trucks are attempting to pass the oversize vehicle.

B. When it is necessary for the oversize vehicle to pass other vehicles or to make a wide turn, the rear escort vehicle shall clearly signal an intention to pass or turn and move into the passing or turning lane well before the oversize vehicle initiates the maneuver. The rear escort driver shall stay in the passing or turning lane until the oversize vehicle completes the pass or turn.

C. If a front escort vehicle passes through an intersection and the oversize vehicle is required to stop for a red light, the escort driver shall stop as soon as possible on the right side of the road and not resume travel until the oversize vehicle approaches the required distance. When an escort driver following an oversize vehicle is required to stop at a traffic light after the oversize vehicle has passed through the intersection, the oversize vehicle driver shall continue its movement and the rear escort driver shall resume a normal following distance after the driver has proceeded through the intersection.

[18.19.8.93 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

**18.19.8.94 ACCUMULATED TRAFFIC, UNFORESEEN HAZARDS OR OBSTRUCTIONS:**

A. An escort vehicle driver shall assist the oversize vehicle in locating a suitable area where the oversize vehicle and escort vehicle or vehicles can be completely and safely

removed from the roadway and safely reenter the roadway. The oversize and escort vehicles shall be removed from the travelled portion of the roadway to a safe and suitable area in the following circumstances:

- (1) to allow accumulated traffic to pass, when the accumulated traffic is due to the oversize vehicle;
- (2) during periods of inclement weather; or
- (3) when mechanical or other problems occur.

B. An escorted oversize vehicle approaching an unforeseen obstruction or hazard shall park off the roadway, where possible, and the escort vehicle shall proceed past the obstruction or hazard if it is safe to do so. The oversize vehicle shall traverse the obstruction or hazard only after the escort vehicle driver has either verified that it is safe to proceed or has safely stopped oncoming traffic and provided clearance to proceed.

C. The following procedure shall be used to stop oncoming traffic when necessary and safe to do so:

- (1) the escort vehicle shall advance to a point where two-way traffic can be maintained;
- (2) the escort vehicle driver shall dismount and serve as a flagman, using a paddle sign to stop traffic at that location;
- (3) once there is clearance for the oversize vehicle, the oversize vehicle driver shall be notified to proceed; and
- (4) when the oversize vehicle reaches the location where traffic has stopped and two-way traffic can be maintained, it shall halt and allow accumulated traffic to clear from both directions with assistance by the dismounted escort vehicle driver or flagman.

D. Traffic shall not be detained longer than ten minutes except under extraordinary circumstances.

E. The flagging requirements, equipment and methods provided in 18.19.8.99 NMAC shall be followed when slowing down, stopping or otherwise directing traffic.

[18.19.8.94 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

**18.19.8.95 COLLISIONS:**

A. In case of a collision involving an oversize or escort vehicle, or involving other vehicles when the collision impedes or prohibits the

continued movement of the oversize vehicle, the escort vehicle driver shall:

- (1) pull completely off the roadway, if possible;
- (2) turn on the amber lights and vehicle emergency flashers;
- (3) warn approaching traffic of the accident;
- (4) obtain assistance as soon as possible by contacting police or other emergency services and by requesting the next person who stops to contact emergency services;
- (5) turn off the ignition of wrecked vehicles to reduce fire hazard and keep smokers away from area;
- (6) not move injured persons unless they are in immediate danger such as in a burning vehicle;
- (7) search the area for victims thrown from vehicles; and
- (8) when emergency or other trained personnel arrive, provide a brief summary of the incident and provide assistance as requested.

B. A driver of an escort vehicle shall not leave the scene of a collision until authorized to do so by law enforcement personnel.  
[18.19.8.95 NMAC - Rp, 18.19.8.106 NMAC, 2-12-2016]

**18.19.8.96 CESSATION OF ESCORT SERVICES:**

A. When an escort operation is completed, the escort driver shall turn off all exterior escort equipment lights, remove or cover the oversize load sign and remove the amber lights and flags. Failure to comply with this requirement shall render the escort vehicle certification void, and the escort vehicle driver shall immediately surrender the escort vehicle certification to a police officer or authorized department personnel upon request.

B. If an escort driver determines that the escorted oversize vehicle driver is not, or will not, comply with a provision of the special permit or is otherwise operating in a manner that creates a hazardous or dangerous situation, the escort driver shall notify the oversize vehicle or load driver of the escort driver's intent to cease providing escort services.

C. If, for any reason, an escort vehicle driver ceases to provide escort services before the move is completed:

- (1) movement

of the escorted vehicle shall stop;

(2) the escort driver shall immediately notify the department; and

(3) the special permit is rendered void.

[18.19.8.96 NMAC - Rp, 18.19.8.105 NMAC, 2-12-2016]

**18.19.8.97 POLICE MAY RESTRICT MOVEMENT:**

Law enforcement officers may direct or escort an oversize vehicle or load off the roadway to a place of safety to allow accumulated traffic to pass or for other safety considerations.

[18.19.8.97 NMAC - Rp, 18.19.8.111 NMAC, 2-12-2016]

**18.19.8.98 ESCORT VEHICLE REQUIRED FOR EACH ESCORTED LOAD:**

An oversize vehicle, combination or load that requires an escort shall have one or more dedicated escort vehicles as required in the special permit. An escort vehicle shall not escort more than one oversize vehicle or load at any one time.

[18.19.8.98 NMAC - Rp, 18.19.8.112 NMAC, 2-12-2016]

**18.19.8.99 FLAGMEN:**

A. Flagmen are required on all loads twenty feet wide or wider or whenever otherwise required by the special permit. Flagmen shall not be used in lieu of an escort vehicle. A dismounted driver of an escort vehicle shall serve as a flagman as necessary during the movement of an escorted oversize vehicle or load.

B. A flagman shall be at least eighteen years of age and an employee or agent of the permittee or an escort vehicle service.

C. A flagman shall wear an orange or red safety jacket and an orange or red hard hat or bump cap. A flagman shall be equipped with a paddle sign.

D. A paddle sign shall be constructed of rigid durable material and consist of a handle at least eight inches long attached to an octagon sign the shape of a standard street stop sign. Each of the eight sides of the octagon sign shall be at least fourteen inches, point to point. One side of the sign shall have a red background with white letters, one and one-half inches thick, reading "STOP". The other side shall have a yellow or orange background with black letters, one and one half inches thick, reading "CAUTION". The handle shall be affixed to the sign in such a manner that the word

on the sign is displayed to motorists when the sign is held up to view.

E. A flagman shall use a paddle sign to direct traffic at all locations where traffic may be obstructed, or when necessary to infringe on the oppositely-bound traffic lane because of breakdown, pulling onto or off the pavement, or avoiding obstacles in the path of movement.

F. A flagman shall use a paddle sign to warn traffic of an approaching oversize vehicle at danger points, such as narrow bridges or sharp corners, where the oversize vehicle will travel.

G. Flagmen shall position themselves far enough in advance of a problem area so that approaching traffic is allowed sufficient distance to reduce speed and come to a stop. Depending upon approach speed and physical conditions at the site, a distance of two hundred to three hundred feet is usually adequate. In urban areas, a shorter distance may be appropriate.

H. Flagmen shall face traffic on the edge of the shoulder of the road just outside of the traffic lane and shall always stand where they are visible by approaching motorists.

I. When warning or stopping traffic, the paddle sign shall be kept in a horizontal position in the path of the vehicle. The free arm shall be raised with the palm of the hand toward approaching traffic.

J. To slow traffic, but not stop it, the flagman shall extend the paddle sign into the traffic lane. The paddle sign shall be lowered before traffic is completely stopped.

K. The paddle sign shall not be used to signal traffic to move ahead. When signaling traffic to move ahead, a flagman shall lower the paddle sign behind his body and signal with the free hand, using a sweeping motion in the direction traffic is to move.

L. The paddle sign shall not be waved. Signals from a flagman shall be clear and distinct.

M. If time permits and when possible, a flagman shall inform motorists of the reason for the delay. [18.19.8.99 NMAC - Rp, 18.19.8.113 NMAC, 2-12-2016]

**HISTORY OF 18.19.8 NMAC:**

**Pre-NMAC History:** Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives. MTD 100, Definitions, 10-15-80

MTD 300, Oversize-Overweight Permits, 10-15-80

MTD 400, Escort Vehicles, 10-15-80

MTD 300, Oversize-Overweight Permits, Amendment No. 1, 9-2-81

MTD 300, Oversize-Overweight Permits, Amendment No. 2, 9-23-82

TRD Rule MVC 7-92, Regulations Pertaining to the Motor Vehicle Code, filed 10-14-92

**History of Repealed Material:**

18.19.8 NMAC, Height and Weight of Vehicles and Loads, filed 1/13/2004 - Repealed effective 2/12/2016.

**REGULATION AND LICENSING DEPARTMENT OPTOMETRY, BOARD OF**

This is an amendment to 16.16.1 NMAC, Section 7, effective 03-02-2016.

