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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 10

May 31, 2016

## Table of Contents

### Notices of Rulemaking and Proposed Rules

#### Environmental Improvement Board

Notice of Rulemaking Hearing.....	342
Aviso de Audiencia Sobre Reglamentacion.....	342

#### Game and Fish, Department of

State Game Commission Meeting and Rule Making Notice.....	343
---	-----

#### Health, Department of

Notice of Public Hearing.....	344
-------------------------------	-----

#### Human Services Department

##### Medical Assistance Division

Notice of Public Hearing to Receive Testimony on the Proposed Rule 8.308.20 NMAC.....	344
---	-----

#### Public Education Department

Notice of Proposed Rulemaking.....	344
------------------------------------	-----

---

### Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

#### Cultural Affairs, Department of

4.5.2 NMAC	R	State Grants In Aid To Public Libraries.....	346
4.51.5 NMAC	R	Archaeological Records Repository and Cultural Resource Information System.....	346
4.5.2 NMAC	N	State Grants In Aid To Public Libraries.....	346
4.10.19 NMAC	N	Cultural Resource Information System and Records.....	349

#### Energy, Minerals and Natural Resources Department

##### Mining Commission

19.10.3 NMAC	A	Minimal Impact Operations.....	354
--------------	---	--------------------------------	-----

#### Human Services Department

##### Medical Assistance Division

8.311.3 NMAC	R	Methods and Standards for Establishing Payment- Inpatient Hospital Services.....	354
8.311.3 NMAC	N	Methods and Standards for Establishing Payment- Inpatient Hospital Services.....	354

#### Racing Commission

15.2.1 NMAC	A	Horse Racing - General Provisions.....	364
15.2.2 NMAC	A	Associations.....	367
15.2.3 NMAC	A	Flat Racing Officials.....	369
15.2.4 NMAC	A	Types of Races.....	370
15.2.5 NMAC	A	Horse Race - Rules of the Race.....	370
16.47.1 NMAC	A	Horse Racing Licensees - General Provisions.....	374

**Regulation and Licensing Department**

Pharmacy, Board of

16.19.2 NMAC	A	Examinations.....	376
16.19.8 NMAC	A	Wholesale Prescription Drug Distribution.....	377
16.19.22 NMAC	A	Support Personnel and Pharmacy Technicians.....	378

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## Notices of Rulemaking and Proposed Rules

### ENVIRONMENTAL IMPROVEMENT BOARD

#### NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing on August 12, 2016, at 9:00 am, in room 307 of the New Mexico State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 16-02 (R), a proposed repeal of 20.2.37 NMAC – Petroleum Processing Facilities.

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

The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal 20.2.37 NMAC. The purpose of the proposed repeal of 20.2.37 NMAC is to remove outdated, mostly redundant requirements. The rule was identified in the November 2012 *Improving Environmental Permitting Report* for potential revision or repeal. The Air Quality Bureau has conducted a thorough analysis of the rule as well as other similar federal rules that apply to this industry, and has concluded that the rule can be repealed without a relaxation of emissions controls or an adverse effect on air quality.

The NMED will host an informational open house on the proposed repeal of 20.2.37 NMAC at the Roswell Public Library, 301 North Pennsylvania Ave., Roswell, NM 88201 from 1:00 pm to 3:00 pm on Tuesday, June 14. For questions regarding the open house, please contact Mark Jones at 505-566-9746 or [mark.jones@state.nm.us](mailto:mark.jones@state.nm.us).

Full text of NMED’s proposed repealed regulation is available on NMED’s web site at [www.env.nm.gov/aqb](http://www.env.nm.gov/aqb) or by contacting Mark Jones at 505-566-9746 or [mark.jones@state.nm.us](mailto:mark.jones@state.nm.us). The proposed repealed regulation may also be examined during office hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico.

The hearing will be conducted in accordance with 20.1.1 NMAC (*Rulemaking Procedures – Environmental Improvement Board*), the *Environmental*

*Improvement Act*, NMSA 1978, Section 74-1-9, the *Air Quality Control Act*, NMSA 1978, Section 74-2-6, and other applicable procedures.

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

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on July 22, 2016, and should reference the docket number, EIB 16-02 (R), and the date of the hearing. Notices of Intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator  
Environmental Improvement Board  
P.O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-2818

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

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

Persons having a disability and needing help in being a part of this hearing process should contact Pam Castaneda, Board Administrator by July 22, 2016 at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

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

### ENVIRONMENTAL IMPROVEMENT BOARD

#### AVISO DE AUDIENCIA SOBRE REGLAMENTACIÓN

La Dirección de Mejoras Medio-ambientales de Nuevo México (“Dirección”) tendrá una audiencia pública el 12 de agosto del 2016, a las 9:00 a.m., en el salón 307 del edificio del Capitolio del Estado de Nuevo México, 490 Old Santa Fe Trail, Santa Fe, Nuevo México. El propósito de la audiencia es considerar el asunto de la EIB 16-02 (R), una propuesta anulación de la 20.2.37 NMAC – Instalaciones de Procesamiento del Petróleo.

El que propone esta enmienda normativa es el Departamento del Medio Ambiente de Nuevo México (“NMED”, por sus siglas en inglés).

El propósito de esta audiencia pública es considerar y tomar una posible acción sobre una petición del NMED para anular la 20.2.37 NMAC. El propósito de la propuesta anulación de la 20.2.37 NMAC es eliminar requisitos obsoletos, mayormente redundantes. La norma se identificó en el informe para permitir mejoras ambientales de noviembre del 2012 para posible revisión o anulación. La Oficina de Control de la Calidad del Aire ha llevado a cabo un análisis completo de la norma así como de otras normas federales similares que son aplicables a esta industria y ha llegado a la conclusión de que la norma se puede eliminar sin una relajación de los controles de emisiones o un efecto adverso en la calidad del aire.

El NMED tendrá una reunión pública

sobre la propuesta anulación de la 20.2.37 NMAC en la biblioteca pública de Roswell, situada en 301 North Pennsylvania Ave., Roswell, NM 88201 de la 1:00 a las 3:00 p.m., el martes 14 de junio. Para preguntas sobre esta reunión, por favor comuníquese con Mark Jones en el 505-566-9746 o [mark.jones@state.nm.us](mailto:mark.jones@state.nm.us).

El texto completo de la propuesta del NMED de la anulación de esta norma está disponible en el sitio en la web del NMED: [www.env.nm.gov/aqb](http://www.env.nm.gov/aqb) o comunicándose con Mark Jones en el 505-566-9746 o [mark.jones@state.nm.us](mailto:mark.jones@state.nm.us). La propuesta anulación de la norma también se puede examinar durante horas hábiles en la oficina de Control de la Calidad del Aire del NMED, 525 Camino de los Marquez, Suite 1, Santa Fe, Nuevo México.

La audiencia se llevará a cabo de acuerdo con la 20.1.1 NMAC (Procedimientos de Reglamentación – Dirección de Mejoras Medio-ambientales), Ley de Mejoras Medio-ambientales, NMSA 1978, Sección 74-1-9, la Ley de Control de la Calidad del Aire, NMSA 1978, Sección 74-2-6, y otros procedimientos que sean aplicables.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas pertinentes, información, puntos de vista y argumentos, en forma oral o escrita, para someter pruebas e interrogar a testigos. Las personas que deseen dar testimonio técnico deben presentar un aviso por escrito a la Dirección indicando su intención de hacerlo. El aviso de intención debe:

- (1) identificar a la persona por quien el testigo (los testigos) dará(n) testimonio;
- (2) identificar a cada testigo técnico que la persona presentará e indicar la capacidad del testigo, incluso una descripción de su educación y antecedentes profesionales;
- (3) incluir una copia de las declaraciones directas en forma de narración de cada testigo técnico;
- (4) incluir el texto de cualquier modificación recomendada al propuesto cambio normativo;
- (5) listar y adjuntar todas las pruebas que esa persona presentará en la audiencia, incluso cualquier propuesta declaración de las razones para adoptar las normas.

Los avisos de intención para la audiencia deben recibirse en la oficina de la Dirección a más tardar para las 5:00 p.m. del 22 de julio del 2016 y deben hacer

referencia al número del caso, EIB 16-02 (R), y la fecha de la audiencia. Los avisos de intención para presentar testimonios técnicos deben presentarse a:

Pam Castañeda, Board Administrator  
Environmental Improvement Board  
P.O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-2818

Cualquier miembro del público en general puede dar declaraciones en la audiencia. No es necesario avisar previamente para dar declaraciones que no sean técnicas en la audiencia. También, cualquier persona puede ofrecer pruebas con relación a su testimonio, siempre y cuando dichas pruebas no sean exageradamente repetitivas del testimonio.

Un miembro del público en general que en lugar de hacer declaraciones orales en la audiencia desee presentar una declaración por escrito para que conste en el acta, deberá registrar la declaración por escrito antes de la audiencia o la puede entregar en la audiencia.

Las personas con discapacidades y que necesiten ayuda para participar en esta audiencia deben comunicarse con Pam Castaneda, Board Administrator para el 22 de Julio, 2016 en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, Nuevo México, 87502, o por teléfono en el 505-827-2425 o en [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). Los usuarios de TDY pueden acceder a su número vía New Mexico Relay Network en el 1-800-659-8331.

La Dirección puede tomar una decisión sobre la propuesta revisión de la norma al concluir la audiencia o puede convocar a una reunión en una fecha posterior para considerar la acción sobre la propuesta.

## GAME AND FISH, DEPARTMENT OF

### STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

On **Thursday, June 23, 2016**, beginning at 9:00 a.m., at the **Blue Hole Convention Center Civic Center Room**, located at **1085 Blue Hole Road, Santa Rosa, NM**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: State Land Office Presentation of 2017-

2018 Hunting, Fishing and Trapping Access Lease, Awards of Excellence and Dedication to Wildlife Management, Gold King Mine Spill Update, Revocations, Discussion on the use of Technology While Hunting, Discussion on the use of Magnification/Clarification Devices on Archery Equipment, Update on Prospective Modifications to Electronic Tagging Requirements for Big Game and Turkey, Discussion on Changes to the Javelina Rule (19.31.21 NMAC), Final Amendment to the Bighorn Sheep Rule (19.31.17 NMAC), Development of Youth Hunting Opportunities in Northeast New Mexico, Update on the Potential Reintroduction of Bighorn Sheep in Game Management Unit 34, Update on the Mexican Wolf Recovery Planning, Discussion on Opportunities for Providing Premium Hunt Opportunities, Citizen Advisory Committee Appointment Process for Habitat Stamp Program, Prospective Initiatives for the 2017 Legislative Session, Final Draft Rule of the Commission's Appeal Process, Fiscal Year 2018 Proposed Capital Projects Budget Approval, Update on the Revision of the Statewide Wildlife Action Plan, Volunteer Rule, Final Rule Presentation, Update on Development of Shooting Ranges in New Mexico, Update on Hunters Helping the Hungry, Presentation for Approval of Area Office Designs for Albuquerque and Roswell Offices, and Closed Executive Session.

Copies of proposed rule changes and the agenda can be obtain from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) 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 Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

## HEALTH, DEPARTMENT OF

### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.32.7 NMAC- "Authorization to Administer Opioid Antagonists". The hearing will be held at 9:00 AM on June 17, 2016 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to review proposed rule changes regarding Overdose Prevention, Requirements for Overdose Prevention and Education Programs, and Opioid Antagonist (Naloxone) Distribution.

A copy of the proposed rules can be obtained from:

Dominick V. Zurlo  
Public Health Division-Hepatitis and Harm Reduction  
New Mexico Department of Health  
1190 St. Francis Drive, P.O. Suite S-1300  
Santa Fe, NM 87502  
505-827-2507  
[dominick.zurlo@state.nm.us](mailto:dominick.zurlo@state.nm.us)

Please submit any written comments regarding the proposed rule changes to the attention of Dominick V. Zurlo at the above address or e-mail prior to the hearing. If you are an individual with a disability who is need of special assistance or accommodations to attend or participate in the hearing, please contact Dominick V. Zurlo by telephone at 505-827-2507. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Notice of Public Hearing to Receive Testimony on the Proposed Rule 8.308.20 NMAC

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend a rule that is part of the New Mexico Administrative Code (NMAC): 8.308.20 *Reimbursement*. This change adds the provision that the Managed Care Organization's (MCO) interest payments to providers for late claims "...shall be paid within 30 calendar days of claim adjudication...". The register and the proposed amendments

to this rule will be available May 31, 2016 on the HSD website: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and at <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD in Santa Fe at 505-827-6252.

### Section 9 Reimbursement for Managed Care:

8.308.20.9 Reimbursement for Managed Care: Paragraph (1) of Subsection E sections B language will be revised to read as follows:

The MCO shall pay a contracted and non-contracted provider interest on the MCO's liability at the rate of one and one-half percent per month on the amount of a clean claim (based upon the current medicaid fee schedule) submitted by the participating provider and not paid within 30 calendar days of the date of receipt of an electronic claim and 45 calendar days of receipt of a paper claim. Interest shall be paid within 30 Calendars Days of claim adjudication, and shall accrue from the 31st calendar day for electronic claims and from the 46th calendar day for manual claims. The MCO shall be required to report the number of claims and the amount of interest paid, on a timeframe determined by HSD/MAD.

A public hearing to receive testimony on this proposed rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico July 5, 2016 from 10 a.m. to 11 a.m., Mountain Daylight Time (MDT).

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written comments to:

Human Services Department  
Office of the Secretary  
ATTN: Medical Assistance Division  
Public Comments  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on July 5, 2016. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

## PUBLIC EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Tuesday, July 5, 2016 from 9:00 a.m. to 11:00 a.m. The purpose of the public hearing will be to obtain input on the proposed amendment to 6.10.7 NMAC (STATEWIDE STANDARDIZED TESTING SECURITY ISSUES AND IRREGULARITIES.)

Interested individuals may provide comments at the public hearing and/or submit written comments to Dan Hill, General Counsel, via email at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), fax (505) 827-6681, or directed to Dan Hill, General Counsel, Jerry Apodaca Public Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained from David Scott at (505) 827-6641.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Mr. Scott at (505) 827-6641 as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

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

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

#### **CULTURAL AFFAIRS, DEPARTMENT OF**

On June 1, 2016, the State Librarian of the New Mexico State Library repealed 4.5.2 NMAC, State Grants in Aid to Public Libraries, and replaced it with 4.5.2 NMAC, State Grants in Aid to Public Libraries, effective June 1, 2016.

#### **CULTURAL AFFAIRS, DEPARTMENT OF**

On May 12, 2016, the Secretary of the Department of Cultural Affairs and the State Historic Preservation Officer repealed 4.51.5 NMAC, Archaeological Records Repository and Cultural Resource Information System, and replaced it with 4.10.19 NMAC, Cultural Resource Information System and Records, effective May 31, 2016.

#### **CULTURAL AFFAIRS, DEPARTMENT OF**

**TITLE 4           CULTURAL  
RESOURCES  
CHAPTER 5       STATE LIBRARY  
PART 2           STATE GRANTS IN  
AID TO PUBLIC LIBRARIES**

**4.5.2.1           ISSUING AGENCY:**  
Department of Cultural Affairs, New Mexico State Library Division.  
[4.5.2.1 NMAC - Rp, 4.5.2.1 NMAC, 6/1/2016]

**4.5.2.2           SCOPE:** Public libraries and developing public libraries.  
[4.5.2.2 NMAC - Rp, 4.5.2.2 NMAC, 6/1/2016]

**4.5.2.3           STATUTORY  
AUTHORITY:** Subsection I of Section 18-2-4 NMSA 1978 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Subsection B of Section 18-2-4 NMSA 1978 directs the state librarian to administer grants-in-aid

and encourage local library services and generally promote an effective statewide library system.

[4.5.2.3 NMAC - Rp, 4.5.2.3 NMAC, 6/1/2016]

**4.5.2.4           DURATION:**  
Permanent.

[4.5.2.4 NMAC - Rp, 4.5.2.4 NMAC, 6/1/2016]

**4.5.2.5           EFFECTIVE DATE:**  
June 1, 2016 unless a later date is cited at the end of a section.

[4.5.2.5 NMAC - Rp, 4.5.2.5 NMAC, 6/1/2016]

**4.5.2.6           OBJECTIVE:** The objective of this rule is to describe the state grants in aid to public libraries program (hereinafter “the state aid program”) and to establish criteria for reviewing and awarding the grants.