**16.16.1.7 DEFINITIONS:**

**A. "Advertisement"** means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, a patient to seek the services of an optometrist.

**B. "Advertisement of Health Care Services Act"** means NMSA 1978, Sections 57-21-1 to 57-21-3, and herein referred to as the Advertisement of Health Care Services Act.

**C. [RESERVED]**

**D. "Board"** means the New Mexico board of optometry, herein referred to as the board.

**E. "Controlled substance"** means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act.

**F. "Controlled Substances Act"** means NMSA 1978 Sections 30-31-1 to 30-31-41 and herein referred to as the Controlled Substances Act.

**G. [RESERVED]**

**H. "Inspection of Public Records Act"** refers to NMSA 1978 Sections 14-2-1 through 14-2-10 (1993 Repl. Pam.), herein referred to as the Inspection of Public Records Act.

**I. "New Mexico Drug, Device and Cosmetic Act"** means Sections 26-1-1 to 26-1-26 NMSA 1978 (1987 Repl. Pam.), herein referred to as the Drug, Device and Cosmetic Act.

**J. "Optometric physician"** means an optometrist

who has been certified by the board to administer ~~[and prescribe oral and topical]~~ pharmaceutical medication in the diagnosis, treatment and management of ocular diseases.

**K. "Open Meetings Act"** means NMSA 1978 Sections 10-15-1 to 10-15-4 (1993 Repl. Pam.), herein referred to as the Open Meetings Act.

**L. "Optometry Act"** means NMSA 1978 Sections 61-2-1 through 61-2-18 (1995 Repl. Pam.), herein referred to as the Optometry Act or Section 61-2-1 et seq.

**M. [RESERVED]**

**N. "Parental Responsibility Act"** refers to Chapter 25 Laws of 1995, herein referred to as the Parental Responsibility Act or PRA.

**O. "Prescription"** as defined in Section 26-1-2.I of the Drug, Device and Cosmetic Act means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of [a] an electronic or written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue.

**P. "Public Records Act"** refers to NMSA 1978 Sections 14-3-2 through 14-3-25 (1995 Repl. Pam.) herein referred to as the Public Records Act.

**Q. [RESERVED]**

**R. "State Rules Act"** means NMSA 1978 Sections 14-4-1 to 14-4-9 (1995 Repl. Pam.), herein referred to as the State Rules Act.

**S. "Uniform Licensing Act"** means NMSA 1978 Sections 61-1-1 to 61-1-33 (1993 Repl. Pam.), herein referred to as the Uniform Licensing Act or ULA.

[10-14-95; 16.16.1.7 NMAC - Rn, 16 NMAC 16.1.7, 03-15-2001; A, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

## REGULATION AND LICENSING DEPARTMENT OPTOMETRY, BOARD OF

This is an amendment to 16.16.5 NMAC, Section 9, effective 03-02-2016.

### 16.16.5.9 NEW MEXICO LICENSING EXAMINATION:

**A.** As of January 15, 1995, all candidates for licensure shall

be required to take the board's licensing examination, consisting of a jurisprudence exam and a clinical practicum exam.

**B.** The board examination shall only be seen by board members, individuals preparing and administering the examination and by examination candidates while sitting for the examination.

**C.** As soon as practical after the board examination is scored, each examination candidate will be notified in writing by certified mail, return receipt requested, of his or her individual scores and pass/fail status.

**(1)** Successful exam candidates will have ninety (90) days from the date of receipt of the exam results notification to complete the licensure process as provided in 16.16.2.10 NMAC or 16.16.2.11 NMAC and 16.16.2.12 NMAC.

**(2)** Candidates who do not complete the licensure process within the time provided in Subsection C, Paragraph (1) of 16.16.5.9 NMAC must reapply for licensure and meet all the requirements of application and examination as set forth in 16.16.3 NMAC.

**D.** A grade of seventy-five percent (75%) or better in each of the clinical sections and in the jurisprudence [subjects] exam is required for passing the licensure examination.

**E.** Candidates failing to pass the board's examination may re-take a regularly scheduled examination upon approved re-application.

**(1)** Failed candidates must repeat all portions of the board's examination.

**(2)** The applicant must complete a new exam application form and submit an updated resume', provide updated license verifications directly from other licensing jurisdictions, and pay the required application processing and examination fees (16.16.2.8 NMAC and 16.16.2.9 NMAC).

**F.** Any candidate detected cheating in any manner during the course of any examination shall automatically fail the entire examination. Cheating on an examination shall be deemed unprofessional conduct, and shall demonstrate that the applicant is not of good moral character. Individuals detected cheating shall be afforded notice and the opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

**G.** The deadline for

challenging the examination is three (3) months from the date the exam scores are mailed to the candidate by certified mail. [11-17-73; 12-6-87; 10-14-95; 5-31-96; 2-15-99; A, 6-26-00; 16.16.5.9 NMAC - Rn, 16 NMAC 16.5.9, 03-15-2001; A, 03-10-2005; A, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

## REGULATION AND LICENSING DEPARTMENT OPTOMETRY, BOARD OF

This is an amendment to 16.16.7 NMAC, Sections 9, 10, 11, 14 and 15, effective 03-02-2016.

### 16.16.7.9 ~~[TOPICAL-OCULAR DIAGNOSTIC-CERTIFICATION:] OPTOMETRISTS AS PRESCRIBING PRACTITIONERS:~~

~~**A. Current licensees graduated before June 1, 1977.** In order to be granted certification to use topical ocular pharmaceutical agents for **diagnostic** purposes in New Mexico, optometrists currently licensed in New Mexico who graduated before June 1, 1977, must successfully complete seventy (70) or more hours of postgraduate education in general and ocular pharmacology as applied to optometry. The course must be taught by an institution accredited by the American optometric association's council on optometric education.~~

~~**B. Current licensees graduated June 1, 1977 or after.** In order to be granted certification to use topical ocular pharmaceutical agents for **diagnostic** purposes in New Mexico, optometrists currently licensed in New Mexico who graduated after June 1, 1977, must successfully complete seventy (70) or more hours of postgraduate education in general and ocular pharmacology as applied to optometry. The course must have particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye for the purpose of examination and analysis of ocular functions and must be taught by an institution accredited by the American optometric association's council on optometric education.] The New Mexico Drug, Device and Cosmetic Act defines optometrists as prescribing practitioners. Subject to the provisions of the Optometry Act, New Mexico licensed optometrists may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of diseases of the eye or~~

adnexa including controlled substances classified as Schedule II-V, provided that an optometrist:

A. may prescribe hydrocodone and hydrocodone combination medications;

B. may administer epinephrine auto-injections to counter anaphylaxis;

C. shall not prescribe any other controlled substances classified in Schedule I or II pursuant to the Controlled Substances Act, Chapter 30, Article 31 NMSA 1978.

[1-15-78; 3-31-91; 10-14-95; 16.16.7.9 NMAC - Rn, 16 NMAC 16.7.9, 03-15-2001; Repealed, 2-12-2016; 16.16.7.9 NMAC - N, 2-12-2016]

**16.16.7.10 [TOPICAL OCULAR THERAPEUTIC CERTIFICATION:**

A. **Postgraduate education required of currently licensed optometrists:** In order to be granted a certificate to administer and prescribe topical ocular therapeutic pharmaceutical agents, all optometrists currently licensed in New Mexico must provide the following documentation to the board:

(1) Proof of successful completion and examination in a one hundred (100) hour course in general and ocular pharmacology, including therapeutic pharmacology as applied to optometry, with particular emphasis on the application of pharmaceutical agents to the eye for the purpose of examination and analysis of ocular functions and the treatment of visual defects or abnormal conditions of the human eye and its adnexa;

(2) Proof that the course was taught by an institution accredited by the American optometric association's council on optometric education; and

(3) The required fee for a pharmaceutical certificate (16.16.2.12 NMAC);

B. **Postgraduate education required of applicants for licensure:**

(1) All optometry licensure applicants must provide the same documentation required in Subsection A of 16.16.7.10 NMAC before sitting for the board's licensing exam.

(2) After the applicant has met all licensure requirements, has successfully passed the board exam, and paid the required license and certificate fees, a license and an ocular

therapeutic certificate will be issued to the applicant.] **[RESERVED]**  
[3-8-86; 10-14-95; 16.16.7.10 NMAC - Rn, 16 NMAC 16.7.10, 03-15-2001; A, 03-22-2008; Repealed 03-02-2016]

**16.16.7.11 [ORAL PHARMACEUTICAL CERTIFICATION:**

A. The certificate issued pursuant to the provisions in Section 61-2-10.2 of the Optometry Act allows the qualified optometrist to administer and prescribe the following classes of oral pharmaceutical drugs in the treatment and management of ocular disease:

(1) anti-infective medications, not including antifungals;

(2) anti-glaucoma medications, not including osmotic medications;

(3) anti-allergy medications;

(4) anti-inflammatory medications, not including oral corticosteroids and immunosuppression agents; and

(5) analgesic medications, including schedule III through V controlled substances, as provided in the Controlled Substances Act.