The purpose of the state aid program is to provide financial assistance that encourages and supports public library service by public libraries and developing public libraries. The state aid program is intended to supplement and encourage local effort in providing local library service. The state aid program consists of developing library grants and public library grants that may be used for: library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of library services.

[4.5.2.6 NMAC - Rp, 4.5.2.6 NMAC, 6/1/2016]

**4.5.2.7           DEFINITIONS:**  
**A.           “Annual report”**

means a report sent once a year from a public library or developing library to the state library. An annual report shall at least accomplish the following tasks:

(1) provide information in the time, manner, and form prescribed by the state library;

(2) describe prior fiscal year’s activities, including income, expenditures, statistics on collections and services, and compliance with state aid program criteria;

(3) be certified by the library as to the accuracy, completeness, and truthfulness of the information provided; and

(4) be approved by and on file at the state library.

**B.           “Basic library services”** means free services provided in a library’s legal service area, including library collections with circulating materials; reference services; a catalog of library holdings accessible by the public; educational programs; interlibrary loan services; public access computers connected to the internet; and internet connectivity for patrons and staff. Basic library service may include any technology or service that relates to the access to information for patron use.

**C.           “Bookmobile”** means a mobile branch that offers basic library services with the exception of computers and internet connectivity.

**D.           “Branch”** means an auxiliary service administered by a public or developing library that provides the following public services:

- (1) separate quarters from the main library;
- (2) a permanent library collection and reference services;
- (3) offers basic library services;
- (4) staff present during open hours; and
- (5) at least 20 hours of public access to physical quarters per week on an annual basis.

**E.           “Circulating materials”** means items from library collections that are checked out by patrons for use outside of the library.

**F.           “Collection development policy”** means guidelines used by library staff for making decisions about the budget for and selection, management, and preservation of library collections.

**G.           “Community analysis and needs assessment”** means an evaluation of a library’s legal service area, its current and future needs, and the library’s role in meeting those needs.

**H.           “Developing library”** means a New Mexico organization

that has initiated and is progressively implementing basic library services within its legal service area.

(1) A developing library is established through one of the following mechanisms:

(a) through an ordinance or legal resolution of a subdivision of state government;

(b) by a contract between a private entity and a subdivision of state government;

(c) by an Indian nation; or

(d) as a non-profit corporation.

(2) A developing library provides the following public services:

(a) staff present during open hours;

(b) at least 15 hours of public access to physical quarters per week on an annual basis; ;

(c) at least two days of public access to physical quarters per week on an annual basis; and

(d) hours of operation posted on or near the library.

**I. "Fiscal year"** means July 1 through June 30.

**J. "Legal service area"** means the geographic area for which a library has been established to offer services and from which, or on behalf of which, the library derives income. The legal service area may be defined by a written agreement with a political subdivision of the state for which the library is the primary service provider. The most recent United States or tribal census determines the population of the legal service area if the population figures are given separately for that area. If the census does not report a discreet population figure for the legal service area, then the state library in its sole discretion shall determine the population for the library's legal service area.

**K. "Library board"** means an administrative or advisory group comprised of representative members of the library's community.

**L. "Library collections"** means library items for public use. Library collections may include such items as books, videos, sound recordings, licensed databases, and equipment. A portion of the collections must be circulating materials.

**M. "Library equipment"** means equipment associated with the delivery of library services.

**N. "Library staff"**

means salaried employees or volunteers whose time is regularly dedicated to delivery of library services.

**O. "Matching funds"** means the amount expended in a fiscal year for library collections from any source other than the state. Sources for matching funds may include municipal funds, county funds, tribal funds, or money acquired through donations, fund-raising, or grants. In-kind contributions are not matching funds. Matching funds do not include funds used for operating costs, administrative costs, or regular staff salaries.

**P. "Public library"** means a New Mexico organization that offers basic library services within its legal service area.

(1) A public library is established through one of the following mechanisms:

(a) through an ordinance or legal resolution adopted by a subdivision of state government;

(b) by a contract between a private entity and a subdivision of state government;

(c) by an Indian nation; or

(d) as a non-profit corporation.

(2) A public library provides the following public services:

(a) staff dedicated to the library

(b) year-round public access to the physical location at least 25 hours per week;

(c) at least two days of public access to physical quarters per week on an annual basis; and

(d) hours of operation posted on or near the library.

**Q. "Reference services"** means the provision of library staff to answer reference questions during all the hours the library is open.

**R. "Strategic plan"** means a detailed program to ensure that library services meet the current and future needs of the library's legal service area. The strategic plan shall include a vision and mission statement as well as goals and objectives, and it shall cover a period of at least the next three years and not exceed five years.

[4.5.2.7 NMAC - Rp, 4.5.2.7 NMAC, 6/1/2016]

#### 4.5.2.8 DEVELOPING LIBRARY GRANT:

**A. Purpose:** To supplement an eligible developing library's budget for up to five years until it meets the minimum requirements for a public library grant.

**B. Description:** The developing library grant funds shall be used for library collections, library staff salaries, library staff training, library equipment, or other operational expenditures associated with delivery of basic library services.

**C. Criteria for reviewing and awarding developing library grants:** The state library shall award developing library grants to developing libraries that meet or exceed the following criteria.

(1) timely submission of an annual report with the state library;

(2) receipt of no more than five, consecutive, awards of developing library grants;

(3) continuous operation for at least nine months;

(4) demonstration of receipt of financial support from sources other than the state. In particular, matching funds in relation to the population of the library's legal service shall be at least \$0.25 per person in its first year and any non-consecutive years of developing library grant application participation; \$0.50 per person in its second consecutive year; \$0.75 per person in its third consecutive year; \$1.00 per person in its fourth consecutive year; and \$1.25 per person in its fifth consecutive year;

(5) maintenance of adequate financial and other records to support the library's eligibility for receiving library grants; the state library may audit such records annually, or as needed, as determined in the state library's sole discretion;

(6) compliance with all state statutes and rules;

(7) compliance with requirements for developing library grants;

(8) employment of a designated director;

(9) creation of a library board that meets at least two times a year and adheres to the state's open meetings law; and

(10) successful expenditure of all developing library grant funds during the prior fiscal year, if applicable.

[4.5.2.8 NMAC - Rp, 4.5.2.8 NMAC, 6/1/2016]

**4.5.2.9 PUBLIC LIBRARY GRANT:**

**A. Purpose:** To supplement eligible public libraries' budgets.

**B. Description:** The public library grant funds shall be used for library collections, library staff salaries, library staff training, library equipment, or other operational expenditures associated with delivery of basic library services.

**C. Criteria for reviewing and awarding public library grants:** The state library shall review and award public library grants to public libraries that have met the following criteria:

- (1) timely submission of an annual report with the state library for the current year and a minimum of two years prior;
- (2) continuous operation for at least one year;
- (3) receipt of a minimum of three consecutive developing library grants;
- (4) demonstration of receipt of financial support from sources other than the state; in particular, matching funds in relation to the population of the library's legal service area shall be at least \$1.50 per person;
- (5) maintenance of adequate financial and other records to support the public library's eligibility for receiving library grants; the state library may audit such records annually, or as needed, as determined in the state library's sole discretion;
- (6) compliance with all state statutes and rules;
- (7) compliance with all requirements for public library grants;
- (8) Formation of a strategic plan that the public library reviews, updates, and files with the state library every three years, and a community analysis and needs assessment, and a collection development policy that the public library reviews, updates, and files with the state library every five years;
- (9) maintain a library board that meets at least two times a year and adheres to the state open meetings law;
- (10) employment of a designated director; and
- (11) successful expenditure of all public library grant funds during the prior fiscal year.

[4.5.2.9 NMAC - Rp, 4.5.2.9 NMAC, 6/1/2016]

**4.5.2.10 DISTRIBUTION OF FUNDS:**

The library division shall distribute state grants in aid in the following manner:

**A. Application:** The annual report submitted for the immediate prior year shall serve as the developing or public library's application for state grants-in-aid.

**B. Allocation:** For state grants-in-aid, the state library shall award at least a quarter of a share (0.25) of the annual allocation to developing libraries, one (1) share of the allocation to each public library, and one half (.50) of a share of the allocation to each branch and bookmobile.

**C. Notification:** Following the end of the application period, the state library shall calculate the grant award for each library. The state library shall notify all eligible public libraries informing them of the amount of their grant.

**D. Request for payment:** Each library shall return the signed grant agreement to the state library within 60 days of receipt of the agreement measured from the postmark or electronic postmark. Upon timely receipt of the grant agreement, the state library shall process a payment request form. If a library does not submit the grant agreement within the required time period, it forfeits the grant award.

**E. Maintenance of effort:** A library's local budget shall not be reduced by its governing body as a result of eligibility for the state aid program. Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds from the library grants award for one year after the reduction has occurred.

[4.5.2.10 NMAC - Rp, 4.5.2.11 NMAC, 6/1/2016]

**4.5.2.11 LIMITATION ON FUNDS:**

**A.** The grant amounts may vary by year, depending on the amount of the appropriation to the state library by the state legislature and the state library's other budgeted expenses.

**B.** Libraries shall not use grant funds for administrative or indirect expenses such as budgeting, accounting, financial management, information systems, data processing, and legal services

**C.** Public and developing libraries shall expend all grant funds during the fiscal year in which they are awarded.

**D.** Should a library cease

providing basic library services prior to or within thirty days of funding; grant funds shall revert to the state library.  
[4.5.2.11 NMAC - Rp, 4.5.2.12 NMAC, 6/1/2016]

**4.5.2.12 APPEAL OR VARIANCE:**

**A.** In the event that any library is denied a grant by the state library or does not meet a requirement of this rule, that library may appeal the decision of the state library or request a variance from the requirement.

**B.** Such appeal or variance shall be made in writing to the state librarian within 10 days of notification of denial of funds or within 10 days of discovery of non-compliance with a requirement. The appeal or variance shall state all relevant facts and conditions.

**C.** The state librarian shall consider each appeal or request for variance and respond in writing to the appealing or requesting party with a decision within 30 days. The state librarian's decision is the department of cultural affairs' final action on the matter.  
[4.5.2.12 NMAC - Rp, 4.5.2.14 NMAC, 6/1/2016]

**HISTORY OF 4.5.2 NMAC:**

**Pre-NMAC History:**  
NMSL 67-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Revised April 19, 1967, filed 5/3/67.  
NMSL 67-2, State Grants-In-Aid To Public Libraries, Rules and Regulations, Amended August 28, 1967, filed 8/30/67.  
NMSL 68-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Amended August 28, 1967, filed 12/19/68.  
NMSL 69-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Revised May 26, 1969, filed 6/20/69.  
NMSL 69-2, State Grants-In-Aid To Public Libraries, Rules and Regulations; Revised September 16, 1969, filed 10/9/69.  
NMSL 70-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, Revised February 26, 1970, filed 4/27/70.  
NMSL 73-4, State Grants-In-Aid To Public Libraries, Rules and Regulations, June 1973, filed 7/10/73.  
NMSL 74-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, July 19, 1974, filed 8/16/74.  
NMSL 75-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, 1975, filed 6/9/75.  
NMSL 76-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, March 31, 1976, filed 4/27/76.

NMSL 77-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, January 21, 1977, filed 2/4/77.

NMSL Rule 79-1B, State Grants-In-Aid To Public Libraries, Rules and Regulations, June 11, 1979, filed 6/25/79. NMSL 79-3, State Grants-In-Aid To Public Libraries, Rules and Regulations, July 1, 1979, filed 7/27/79.

NMSL 81-2, State Grants-In-Aid To Public Libraries, Rules and Regulations, May 11, 1981, filed 5/12/81.

NMSL 89-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, filed 10/23/89.

NMSL 93-1, State Grants-In-Aid To Public Libraries, Rules and Regulations, filed 1/28/93.

#### History of Repealed Material:

NMSL 93-1, State Grants-In-Aid To Public Libraries, Rules and Regulations (filed 1/28/93), repealed 7/1/2000.

4.5.2 NMAC, State Grants-In-Aid To Public Libraries (filed 6/19/2000), repealed 7/1/2009.

4.5.2 NMAC, State Grants-In-Aid To Public Libraries (filed 7/1/2009), repealed 6/1/2016.

#### Other History:

NMSL 93-1, State Grants-In-Aid To Public Libraries, Rules and Regulations (filed 1/28/93) was replaced by 4.5.2 NMAC, State Grants In Aid To Public Libraries, effective 7/1/2000.

4.5.2 NMAC, State Grants In Aid To Public Libraries (filed 6/19/2000) was replaced by 4.5.2 NMAC, State Grants In Aid To Public Libraries, effective 7/1/2009.

4.5.2 NMAC, State Grants In Aid To Public Libraries (filed 7/1/2009) was replaced by 4.5.2 NMAC, State Grants In Aid To Public Libraries, effective 6/1/2016.

## CULTURAL AFFAIRS, DEPARTMENT OF

### TITLE 4 CULTURAL RESOURCES

### CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION

### PART 19 CULTURAL RESOURCE INFORMATION SYSTEM AND RECORDS

**4.10.19.1 ISSUING AGENCY:** Department of cultural affairs, state historic preservation division. [4.10.19.1 NMAC - Rp, 4.51.5.1 NMAC, 5/31/16]

**4.10.19.2 SCOPE:** This rule applies to the state historic preservation division and entities wishing to access, use or submit records to the records repository or NMCRIS.

[4.10.19.2 NMAC - Rp, 4.51.5.2 NMAC, 5/31/16]

**4.10.19.3 STATUTORY AUTHORITY:** Subsection D of Section 18-6-8 NMSA 1978 and Section 18-6-11.1 of the Cultural Properties Act.

[4.10.19.3 NMAC - Rp, 4.51.5.3 NMAC, 5/31/16]

**4.10.19.4 DURATION:** Permanent.

[4.10.19.4 NMAC - Rp, 4.51.5.4 NMAC, 5/31/16]

**4.10.19.5 EFFECTIVE DATE:** May 31, 2016, unless a later date is cited at the end of the section.

[4.10.19.5 NMAC - Rp, 4.51.5.5 NMAC, 5/31/16]

**4.10.19.6 OBJECTIVE:** This rule describes the procedures to access and use cultural resource records in the NMCRIS and the records repository while minimizing loss of archaeological resources in the state of New Mexico. In addition, the rule describes the procedures to register and to submit cultural resource records to NMCRIS and the repository and establishes reasonable fees for use of the records.

[4.10.19.6 NMAC - Rp, 4.51.5.6 NMAC, 5/31/16]

#### 4.10.19.7 DEFINITIONS:

**A. "Application"** means the document, provided by HPD on its website or other method that is used to request access to NMCRIS or to the records repository.

**B. "ARMS"** means the archaeological records management section, a bureau within the historic preservation division that manages NMCRIS and the repository.

**C. "ARMS special request form"** means the document, provided by HPD on its website or other method that is used to request ARMS's assistance in obtaining information from NMCRIS or the records repository including customized database queries.

**D. "Assisted access user"** means an individual or entity with a property interest or regulatory oversight that does not meet the standards for qualified user, but wants access to information about cultural properties or cultural resource investigations that

is relevant to the property interest or regulatory oversight.

**E. "Cooperative agreement"** means an agreement between HPD and a public agency or tribal government to maintain and expand NMCRIS and the repository.

**F. "Cultural Properties Act"** means Sections 18-6-1 through 18-6-17 NMSA 1978.

**G. "Cultural property" or "cultural resource"** means a structure, place, site or object that has or may have historic, archaeological, scientific, architectural or other cultural significance.

**H. "CPRC"** means the cultural properties review committee created pursuant to Section 18-6-9 of the Cultural Properties Act.

**I. "Cultural resource investigation" or "investigation"** means the study of a specific cultural property or specific area to identify, record, evaluate, interpret or protect cultural properties.