B. **Requirements for currently licensed New Mexico optometrists.** In order for an optometrist currently licensed in the State of New Mexico to be granted certification to use the oral pharmaceutical agents listed in Subsection A of 16.16.7.11 NMAC, the optometrist must first:

(1) be certified in New Mexico in the use of topical ocular pharmaceuticals in accordance with 16.16.7.10 NMAC;

(2) provide proof of successful completion and examination in a board-approved course of instruction consisting of at least twenty (20) hours in clinical pharmacology, including systemic pharmacology as applied to optometry with particular emphasis on the administration of oral pharmaceutical agents for the purpose of examination of the human eye, and analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa.

(3) provide proof the course was taught by an institution accredited by the American optometric association's council on optometric education;

C. **Postgraduate**

**education required of applicants for licensure:**

(1) Licensure applicants graduated from optometry school prior to the 1994-1995 academic period must provide the board with the same documentation required in Subsection B of 6.16.7.11 NMAC.

(2) Licensure applicants receiving doctor of optometry degrees in the 1994-1995 academic year and thereafter have obtained the required number of academic hours required for the oral pharmacology course in their optometric program to meet the certification requirement for the administration and prescription of oral pharmaceutical agents in New Mexico.] **[RESERVED]**

[10-14-95; A, 6-26-00; 16.16.7.11 NMAC - Rn, 16 NMAC 16.7.11, 03-15-2001; A, 03-22-2008; Repealed 03-02-2016]

**16.16.7.14 PRESCRIPTION FOR PHARMACEUTICAL AGENTS:**

A prescription written for a [topical ocular pharmaceutical agent or for an oral] pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written or electronic order signed by the prescriber, that bears the following items:

- A. the name and address of the prescriber;
- B. the prescriber's professional designation;
- C. the name and address of the patient;
- D. the name and quantity of the agent being prescribed;
- E. directions for the use of the agent;
- F. the prescription issue date; and
- G. the number of refills allowed.

[16.16.7.14 NMAC - N, 03-17-2004; A, 03-02-2016]

**16.16.7.15 OPTOMETRIC PHYSICIAN CERTIFICATION REQUIREMENT:** All New Mexico licensed optometrists [graduated from optometry school prior to the 1994-1995 academic year, must complete the requirements for certification in the use of oral pharmaceutical agents prior to July 1, 2013, as required in Subsection B of 16.16.7.11 NMAC:] shall have pharmaceutical certification as determined by the board prior to licensure and may use the title "optometric physician".

[16.16.7.15 NMAC - N, 03-22-2008; A, 03-02-2016]

**REGULATION AND LICENSING DEPARTMENT  
OPTOMETRY, BOARD OF**

This is an amendment to 16.16.8 NMAC, Sections 2, 6, 8 and 9, effective 03-02-2016.

**16.16.8.2 SCOPE:** Part 8 of Chapter 16 applies to all New Mexico licensees [certified by the Board to use and dispense oral pharmaceuticals who intend to dispense and prescribe controlled dangerous substances as provided in NMSA 1978 Section 61-2-10.2 (1995 Repl. Pam.)].  
[10-14-95; 16.16.8.2 NMAC - Rn, 16 NMAC 16.8.2, 03-15-2001; A, 03-02-2016]

**16.16.8.6 OBJECTIVE:** The objective of Part 8 of Chapter 16 is to inform [the qualified] optometrists of the procedures [which must be completed by the Board, the Board of Pharmacy, and the certified optometrist before the optometrist can receive a registration from the New Mexico Board of Pharmacy and the United States Drug Enforcement Administration to] to complete for certification before the optometrist can administer, dispense, and prescribe dangerous controlled substances in the treatment and management of ocular disease and conditions as provided in NMSA 1978 Section 61-2-10.2 (1995 Repl. Pam.).  
[10-14-95; 16.16.8.6 NMAC - Rn, 16 NMAC 16.8.6, 03-15-2001; A, 03-02-2016]

**16.16.8.8 PRE-DEA REGISTRATION REQUIREMENTS:**  
**A.** [Any] All New Mexico licensed [optometrist, qualified and certified by the Board as provided in 16.16.7.11 NMAC,] optometric physicians [who elect to administer, dispense, and/or prescribe oral pharmaceutical agents categorized as dangerous controlled substances in the treatment and management of ocular disease,] must first register with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA).  
[B. The DEA must first review the Optometry Act provisions which authorize, and the Board regulations which administer and

enforce the dispensing and prescribing controlled dangerous substances to ensure compliance with federal laws.]

[C. The DEA must officially recognize to the Board that New Mexico optometrists properly qualified and certified by the Board, will be eligible by federal law to receive a DEA registration.]

[D.] **B.** Upon receipt of official recognition and authorization from the DEA, the board will send the board of pharmacy an official list, as required by the board of pharmacy, of all board licensees who have met the required qualifications and have received the proper board certification as provided by Section 61-2-10.2 of the Optometry Act.

[E. The Board of Pharmacy will send applications for State registration for dangerous controlled substances only to optometrists officially listed by the Board as certified for prescriptive authority of controlled substances.]

[10-14-95; 16.16.8.8 NMAC - Rn, 16 NMAC 16.8.8, 03-15-2001; A, 03-02-2016]

**16.16.8.9 DEA REGISTRATION REQUIREMENTS FOR CERTIFIED OPTOMETRISTS:**

**A.** Upon completion of the board of pharmacy's requirements, and upon receipt of a New Mexico registration for controlled substances from the board of pharmacy, the [qualified] optometrist shall apply for a DEA registration number from the DEA.

[B. The DEA will issue a qualified, certified New Mexico licensed optometrist a DEA registration number only after the optometrist has been issued a New Mexico controlled substance registration by the board of pharmacy.]

[C.] **B.** Upon receipt of a DEA registration number, the optometrist may administer, dispense, or prescribe dangerous controlled substances as provided in 16.16.7 NMAC for the treatment and management of ocular disease.

[10-14-95; 10-15-97; 16.16.8.9 NMAC - Rn, 16 NMAC 16.8.9, 03-15-2001; A, 07-06-2012; A, 03-02-2016]

**REGULATION AND LICENSING DEPARTMENT  
OPTOMETRY, BOARD OF**

This is an amendment to 16.16.13 NMAC, Section 8, effective 03-02-2016.

**16.16.13.8 CONTINUING EDUCATION REQUIREMENTS:** A minimum of twenty-two (22) clock hours of optometry related, board approved continuing education or postgraduate programs, are required for license renewal each year beginning July 1, as detailed below.

**A.** The continuing education shall be submitted as follows:  
**(1)** at least ten (10) of the twenty-two (22) hours of continuing education must be in a board approved program in clinical or ocular therapeutic pharmacology; and

**(2)** at least one (1) of the twenty-two (22) hours of continuing education must be in a board approved course in pain management or related topic pursuant to 16.16.25.11 NMAC. This requirement shall begin with the 2015 renewal period beginning July 2, 2014.

**B.** For optometrists on inactive status [holding ocular therapeutics certification], a minimum of ten (10) hours of continuing education in a board approved program in clinical or ocular therapeutic pharmacology is required.

**C.** The continuing education must have been taken within the preceding renewal period (i.e. July 2 of one year through June 30 of the next).

**D.** The board may audit any licensee's continuing education documentation for the current licensing year and the two (2) previous years.

**E.** A licensee who receives a notice of audit shall submit to the board office on or before July 1, unless otherwise specified, evidence of continuing education hours for the requested period.

**F.** A license will be placed on expired status if the licensee fails to meet the continuing education requirements for renewal by the expiration date stated in this rule.

**G.** Reactivation of license expired due to non-renewal for failure to meet the continuing education requirement. The licensee may apply for license reactivation in the same manner as provided in Part 11 of 16.16 NMAC. The continuing education and fees will be calculated based on the number of years the license was expired due to non-renewal for failure to meet the continuing education requirement.

**H.** Newly licensed optometrists who graduated from optometry school within the same year of licensure may submit the completed

curriculum of their last year of optometry school to meet their continuing education requirement the first year of renewal. [11-17-73; 2-6-87; 10-14-95; 10-15-97; 2-15-99; 16.16.13.8 NMAC - Rn, 16 NMAC 16.13.8, 03-15-2001; A, 03-15-2004; A 03-22-2008; A, 07-06-2012; A, 04-24-2014; A, 03-02-2016]

**REGULATION AND LICENSING DEPARTMENT  
OPTOMETRY, BOARD OF**

This is an amendment to 16.16.15 NMAC, Section 10, effective 03-02-2016.

**16.16.15.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:** The intent of the optometry board requiring participation in the PMP is to assist optometrists in balancing the safe use of controlled substances with the need to impede illegal and harmful activities involving these pharmaceuticals.

**A.** An optometrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** An optometrist shall, before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following exists:

(1) for a new patient of the optometrist, a patient PMP report for the previous 12 months shall only be required when Schedules III or IV drugs are prescribed for a period greater than 10 days; and

(2) for an established patient during the continuous use of controlled substances, a PMP shall be requested a minimum of once every six months.

**C.** Optometrists qualified and certified by the board may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:

(1) may prescribe hydrocodone and hydrocodone combination medications;

(2) may administer epinephrine auto-injections to counter anaphylaxis; and

(3) shall not

prescribe any other controlled substances classified in Schedule I or II pursuant to the Controlled Substances Act, Chapter 30, Article 31 NMSA 1978.  
[16.16.15.10 NMAC - N, 04-24-2014; A, 03-02-2016]

**REGULATION AND LICENSING DEPARTMENT  
OPTOMETRY, BOARD OF**

This is an amendment to 16.16.17 NMAC, Section 9, effective 03-02-2016.

**16.16.17.9 ADVERTISEMENTS:**

**A.** An optometrist may place advertisements in the yellow pages of the telephone directory. The advertisement must state the following information as provided in Section 57-21-3 of the Advertisement of Health Care Services Act:

(1) the optometrist's name;

(2) address and telephone number of the optometrist's practice location; and

(3) the designation of the profession in which the optometrist is licensed to practice: O.D., optometrist, doctor of optometry, or optometric physician, as provided in Subsection C of this rule.

**B.** The advertisement may also describe the nature of the optometrist's practice such as, but not limited to, visual analysis, refraction, and eye examination.

**C.** ~~New Mexico licensed optometrists [who have been qualified and certified by the Board to administer and prescribe oral or topical pharmaceutical agents as provided in 16.16.7.11 NMAC, the Board's Rules and Regulations.]~~ shall be allowed to use the designation of "optometric physician" in their advertisements. The advertisement may be placed under the "physicians" title in the yellow pages under the following conditions:

(1) the optometrist identifies his professional designation in his advertisement, and

(2) the title heading does not limit the advertisement specifically. For instance: "physicians M.D." limits the section only to M.D.s; "physicians - M.D., ophthalmologists" limits the section only to M.D.s and/or ophthalmologists.

[11-17-73; 11-7-80; 6-24-94; 10-14-95; 10-15-97; A, 6-26-00; 16.16.17.9 NMAC - Rn, 16 NMAC 16.17.9, 03-15-2001; A,

03-02-2016]

**REGULATION AND LICENSING DEPARTMENT  
OPTOMETRY, BOARD OF**

This is an amendment to 16.16.18 NMAC, Section 7, effective 03-02-2016.

**16.16.18.7 DEFINITIONS:**

**A.** "Board" means the New Mexico board of optometry herein referred to as the board.

**B.** "Optometric physician" means an optometrist who ~~[has been certified by the board to administer and prescribe oral or topical]~~ administers pharmaceutical medications in the diagnosis, treatment and management of ocular diseases as provided in 16.16.7.11 NMAC.

[16.16.18.7 NMAC - N, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

**SECRETARY OF STATE**

1 NMAC 10.11, Order of Offices on the Ballot (filed 11/25/1997) is being repealed and replaced by 1.10.11 NMAC, Order of Offices on the Ballot, effective 2/12/2016.

**SECRETARY OF STATE**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 11 ORDER OF OFFICES ON THE BALLOT**

**1.10.11.1 ISSUING AGENCY:** Office of the Secretary of State (SOS). [1.10.11.1 NMAC - Rp, 1 NMAC 10.11.1, 2/12/2016]

**1.10.11.2 SCOPE:** This rule applies to any statewide primary or general election. [1.10.11.2 NMAC - Rp, 1 NMAC 10.11.2, 2/12/2016]

**1.10.11.3 STATUTORY AUTHORITY:** Election Code, Section 1-10-8 NMSA 1978. [1.10.11.3 NMAC - Rp, 1 NMAC 10.11.3, 2/12/2016]

**1.10.11.4 DURATION:** Permanent. [1.10.11.4 NMAC - Rp, 1 NMAC 10.11.4,



2/12/2016]

**1.10.11.5 EFFECTIVE DATE:**  
February 12, 2016, unless a later date is cited at the end of a section.  
[1.10.11.5 NMAC - Rp, 1 NMAC 10.11.5, 2/12/2016]

**1.10.11.6 OBJECTIVE:** To establish the order of offices and to standardize the appearance of candidate names on the paper ballots in a primary or general election.  
[1.10.11.6 NMAC - Rp, 1 NMAC 10.11.6, 2/12/2016]

**1.10.11.7 DEFINITIONS:**  
**A. "Judicial offices in partisan contest"** means the non-retention, partisan election of supreme court justice and judge of the court of appeals as well as district court judges (13 districts), magistrate court judges and metropolitan court judges.

**B. "Non-judicial state offices to be voted on at large"** means the governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor and commissioner of public lands.

**C. "Other district offices"** means districted offices including the public regulation commissioner (five districts), public education commissioner (10 districts), and district attorneys (13 districts).

**D. "Other questions"** means those ballot questions to be placed on the ballot which are authorized by a law other than Section 1-10-8 NMSA 1978 including general obligation bonds, constitutional amendments, and other propositions.  
[1.10.11.7 NMAC - Rp, 1 NMAC 10.11.7, 2/12/2016]

**1.10.11.8 ORDER OF OFFICES ON THE STATEWIDE BALLOT:**

**A.** The ballot used in the primary and general elections shall contain, when applicable, the offices to be voted on in the following order:  
(1) president and vice president;  
(2) United States senator;  
(3) United States representative;

**B.** Non-judicial state offices, when applicable, shall be in the following order on the primary election ballot. The order of the non-judicial state offices on the general election ballot shall

be the same as in the primary election except, per New Mexico state constitution Article 5, Section 1, the governor and lieutenant governor shall be elected jointly by the casting by each voter of a single vote applicable to both offices.

- (1) governor;
- (2) lieutenant governor;
- (3) secretary of state;
- (4) state auditor;
- (5) state treasurer;
- (6) attorney general;
- (7) commissioner of public lands.

**C.** When applicable, the ballot used in the primary and general elections shall continue in the following order:

- (1) state senator;
- (2) state representative.

**D.** When applicable, other districted offices shall be in the following order on the primary and general election ballot:

- (1) public regulation commissioner;
- (2) public education commissioner;
- (3) district attorney.

**E.** Judicial offices in partisan contests, when applicable, shall be in the following order on the primary and general election ballot:

- (1) supreme court justice in the order in which the position became vacant;
- (2) court of appeals judge in the order in which the position became vacant;
- (3) district court judge, in numerical order by division;
- (4) magistrate or metropolitan court judge, when applicable, in numerical order by division.

**F.** When applicable, the ballot used in the primary and general elections shall continue in the following order:

- (1) county commissioners or county councilors, in numerical order by district;
- (2) county clerk;
- (3) county treasurer;
- (4) county

- assessor;
- (5) county sheriff;
- (6) probate judge.

**G.** When applicable, the ballot used in the general elections shall continue with other questions. At least 63 days before each general election, the SOS shall determine the order of each category of other questions, taking into account the need for a common back side for ballots in certain counties to reduce costs and to increase the efficiency of the check-in procedure for voters when using on demand ballot printing systems. The categories of other questions are:

- (1) statewide judicial offices in retention elections, including supreme court and court of appeals, when applicable, in the order of seniority of each judicial officer;
  - (2) district court retention elections, when applicable, in numerical order by division;
  - (3) metropolitan court retention elections, when applicable, in numerical order by division;
  - (4) constitutional amendments, in the order passed by the legislature;
  - (5) general obligation bonds, in the order described in the chaptered General Obligation Bond Act;
  - (6) other statewide questions, otherwise authorized by law for placement on the ballot;
  - (7) local government ballot questions, in the order prescribed by the applicable county commission or county council.
- [1.10.11.8 NMAC - N, 2/12/2016]

**1.10.11.9 APPEARANCE OF NAME ON THE BALLOT:**

**A.** A candidate's name appearing on the ballot shall be printed as it appears on the candidate's certificate of registration, notwithstanding the following:

**A.** The last name printed on the ballot must match the candidate's legal last name.

**B.** Academic, honorific, and elected titles will not be printed on the ballot.

**C.** Periods after initials will not be printed on the ballot.

**D.** Punctuation common to names, other than periods, will be printed on the ballot as it appears on the candidate's certificate of registration.