**J. "Cultural resource records"** means the paper and digital files and related materials including, but not limited to, forms, journals, maps, databases, photographs, nominations, manuscripts and reports associated with cultural properties or cultural resource investigations conducted in the state of New Mexico.

**K. "DCA"** means the department of cultural affairs created pursuant to Section 9-4A-4 NMSA 1978.

**L. "HPD"** means the historic preservation division within the DCA created pursuant to Subsection A of Section 18-6-8 of the Cultural Properties Act.

**M. "HPD website"** means <http://nmhistoricpreservation.org> or its successor site.

**N. "Independent researcher"** means a qualified user who is unaffiliated with a qualified institution and is performing uncompensated research for the researcher's own benefit. Paid consultants are not independent researchers.

**O. "Individual account"** means an account for accessing NMCRIS and the records repository for each qualified user.

**P. "Institutional agreement"** means a document, signed annually by qualified institutions or independent researchers. The agreement specifies the requirements for using and disseminating information from NMCRIS and the records repository.

**Q. "NMCRIS"** means the New Mexico cultural resource information system, an online computer

information system that integrates geographic, research, and management data on cultural properties and cultural resource investigations.

**R. “Performing entity” or “performing agency”** means an individual, corporation, partnership, trust, association, educational institution, foundation, museum, public agency or tribal government that carries out cultural resource investigations and creates cultural resource records.

**S. “Public agency”** means a federal or state agency or political subdivision of the state that has administrative responsibility for consulting with the state historic preservation officer under federal or state laws including but not limited to section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and Section 18-6-8.1 of the Cultural Properties Act, Section 18-8-7 of the Prehistoric and Historic Sites Preservation Act, and Section 18-6A-5 of the Cultural Properties Protection Act.

**T. “Qualified institution”** means an entity, other than an independent researcher, that signs an institutional agreement and that authorizes one or more qualified users to represent it for purposes of accessing the records repository and NMCRIS.

**U. “Qualified user”** means an individual listed in the state historic preservation officer directory or an individual with a bachelor’s degree in archaeology, anthropology, architecture, architectural history, historic architecture, history, American studies, historic preservation, or a closely related field from an accredited educational institution or other appropriate education, professional experience, and training as determined by the registrar.

**V. “Records repository” or “repository”** means the archives maintained by HPD that contain cultural resource records including but not limited to cultural resource investigation reports, plans, and manuscripts; archaeological resource records; historic building, structure, and other cultural property records; state register of cultural properties and national register of historic places nominations; and related materials.

**W. “Registrar”** means the employee of HPD assigned to manage ARMS.

**X. “Report recipient”** means an organization, public agency, tribal government, or individual that commissions a performing entity to conduct a cultural resource investigation.

**Y. “SHPO”** means the

state historic preservation officer and is the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act who serves as the director of HPD.

**Z. “SHPO directory”** means the list of cultural resource and historic preservation professionals established pursuant to 4.10.8 NMAC.

**AA. “User’s guide”** means the manual issued by HPD on its website or through other distribution methods that describes the process and standards to submit cultural resource records to NMCRIS and the records repository. [4.10.19.7 NMAC - Rp, 4.51.5.7 NMAC, 5/31/16]

#### **4.10.19.8 ACCESS TO RECORDS REPOSITORY AND NMCRIS:**

**A. Registrar:** The registrar shall:

(1) only disseminate information from the records repository or NMCRIS that conforms with Section 18-6-11.1 of the Cultural Properties Act. If a release of information from the records repository or NMCRIS does not conform with Section 18-6-11.1 or other laws, the registrar shall redact and not release that information;

(2) make applications available to the public on the HPD website or through other convenient method; and

(3) grant access to the records repository and NMCRIS by applying the standards in this rule. If the registrar cannot determine whether an applicant is an independent researcher, qualified user, or qualified institution, the registrar shall refer the application to the SHPO for a final decision.

**B. Qualified institutions:**

(1) Qualified institutions shall submit a completed institutional agreement to HPD annually. The institutional agreement is valid only for the calendar year in which it is executed. The qualified institution shall designate the individual within the qualified institution who has signatory authority to authorize qualified users to use the qualified institution’s account. The agreement shall require the institution to pay all applicable fees for the authorized qualified users’ uses of NMCRIS and the records repository on the qualified institution’s behalf.

(2) Qualified institutions shall submit an individual account application for each qualified user authorized by the qualified institution to represent it for purposes of accessing the

records repository and NMCRIS. Signed approval by the qualified institution on the individual account application authorizes HPD to charge all applicable fees under this rule to the qualified institution.

(3) Public agencies or tribal governments may enter into a cooperative agreement with HPD in lieu of an institutional agreement. Cooperative agreements shall specify conditions for access to and use of NMCRIS and the repository that are consistent with the requirements for institutional agreements, unless this rule expressly provides otherwise. Entities may contact the registrar to negotiate a cooperative agreement.

**C. Independent researchers:** Independent researchers shall submit a completed institutional agreement annually. The agreement is valid only for the calendar year in which it is executed. The agreement shall indicate the independent researcher’s agreement to use the NMCRIS and repository only for research that is uncompensated and that is for the independent researcher’s own benefit. Individuals working as paid consultants shall submit an institutional agreement as a qualified institution and not as an independent researcher.

**D. Qualified users:**  
(1) Qualified users wishing to access the records in the repository and NMCRIS shall be affiliated with a qualified institution with a valid institutional agreement or a public agency or tribal government with a cooperative agreement, or shall be an independent researcher with a valid institutional agreement.

(2) Qualified users shall complete, sign, and submit an individual account application to HPD. Upon receipt of a user name and password from HPD, the qualified user may access NMCRIS online and may access the records repository under the supervision of HPD staff. Qualified users shall adhere to conditions in the individual account application for use of the materials in the repository and NMCRIS.

(3) Qualified users shall not share user name or password information with anyone and shall not otherwise allow others to access NMCRIS. Qualified users shall not use, or assist others with using, information from NMCRIS or the repository to violate state or federal laws.

**E. Assisted access users:** Assisted access users may submit an ARMS special request form to HPD to obtain information from NMCRIS or the records repository. If the registrar

approves the request, the assisted access user shall sign a nondisclosure agreement provided by HPD. Upon receipt of the signed nondisclosure agreement, HPD shall provide the relevant information or records, subject to the registrar's redaction of protected information.

**F. Others:** Individuals who are not assisted access users or qualified users and who wish to examine records in the repository shall contact HPD to make an appointment and shall specify the purpose of the visit and records the individual wishes to review. The individual may view the records, subject to signing a nondisclosure agreement and redaction of protected information by the registrar, if the registrar determines that granting the request conforms with Section 18-6-11.1 of the Cultural Properties Act.

**G. Appeal of registrar access decisions:**

(1) An entity aggrieved by a decision of the registrar regarding access to cultural resource records may appeal. Appeals shall be submitted in writing to the SHPO within ten calendar days of the decision with a statement of reasons for the appeal.

(2) The SHPO shall respond in writing within ten calendar days of receipt of an appeal.

(3) The SHPO's decision on the appeal is DCA's final action on the matter.

**F. Violations of this section or the terms of an application or agreement:**

(1) If the registrar discovers a violation of this section or the terms of an individual account application or institutional agreement, the registrar may restrict, temporarily suspend, or prohibit future access to NMCRIS or the repository.

(2) An entity aggrieved by the registrar's decision may appeal. Appeals shall be submitted to the SHPO in writing within ten calendar days of the decision with a statement of reasons for the appeal.

(3) The SHPO shall respond in writing within 10 calendar days of receipt of an appeal.

(4) The SHPO's decision on the appeal is DCA's final action on the matter.

**G. Computation of time:** In computing the period of time prescribed for appeal, the day from which the period of time begins to run shall not be included. The last calendar day shall be included in the computation unless it is a Saturday, Sunday or a day on which a

legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. [4.10.19.8 NMAC - N, 5/31/16]

#### **4.10.19.9 REGISTRATION AND RECORDS SUBMISSION:**

**A. Registration:**  
(1) Performing entities shall register all cultural resource investigations conducted in the state of New Mexico in NMCRIS unless the investigation, in its entirety, occurs on tribal lands as defined in 36 CFR 800.16(x) and the Indian nation, tribe(s), or pueblo(s) associated with the land has a tribal historic preservation officer who has assumed all or part of the functions of SHPO pursuant to 54 U.S.C. § 302702.

(2) Performing entities shall register each cultural resource investigation and each associated cultural resource in NMCRIS according to the most recent version of the user's guide. If a performing entity does not have a NMCRIS account at the time it conducts an investigation, the performing entity shall either contact HPD to set up an account and then register the investigation or make arrangements with ARMS to register the investigation with ARMS's assistance.

#### **B. Submittal of records:**

(1) **Digital submittals:** Performing entities shall submit cultural resource records according to the most recent version of the user's guide by entering data on investigations and cultural resources into NMCRIS through the online electronic forms and through the online map service. After entering the data, the performing entity shall download the electronic forms with the online data entries for the investigation and for each resource and shall complete any remaining sections not available online. Once the forms are complete, the performing entity shall scan them and the required attachments, and upload the scanned forms and the cultural resource investigation reports into NMCRIS. If performing entities are unable to upload any forms or documents into NMCRIS, they shall either make arrangements with ARMS to upload the documents or they shall submit digital copies of the forms or documents to NMCRIS separately and concurrently with the submittal of the paper records.

(2) **Paper submittals:** Unless submitted to HPD by the report recipient, the performing entity shall submit one printed copy of the investigation's cultural resource reports, the NMCRIS information abstract form,

the associated laboratory of anthropology (LA) site records and historic cultural properties inventory (HCPI) forms, and any related materials to HPD for archiving in the records repository. Performing entities shall include the NMCRIS activity number, LA site numbers, and HCPI numbers associated with the relevant cultural resources on all documents they submit to NMCRIS and the records repository.

#### **C. Failure to comply with this section:**

(1) If the registrar discovers a violation of this section, the registrar may restrict, temporarily suspend, or prohibit future access to NMCRIS or the repository.

(2) An entity aggrieved by the registrar's decision may appeal. Appeals shall be submitted to the SHPO in writing within ten calendar days of the decision with a statement of reasons for the appeal.

(3) The SHPO shall respond in writing within ten calendar days of receipt of an appeal.

(4) The SHPO's decision on the appeal is DCA's final action on the matter.

**D. Computation of time:** In computing the period of time prescribed for appeal, the day from which the period of time begins to run shall not be included. The last calendar day shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. [4.10.19.9 NMAC - N, 5/31/16]

#### **4.10.19.10 FEES:**

**A. Use of the records repository and NMCRIS is contingent upon the HPD's receipt of reasonable fees as provided in this rule. The SHPO shall expend the fees received solely for the maintenance and administration of the records repository and NMCRIS, consistent with HPD's appropriated budget. Expenditures for the maintenance and administration of the records repository and the NMCRIS include, but are not limited to, software licensing and maintenance, software development, computer equipment lease or purchase, contractual services, staff time, facilities, and supplies.**

#### **B. Fee schedule:**

(1) **Access fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay an annual access fee that entitles qualified

users of the qualified institution to unlimited on-site use of the records repository and access to NMCRIS on the following basis: \$200 per year for qualified institutions with three or fewer supervisory staff; \$300 per year for qualified institutions with four to 10 supervisory staff; \$500 per year for qualified institutions with 11-20 supervisory staff; and \$800 per year for qualified institutions with 21 or more supervisory staff. As used in this paragraph, “supervisory staff” means supervisory archaeologists or crew chiefs who meet the qualifications outlined in 4.10.8.10 NMAC. Access fees are due each calendar year and shall accompany a signed institutional agreement.

(2) **Registration fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay registration fees for cultural resource investigations consistent with the following fee schedule.

(a) Fees for archaeological surveys are based on the total area surveyed as measured in acres, using the schedule below:

Class number	Survey size (acres +/-)	Survey Registration Fees
1	<2	\$25
2	2 to 4.99	\$50
3	5 to 9.99	\$75
4	10 to 19.99	\$100
5	20 to 39.99	\$125
6	40 to 79.99	\$200
7	80 to 119.99	\$300
8	120 to 199.99	\$400
9	200 to 399.99	\$500
10	400 to 599.99	\$800
11	600 to 999.99	\$1000
12	1,000 to 1,499.99	\$2000
13	1,500 to 1,999.99	\$2500
14	2,000 to 2,499.99	\$3000
15	2,500 to 3,000	\$3500
16	greater than 3,000 acres	\$500 more for each 500 acres or fraction thereof over 3,000 acres

(b) Fees for surveys that record all types of cultural resources are based on the total area of archaeological survey as measured in acres using the schedule above.

(c) The fee is twenty dollars (\$20) to register damage assessments, regional research designs, cultural overviews or historic contexts, and small monitoring projects with five or fewer archaeological sites. The fee is seventy-five dollars (\$75) for monitoring projects with more than five archaeological sites and for all test excavation, excavation, or mitigation projects. Add fifteen dollars (\$15) to the seventy-five dollars (\$75) fee for each archaeological site.

(3) **Staff assistance fees:** With the exception of public agencies or tribal governments with a cooperative agreement, additional fees for HPD staff assistance with cultural resources records apply as follows:

(a) Qualified institutions shall pay seventy-five dollars (\$75) per-hour for assistance with records or map checks when the assistance time exceeds one-half hour on a given business day, rounding increments to the next full hour.

(b) Qualified institutions shall pay one hundred fifty dollars (\$150) per hour for assistance with custom database queries and creation of electronic data files, with a one hour minimum and rounding increments to the next full hour.

(c) Assisted access users shall pay two hundred fifty (\$250) per hour for assistance, with a one hour minimum, and rounding increments to the next full hour.

(d) HPD may charge reasonable fees to make copies of records.

(4) **Fees for researchers:** Independent researchers and educational institutions engaged in academic research are not subject to any fees, other than copy fees, provided they have a current institutional agreement on file and they submit the results of the research to HPD in accordance with 4.10.19.9 NMAC.

C. **Consolidated fee schedule:** At least 60 days prior to implementation, HPD shall provide written notice to all qualified institutions of the date that the following “consolidated fee schedule” shall go into effect. HPD shall also provide this notice on its website and may provide additional notice through other convenient methods. The “consolidated fee schedule” shall supersede the fee schedule outlined in Subsection B of this section on the date provided in the notice.

(1) **Access fees:** Authorized qualified users, designated by a qualified institution, shall have unlimited on-site use of the records repository and NMCRIS without paying access fees.

(2) **Registration fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay registration fees for cultural resource investigations consistent with the following fee schedule.

(a) Fees for archaeological surveys are based on the total area surveyed as measured in acres, using the schedule below:

Class number	Survey size (acres +/-)	Survey Registration Fee
1	<2	\$35
2	2 to 4.99	\$65
3	5 to 9.99	\$100
4	10 to 19.99	\$130
5	20 to 39.99	\$170
6	40 to 79.99	\$260
7	80 to 119.99	\$390
8	120 to 199.99	\$520
9	200 to 399.99	\$650
10	400 to 599.99	\$1,040
11	600 to 999.99	\$1,300
12	1,000 to 1,499.99	\$2,600
13	1,500 to 1,999.99	\$3,250
14	2,000 to 2,499.99	\$3,900
15	2,500 to 3,000	\$4,550
16	greater than 3,000 acres	\$650 more for each additional 500 acres or fraction thereof over 3,000 acres

(b) Fees for surveys that record all types of cultural resources are based on the total area of archaeological survey as measured in acres using the schedule above.

(c) The fee is fifty dollars (\$50) to register surveys that are solely architectural in scope. Add twenty-five dollars (\$25) to the fifty dollars (\$50) fee for each associated cultural resource.

(d) The fee is fifty dollars (\$50) to register all non-survey cultural resource investigations. Add twenty-five dollars (\$25) to the fifty dollar (\$50) fee for each associated cultural resource.

(3) **Staff assistance fees:** With the exception of public agencies or tribal governments with a cooperative agreement, fees for HPD staff assistance with cultural resources records apply as follows:

(a) Qualified institutions shall pay seventy-five dollars (\$75) per hour for assistance with records or map checks that require more than one-half hour in a given day, in not less than one hour increments, rounding increments to the next full hour.

(b) Qualified institutions shall pay one hundred fifty dollars (\$150) per hour for assistance with custom database queries and creation of electronic data files rounding increments to the next full hour.

(c) Assisted access users shall pay two hundred fifty dollars (\$250) per hour for assistance rounding increments of an hour to the next full hour.

(d) HPD may charge reasonable fees to make copies of records.

(4) **Fees for researchers:** Independent researchers and educational institutions engaged in academic research are not subject to any fees, other than copy fees, provided they have a current institutional agreement on file and they submit the results of the research to HPD in accordance with 4.10.19.9 NMAC.

**D. Cooperative agreement fees:** Except in cases the SHPO determines the historic preservation benefits are significant, cooperative agreements shall provide annual financial assistance to HPD.

**E. Delinquent accounts:** Accounts with balances that remain unpaid for more than 90 days are delinquent. HPD shall terminate institutional agreements with entities that have delinquent accounts.

[4.10.19.10 NMAC - Rp, 4.51.5.11 NMAC, 5/31/16]

#### **HISTORY OF 4.10.19 NMAC:**

Pre-NMAC History: None.

#### **History of Repealed Material:**

4.51.5 NMAC, Archaeological Records Repository and Cultural Resource Information System (filed 11/15/2002) repealed 1-1-2010.

4.51.5 NMAC, Archaeological Records Repository and Cultural Resource Information System, filed 12/2/2009, repealed 5/31/2016.

**Other History:** 4 NMAC 51.3.2, named Fees, Subpart 2 - Archaeological Records Repository And Cultural Resource Information System, filed 8/16/96 was renumbered, reformatted and amended to 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System, effective 1/1/03.

4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System (filed 11/15/2002) was replaced by 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System, effective 1-1-2010.

4.51.5 NMAC, Archaeological Records Repository and Cultural Resource Information System (filed 12/2/2009) was replaced by 4.10.19 NMAC, Cultural Resource Information System and Records, effective 5/31/2016.



**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
MINING COMMISSION**

Explanatory paragraph: This is an amendment to 19.10.3 NMAC, Section 303 and 304, effective May 31, 2016. In 19.10.3.303 NMAC, Subsections B through I and Subsections K through L were not published as there were no changes. In 19.10.3.304 NMAC, Subsections B through H and Subsections J through K were not published as there were no changes.

**19.10.3.303 MINIMAL IMPACT EXISTING MINING OPERATIONS:**

**A.** An existing mining operation that continues mining operations will not be considered a minimal impact existing mining operation if it exceeds 10 acres of disturbed land, ~~[except that an existing mining operation extracting humate may exceed 10 acres but not 20 acres if its approved closeout plan or reclamation plan provides for concurrent reclamation of mined-out areas.]~~ or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations that: (1) are located outside Bernalillo, Dona Ana and Santa Fe counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Permanent roads and areas within the permit area that are reclaimed will not be counted as part of the acreage limitation for a minimal impact existing mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status. Notwithstanding the frequency for inspections of minimal impact mining operations specified in Paragraph (4) of Subsection A of 19.10.11.1101 NMAC, if a minimal impact operation permit is issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

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**J.** The director shall determine if an operation is eligible for a

minimal impact operation permit. ~~[and] The director may conduct an evaluation or site visit which may include other agencies in making this determination for operations that do not exceed 10 acres of disturbance. In making this determination for operations with more than 10 acres of disturbance, the director shall conduct an on-site inspection which may include other agencies.~~

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[7-12-94, 2-15-96, 12-14-96; 19.10.3.303 NMAC - Rn, 19 NMAC 10.2.3.303, 05-15-01; A, 02-28-14; A, 05-31-16]

**19.10.3.304 MINIMAL IMPACT NEW MINING OPERATIONS:**

**A.** A minimal impact new mining operation will not exceed 10 acres of disturbed land, ~~[except that a new mining operation extracting humate may exceed 10 acres but not 20 acres if its approved closeout plan or reclamation plan provides for concurrent reclamation of mined-out areas]~~ or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations that: (1) are located outside Bernalillo, Dona Ana and Santa Fe counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Pre-existing roads and reclaimed acres within the permit area will not be counted as part of the acreage limitation for a minimal impact new mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status. In determining whether a proposed operation with between 10 and 40 acres of disturbed land is eligible for a minimal impact new mining permit, the director shall conduct a site visit that may include other agencies in accordance with Subsection I of 19.10.3.304 NMAC. Notwithstanding the frequency for inspections of minimal impact mining operations specified in Paragraph (4) of Subsection A of 19.10.11.1101 NMAC, if a minimal impact operation permit is issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

\*\*\*

**I.** The director shall determine if an operation is eligible for a minimal impact operation permit. ~~[and] The director may conduct an evaluation or site visit which may include other agencies in making this determination for operations that do not exceed 10 acres of disturbance. In making this determination for operations with more than 10 acres of disturbance, the director shall conduct an on-site inspection which may include other agencies.~~

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[7-12-94, 2-15-96; 19.10.3.304 NMAC - Rn, 19 NMAC 10.2.3.304, 05-15-01; A, 02-28-14; A, 05-31-16]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

The Human Services Department approved, at its 4/14/2016 hearing, to repeal its rule 8.311.3 NMAC, Methods and Standards for Establishing Payment-Inpatient Hospital Services (filed 12/13/2000) and replace it with 8.311.3 NMAC, Methods and Standards for Establishing Payment-Inpatient Hospital Services, effective 6/1/2016.

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 311 HOSPITAL  
SERVICES  
PART 3 METHODS AND  
STANDARDS FOR ESTABLISHING  
PAYMENT-INPATIENT HOSPITAL  
SERVICES**

**8.311.3.1 ISSUING AGENCY:** Human Services Department (HSD). [8.311.3.1 NMAC - Rp, 8.311.3.1 NMAC, 6/1/2016]

**8.311.3.2 SCOPE:** This rule applies to the general public. [8.311.3.2 NMAC - Rp, 8.311.3.2 NMAC, 6/1/2016]

**8.311.3.3 STATUTORY AUTHORITY:** The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services

under the Social Security Act as amended or by state statute. See Section 27-2-12 *et seq* NMSA 1978.

[8.311.3.3 NMAC - Rp, 8.311.3.3 NMAC, 6/1/2016]

**8.311.3.4 DURATION:**

Permanent.

[8.311.3.4 NMAC - Rp, 8.311.3.4 NMAC, 6/1/2016]

**8.311.3.5 EFFECTIVE DATE:**

June 1, 2016, unless a later date is cited at the end of a section.

[8.311.3.5 NMAC - Rp, 8.311.3.5 NMAC, 6/1/2016]

**8.311.3.6 OBJECTIVE:**

The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance programs. [8.311.3.6 NMAC - Rp, 8.311.3.6 NMAC, 6/1/2016]

**8.311.3.7 DEFINITIONS:**

[RESERVED]

**8.311.3.8 [RESERVED]**

**8.311.3.9 METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL SERVICES:**

The New Mexico title XIX program reimburses appropriately licensed and certified acute care hospitals for inpatient services as outlined in this part. Procedures and policies governing state licensure, certification of providers, utilization review and any other aspect of state regulation of the title XIX program not relating to the method of computing payment rates for inpatient services are not affected by this part.

[8.311.3.9 NMAC - Rp, 8.311.3.9 NMAC, 6/1/2016]

**8.311.3.10 GENERAL REIMBURSEMENT POLICY:**

The state of New Mexico human services department (hereinafter called the department) will reimburse inpatient hospital services rendered on or after October 1, 1989 in the following manner:

**A.** Covered inpatient services provided to eligible recipients admitted to in-state acute care hospitals and acute care units on or after October 1, 1989 will be reimbursed at a prospectively set rate, determined by the methodology set forth in 8.311.3.12 NMAC, unless the hospital or unit is classified into one of the prospective payment system (PPS) exempt categories outlined in Subsection C through D below.

**B.** Covered inpatient services provided to eligible recipients admitted to acute care hospitals and acute care units within hospitals located out-of-state or in border areas (Mexico excluded) will be reimbursed at a prospectively set rate as described in Paragraph (16) of Subsection C of 8.311.12 NMAC, unless the hospital or unit is classified into one of the prospective payment system (PPS) exempt categories outlined in Subsections C through D below or at a negotiated rate not to exceed the rate paid by federal programs such as medicare. Negotiation of rates will only be allowed when the department determines that the hospital provides a unique service required by an eligible recipient.

**C.** Inpatient services provided in rehabilitation and specialty hospitals and medicare PPS-exempt distinct part units within hospitals will be reimbursed using the provisions and principles of reimbursement set forth in Public Law 97-248. This legislation, which was effective October 1, 1982, is commonly referred to as TEFRA (Tax Equity and Finance Reduction Act) and is described in 8.311.3.11 NMAC.

**D.** Indian health services hospitals will be reimbursed using a per diem rate established by the federal government.

**E.** New Mexico providers entering the medical assistance division (MAD) program will be reimbursed at the peer group median rate for the applicable peer group, until such time as a distinct rate can be established, unless the hospital meets the criteria for prospective payment exemption as described in Subsections C through D above.

**F.** All hospitals which meet the criteria in Subsection A of 8.311.3.13 NMAC will be eligible for a disproportionate share adjustment.

**G.** Effective for discharges on or after April 1, 1992, and in accordance with Section 4604 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, the department provides for an outlier adjustment in payment amounts for medically necessary inpatient services involving exceptionally high costs or long lengths of stay for children who have not attained the age of six years in disproportionate share hospitals and for infants under one year of age in all hospitals. The outlier adjustment for these cases is described in Subsection F of 8.311.3.12 NMAC.

**H.** MAD covered inpatient services provided in specialty hospitals will be reimbursed at an interim

rate established by MAD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principals. If a provider is not cost settled, the reimbursement rate will be at the provider's cost to charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012. Otherwise, rates are established after considering available cost to charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration.

**I.** The reimbursement rates established by MAD using the reimbursement principles stated in 8.311.3 NMAC may be reduced or limited by budget availability at the department's discretion.

[8.311.3.10 NMAC - Rp, 8.311.3.10 NMAC, 6/1/2016]

**8.311.3.11 PAYMENT METHODOLOGY FOR PPS-EXEMPT HOSPITALS AND EXEMPT UNITS WITHIN HOSPITALS:**

**A. Application of TEFRA principles of reimbursement:**

**(1)** The principles and methods identified in Public Law 97-248 provision (TEFRA), effective October 1, 1982, regarding allowable payment for inpatient hospital services, and any subsequent changes to such provision shall be used to determine:

**(a)** the amount payable by the department through its fiscal agent for services covered under the MAD program and provided to eligible recipients; and

**(b)** the manner of payment and the manner of settlement or overpayments and underpayment for inpatient services provided by hospitals for MAD reimbursement purposes, effective for all accounting periods which begin on or after October 1, 1983.

**(2)** The inflation factor used in the calculations will be identical to that used by medicare to update payments to hospitals which are reimbursed using the TEFRA methodology, except for the period October 9, 1991 through September 30, 1992, for which the inflation factor will be .5 percent for urban hospitals and 1.5 percent for rural hospitals.

**(3)** In accordance with Section 902 (s)(3) of the Social Security Act effective July 1, 1991, the TEFRA rate of increase limit for inpatient hospital services will not apply to the delivery of such services to any individual who has not attained

their first birthday, (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).

**B. Appeals:**

(1) Hospitals may appeal the target rate and application of same, if circumstances beyond the hospitals' control have caused the reimbursement rates to fall at least five percent below actual allowable costs.

(2) Such appeals must be filed in writing within 180 calendar days of the notice of final settlement and must contain sufficient supporting documentation to demonstrate that the circumstances causing the situation were not within the control of the hospital and that the continued imposition of the target rate would cause a significant financial hardship.

(3) The department shall review the supporting documentation and, if appropriate, grant an exemption from or modification of the target rate. The department's determination on the merits of the appeal will be made within 180 calendar days of receipt of the appeal request, although the state may make a determination to extend such period to a specified date as necessary.

[8.311.3.11 NMAC - Rp, 8.311.3.11 NMAC, 6/1/2016]

**8.311.3.12 PROSPECTIVE PAYMENT METHODOLOGY FOR HOSPITALS:** Payment for all covered inpatient services rendered to eligible recipients admitted to acute care hospitals (other than those identified in Subsection C through D of 8.311.3.10 NMAC) on or after October 1, 1989 shall be made based on a prospective payment approach which compensates hospitals an amount per discharge for discharges classified according to the diagnosis related group (DRG) methodology. The prospective rates for each hospital's MAD discharges will be determined by the department in the manner described in the following subsections.

**A. Services included in or excluded from the prospective payment rate:**

(1) Prospective payment rates shall constitute payment in full for each MAD discharge. Hospitals may not separately bill the eligible recipient or the MAD program for medical services rendered during an inpatient stay, except as described below. Hospitals may submit a claim for payment only upon the final discharge of an eligible recipient or upon completion of the transfer of the

eligible recipient to another acute care hospital.

(2) The prospective payment rate shall include all services provided to hospital inpatients. These services shall include all items and non-physician services furnished directly or indirectly to hospital inpatients, such as:

(a) laboratory services;  
(b) pacemakers and other prosthetic devices, including lenses and artificial limbs, knees and hips;

(c) radiology services, including computed tomography (CT) or magnetic resonance imaging (MRI) scans furnished to an eligible recipient by a physician's office, other hospital or radiology clinic;

(d) transportation (including transportation by ambulance) to and from another hospital or freestanding facility to receive specialized diagnostic or therapeutic services.

(3) Services which may be billed separately include:

(a) ambulance service when the eligible recipient is transferred from one hospital to another and is admitted as an inpatient to the second hospital;

(b) physician services furnished to an individual eligible recipient.

**B. Computation of DRG relative weights:**

(1) Relative weights used for determining rates for cases paid by DRG under the state plan shall be derived, to the greatest extent possible, from New Mexico MAD hospital claim data. All such claims are included in the relative weight computation, except as described below.

(2) Hospital claim data for discharges occurring from January 1, 1985 through approximately the end of calendar year 1988 are included in the computation and prepared as follows:

(a) claims are edited to merge interim bills from the same discharge;

(b) all MAD inpatient discharges will be classified using the DRG methodology, a patient classification system that reflects clinically cohesive groupings of inpatient cases which consume similar amounts of hospital resources; claims are assigned to appropriate DRGs using DRG grouper software;

(c) claims included in the computation of DRG relative weights were restricted to those claims for cases to be included in the proposed PPS; claims for services provided in PPS-exempt hospitals or units (or for services otherwise exempt from the PPS) were not used to compute DRG relative weights.

(3) Charges for varying years are adjusted to represent a common year through application of inflation indices as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC.

(4) Initial relative weights are computed by calculation of the average MAD charge for each DRG category divided by the average charge for all DRGs.

(5) Where the New Mexico MAD-specific claims and charge data are insufficient to establish a stable relative weight, a relative weight is imported from other sources such as the CHAMPUS or medicare prospective payment systems. Weights obtained from external sources are normalized so that the overall case mix is 1.0.

(6) The relative weights computed as described above shall remain in effect until the next year. At that time, the relative weights will be recalculated using the DRG grouper version similar to the one in use by medicare.

**C. Computation of hospital prospective payment rates:**

(1) **Rebasing of rates:** Beginning October 1, 1997, the department discontinued the rebasing of rates every three years. Hospital rates in effect October 1, 1996 were updated by the most current market basket index (MBI) as determined by the centers for medicare and medicaid services (CMS) for rates effective October 1, 1997 and succeeding years. Thereafter, pursuant to budget availability and at the department's discretion, the application of the MBI inflation factor will be reviewed based upon economic conditions and trends. A notice will be sent out every October 1<sup>st</sup>, informing the provider whether the MBI will be used for the upcoming year and what the percentage increase will be if the MBI or a percentage up to the MBI is authorized to be applied.

(2) **Base year discharge and cost data:**

(a) The state's fiscal agent will provide the department with MAD discharges for the provider's last fiscal year which falls in the calendar year prior to year one.