**E.** Only letters and punctuation utilized in roman typefaces

will be printed on the ballot.  
[1.10.11.9 NMAC - N, 2/12/2016]

#### HISTORY OF 1.10.11 NMAC:

1 NMAC 10.11, Order of Offices on the Ballot, filed 11/25/1997 - Repealed effective 2/12/2016.

### SECRETARY OF STATE

This is an amendment to 1.10.35 NMAC, Sections 2, 3, 7-9, 11 & 12, effective 2/12/2016.

**1.10.35.2 SCOPE:** This rule applies to the uniform operation and maintenance of the statewide computerized voter registration system in each of the ~~[thirty-three]~~ 33 ~~[counties]~~ county clerk offices of New Mexico and the office of the secretary of state (SOS). [1.10.35.2 NMAC - N, 3-15-2012; A, 2-12-2016]

**1.10.35.3 STATUTORY AUTHORITY:** ~~The Election Code, [Section 1-2-1 NMSA 1978; Section 1-5-31 C.;] Sections 1-2-1, 1-4-18.1 and Subsection C of 1-5-31 NMSA 1978, Public Law 103-31, The National Voter Registration Act of 1993; Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall issue rules to establish and administer the statewide computerized voter registration system and to require deadlines and timelines for the updating of voter files and shall adopt rules establishing a uniform and nondiscriminatory process to match the information contained in the voter registration election management system with the database of the motor vehicle division of the taxation and revenue department (TRD) or the federal social security administration for electronic certificates of registration.~~ [1.10.35.3 NMAC - N, 3-15-2012; A, 2-12-2016]

#### 1.10.35.7 DEFINITIONS:

**A. "Active voter"** means a registered voter ~~[-(1) who has no change of address; (2) who has had a change of address and who has informed the county clerk of that change of address; (3) who has had a change of address, been sent a confirmation mailing, and who has voted in any election since the confirmation mailing was sent; or (4) is a registered voter]~~ who has not been declared ~~[to be]~~ an inactive voter.

**B. "Agency central"** means the ~~[secretary of state's office when~~

~~entering data into the statewide voter file to notice county clerks that ineligible voters be removed from the voter file due to death or felony conviction]~~ system used by the SOS to submit electronic batches to the county clerks for processing in the statewide voter records system. ~~Electronic batches processed using agency central include death records, felon records, electronic voter registration records submitted from the motor vehicle division (MVD), and online voter registration records collected from the SOS's website.~~

**C. "Board of registration"** means the voters of a county who are appointed by the board of county commissioners and serve under the provisions of ~~Sections 1-4-33 to [through 1-4]-38 NMSA 1978.~~

**D. "Cancelled"** means the status of a person's voter registration record when that person is no longer eligible to vote due to death; transfer of residence to another county or state; a finding by a court of legal insanity; felony conviction while the person is in prison, on parole, or on supervised probation; or at the voter's request.

**E. "Certificate of registration"** means the form, prescribed by the ~~[secretary of state]~~ SOS or the federal form complying with the National Voter Registration Act of 1993, used by qualified electors or by federal qualified electors to register to vote ~~[in the state].~~

**F. "Confirmation card"** means a postage prepaid and preaddressed notice, with language in compliance with the National Voter Registration Act of 1993 and Subsection C of Section 1-4-28 NMSA 1978, sent by forwardable mail, with a postage prepaid return postcard on which a voter may state the voter's current address.

**G. "Confirmation mailing"** means a non-discriminatory mass mailing; conducted by the office of the ~~[secretary of state]~~ SOS to voters flagged as NVRA on the statewide voter file and to voters who have filed a change of address request with the postal service since the last confirmation mailing.

**H. "County"** means an administrative district of the state of New Mexico.

**I. "County register"** means a physical file of voter registration records kept in fire resistant containers at the county clerk's office.

**J. "County voter file"** means the computerized version of the county register, comprising ~~[a]~~ each county's portion of the statewide voter

file.

**K. "Data recording media"** means physical material that holds data expressed in any existing electronic format.

**L. "District"** means a distinct territorial subdivision containing a body of eligible voters within the represented area.

**M. "Duplicate [reports] search"** means the process of verifying that voters are not registered in more than one county of the state, or registered more than once in a single county.

**N. "Election"** means any statewide special election, general election, primary election, special county-wide election or special elections to fill vacancies in the office of United States representative and regular or special school district or municipal elections.

**O. "File maintenance"** means the total activities undertaken by county or state election officials to ensure the accuracy and integrity of the statewide voter file.

**P. "Inactive voter"** means a voter who has been mailed a confirmation card in accordance with ~~[42 U.S.C. 1993 gg 6(d)]~~ 52 U.S.C. 20501 to 20511, and who has either failed to respond or has failed to vote in any election conducted after the mailing of the confirmation card.

**Q. "Initial mailing"** means the first non-discriminatory mailing to a voter, by the county clerk or SOS, which is returned as undeliverable by the postal service.

**R. "Mailing address"** means the address at which a voter receives correspondence; it is the address in the "physical street address where you live now" box on the certificate of registration, unless the voter's address has been updated by the county clerk and the updated address is attached to the certificate of registration, or unless a voter has entered a different mailing address in the "address where you get your mail (if different from above) box on the certificate of registration.

**S. "Module"** means a portion of the statewide voter records system program that carries out a specific function and may be used alone or combined with other modules of the same program.

**T. "New registrant"** means a voter who has never been registered in any county within the state.

**U. "Non-standard address"** means an unnamed street, unknown structure or directional address

not on the county street file.

**V. “NVRA”** means a designation in the statewide voter file indicating a voter was sent ~~[a non-discriminatory]~~ an initial mailing other than a confirmation mailing, which was returned to the county clerk as undeliverable.

**W. “Online voter registration system”** means the system authorized by the SOS for the purpose of accepting voter registration applications through the internet.

~~[W:] X.~~ **X. “Physical address”** means the location of a voter’s residence even if provided in the form of a map or geographic description pursuant to 1-4-5.3 NMSA 1978.

**Y. “Positive match”** means that two records match based on a strong match or that a match has been determined to exist based on further investigation by a county clerk of a weak match.

~~[X:] Z.~~ **Z. “Precinct”** means a part of a county with definite boundaries established for electoral administrative functions.

~~[Y:] AA.~~ **AA. “Precinct part”** means the designation given when a precinct is divided by one or more [electoral] districts.

~~[Z:] BB.~~ **BB. “Precinct voter list”** means a voter list arranged in alphabetical order of voter surname within and for each precinct.

~~[AA:] CC.~~ **CC. “Public service request”** means information prepared for an individual or organization requesting certain information from the voter records system.

~~[BB:] DD.~~ **DD. “Registrant detail”** means all data entered into the voter records system for an individual voter.

~~[CC:] EE.~~ **EE. “Removable”** means the designation in the statewide voter file for the voter registration record of a person registered to vote whose voter registration has been cancelled due to death, transfer of residence to another [county or] state, a finding by a court of legal insanity, felony conviction while the person is in prison, on parole or on supervised probation, [or] at the voter’s request, or, if after 45 days, a county clerk is unable to fulfill an incomplete application received online or electronically.

~~[DD:] FF.~~ **FF. “Scanned image”** means the digital [conversion] capture of the certificate of registration and any other [document] physical documents relating to the voter’s record.

~~GG.~~ **GG. “Select groups”** means a group of voters selected based upon their party registration, or lack thereof, gender, residence, age, or any other protected class as defined by law.

~~[EE:] HH.~~ **HH. “Special voter list”** means a prepared list of selected voters arranged in the order in which requested.

~~[FF:] II.~~ **II. “Street file”** means a method of geocoding or manually managing street segments, including address ranges, road networks and providing for incremental updates in the statewide voter registration system.

**JJ. “Strong match”** means that two records in different databases have: (1) the same name, (2) same date of birth (DOB), and (3) the same full social security number (SSN).

~~[GG:] KK.~~ **KK. “Suspense status”** means an applicant for voter registration whose status as a voter is held in abeyance until certain voter qualifications are met.

~~[HH:]~~ **“Transfer report”** or previous registration report means a listing of voters on the voter file who have moved from one county to another and re-registered in their new county of residence.

~~[H:] LL.~~ **LL. “Undeliverable mailing”** means correspondence sent to a voter and returned by the postal service indicating that the voter no longer receives mail at that address.

~~[JJ:] MM.~~ **MM. “Voter”** means any qualified elector or federal qualified elector who is registered under the provisions of the Election Code.

~~[KK:] NN.~~ **NN. “Voter data”** means selected information from the voter file.

~~[LL:] OO.~~ **OO. “Voter file”** means all voter information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on the voter records system and certified by the county clerk as the source of all information required by the Voter Records System Act.