(b)

The state's audit agent will provide MAD costs incurred, reported, audited, or desk audited for the same period.

(c)

To calculate the total reimbursable inpatient operating costs from the cost and discharge data described above, the department will:

(i)

exclude estimated outlier discharges and costs as described in Paragraph (4) of Subsection C of 8.311.3.12 NMAC;

(ii)

exclude pass-through costs, as identified in the TEFRA provisions and further defined in Paragraph (3) of Subsection C of 8.311.3.12 NMAC below.

**(3) Definition**

**of excludable costs per discharge; reduction of excludable capital costs:**

(a)

The approach used by the department to define excludable costs parallels medicare's approach. Excludable costs are defined according to the PPS or TEFRA methodology and include such costs as those associated with capital, organ acquisition, and certified nurse anesthetists.

(b)

The pass-through capital costs identified using TEFRA provisions will be reduced in a manner similar to that employed by the medicare PPS. For example, excludable capital costs for fiscal year 1989 will be reduced by fifteen percent as required by Section 4006 of the Omnibus Budget Reconciliation Act of 1987. However, any such reduction to pass-through capital costs will only apply to those costs incurred after October 1, 1989.

**(4) Outlier**

**adjustment factors:** Hospital-specific outlier adjustment factors will be used to deduct outlier costs and cases from the total MAD inpatient operating costs and cases used in rate setting. These factors will be determined by using actual claim and cost data for outlier cases for the base year period. Only claims for cases to be paid by DRG will be included in the analysis used to determine this estimate. The definition of an outlier case can be found in Paragraph (1) of Subsection F of 8.311.3.12 NMAC.

**(5) Calculation**

**of base year operating cost per discharge:** The total reimbursable inpatient operating cost (excluding pass-through costs and estimated outlier costs) is divided by the hospital's number of non-outlier MAD discharges to produce the base year operating cost per discharge. The base rate methodology is described below:

BYOR = OC/D  
BYOR = base year operating cost per discharge

OC = total Title XIX inpatient operating cost for the base year, less excludable costs and estimated outlier costs

D = MAD discharges for the hospital's base year as provided by the department's fiscal agent, less estimated outlier cases

**(6) Possible use**

**of interim base year operating cost per discharge rate:**

(a)

If the fiscal agent and audit agent have not provided the department with a hospital's base year discharges and costs as of June 1 prior to year one, the department will develop an interim operating cost per discharge base rate. This rate will be developed according to the normal base rate methodology, but using costs and discharges for the fiscal year prior to the base year.

(b)

When an interim rate is developed, the operating costs per discharge are first multiplied by an inflation index (as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC) to bring the costs to the midpoint of the base year. When the provider's actual base year costs and discharges become available, the department will calculate a final base year operating cost per discharge using the normal base rate methodology. The rate that is computed from the final base year operating costs per discharge will apply to all discharges in year one, retroactive to the effective date of the interim rate.

**(7) Prohibition**

**against substitution or rearrangement of base year cost reports:**

(a)

A hospital's base year cost reports cannot be substituted or rearranged once the department has determined that the actual cost submission is suitable. A submission shall be deemed suitable 180 calendar days from the date of the notice of proposed rate (NPR) issued by the state's intermediary in the absence of an appeal by the hospital to the intermediary and the state.

(b)

In the event of such an appeal, the state must make a written determination on the merits of the appeal within 180 calendar days of receipt, although the state may make a determination to extend such period to a specified date as necessary. Once such an appeal has been determined, the resulting base cost will be effective retroactively to year one and will not be

changed until subsequent rebasing of all hospitals has been completed.

**(8) Application**

**of inflation factors:**

(a)

The inflation factors used to update operating costs per discharge will be identical to those established by congress and adopted for use by CMS to update medicare inpatient prospective payment rates. The medicare prospective payment update factor (MPPUF) is determined by CMS, usually on an annual basis, and may differ depending upon the hospital type (urban, large urban, or rural) as defined by CMS.

(b)

Each hospital's base year operating cost per discharge will be indexed up to the common point of December 31 falling prior to year one, using the applicable medicare prospective payment update factors (MPPUF) for that hospital for that period. That is, the inflation factors used will be identical to those established by congress and adopted for use by CMS to update medicare inpatient prospective payment rates, including any established differential for urban and rural hospitals. Then this value will be indexed using the applicable MPPUF corresponding to the period beginning October 1 (prior to year one) and ending with the midpoint of operating year one. For years two and three, the inflation factors will be the applicable MPPUF as specified by CMS.

(c)

For the period October 9, 1991, through September 30, 1992, an exception to (a) and (b) above was made. The inflation factor used to update rates for that period is .5 percent for urban hospitals and 1.5 percent for rural hospitals.

**(9) Case-mix**

**adjustments for base year operating cost per discharge rate:**

(a)

The department will adjust the operating cost per discharge rate to account for case-mix changes, based on the classification of inpatient hospital discharges according to the DRG methodology established and used by the medicare program.

(b)

For each DRG, the department determines a relative value (the DRG relative weight) which reflects the charges for hospital resources used for the DRG relative to the average charges of all hospital cases. The department's methodology for computing DRG relative weights was discussed earlier in Subsection B of 8.311.3.12 NMAC. Case-mix adjustments will be computed using the methodology described below.

(c)  
**Case-mix computation:** Each base year, a hospital's case-mix index will be computed by the department and its fiscal agent as follows:

(i) all MAD discharges are assigned to appropriate DRGs;

(ii) the case-mix index is computed for each hospital by summing the products of the case frequency and its DRG weight and dividing this sum by the total number of title XIX cases at the hospital.

(d) The case-mix adjustment is applied to the base year operating cost per discharge as described in Subparagraph (e) of Paragraph (10) of Subsection C of 8.311.3.12 NMAC below.

**(10) Limitations on operating cost prospective per discharge rates:**

(a) Limitations on operating cost prospective base rates will be imposed using a peer group methodology. Effective October 1, 1989, hospitals will be placed in one of six possible peer groups (teaching, referral, regional, low-volume regional, community and low-volume community) based on the following criteria: bed size, case-mix, services available, population served, location, trauma designation, teaching status, and low-volume (i.e. less than 150 MAD discharges per year.)

(b) At the time of the next rebasing year following October 1, 1989, the criteria regarding low-volume utilization was dropped along with the low-volume peer groups, thus leaving four possible peer groups for assignment (teaching, referral, regional and community).

(c) The department will determine the peer group assignment of each hospital, and appeal of such assignment will be allowed only as described in Paragraph (1) of Subsection D of 8.311.3.12 NMAC.

(d) A ceiling on allowable operating costs will be set at one hundred ten percent of the median of costs for all hospitals in the peer group, after application of each hospital's case mix and indexing of the cost from the hospital's fiscal year end to a common point of December 31. These adjustments are made to equalize the status of each hospital for ceiling establishment purposes. The median shall be the midpoint of rates (or the average of the rates of the two hospitals closest to the midpoint).

(e)

The case-mix equalization for each hospital in a peer group will be calculated as follows:

- PGR = BYOR/CMI
- PGR = hospital rate equalized for peer group comparison
- BYOR = base year operating cost per discharge
- CMI = case-mix index in the base year

(f)

The allowable operating cost per discharge rate (hospital-specific rate) will be the lower of:

- (i) the ceiling for the hospital's peer group; or
- (ii) the hospital rate resulting from the computation found in Subparagraph (e) of Paragraph (10) of Subsection C of 8.311.3.12 NMAC above.

(11)

**Computation of prospective operating cost per discharge rate:** The following formulas are used to determine the prospective operating cost per discharge rate for years one, two and three:

**Year one**  
 PDO1 = HSR x (1 + MPPUF)  
 PDO1 = per discharge operating cost rate for year one  
 HSR = the hospital-specific rate, which is the lower of the peer group ceiling or the hospital's rate, equalized for peer group comparison  
 MPPUF = the applicable medicare prospective payment update factor as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC

**Year two**  
 PDO2 = PDO1 x (1 + MPPUF)  
 PDO2 = per discharge operating cost rate for year two  
 PDO1 = per discharge operating cost rate for year one  
 MPPUF = the applicable medicare prospective payment update factor as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC

**Year three**  
 PDO3 = PDO2 x (1 + MPPUF)  
 PDO3 = per discharge operating cost rate for year three  
 PDO2 = per discharge operating cost rate for year two  
 MPPUF = the applicable medicare prospective payment update factor as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC

(12)

**Computation of excludable cost per discharge rate:** Total MAD excludable cost, as identified in TEFRA, with excludable capital costs reduced as indicated in Paragraph (3) of Subsection C

of 8.311.3.12 NMAC, will be paid in the following manner:

(a)

An excludable cost per discharge rate is computed using the following methodology:

- ER = ECP/DCY
- ER = excludable cost per discharge rate
- ECP = excludable costs on the hospital's most recently settled cost report prior to the rate year, as determined by the audit agent
- DCY = MAD discharges for the calendar year prior to the rate year, as determined by the department's fiscal agent

(b)

The retrospective settlement will be determined based on a percentage of the actual allowable amount of MAD excludable costs incurred by a hospital during the hospital's fiscal year as determined by the department.

(13)

**Computation of prospective per discharge rate:** The excludable cost per discharge, as described in Paragraph (12) of Subsection C of 8.311.3.12 NMAC above, will be added to the appropriate operating per discharge rates to determine the prospective rates.

(14) **Effective**

**dates of prospective rates:** Rates were implemented October 1, 1989 and continue to be effective as of October 1 of each year for each hospital.

(15) **Effect on**

**prospective payment rates of a change of hospital ownership:** When a hospital is sold or leased, no change is made to the hospital's per discharge rate as a result of the sale or lease transaction.

(16) **Rate setting**

**for border-area hospitals:** Border-area hospitals will be reimbursed at median rate (including excludable cost pass-throughs) for the regional peer group.

**D. Changes to**

**prospective rates:**

(1) **Appeals:**

Hospitals may appeal for a change in the operating component of the prospective payment rate, including a change in peer group assignment, as applicable. For an appeal to be considered, the hospital must demonstrate in the appeal that:

(a)

the following five requirements are satisfied:

(i)

the hospital inpatient service mix for MAD admissions has changed due to a major change in scope of facilities and services provided by the hospital;

the change in scope of facilities and services has satisfied all regulatory and statutory requirements which may be applicable, such as facility licensure and certification requirements and any other facility or services requirements which might apply;

the expanded services were a) not available to eligible recipients in the area; or b) are now provided to eligible recipients by the hospital at a lower reimbursement rate than would be obtained in other hospitals providing the service;

the magnitude of the proposed (as appealed) prospective per discharge rate for the subsequent year will exceed one hundred five percent of the rate that would have otherwise been paid to the hospital;

in addition to requirements Items (i) through (iv) above, appeals for rate adjustment will not be considered if cost changes are due to changes in hospital occupancy rate, collective bargaining actions, changes in hospital ownership or affiliation, or changes in levels of rates of increases of incurred cost items which were included in the base rate;

the appeal must provide a specific recommendation(s) regarding the magnitude of alterations in the appellant's prospective rate per discharge and peer group reassignment, as applicable; in making its decision on any appeal, the department shall be limited to the following options:

reject the appeal on the basis of a failure of the appellant to demonstrate necessary conditions and documentation for an appeal as specified in Subparagraph (a) of Paragraph (1) of Subsection D of 8.311.3.12 NMAC above; or

accept all of the specific recommendations, as stated in the appeal, in their entirety; or

adopt modified versions of the recommendations as stated in the appeal; or

reject all of the recommendations in the appeal;

hospitals are limited to one appeal per year, which must be filed in writing with the MAD director by a duly authorized officer of the hospital no later than July 1 of each year; within 15 calendar days

(ii) of the filing date, the department shall offer the appellant the opportunity for hearing of the appeal; if such a hearing is requested, it shall occur within 30 calendar days of the filing date; the department shall notify the appellant of the decision of the appeal in writing no later than September 15 of the year in which the appeal is filed.

**E. Retroactive settlement:**

(1) Retroactive settlement may occur in those cases in which no audited cost reports were available at the time of rate setting and an interim rate was used. Retroactive settlement will only occur in those cases where adjustments to interim rates are required. For year one, the department's audit agent will determine the difference between payments to the hospital under the interim operating cost per discharge rate and what these payments would have been under the final rate. The audit agent will report the amount of overpayment or underpayment for each facility within 90 calendar days of the effective date of the final rate. Retroactive settlements will be based on actual claims paid while the interim rate was in effect.

(2) **Underpayments:** In the event that the interim rate for year one is less than the final rate, the department will include the amount of underpayment in a subsequent payment to the facility within 30 calendar days of notification of underpayment.

(3) **Overpayments:** In the event that the interim rate exceeds the final rate, the following procedure will be implemented: the facility will have 30 calendar days from the date of notification of overpayment to submit the amount owed to the department in full. If the amount is not submitted on a timely basis, the department will begin withholding from future payments until the overpayment is satisfied in full.

(4) Retroactive settlements for excludable costs will be handled in the same manner as described above.

**F. Special prospective payment provisions:**

(1) **Outlier cases:**

(a) Effective for discharges occurring on or after April 1, 1992, outlier cases are defined as those cases with medically necessary services exceeding \$100,000 in billed charges, or those with medically necessary lengths of stay of 75 calendar days or more, when such services are

provided to eligible children up to age six in disproportionate share hospitals, and to eligible infants under age one in all hospitals. These cases will be removed from the DRG payment system and paid at an amount equal to ninety percent of the hospital's standardized cost. Standardized costs are determined by multiplying the hospital's allowable billed charges by the hospital's cost-to-charge ratio as calculated from the hospital's most recent cost report.

(b) Utilization review will be performed on all outlier cases to determine the medical necessity of services rendered. Should this review determine non-medical necessity for all or part of the services, these services will be deducted from the billed amount prior to payment.

(2) **Payment for transfer cases:**

(a) All cases transferred from one acute care hospital to another will be monitored under a utilization review policy to ensure that the department does not pay for inappropriate transfers.

(b) The following methodology will be used to reimburse the transferring and discharging hospitals for appropriate transfers if both hospitals and any hospital units involved are included in the PPS.

(i) A hospital inpatient shall be considered "transferred" when an eligible recipient has been moved from one DRG acute inpatient facility to another DRG acute inpatient facility. Movement of an eligible recipient from one unit to another unit within the same hospital shall not constitute a transfer, unless the eligible recipient is being moved to a PPS exempt unit within the hospital.

(ii) The transferring hospital will be paid the lesser of standardized costs or the appropriate DRG payment amount. Should the stay in the transferring hospital qualify for an outlier payment, then the case will be paid as an outlier as described in Subsection F of 8.311.3.12 NMAC. Standardized costs are determined by multiplying the hospital's allowable billed charges by the hospital's cost-to-charge ratio.

(iii) The receiving hospital which ultimately discharges the eligible recipient will receive the full DRG payment amount, or, if applicable, any outlier payments associated with the case. All other hospitals which admitted and subsequently transferred the eligible recipient to another

acute care hospital during a single spell of illness shall be considered transferring hospitals.

(c)

If the transferring or discharge hospital or unit is exempt from the PPS, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or unit.

(3) **Payment for readmissions:**

(a)

Readmissions that occur within 24 hours of the previous discharge of an eligible recipient with the same or related diagnosis related group (DRG) will be considered part of the prior admission and not paid separately when the admissions are to the same hospital. When the second admission is to a different hospital, the claims may be reviewed to determine if the initial claim should be considered as a transfer.

(b)

Readmissions occurring within 15 calendar days of prior acute care admission for a related condition may be reviewed to determine medical necessity and appropriateness of care. If it is determined that either or both admissions were unnecessary or inappropriate, payment for either or both admissions may be denied. Such review may be focused to exempt certain cases at the sole discretion of the department.

(4) **Payment for inappropriate brief admissions:**

Hospital stays of up to two calendar days in length may be reviewed for medical necessity and appropriateness of care. (Discharges involving eligible recipient healthy mothers and healthy newborns are excluded from this review provision.) If it is determined that the inpatient stay was unnecessary or inappropriate, the prospective payment for the inpatient discharge will be denied. If the inpatient claim is denied, the hospital is permitted to resubmit an outpatient claim for the services rendered. Such review may be further focused to exempt certain cases at the sole discretion of the department.

(5) **Payment for non-medically warranted days:**

(a)

Reimbursement for eligible recipients admitted to a hospital receiving services at an inappropriate level of care will be made at rates reflecting the level of care actually received. The number of days covered by the MAD program is determined based only upon medical necessity for an acute level of hospital care.

(b)

When it is determined that an eligible

recipient no longer requires acute-level care but does require a lower level of institutional care, and when placement in such care cannot be located, a DRG hospital will be reimbursed for "awaiting placement" days. Reimbursement will be made at the weighted average rate paid by the department in the preceding calendar year for the level of care needed. There is no limit on the number of covered "awaiting placement" days as long as those days are medically necessary. However, the hospital is encouraged to make every effort to secure appropriate placement for the eligible recipient as soon as possible. During "awaiting placement" days, no ancillary services will be paid, but medically necessary physician visits will be reimbursed.

(6) **Indirect**

**medical education (IME) adjustment:**

Effective August 1, 1992, each acute care hospital that qualifies as a teaching hospital will receive an IME payment adjustment, which covers the increased operating or patient care costs that are associated with approved intern and resident programs. The IME payment adjustment is subject to available state and federal funding, as determined by the department and shall not exceed any amounts specified in the *medicaid state plan*.

(a)

In order to qualify as a teaching hospital and be deemed eligible for an IME adjustment, the hospital must:

(i)

be licensed by the state of New Mexico; and

(ii)

be reimbursed on a DRG basis under the plan; and

(iii)

have 125 or more full-time equivalent (FTE) residents enrolled in approved teaching programs.

(b)

Determination of a hospital's eligibility for an IME adjustment will be done annually by the department, as of the first day of the provider's fiscal year. If a hospital meets the qualification for an IME adjustment after the start of its fiscal year, it will be deemed eligible for the IME adjustment beginning on the first day of the quarter after the date the qualification were met.

(c)

The IME payment amount is determined by multiplying DRG operating payments, which are DRG payments and outlier payments, by the IME adjustment factor computed by the following formula:

$1.89 * ((1+R)^{405} - 1)$  where R equals the number of approved full-time equivalent (FTE) residents divided by the number of available beds (excluding nursery and neonatal bassinets). FTE residents are counted in accordance with 42 CFR 412.105(f), except that the limits on the total number of FTE residents in 42 CFR 412.10(f)(1)(iv) shall not apply, and at no time shall exceed 450 FTE residents. For purposes of this paragraph, DRG operating payments include the estimated average per discharge amount that would otherwise have been paid for MAD managed care enrollees if those persons had not been enrolled in managed care.

(d)

Quarterly IME payments will be made to qualifying hospitals at the end of each quarter. Prior to the end of each quarter, the provider will submit to the department's audit agent the information necessary to make the calculation, i.e. number of beds, number of estimated residents for the quarter, and the MAD DRG amount. After review and adjustment, if necessary, the audit agent will notify the department of the amount due to/from the provider for the application quarter. Final settlement of the IME adjustment amount will be made through the cost report; that is, the number of beds, residents, and DRG amounts used in the quarterly calculation will be adjusted to the actual numbers shown on the provider's cost report for those quarters.

(7) **Payment**

**for direct graduate medical education (GME):**

Subject to federal government approval of a corresponding amendment to the *medicaid state plan*, effective for services provided on or after July 1, 1998, payment to hospitals for GME expense is made on a prospective basis as described in this section. Payments will be made quarterly to qualifying hospitals, at a rate determined by the number of resident full-time-equivalents (FTEs) in the various categories defined below, who worked at the hospital during the preceding year, and subject to an upper limit on total payments. The GME payment is subject to available state and federal funding, as determined by the department, and shall not exceed any amounts specified in the *medicaid state plan*.

(a)

To be counted for MAD reimbursement, a resident must be participating in an approved medical residency program, as defined by medicare in 42 CFR 413.75. With regard to categorizing residents, as described in Subparagraph (b) of Paragraph (9) below, the manner

of counting and weighting resident FTEs will be the same as is used by medicare in 42 CFR 413.79 except that the number of FTE residents shall not be subject to the FTE resident cap described in 42 CFR 413.79(b)(2). Resident FTEs whose costs will be reimbursed by the department as a medical expense to a federally qualified health center are not eligible for reimbursement under this section. To qualify for MAD GME payments, a hospital must be licensed by the state of New Mexico, be currently enrolled as a MAD provider, and must have achieved a MAD inpatient utilization rate of five percent or greater during its most recently concluded hospital fiscal year. For the purposes of this section, the MAD inpatient utilization rate will be calculated as the ratio of New Mexico MAD eligible days, including inpatient days paid under MAD managed care arrangements, to total inpatient hospital days.

(b)

Approved resident FTEs are categorized as follows for MAD GME payment:

(i)

**Primary care/obstetrics resident.**

Primary care is defined per 42 CFR 413.75(b).

(ii)

**Rural health resident.** A resident is defined as participating in a designated rural health residency program. Residents enrolled in a designated rural health residency program will be counted as a rural health resident FTE for the entire duration of their residency, including those portions of their residency which may be served in a non-rural hospital or clinic. Should any resident meet the criteria for both rural health and primary care in this section, this resident will be counted as a rural health resident.

(iii)

**Other approved resident.** Any resident not meeting the criteria in Items (i) or (ii), above.

(c)

**MAD GME payment amount per resident FTE:**

(i)

The annual MAD payment amount per resident FTE with state fiscal year 2017 is as follows:

Primary care/obstetrics resident: \$41,000  
 Rural health resident: \$52,000  
 Other resident: \$50,000

(ii)

The per resident amounts specified in Item (i) of Subparagraph (c) of Paragraph (9) of Subsection F of 8.311.3.11 NMAC will be inflated for state fiscal years beginning on or after July 1, 2017 using the annual inflation update factor described in Item

(ii) of Subparagraph (d) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC.

(d)

**Annual inflation update factor:**

(i)

Effective for state fiscal years 2000 and beyond, the department has updated the per resident GME amounts and the upper limit on GME payments for inflation, using the market basket forecast published in the CMS Dallas regional medical services letter issued for the quarter ending in March 1999 to determine the GME rates for state fiscal year 2000 (July 1, 1999 - June 30, 2000).

(ii)

The department will use the market basket forecast shown for PPS hospitals that is applicable to the period during which the rates will be in effect. MAD will determine the percentage of funds available for GME payments to eligible hospitals.

(e)

**Annual upper limits on GME payments:**

(i)

Total annual MAD GME payments will be limited to \$18,500,000 for state fiscal year 2017. This amount will be updated for inflation, beginning with state fiscal year 2018, in accordance with Subparagraph (d) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC.

(ii)

Total annual GME payments for residents in Category B.3, "Other," will be limited to the following percentages of the \$18,500,000 total annual limit (as updated for inflation in accordance with Subparagraph (d) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC):

state fiscal year 1999	58.3 percent
state fiscal year 2000	56.8 percent
state fiscal year 2001	53.3 percent
state fiscal year 2002	50.7 percent
state fiscal year 2003	48.0 percent
state fiscal year 2004	45.5 percent
state fiscal year 2005	43.0 percent
state fiscal year 2006	40.4 percent
state fiscal year 2017 and thereafter	no limit

(f)

**Reporting and payment schedule:**

(i)

Hospitals will count the number of residents working according to the specification in this part during each fiscal year (July 1 through June 30) and will report this information to the department by December 31. Counts will represent the weighted average number of residents who worked in the hospitals during the specified 12-month period. Hospitals may also add to this count any FTEs associated

with newly approved residency programs that will be implemented on or before the start of the prospective GME payment year, to the extent that these FTEs are not already reflected in the weighted average counts of the preceding year. To illustrate, resident FTE amounts would be counted from 07/01/96 - 06/30/97 for the payment year 07/01/98 - 06/30/99. The department may require hospitals to provide documentation necessary to support the summary counts provided.

(ii)

The department will establish the amount payable to each hospital for the prospective payment period that will begin each July 1. Should total payments as initially calculated exceed either of the limitations in Subsection D of 8.311.3.11 NMAC, the amount payable to each will be proportionately reduced.

(iii)

The annual amount payable to each hospital is divided into four equal payments. These payments will be made by the department on or about the start of each prospective payment quarter.

(iv)

Should a facility not report timely with the accurate resident information as required in Item (i) of Subparagraph (f) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC above, it will still be entitled to receive payment for any quarter yet remaining in the prospective payment year, after acceptable information has been submitted. However, payments to untimely reporting facilities will be limited to the amount of funds that remain available under the upper limits described in Subsection D of 8.311.3.11 NMAC, after prospective payment amounts to timely filing facilities have been established.

[8.311.3.12 NMAC - Rp, 8.311.3.12 NMAC, 6/1/2016]

**8.311.3.13 DISPROPORTIONATE SHARE HOSPITALS:**

To take into account the situation of hospitals serving a disproportionate number of low-income patients with special needs, a payment will be made to qualifying hospitals.

**A. Criteria for deeming hospitals eligible for a disproportionate share payment:**

(1)

Determination of each hospital's eligibility for a disproportionate share payment for the MAD inpatient utilization rate as listed below, will be done annually by the department's audit agent, based on the hospital's most recently filed cost report. Hospitals which believe they qualify under the low income utilization



rate must submit documentation justifying their qualification. This documentation should be submitted to the department by March 31 of each year.

(2) In the case of a DRG hospital with a PPS exempt specialty unit, data from the entire facility will be considered to determine DSH status.

(3) The following criteria must be met before a hospital is deemed to be eligible:

(a) Minimum criteria: The hospital must have:

(i) a MAD inpatient utilization rate greater than the mean MAD inpatient utilization rate for hospitals receiving MAD payments in the state; or

(ii) a low-income utilization rate exceeding twenty-five percent; (refer to Subparagraph (b) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC for definitions of these criteria).

(iii) the hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to eligible recipients entitled to such services under MAD; in the case of a hospital located in a rural area (defined as an area outside of a metropolitan statistical area (MSA), as defined by the United States executive office of management and budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform non-emergency obstetric procedures;

(iv) Item (iii) of Subparagraph (a) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC does not apply to a hospital which meets the following criteria: the inpatients are predominantly individuals under 18 years of age; or the hospital did not offer non-emergency obstetric services as of December 22, 1987;

(v) the hospital must have, at a minimum, a MAD inpatient utilization rate (MUR) of one percent.

(b) **Definitions of criteria:**

(i) MAD inpatient utilization: For a hospital, the total number of its MAD inpatient days in a cost reporting period, divided by the total number of the hospital's inpatient days in the same period. These include both MAD managed care and non-managed care MAD inpatient days.

(ii) Low-income utilization rate: For a hospital, the sum (expressed as a percentage) of the following fractions: The sum of total MAD inpatient and outpatient net revenues (this includes MAD managed care and non-managed care revenues) paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of net revenues of the hospital for inpatient and outpatient services (including the amount of such cash subsidies) in the same cost reporting period; and the total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period, less the amount of the cash subsidies received directly from the state and local governments in that period reasonably attributable to inpatient hospital services, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. If this number is zero or less than zero, then it is assumed to be zero. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved MAD state plan), that is, reductions in charges given to other third-party payers, such as HMOs, medicare, or Blue Cross.

(iii) The medicaid utilization rate (MUR) is computed as follows:

$$\text{MUR \%} = 100 \times \frac{M}{T}$$

M = hospital's number of inpatient days attributable to eligible recipients under the MAD state plan; these include MAD managed care and non-managed care days

T = hospital's total inpatient days

(iv) Newborn days, days in specialized wards, and administratively necessary days are included in this calculation. Additionally, days attributable to individuals eligible for medicaid in another state are included. MAD inpatient days includes both MAD managed care and non-managed care patient days.

(v) The numerator (M) does not include days attributable to recipients 21 or older in institutions for mental disease (IMD) as these patients are not eligible for MAD coverage in IMDs under the New Mexico state plan and cannot be considered a MAD day.

**B. Inpatient disproportionate share pools:**  
Section 1923 of the Social Security Act allows qualifying hospitals to receive a disproportionate share payment, in addition to their allowable regular claims payments and any other payments to which they are entitled. This determination is performed annually as described in Subsection A of 8.311.3.13 NMAC. Qualifying hospitals will be classified into one of three disproportionate share hospital pools: Teaching PPS hospitals, non-teaching PPS hospitals, and PPS-exempt (TEFRA) hospitals. Hospitals may also qualify for a payment from a fourth pool: reserve pool, as explained in this Subsection C of 8.311.3.13 NMAC below.

(1) To qualify as a teaching hospital and be eligible for the teaching hospital DSH payment, the hospital must:

(a) be licensed by the state of New Mexico; and

(b) reimbursed, or be eligible to be reimbursed, under the DRG basis under the plan; and

(c) have 125 or more full-time equivalent (FTE) residents enrolled in approved teaching programs.

(2) A non-teaching PPS (DRG) hospital qualifies if it is an in-state acute care hospital reimbursed by or eligible to be reimbursed by prospective payment methodology.

(3) A PPS-exempt hospital (TEFRA) such as rehabilitation hospitals, children's hospitals, or free-standing psychiatric hospitals, qualify if it is reimbursed by or eligible to be reimbursed by TEFRA methodology as described in 8.311.3.11 NMAC.

(4) The reserve pool is to compensate DSH qualifying hospitals which have had a disproportionate shift in the delivery of services between low-income and MAD-covered inpatient days in any given quarter. A hospital will qualify for payment from the reserve pool if its charity ratio, as described in Item (ii) of Subparagraph (b) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC, exceeds twenty percent. A qualifying hospital may receive a payment from the reserve pool in addition to its payment from one of the three other pools.

**C. Disproportionate share hospital payments:**

(1) DSH payments are subject to available state

and federal funding, as determined by the department.

(2) If DSH funds are available, they shall be allocated to each pool and paid to qualifying hospitals based on the number of MAD discharges. These include both MAD managed care and non-managed care discharges. A discharge occurs when a patient dies in the hospital, is formally released from the hospital, or is transferred to another hospital or nursing home.

(3) Payments are made quarterly, with the annual amount for the pool divided into four parts, and each part distributed after the end of each quarter based on MAD discharges during that quarter. The quarterly payment to each hospital qualifying for DSH pools one, two, or three will be computed by dividing the number of MAD discharges for that hospital by the total number of MAD discharges from all hospitals qualifying for that DSH pool and then multiplying this pro-rata share by the quarterly allocation for the respective pool. This amount cannot exceed the OBRA 93 DSH limit, which is described in Subsections E and F of 8.311.3.13 NMAC.

(4) MAD will review the allocation of DSH funds prior to the start of each state fiscal year and may re-allocate funds between pools at that time in consideration of shifts in the hospital utilization of MAD and low-income/indigent care patients.

(5) The percentages allocated to each pool for state fiscal year 1998 are as listed below. The total allocations shall be adjusted in subsequent state fiscal years based on the medicare prospective payment update factor (MPPUF) or the DSH budget as defined by the department. The base year DSH budget for state fiscal year 1998 is \$22,000,000.00.

(a) The teaching PPS hospital DSH pool is fifty-six percent of the overall DSH budget, as defined by HSD.

(b) The non-teaching PPS (DRG) hospital DSH pool is 22.5 percent of the overall DSH budget, as defined by HSD.

(c) The PPS-exempt hospital (TEFRA) DSH pool is 1.5 percent of the overall DSH budget, as defined by HSD.

(d) The reserve DSH pool is twenty percent of the overall DSH budget, as defined by HSD. Quarterly payments may be made directly from the reserve pool to hospitals

qualifying for any of the other three DSH pools at the rate of N dollars per MAD discharge, where N is equal to the fraction described in Item (ii) of Subparagraph (b) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC minus twenty percent, multiplied by \$1,750.

**D. Request for DSH payment procedures:** Hospitals must submit to the department the number of MAD discharges (both managed care and fee for service discharges), which they have incurred 30 calendar days after the end of each quarter. The department will review the hospital's documentation supporting their discharge information. Any requests received later than 60 calendar days from the end of the quarter will be denied as untimely.