~~[MM:] PP.~~ **PP. “Voter history”** means extracted voter information from the voter file indicating the jurisdiction where a voter voted, election and date, political party, if any, precinct or precinct part, location and method of voting.

~~[NN:] QQ.~~ **QQ. “Voter list”** means any prepared list of voters.

~~[OO:] RR.~~ **RR. “Voter records system”** means the statewide

computerized voter registration system and database, in compliance with the Help America Vote Act of 2002, developed, implemented, established, supervised and maintained by the [secretary of state] SOS.

~~SS.~~ **SS. “Weak match”** means that two records in different databases have any of the two following matching: (1) name, (2) DOB, (3) SSN, or (4) address. [1.10.35.7 NMAC - N, 3-15-2012; A, 2-12-2016]

#### 1.10.35.8 [ADDING AND TRANSFERRING VOTERS:

~~A.~~ **A.** A new registrant added to the county voter file shall be entered using the duplicate search module to determine if the voter is new to the state or is to be transferred from another county:

~~B.~~ **B.** All registrant detail and statutorily required data must be entered from the certificate of registration into the voter file including social security number and date of birth.

~~C.~~ **C.** The county clerk may establish a best practice of proofreading data entry to prevent errors and duplicate voter entry. Proofreading may be done by a staff member who did not complete the original entry and the proofreading search for the record may be conducted using different criteria (i.e. date of birth or name rather than social security number):

~~D.~~ **D.** The county clerk shall scan each certificate of voter registration in the county register. All scanned images attached to a voter record transferred to another county shall be retained as attached to that record.

~~E.~~ **E.** In addition to any e-mail notification, the county clerk shall prepare a monthly transfer report or report of previous registration. The names of voters from the transfer report shall be used to attach to the original certificate of registration in the county register when a voter is being removed from the county voter file. The county clerk shall not mail photocopies of certificates of registration to another county in lieu of the transfer report:

~~F.~~ **F.** Pursuant to Section 1-4-15 C, NMSA 1978, a voter who does not declare a political party preference shall be entered into the voter file as “Decline to State”. County clerk staff shall not check the “no party” box on the certificate of voter registration, but shall leave it blank.

~~G.~~ **G.** A voter who is not eighteen (18) years of age at the time

of registration, but will be eighteen (18) years of age by the date of the next election, shall be placed in suspense status. At thirty-five (35) days and twenty-one (21) days prior to the next election, the county clerk shall run a suspense query report of the county voter file and activate suspense voters on the appropriate date prior to the election.

**H.** Any necessary notations on the certificate of registration by county clerk's staff shall be done on the appropriate area of the form.

**I.** The county clerk shall maintain a listing of addresses for commercial mail box establishments, if any, to prevent the entry of a non-residential address as a residence address into the voter file.] **PROCESSING**

### **VOTER REGISTRATION CERTIFICATES:**

**A.** Adding and transferring voters.

**(1)** Upon receipt of a voter registration certificate, the county clerk shall run a duplicate search to determine if the voter is new, is to be transferred from another county, or if the record should be updated within the county. To determine if a record already exists in the system, the duplicate search criteria shall be based on a strong match. The county clerk may also conduct additional duplicate searches using different criteria to minimize the chance of entering a duplicate record. Additional search criteria may be based on weak match criteria. Upon running a duplicate search, if the voter's information on the voter registration certificate matches with an existing record, the voter shall be updated and transferred from another county.

**(2)** Upon receipt of a voter registration certificate, the county clerk shall run a search in the statewide voter registration system to determine if the applicant has been previously marked as deceased or as having a felony conviction prior to acceptance of the application. If a strong match is found, the application shall be rejected pursuant to Subsection C of 1.10.35.8 NMAC. The county clerk may conduct additional searches to determine a possible match for purposes of ensuring a death or felony record does not exist prior to entering the voter registration certificate.

**(3)** All registrant detail and statutorily required data must be entered from the certificate of registration into the voter file including: name, full social security number (SSN),

physical address, DOB, and an image of the signature.

**(4)** The county clerk may establish a best practice of proofreading data entry to prevent errors and duplicate voter entry. Proofreading may be done by a staff member who did not complete the original entry and the proofreading search for the record may be conducted using different criteria (i.e. DOB or name rather than SSN).

**(5)** The county clerk shall scan each certificate of voter registration in the county register and attach to the electronic voter record. All scanned images attached to a voter record transferred to another county shall be retained as attached to that record.

**(6)** Pursuant to Subsection C of Section 1-4-15 NMSA 1978, a voter who does not declare a political party preference shall be entered into the voter file as "decline to select". County clerk staff shall not check the "no party" box on the certificate of voter registration, but shall leave it blank.

**(7)** A voter who is not 18 years of age at the time of registration shall be placed in "suspense" status. At 35 days and 21 days prior to the next election, the county clerk shall run a suspense query report of the county voter file and activate suspense voters on the appropriate date prior to the election. At 21 days prior to an election, the county clerk shall activate all those suspense voters who will be 18 on or before the election.

**(8)** If the age question is checked "no" or left blank the application shall nonetheless be accepted if the DOB demonstrates that the applicant is over the age of 18 or placed in suspense status if the DOB demonstrates the applicant is under the age of 18.

**(9)** The county clerk shall receive voter registration certificates, but shall not process certificates when the registration books are closed pursuant to Section 1-4-8 NMSA 1978, during the county canvass, or during the period of time following the county canvass when voter credit is entered into the voter registration system pursuant to Subsection B of Section 1-4-12 NMSA 1978.

**(10)** When a voter registration agent number is provided on an application, the county clerk shall enter the agent number and the registration form number in the statewide voter registration system under "additional info."

**B.** Matching with MVD

database: All online and MVD electronic registrations have been verified with the MVD database prior to transmission to the county clerk. Upon receiving a paper voter registration certificate, the county clerk may conduct a search in the MVD database for investigative purposes.

**(1)** If the county clerk determines that a conflict exists between the MVD database and the voter registration record the county clerk may contact the registrant to request clarification. If it is determined that the information provided on the voter registration form needs to be corrected, the county clerk shall request that the voter fill out a new voter registration form with the corrected information before processing the application.

**(2)** The MVD database shall not be used to fill in information that is not included on incomplete applications or applications not otherwise in proper form.

**C.** Rejection of voter registration forms.

**(1)** Rejection for incomplete information: Voter registration forms which do not contain the qualified elector's name, physical address or a non-standard physical address without a mailing address, full SSN, DOB, and signature shall be rejected. For voter registration forms meeting these criteria, the county clerk shall return the form to the qualified elector with an explanation of the reasons for rejection within five business days, but as soon as is practicable.

**(2)** Rejection for non-citizenship: For voter registration forms in which the citizenship question is answered in the negative, the county clerk shall reject the form. The county clerk shall also reject any voter registration certificate in which the question regarding citizenship is not answered. The county clerk shall send a notice within five business days to the applicant with an explanation that non-citizens are not eligible to vote in New Mexico elections. If the box was checked in error, the applicant may fill out a new form.

**(3)** Rejection of forms containing commercial mailbox locations as the physical address: The county clerk shall maintain a listing of addresses for commercial mail box establishments, if any, to prevent the entry of a non-residential address as a residence address into the voter file. When any voter registration form is received containing a commercial mail box location as the physical address, it

shall be rejected, and the form returned to the voter with an explanation of the reason for the rejection along with a new voter registration form and instructions on how to register online, if available to that voter, within five business days, but as soon as is practicable.

**(4)** Rejection for felony conviction confirmation: For voter registration forms submitted that have a positive match with a felon record in agency central, the county clerk shall send a notice to the applicant with an explanation that felons are not allowed to vote while in prison, on parole or on supervised probation, and provide the elector with information on how they can become eligible or how to update or correct the information in agency central, within five business days, but as soon as is practicable.

**(5)** Rejection for deceased confirmation: For voter registration forms submitted that have a positive match with a death record in agency central, the county clerk shall contact the secretary of state who will work with the department of health or other authorized agencies to confirm that a death certificate exists. If the death is confirmed, the county clerk shall reject the voter registration form and shall refer the matter to the assigned election prosecutor within the district attorney's office for investigation.

**(6)** Voter registration applications that contain an invalid series of numbers for SSN shall be rejected. Within five business days, but as soon as is practicable of the rejection, the form shall be returned to the voter with an explanation of the reason for the rejection. The social security administration has provided information regarding invalid or impossible SSNs as follows:

**(a)** SSN's never begin with the first three digits of 000, 666, or 900 series; and

**(b)** prior to June 25, 2011, SSN's did not begin with the first three digits of 800 series or above 772 in the 700 series.

**(7)** If applications are complete, but the clerk reasonably believes an application is fraudulent, a copy of such registration shall be sent to the assigned election prosecutor within the district attorney's office along with a statement of the reasons the application(s) are considered suspicious for further investigation. The county clerk may contact the SOS to request assistance in researching suspicious applications.