**E. DSH limits:**  
(1) Pursuant to section 1923 (g) of the Social Security Act, a limit is placed on the payment adjustment for any hospital. A hospital's payment adjustment determined in Subsections B through D of 8.311.3.13 NMAC shall not exceed that hospital's hospital-specific DSH limit, as determined under Subsection E of 8.311.3.13 NMAC. This limit is calculated as follows:  
DSH limit = M + U  
M = Cost of services to eligible recipients, less the amount paid by the MAD program under the non-DSH payment provisions of this plan  
U = Cost of services to uninsured patients, less any cash payments made by them

(2) The cost of services will include both inpatient and outpatient costs for purposes of calculating the limit. The "costs of services" are defined as those costs determined allowable under this plan. "Uninsured patients" are defined as those patients who do not possess health insurance or do not have a source of third-party payment for services provided, including individuals who do not possess health insurance which would apply to the service for which the individual sought treatment. Payments made to a hospital for services provided to indigent patients made by the state or a unit of local government within the state shall not be considered to be a source of third-party payment.

**F. Limitations in New Mexico DSH allotment:** If the DSH payment amounts as described in Subsections C through E of 8.311.3.13 NMAC above, exceed in any given year, the federal determined DSH allotment for New Mexico, the DSH allocations by pool will be reduced proportionately to a level

in compliance with the New Mexico DSH allotment.

[8.311.3.13 NMAC - Rp, 8.311.3.13 NMAC, 6/1/2016]

**8.311.3.14 DETERMINATION OF ACTUAL, ALLOWABLE, AND REASONABLE COSTS:**

**A. Adequate cost data:**

(1) All hospitals must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors. The hospital will submit a cost report each year. The cost data must be based on an approved method of cost finding and on the accrual basis of accounting. However, where governmental institutions operate on a cash basis of accounting, cost data on this basis will be acceptable, subject to appropriate treatment of capital expenditures.

(2) The cost finding method to be used by hospitals will be the step-down method. This method recognizes that services rendered by certain non-revenue-producing departments or centers are utilized by certain other non-revenue-producing centers. All costs of non-revenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. The cost of the non-revenue-producing center serving the greatest number of other centers while receiving benefits from the least number of centers is apportioned first. Following the apportionment of the cost of the non-revenue-producing center, that center will be considered "closed" and no further costs will be apportioned to it. This applies even though it may have received some service from a center whose cost is apportioned later. Generally when two centers render services to an equal number, that center which has the greatest amount of expense will be allocated first.

**B. Reporting year:** For the purpose of determining payment rates, the reporting year is the hospital's fiscal year.

**C. Cost reporting:** At the end of each of its fiscal years, the hospital will provide to the department or its audit agent an itemized list of allowable costs (financial and statistical report) on the New Mexico MAD cost reporting form. The cost report must be submitted within 90 calendar days after the close of the hospital's fiscal year. Failure to file a report within the 90 calendar day limit, unless an extension is granted, will result in suspension of MAD payments, until such time as the report is received.

**D. Retention of records:**  
**(1) Each** hospital will maintain financial and statistical records of the period covered by such cost report for a period of not less than four years following the date of submittal of the New Mexico MAD cost report to the department. These records must be accurate and in sufficient detail to substantiate the cost data reported. The provider will make such records available upon demand to representatives of the department, the state of New Mexico audit agent, or the United States department of health and human services.

**(2) The** department or its audit agent will retain all cost reports submitted by providers for a period of not less than three years following the date of final settlement of such reports.

**E. Audits:**  
**(1) Desk audit:** Each cost report submitted will be subjected to a comprehensive desk audit by the state's audit agent. This desk audit is for the purpose of analyzing the cost report. After each desk audit is performed, the audit agent will submit a complete report of the desk review to the department.

**(2) Field audit:** Field audits will be performed on all facilities and per the auditing schedule established by medicare. The purpose of the field audit of the facility's financial and statistical records is to verify that the data submitted on the cost report is accurate, complete, and reasonable. The field audits are conducted in accordance with generally accepted auditing standards. Field audits are of sufficient scope to determine that only proper items of cost applicable to the service furnished were included in the provider's calculation of its cost and to determine whether the expense attributable to such proper items of cost was accurately determined and reasonable. After each field audit is performed, the audit agent will submit a complete report of the audit to the department. This report will meet generally accepted auditing standards and shall declare the auditor's opinion as to whether, in all material respects, the costs reported by the provider are allowable, accurate, and reasonable. These audit reports will be retained by the department for a period of not less than three years from the date of final settlement of such reports. Audits will be performed in accordance with applicable federal regulations.

**F. Overpayments:** All overpayments found in audits will be

accounted for on the CMS-64 report in accordance with 42 CFR 433.300 through 42 CFR 433.322.

**G. Allowable and non-allowable costs:** Allowable costs, non-allowable costs, and reasonableness of costs will be determined as on the basis of the medicare health insurance manual (HIM-15).

[8.311.3.14 NMAC - Rp, 8.311.3.14 NMAC, 6/1/2016]

**8.311.3.15 PUBLIC DISCLOSURE OF COST REPORTS:**

**A.** As required by law, cost reports submitted by participating providers as a basis for reimbursement are available to the public upon receipt of a written request to the medical assistance program audit agent. Disclosure information is limited to cost report documents required by social security administration regulations and, in the case of a settled cost report, the notice of program settlement.

**B.** The request must identify the provider and the specific report(s) requested.

**C.** The provider whose report has been requested will be notified by the MAD audit agent that its cost report has been requested, by whom the request was made, and that the provider shall have 10 calendar days in which to comment to the requestor before the cost report is released.

**D.** The cost for copying will be charged to the requestor. [8.311.3.15 NMAC - Rp, 8.311.3.15 NMAC, 6/1/2016]

**8.311.3.16 SEVERABILITY:**

If any provision of this regulation is held to be invalid, the remainder of the regulations shall not be affected thereby.

[8.311.3.16 NMAC - Rp, 8.311.3.16 NMAC, 6/1/2016]

**HISTORY OF 8.311.3 NMAC:** The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

SP-Rule 004.1901, General Program Administration Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care, 1/17/1985.

SP-Rule 004.1901, Section 4, General Program Administration Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care, 7/2/1985.

SP-Rule 004.1901, Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services, 8/25/1986.

ISD 306.4000, Providers Protesting

Certified Cost Reimbursement Rates, 1/7/1980.  
 SP-004.1901, Section 4, General Program Administration Methods and Standards For Establishing Payment Rates - Inpatient Hospital Care, 6/10/1981.  
 8 NMAC 4.MAD.721.D, Provider Policies, Reimbursement Methodology, Methods and Standards For Establishing Payment Rates-Inpatient Hospital Services, 1/18/1995.

8 NMAC 4.MAD.721.D, Amendment to 8 NMAC 4.MAD.721.D [Section IV], 1/17/1996.

8 NMAC 4.MAD.721.D, Amendment to 8 NMAC 4.MAD.721.D [Section IV], 7/17/1997.

8 NMAC 4.MAD.721.D, Amendment to 8 NMAC 4.MAD.721.D [Section III], 10/17/1997.

8 NMAC 4.MAD.721.D, Amendment to 8 NMAC 4.MAD.721.D [Section III], 6/15/1998.

8 NMAC 4.MAD.721.D, Amendment to 8 NMAC 4.MAD.721.D [Section III], 7/31/1998.

8 NMAC 4.MAD.721.D, Amendment to 8 NMAC 4.MAD.721.D [Section III], 12/14/1998.

**History of Repealed Material:**

8.311.3 NMAC, Methods and Standards for Establishing Payment-Inpatient Hospital Services, filed 12/13/2000 - Repealed effective 6/1/2016.

**RACING COMMISSION**

Explanatory paragraph: This is an amendment to 15.2.1 NMAC, Section 8, effective June 1, 2016. In 15.2.1.8 NMAC, Subsections A through H were not published as there were no changes.

**15.2.1.8 COMMISSION:**

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**I. ISSUANCE OF LICENSE TO CONDUCT A RACE MEETING AND ALLOCATION OF RACE DATES:**

**(1)** The commission shall allocate race dates to each association in accordance with the act and these rules. An association shall apply to the commission for a license and racing dates not later than June 1st for all proposed racing meets and dates to be run in the succeeding calendar year. Applications shall not be received or amended after this date except by approval of a majority of the commission. The application must contain the information

required by statute and the commission. After the request is filed, the commission may require the association to submit additional information. The commission may limit, condition or otherwise restrict any license to conduct horse racing or a horse race meeting in the state of New Mexico.

(2) The burden of proof is on the association to demonstrate that its receipt of a license to conduct a race meet and the allocation of the race dates will be in the public interest and will achieve the purposes of the act.

(3) In issuing licenses for race meetings and allocating race dates under this section, the commission may consider the following factors: public interest, health of the industry, safety and welfare of participants, and the criteria for licensure to conduct a race meet set forth in the act and in these rules.

(4) Prior to approving an application for a new license for a horse racetrack, other than the licenses in existence as of January 1, 2007, or an application by a licensed horse racetrack to move its racing and gaming facilities to a new location, the commission shall solicit and consider the views on the application by the Indian tribes, nations and pueblos in the following manner:

(a) provide written notice to all federally recognized Indian tribes, nations or pueblos that are authorized by law to enter into a gaming compact with the state of New Mexico under the Indian Gaming Regulatory Act, 25 U.S.C. Section 2701 et seq., ("Indian Tribes") that such an application has been filed with the commission within [fifteen] 15 days of such filing and provide a copy of all non-confidential documents submitted by an applicant to an Indian tribe upon request, at the Indian tribe's expense;

(b) allow Indian tribes [forty five] 45 days to respond to the application by submitting written comments to the commission prior to holding any public hearing at which final action on the application may be considered; such comments shall be immediately forwarded to the applicant by the commission, but no later than [fifteen] 15 days prior to holding any public hearing at which final action on the application may be considered; the views of the Indian tribes may include, but are not limited to, the following:

(i) potential economic impact of approval of said license on a specific Indian tribe's

government or gaming facility, including impact on revenue sharing with the state of New Mexico; the number of miles from the nearest tribal gaming facility; the potential impact on the nearest tribal gaming facility's market share; and the potential impact on the Indian tribe's income from gaming facilities;

(ii) identification of other significant impacts on the Indian tribe;

(c) any public hearing at which final action on the application may be considered must be at least [fifteen] 15 days after the [forty five] 45 day comment period for Indian tribes set forth above;

(d) the commission shall consider and evaluate the Indian tribes' views prior to taking any final action on the application; to "consider and evaluate" means to think about carefully and seriously;

(e) the above procedures for notification to Indian tribes shall not apply to the annual renewal of a horse racetrack license.

(5) The association shall be obligated to conduct pari-mutuel racing, except in the case of emergencies, on each race date allocated. Any change in race dates must be approved by the commission. In the case of emergencies the stewards may authorize cancellation of all or a portion of any race day.

(6) All applicants for an initial license to conduct horse racing or a horse race meeting in the state of New Mexico shall submit the following information to the commission in the form of a verified application, including an original and six [(6)] copies.

(a) The name of the applicant and indicate whether it is an individual, firm, association, partnership, corporation or other legal entity.

(b) The names, residences, and nationalities of individual applicants or members of a partnership, association or firm.

(c) If the applicant is a corporation, the following information must be furnished, and if the applicant is a parent or subsidiary of another corporation, the following information must be furnished for each entity.

(i) The year in which the corporation was organized, its form of organization and the name of the state under the laws of which it was organized. Articles of incorporation and bylaws must also be submitted.

(ii) The classes of capital stock authorized, the amount authorized, and the amount outstanding as of the date not less than [fifteen] 15 days prior to the filing of the application.

(iii) The name and address of each person who owns of record or is known by the applicant to own beneficially, ten [(40)] percent or more of any class of capital stock. This can be indicated as name and address; class of stock owned; type of ownership whether of record or beneficial; amount owned; percent of the class of stock.

(iv) Outline briefly the dividend rights, voting rights, liquidation rights, preemptive rights, conversion rights, and redemption provisions. If the rights of holders of such stock may be modified other than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(v) If organized as a corporation within the past five [(5)] years, furnish the names of the promoters, the nature and amount of anything of value received or to be received by each promoter directly or indirectly from the applicant and the nature and amount of any assets, services, or other consideration therefore received or to be received by the applicant.

(vi) List the names of all directors and executive officers and all persons chosen to become directors or executive officers. Indicate all other positions and offices held by each such person, and the principal occupation during the past five [(5)] years of each person to become a director or executive officer. For the purposes of this subparagraph, "executive officer" means the president, vice-president, secretary and treasurer, and any other person who performs policy-making, supervisory, administrative, or financial functions for the applicant.

(vii) Describe in detail the financial arrangements, which have been made for acquisition and operation of racing facilities, including the nature and source of any funds or other property, real or personal, which may be used in this connection.

(viii) Identify in detail the source(s) and terms of any loans, loan commitments, lines of credit, pledges, stock subscriptions, and any other source of funds which may be used in the acquisition or operation of racing facilities.

<p>(ix) State in detail the terms of any proposed purchase of stock or assets in a current licensee.</p>	<p>(ix) applicant, or any director, executive officer, stockholder or manager has owned an interest in or has been employed by any firm, partnership, association or corporation previously licensed to conduct a race meeting in any jurisdiction. (xviii)</p>	<p>ticket sales. (xxx) Describe climatic conditions prevalent during the proposed racing season. (xxxii)</p>
<p>(x) State whether a substantial portion of the assets or of the capital stock is encumbered by any short-term or long-term debt. Explain fully and state the names and addresses of parties holding security interests or promissory notes from the applicant and the stockholders, where the stock is pledged as security, and outline the terms of and submit the agreements creating the security interests.</p>	<p>State actual legal description of a proposed site for racing facilities, names and addresses of the titleholders to the real property and names and addresses of all personal holding mortgages or other security interests in the property. (xix)</p>	<p>Indicate the population of the local area, and the growth trend. Indicate the potential market including tourists, transients and patrons from neighboring areas. (xxxiii)</p>
<p>(xi) Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year.</p>	<p>State the number of miles from the nearest population center, and describe briefly the transportation facilities serving that population center. (xx)</p>	<p>Indicate the principal sources of local income, showing the percentage from farming and ranching, industrial, professional services, military and other governmental sources. (xxxiv)</p>
<p>(xii) Applicant must submit with application a current financial statement for each director, executive officer, manager, and stockholders owning ten [10] percent or more of the outstanding shares in any corporate applicant.</p>	<p>State the exact dimensions of the track proposed. Submit at least one copy of the architect's drawings showing detail of the proposed construction. If a grandstand is in existence, describe the size and type of construction. (xxi)</p>	<p>Describe the effect of competition with other racetracks in and out of the state and with other sports or recreational facilities in the area. (xxxv)</p>
<p>(xiii) All financial information shall be accompanied by an unqualified opinion of a duly licensed certified public accountant, or if the opinion is given with qualifications, the reasons for the qualifications must be stated.</p>	<p>Describe the efforts to be made to insure the security safety and comfort of patrons and license holders. (xxii)</p>	<p>Indicate what effect opposition from area residents may have on the economic outlook for the proposed track. (xxxvi)</p>
<p>(xiv) For applicants other than corporation, list the names and addresses of all executive officers and managerial officers. Indicate positions and offices held by each person named and their principal occupation(s) during the past five years.</p>	<p>State the availability of fire protection and adequacy of law enforcement and police protection. (xxiii)</p>	<p><u>Describe a strategic plan to be proactive in an effort to prevent contagious equine diseases, and biosecurity measures to be put in place in the event of an outbreak including permanent quarantine facilities.</u> (7) A new complete primary application as required in [Subsection F] Paragraph (5) of <u>Subsection I of 15.2.1.8 NMAC</u> is also required if any of the following events occur:</p>
<p>(xv) State whether any director, executive officer, manager, or stockholder has ever been convicted of a crime and describe the circumstances of the convictions.</p>	<p>State the parking lot capacity and describe the construction and type of parking facilities. (xxiv)</p>	<p>(a) if the effective controlling interest of any licensee is transferred or conveyed; (b) if any involuntary transfer of either tangible real or personal property or corporate stock gives the effective control of the licensee to the transferee;</p>
<p>(xvi) Describe any pending legal proceedings to which the applicant or any of its subsidiaries or parent corporations is involved, or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted and the principal parties thereto.</p>	<p>State the number and type of construction of stables, other barn areas, forecourt and paddock areas, indicating capacities and fire prevention facilities for all areas. (xxv)</p>	<p>(c) in the event that a transfer under Subparagraphs (a) and (b) occurs after the granting of racing dates, the transferee shall immediately apply to the commission for a hearing to show cause why the transferee should be permitted to continue racing under the current grant of racing dates;</p>
<p>(xvii) State in complete detail whether the</p>	<p>Describe the facilities for owners, trainers, jockeys, grooms and other racing personnel. (xxvi)</p>	<p>(d) failure to make application within [ninety] 90 days of the date of the proposed transfer shall be grounds for revocation of license.</p>
	<p>State the arrangements for food and drink concessions indicating the names and addresses of concessionaires and the terms of the concession contracts. (xxvii)</p>	<p>(8) A race meet licensee that has been licensed for the previous year, must submit to the commission a renewal application, on a form provided by the commission, containing the following information:</p>
	<p>Describe any concessions, clubs or other special facilities, existing or proposed, for patrons. (xxviii)</p>	
	<p>Indicate by actual dates the racing days requested by applicant. (xxix)</p>	
	<p>Indicate the kind of racing to be conducted. (xxx)</p>	
	<p>Describe the proposed pari mutuel operation in general and indicate in particular the terms of the pari mutuel</p>	

(a) complete listing of officers, directors of corporation, and secondary lender affiliates;

(b) proposed race dates and simulcast race dates;

(c) at the time of annual request for racing dates, when the commission in its discretion determines that the licensee should supply current information;

(d) current financial statements;

(e) changes to articles of incorporation and bylaws;

(f) list of concessionaires and contract services;

(g) changes from original application, or last renewal application, in mortgagee of real property;

(h) insurance policies;

(i) any other changes from original primary application.