**(8)** The county clerk may contact the applicant via phone or e-mail if necessary, however, in no case shall a change in registrant information be processed unless provided in writing.

**D.** Processing online voter registration forms received from the SOS.

**(1)** In order for an applicant to use the online voter registration system, a positive match of identity is required with the MVD database. The match criteria shall be a current or expired MVD driver's license ID number or state ID number, full SSN, and full DOB. If a positive match is not found in the MVD database, the applicant shall be provided with a notice that the application cannot be processed online because of non-matching MVD information. The applicant shall be provided a link to print a paper voter registration application and an option to provide contact information and request to be contacted by the county clerk. If a positive match is made with the MVD database, the applicant shall be allowed to proceed with online registration and the MVD will send an image of the signature and photo as part of the voter registration application.

**(2)** If the applicant answers no to the questions regarding citizenship, the voter will not be allowed to continue with the online application process.

**(3)** If the applicant answers no to the question regarding age, the voter will be allowed to continue with the online application process, however, the clerk will place the record in suspense status in the statewide voter registration system.

**(4)** If the applicant answers yes to the question regarding currently being in prison, on parole, or on supervised probation as a result of a felony conviction, the voter will not be allowed to continue with the online application process.

**(5)** The applicant shall be provided the opportunity to enter all information as prescribed by the paper registration form, except the voter will not be allowed to modify the SSN or DOB after receiving confirmation of a positive match with the MVD database.

**(6)** The online voter registration system shall allow the applicant to designate from the list of qualified political parties or choose not to designate a political party. The online voter registration system shall not permit

an applicant to designate a political party that is not a qualified political party pursuant to Article 7 of the Election Code.

**(7)** The online voter registration system shall not allow incomplete voter registration applications to be submitted to the statewide voter registration system. The registrant shall receive a system notification when attempting to submit incomplete information and shall not be allowed to proceed until all required information has been provided. Required information shall include the voter's first name, last name, DOB, SSN, gender, physical address, mailing address in the event a non-standard physical address is provided, answers to citizenship and age questions, and party designation or choice of no party designation.

**(8)** Upon receipt of any online or electronic application forwarded to the county clerk via agency central, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

**(9)** The online voter registration system will generate a digital image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

**(10)** The online voter registration system shall transmit all information provided by the voter via a secured and encrypted transmission path and an audit log of all attempts, both successful and unsuccessful, to use the online voter registration system will be maintained by the secretary of state.

**E.** Processing electronic voter registration forms received from the MVD.

**(1)** Upon receipt of any electronic application forwarded to the county clerk via agency central, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

**(2)** The electronic voter registration system will generate an image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

**F.** Processing incomplete or ineligible electronic or online voter registration applications: This section applies to all electronically submitted voter registration applications.

(1) Upon determining that the electronic or online voter registration application does not contain a valid physical address, includes a non-standard address with no mailing address, or is otherwise not filled out in proper form, the county clerk shall place the voter in "suspense" status with the status reason of "incomplete application." The county clerk shall attempt to contact the applicant to request a corrected voter registration form within five business days, but as soon as is practicable.

(2) After 45 days of an electronic record remaining in "suspense" status, the county clerk shall place the voter in "removable" status with a reason of "incomplete application" until such time the voter submits a completed application. Additionally, the clerk shall print the affected voter registration certificate image(s), mark as removable with the applicable status reason, and maintain as part of the county register pursuant to Section 1-4-12 NMSA 1978.

(3) Upon determining that the electronic or online voter registration application is ineligible by reason of felony conviction, death, or other applicable reason pursuant to Section 1-4-24 NMSA 1978, the county clerk shall process the application with the applicable status and status reason code as follows:

(a) If a county clerk determines that the applicant has a death record in agency central, the county clerk shall contact the SOS to receive confirmation and a copy of the state vital records death certificate. Upon confirmation, the application shall be processed with a status of "removable" and a status reason of "deceased" and shall refer the matter to the assigned election prosecutor within the district attorney's office for investigation.

(b) If a county clerk determines that the applicant has a felony conviction record in agency central that has not been satisfied and the county clerk has received no information satisfying the county clerk that the felon is no longer in prison or on parole or on supervised probation, the county clerk shall process the application with a status of "not eligible" and a status reason of "felony conviction." Additionally, the county clerk shall send a notice to the applicant with an explanation that felons are not allowed to vote while in prison, on parole or on supervised probation, and provide the elector with information on how they can become eligible or how to update or

correct the information in agency central, within five business days, but as soon as is practicable.

(c) If a county clerk determines that the applicant is ineligible for any other reason, the county clerk shall process the application with a status of "removable" and the applicable status reason. [1.10.35.8 NMAC - N, 3-15-2012; Repealed, 2-12-2016; 1.10.35.8 NMAC - N, 2-12-2016]

#### **1.10.35.9 FILE MAINTENANCE:**

[A.] The secretary of state shall contract with a postal service approved vendor of the national change-of-address program (NCOA) pursuant to Section 1-4-28, NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

[B.] The secretary of state shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk and so designated by the county clerk in the county voter file.

[C.] All active voters appearing in either the NCOA or the NVRA files shall be mailed a confirmation card to the voter's mailing address. The confirmation card shall be returned by the voter no later than twenty-eight (28) days prior to the next general election.

[D.] The secretary of state shall deliver returned and address-corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter's record in the voter file. The physical confirmation card shall be attached to the voter's certificate of registration to be filed in the county register.

[E.] The secretary of state shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or county. If the voter has moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

[F.] If the voter's confirmation card indicates they have moved to another state or country, they shall be removed from the file and the

voter's certificate of registration, with the confirmation card attached, shall be removed from the county register, and retained for six (6) years.

[G.] A voter whose confirmation card is returned undeliverable shall be designated on the voter file as "inactive." The designation shall be carried out only by the secretary of state.

[H.] A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter's address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs after the date of the confirmation mailing.

[I.] Cancellation of voter registration shall be by the board of registration and subject to the provisions of the election code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six (6) years.

[J.] The county clerk shall conduct monthly duplicate reports on the voter file, but in no case shall this maintenance be conducted when voter registration is closed for an election. Duplicate reports shall use combinations of data searching (e.g. first name, last four digits of social security number, birth date) the county clerk determines will be most productive in discovery of duplicate voter registrations.

[K.] The county clerk shall establish a street file of standard 911 residential addresses within the voter file to determine a registrant's physical address and shall attempt to correct all non-standard addresses, if any.

[L.] The county clerk shall ensure that all political subdivision changes due to reapportionment, redistricting or annexations are entered into the voter file and voters are assigned to correct voting districts, precincts or precinct parts, if any.

[M.] The county clerk shall designate a cancelled voter's record as removable in the county voter file if the voter is deceased, an ineligible felon, has been declared incompetent by a court of law, has moved outside the county or state, or has a duplicate registration. A voter's record shall also be designated cancelled or removable at the voter's request or in the case of data entry error.

[N.] The county clerk shall, after each election, enter the voter history for each voter in the election into

the voter file:

O. List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

P. All user names and passwords shall be kept confidential by each authorized user of the statewide voter registration system.] List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

A. Confirmation mailings for voters designated as NVRA under 1-4-28 NMSA 1978 (change of address).

(1) The SOS shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28 NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

(2) The SOS shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk or SOS and so designated by the county clerk in the county voter file.

(3) All active voters appearing in either the NCOA or the NVRA files shall be marked with a status of "inactive" and a status reason of "confirmation mailing" and mailed a confirmation card to the voter's mailing address by the SOS.

(4) The SOS shall deliver returned and address corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter's record in the voter file. The physical confirmation card shall be attached to the voter's certificate of registration to be filed in the county register.

(5) The SOS shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or country. If the voter has moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

(6) The SOS shall return to the county clerk any confirmation card that indicates the voter has moved to another state or country. The county clerk shall mark the record with a status of "removable" and a status reason of "moved outside of county/city," remove the certificate of registration from the county register with the confirmation card attached, and retain it for six years. The county clerk shall also scan the card and attached it to the electronic voter record.

(7) The SOS shall return to the county clerk any confirmation card that is returned as undeliverable. The county clerk shall log the mail as undeliverable in the electronic voter record and attach the confirmation card to the certificate of registration in the county register. The county clerk shall also scan the card and attached it to the electronic voter record.

(8) A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter's address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs after the date of the confirmation mailing.

(9) Cancellation of voter registration shall be by the board of registration and subject to the provisions of the Election Code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six years.

B. Street file maintenance: The county clerk shall establish a street file of standard 911 residential addresses within the voter file to determine a registrant's physical address and shall attempt to correct all non-standard addresses, if any.

C. Precinct assignments: The county clerk shall ensure that all political subdivision changes due to reapportionment, redistricting or annexations are entered into the voter file and voters are assigned to correct voting districts, precincts or precinct parts, if any. The county clerk shall also conduct an audit in every odd numbered year to ensure that all precinct assignments are correct and shall ensure all discrepancies that are discovered in the audit are corrected as soon as possible and at least by the end of the odd numbered year.

D. Felony convictions and satisfactions.

(1) The SOS, via agency central, shall enter, as the method of forwarding to county clerks, information on state and federal felony convictions into the statewide voter file upon receipt from the administrative office of the courts, the department of corrections, the department of justice, or other legally recognized source. Within five business days of receiving an agency central batch, the county clerk shall check to see if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall remove the voter's voter registration certificate from the county register and mark the record in the electronic voter file system with a status code of "not eligible" and a status reason of "felony conviction." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the felon record and the voter in the voter file. The county clerk may contact the appropriate agency to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the felon records.

(2) Upon determining a positive match due to felony conviction, the county clerk shall send a notice to the cancelled registrant explaining that the person's registration has been cancelled due to a positive match with a felony conviction with information on how they can reinstate their registrant status if the person believes the cancellation has occurred in error, within five business days, but as soon as is practicable.

(3) When the SOS receives notice of satisfaction of felony conditions for a voter, the SOS shall enter the voter's restoration of eligibility into agency central. The SOS shall send regular notices of restoration to each county clerk via mail or secure electronic transport.

(4) Upon satisfaction of felony conditions, the qualified elector must re-register by providing a new voter registration form. The county clerk shall consider receipt of acceptable documentation from the voter of satisfaction of conditions or restoration of eligibility in agency central as satisfactory proof of eligibility to register. The county clerk may consider additional evidence of satisfaction for restoration of eligibility and may contact the SOS for further investigation. Upon re-registering, the voter's record shall be changed to active status.

**E.** Deceased voters.  
**(1)** The SOS,

via agency central, shall enter, as the method of forwarding to county clerks, the list of deceased voters received from the DOH into the statewide voter registration system. Within five business days of receiving an agency central batch, the county clerk shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

**(2)** The county clerk may also utilize information provided in the obituaries in the local newspaper of record, online sites containing such records, or signed and notarized statements from family members to positively confirm deceased status. The county clerk may also use probate information, death certificates, or information pursuant to Subsection F of Section 1-4-25 NMSA 1978, to determine strong or weak matches with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

**(3)** Upon designating a voter as cancelled in the voter file, the county clerk shall remove the voter's certificate of registration from the county register and retain it for six years.

**F.** Native American deceased processing: For counties that include tribal or pueblo land and precincts, that county's Native American coordinator shall coordinate with the tribe or pueblo officials at least three times per year to identify deceased voters on the rolls as follows:

**(1)** The county Native American coordinator shall request a notarized list of deceased residents since the last time period requested, that includes full name, DOB, gender, address, SSN, and place and date of death from the tribe or pueblo. Pursuant to Subsection F of Section 1-4-25 NMSA 1978, the notarized list must be provided by the president or governor of an Indian nation, tribe or pueblo, from a census bureau representative, or from a tribal enrollment clerk.

**(2)** Upon receipt of the notarized listing, the county shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file. In the case of a weak match, the county clerk may send a letter to the residence address or relative requesting confirmation of the death. The relative will be asked to provide a signed statement from a family member indicating that the voter in question is deceased. If no response or no supporting documentation is provided, the voter's record is left unaltered and will remain on the voter registration rolls. The record will be subject to the normal NVRA purge process.

**G.** Other state notifications: Upon receiving notification by another state of a voter registering to vote in that state, the county clerk shall cancel that voter's registration and designate as "removable" and status reason to "moved outside of county/city." [1.10.35.9 NMAC - N, 3-15-2012 - Repealed, 2-12-2016; 1.10.35.9 NMAC - N, 2-12-2016]

**1.10.35.11 [FELONY CONVICTION AND RESTORATION OF ELIGIBILITY:**

**A.** The secretary of state, as agency central shall enter all state and federal felony convictions into the statewide voter file monthly. The secretary of state shall send monthly notices of ineligibility to each county clerk. Upon such notice, the county clerk shall remove the voter's certificate of registration from the county register.

**B.** When the secretary of state receives notice of restoration to voting status, the secretary of state shall

enter the voter's restoration of eligibility into agency central.

**C.** The secretary of state shall send special notices of conviction or restoration of eligibility prior to the close of registration form any election.] **PROTECTION AND ACCEPTABLE USE OF THE ELECTRONIC VOTER FILE SYSTEM:** In accordance with Sections 1-4-5.5 to -5.6, and 1-4-50 NMSA 1978, the SOS and county clerk offices shall take measures to minimize the risk of unauthorized disclosure, unauthorized acquisition, unauthorized access or other situation that would provide access to voter registration records outside what is allowable by law. Measures shall include:

**A.** All usernames and passwords shall be kept confidential by each authorized user of the statewide voter registration system.

**B.** The SOS and county clerk offices shall disable all user accounts immediately upon the effective date of resignation or termination of an employee from the respective office.

**C.** The SOS and county clerk shall conduct an audit at least annually of the user permissions of each authorized user within their respective office to ensure each authorized user has the minimal roles assigned in order for the user to perform his/her job functions.

**D.** The SOS and county clerk offices shall conduct an audit of authorized user accounts at least monthly to ensure the user account database is accurate.

**E.** The SOS and county clerk offices shall take reasonable measures to restrict access to voter registration data, both in electronic and paper form, except as required by the authorized user to perform his/her job functions.

**F.** Authorized users of the statewide voter registration system shall not use the system for any other purpose except as authorized by statute and defined by his/her job functions within the office.

**G.** The SOS and county clerk is prohibited from using unencrypted email to transport voter registration information that includes SSN.

**H.** Data exports created from the statewide voter registration system shall be stored in a protected location and shall be permanently deleted once they are no longer needed and can only be exported to work owned computers or devices within the SOS or county clerk offices.



~~I.~~ The SOS and county clerk offices shall ensure that antivirus, antimalware, and an operating system patching program is maintained on all computers that access the statewide voter system.

[1.10.35.11 NMAC - N, 3-15-2012; Repealed, 2-12-2016; 1.10.35.11 NMAC - N, 2-12-2016]

**1.10.35.12** ~~[DECEASED VOTERS:~~

~~A.~~ The secretary of state as agency central shall enter, as the method of forwarding to county clerks, the list of deceased voters received from vital statistics into the statewide voter file monthly.

~~B.~~ The county clerk shall check the daily or weekly obituaries in the local newspaper of record. The county clerk may also use probate information or information pursuant to Section 1-4-25 F, NMSA 1978.

~~C.~~ Upon designating a voter as cancelled or removable in the voter file, the county clerk shall remove the voter's certificate of registration from the county register and retain it for six (6) years.] **[RESERVED]**

[1.10.35.12 NMAC - N, 3-15-2012; Repealed, 2-12-2016]

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**END OF ADOPTED  
RULES**

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# 2016 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXVII, Issues 1-24

<b>Volume XXVII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 4</b>	<b>January 15</b>
<b>Issue 2</b>	<b>January 19</b>	<b>January 29</b>
<b>Issue 3</b>	<b>February 1</b>	<b>February 12</b>
<b>Issue 4</b>	<b>February 15</b>	<b>February 29</b>
<b>Issue 5</b>	<b>March 1</b>	<b>March 15</b>
<b>Issue 6</b>	<b>March 16</b>	<b>March 31</b>
<b>Issue 7</b>	<b>April 1</b>	<b>April 15</b>
<b>Issue 8</b>	<b>April 18</b>	<b>April 30</b>
<b>Issue 9</b>	<b>May 2</b>	<b>May 13</b>
<b>Issue 10</b>	<b>May 16</b>	<b>May 31</b>
<b>Issue 11</b>	<b>June 1</b>	<b>June 15</b>
<b>Issue 12</b>	<b>June 16</b>	<b>June 30</b>
<b>Issue 13</b>	<b>July 1</b>	<b>July 15</b>
<b>Issue 14</b>	<b>July 18</b>	<b>July 29</b>
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<b>Issue 16</b>	<b>August 16</b>	<b>August 31</b>
<b>Issue 17</b>	<b>September 1</b>	<b>September 15</b>
<b>Issue 18</b>	<b>September 16</b>	<b>September 30</b>
<b>Issue 19</b>	<b>October 3</b>	<b>October 14</b>
<b>Issue 20</b>	<b>October 17</b>	<b>October 31</b>
<b>Issue 21</b>	<b>November 1</b>	<b>November 15</b>
<b>Issue 22</b>	<b>November 16</b>	<b>November 30</b>
<b>Issue 24</b>	<b>December 16</b>	<b>December 30</b>

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