(9) The commission in addition to any other legally sufficient reason, may disapprove, deny, refuse to renew, suspend, or revoke a license to conduct horse racing or a horse race meeting in the state of New Mexico if any person having any direct or indirect interest in the applicant or in the licensee, or any nature whatsoever, whether financial, administrative, policy-making or supervisory:

(a) has been convicted of a felony under the laws of New Mexico, the laws of any other state or the laws of the United States, unless sufficient evidence of rehabilitation has been presented to the commission;

(b) has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, unless sufficient proof of rehabilitation has been presented to the commission;

(c) has violated or attempted to violate any law or regulation with respect to racing in any jurisdiction, unless sufficient proof of rehabilitation has been presented to the commission;

(d) has consorted or associated with bookmakers, touts or persons of similar pursuits, unless sufficient proof of rehabilitation has been presented to the commission;

(e) is consorting or associating with bookmakers, touts or persons of similar pursuits;

(f) is financially irresponsible as found or determined by the commission; or,

(g) is a past or present member of or participant in organized crime as such membership or participation may be found or determined by the commission. [15.2.1.8 NMAC - Rp, 15 NMAC 2.1.8, 03/15/2001; A, 08/30/2001; A, 01/31/2008; A, 04/30/2012; A, 06/01/2016]

**RACING COMMISSION**

Explanatory paragraph: This is an amendment to 15.2.8 NMAC, Section 8, effective June 1, 2016. In 15.2.2.8 NMAC, Subsection C, Subsections F through M, Subsections Q through T, Subsections V and W were not published as there were no changes.

**15.2.2.8 ASSOCIATIONS: GENERAL DUTY:**

(1) An association, its officers, directors, officials and employees shall abide by and enforce the Horse Racing Act and the rules and orders of the commission and stewards.

(2) An association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The commission may grant an exemption if the commission determines that: the association’s proposal substantially satisfies the purpose of the requirement; the exemption is in the best interests of the race horses, the racing industry and the citizens of this jurisdiction.

**B. FINANCIAL REQUIREMENTS: INSURER OF THE RACE MEETING:**

(1) Approval of a race meeting by the commission does not establish the commission as the insurer or guarantor of the safety or physical condition of the association’s facilities or purse of any race.

(2) An association shall agree to indemnify, save and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(3) An association shall provide the commission

with a certificate of liability insurance as required by the commission.

(4) An association shall maintain one or more trust accounts in financial institutions insured by the FDIC or other federal government agency for the deposit of nominations and futurity monies and those amounts deducted from the pari mutuel handle for distribution to persons other than the association according to the Horse Racing Act and commission rules.

An association may invest nominations and futurities monies paid by owners in a U.S. Treasury Bill or other appropriate U.S. Government financial instrument instead of an account in a financial institution, in which case the provisions of this Rule shall apply to such instrument.

(5) An association shall keep its operating funds and other funds that belong exclusively to the association separate and apart from the funds in its trust accounts and from other funds or accounts it maintains for persons other than itself, such as a horsemen’s book account.

(6) An association shall employ proper accounting procedures to insure accurate allocation of funds to the respective purses, parties and organizations and detailed records of such accounts shall be made available to the commission or its staff on demand in connection with any commission audit or investigation.

(7) An association shall insure that sufficient funds for the payment of all purses on any race day are on deposit in a trust account at least two business days before the race day and shall provide the commission with documentation of such deposits prior to the race day. Exceptions to this subsection may be made by the commission or the agency director for good cause shown.

(8) An association shall add all interest accrued on funds in a trust account to the balance in the account and distribute the interest proportionally to those for whom the funds are held.

(9) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari mutuel handle are distributed according to the Horse Racing Act and commission rules and not otherwise.

(10) An association and its managing officers shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely

distribution in accordance with the Horse Racing Act, commission rules, association rules and race conditions.

(11) An association is authorized to offset a portion of the jockey and exercise rider insurance premium from gaming monies subject to the approval of the commission.

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**D. FINANCIAL REPORTS:**

(1) The commission may require periodic audits to determine that the association has funds available to meet those distributions for the purposes required by the Horse Racing Act, commission rules, the conditions and nomination race program of the race meeting and the obligations incurred in the daily operation of the race meeting.

(2) An association shall file a copy of all tax returns, a balance sheet and a profit and loss statement.

(3) An association shall file with the commission an unaudited balance sheet and profit and loss statement as required by the commission. Those submissions must be in a format, which conforms to the requirements set out in the association license application.

(4) An association shall file an annual audit with the commission within 90 days after the association's fiscal year-end. The commission, upon good cause shown, may extend the time for filing.

**E. FACILITIES AND EQUIPMENT: FACILITIES FOR PATRONS AND LICENSEES:**

(1) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

(2) An association shall provide and maintain adequate restroom facilities for the patrons and licensees.

(3) An association shall provide an adequate supply of free drinking water.

(4) An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(5) During a race performance, the association shall provide a first aid room equipped with

at least two beds and other appropriate equipment; the services of at least one physician or certified emergency medical technician [~~EMT~~].

(6) An association shall provide two properly equipped ambulances, ready for immediate duty at any time the racetrack is open for racing or exercising. The ambulance shall be staffed with one certified paramedic or an intermediate emergency medical technician [EMT] (as long as physician is on the grounds).

The other staff will be certified EMTs. If the ambulance is being used to transport an individual, the association may not conduct a race until a properly equipped and staffed ambulance is in place, or a physician is on duty.

(7) Unless otherwise approved by the commission or the stewards, an ambulance shall follow the field at a safe distance during the running of races.

(8) The ambulance must be parked at an entrance to the racing strip except when the ambulance is being used to transport an individual or when it is following the field during the running of a race.

(9) An association shall provide adequate office space for the use of the stewards and other commission personnel as required by the commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the commission. An association shall provide a designated steward read only access to the incompass

rtio system as prescribed by the racing office as well as e-mail notification for all entry clerk overrides for horses on stewards', veterinarian's and starter's lists.

(10) An association shall promptly post commission notices in places that can be easily viewed by patrons and licensees.

(11) An association shall ensure that all concessions provide prompt and efficient service to the public at all race meets or simulcast performances. The associations shall specifically ensure that concessions have adequate staff and inventory to provide prompt and efficient service to the public.

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**N. BARNES:**

(1) An association shall provide barns containing a sufficient number of stalls to accommodate all horses approved to

race and all other horses approved to be on the grounds. The association's stable area configuration and facilities must be approved by the commission.

(2) An association shall ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.

(3) An association shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 by 10 feet.

(4) An association shall provide an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area daily. The association shall ensure that refuse from the stalls and other refuse is kept separate.

(5) For new barn construction, an association shall comply with the commission's minimum barn requirements:

(a) Two wash racks per [~~twenty-four~~] 24 stalls with drains a minimum of [~~8' x 10'~~] 8 by 10 feet.

(b) One cold water faucet within 48 inches of all stalls.

(c) Dimensions of stalls are [~~12' x 12'~~] 12 by 12 feet, with a slanted to minimum of 10 foot roof at all points and 8 foot walls.

(d) One room [~~10' x 12'~~] 10 by 12 feet per eight [~~(8)~~] stalls.

(e) Twelve foot [~~(12')~~] shed rows.

(f) Twelve foot [~~(12')~~] ends.

(g) Building material must be [~~100%~~] one hundred percent fire retardant and 26 gauge metal covered composite.

(h) Two 110 electrical outlets per four [~~(4)~~] stalls placed a minimum 6 foot height centered at 4 foot.

(i) Overhead lighting down shedrow so as to illuminate the stalls and shedrow.

**O. TEST BARN**

(1) An association shall provide a test barn for taking specimens of urine, blood or other bodily substances or tissues for testing.

(2) The test barn must be equipped with a walk ring that is large enough to accommodate [~~ten~~] 10 horses; at least three enclosed stalls that permit observation of the collection

process and provide for the protection of collection personnel; facilities and equipment for the collection, identification and storage of samples; a wash rack that is large enough to accommodate three horses at the same time; hot and cold running water; clean water buckets supplied by the trainer for each horse.

(3) An association shall limit access to the test barn to persons, authorized by the official veterinarian, for the conduct of commission authorized tasks such as practicing veterinarians in the performance of their obligations, employees of the official veterinarian, commissioners and their designees. In addition, no more than two [(2)] persons representing the stable of a horse required to be tested may accompany that horse into the test barn. All persons entering the test barn must wear a valid license in plain view. All entrances shall be locked or guarded at all times.

**P. ISOLATION AREA:**

(1) By January 1, 2017, an association shall provide [an] a minimum eight stall, perimeter fenced isolation [area] facility for the care and treatment of a horse that is ordered isolated by the racing veterinarian or the official veterinarian.

(2) The isolation [area] facility must be approved by the official veterinarian.

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**U. COMPLAINTS:**

(1) An association shall designate a location and provide personnel who shall be readily available to the public to provide information or receive complaints.

(2) An association shall promptly notify the commission of a complaint regarding an alleged violation of the Horse Racing Act or a rule of the commission; an alleged violation of ordinances or statutes; accidents or injuries; unsafe or unsanitary conditions for patrons, licensees or horses.

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**X. EMERGENCY TRACK WARNING SYSTEM:** All tracks, including training tracks, under the jurisdiction of the commission shall install an emergency track warning system approved by the commission with the controls located in the stewards' and clockers' stands on all racing and training tracks.

[15.2.2.8 NMAC - Rp, 15 NMAC

2.2.8, 03/15/2001; A, 08/30/2001; A, 11/14/2002; A, 08/30/2007; A, 01/01/2013; A, 06/01/2016]

## RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.3 NMAC, Section 8, effective June 1, 2016. In 15.2.3.8 NMAC, Subsections B through P were not published as there were no changes.

### 15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

#### A. Racing Officials.

Officials at a race meeting include the following: assistant racing secretary; chief of security; director of racing, or similar position; clerk of scales; clocker; general manager; handicapper; horse identifier; horsemen's bookkeeper; jockey room custodian; official veterinarian; paddock judge; pari mutuel manager; patrol judge, absent video replay equipment; placing judge, if duty not performed by stewards; racing secretary; racing veterinarian; stable superintendent; starter; stewards; timer; track superintendent; any other person designated by the commission.

#### (1) Eligibility.

To qualify as a racing official, the applicant shall: be of good character and reputation; demonstrate experience in flat racing; be familiar with the duties of the position and with the commission's rules of flat racing and show an ability to fulfill the requirements of the position. Stewards must be accredited by the racing officials accreditation program and be current with continuing education requirements.

#### (2) Approval

**and licensing.** The commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing. An association shall submit to the commission its request for approval of racing officials [sixty] 60 days prior to the first day of the race meet.

#### (3) Prohibited

**practices.** While serving in an official capacity, racing officials and their assistants shall not: participate in the sale or purchase, or ownership of any horse racing at the meeting; sell or solicit horse insurance on any horse racing at the meeting; be licensed in any other capacity without permission of the commission, or in case of an emergency, the permission of the stewards; wager on the outcome of any race under the jurisdiction of the

commission; consume or be under the influence of alcohol or any prohibited substances while performing official duties.

#### (4) Report

**of violations.** Racing officials and their assistants shall report immediately to the stewards every observed violation of these rules and of the laws of this state governing racing.

#### (5) Complaints

**against officials.** Complaints against any steward shall be made in writing to the commission and signed by the complainant.

#### (a)

Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the commission by the stewards, together with a report of the action taken or the recommendation of the stewards.

#### (b) A

racing official may be held responsible by the stewards or the commission for their actions, and the actions of their assistants [and/or] and employees.

#### (6)

#### Appointment.

#### (a)

A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the commission.

#### (b)

The commission shall appoint or approve the stewards at each race meeting.

#### (7)

#### Appointment of substitute officials.

Where an emergency vacancy exists among racing officials (except for stewards), the stewards or the association, with the stewards' approval, shall fill the vacancy immediately. Such appointment shall be reported to the commission and shall be effective until the vacancy is filled in accordance with these rules.

#### (8)

#### Appointment of substitute steward.

Should any steward be absent at race time, and no approved alternate steward be available, the remaining stewards shall appoint a substitute for the absent steward. If a substitute steward is appointed, the commission and the association shall be notified by the stewards. The following are prohibited from serving as a substitute steward: director, deputy director, or racing commissioner.

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[15.2.3.8 NMAC - Rp, 15 NMAC



2.3.8, 04/13/2001; A, 11/15/2001; A, 08/30/2007; A, 06/15/2009; A, 06/30/2009; A, 12/01/2010; A, 05/01/2015; A, 06/01/2016]

**RACING COMMISSION**

Explanatory paragraph: This is an amendment to 15.2.4 NMAC, Section 8, effective June 1, 2016. In 15.2.4.8 NMAC, Subsections C through F were not published as there were no changes.

**15.2.4.8 CLAIMING RACES:**

**A. GENERAL PROVISIONS:**

(1) A person entering a horse in a claiming race warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for that horse.

(2) A filly or mare that has been bred is ineligible to enter into a claiming race unless a licensed veterinarian's certificate dated at least 25 days after the last breeding of that mare is on file with racing secretary's office stating that the mare or filly is not in foal. However, an in-foal filly or mare shall be eligible to enter into a claiming race if the following conditions are fulfilled:

(a) full disclosure of such fact is on file with the racing secretary and such information is posted in [his/her] the racing secretary's office;

(b) the stallion service certificate has been deposited with the racing secretary's office (although all information obtained on such certificate shall remain confidential);

(c) all payments due for the service in question and for any live progeny resulting from that service are paid in full;

(d) the release of the stallion service certificate to the successful claimant at the time of claim is guaranteed.

(3) The stewards may set aside and order recession of a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the

claim committed a prohibited action, as specified in Subsection E of 15.2.4 NMAC with respect to the making of the claim, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of these rules regarding claiming races. Should the stewards order a recession of a claim, they may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate.

**B. CLAIMING OPTION ENTRY:**

(1) At the time of entry into a claiming race, the owner may opt to declare a horse ineligible to be claimed provided:

(a) the horse has been laid off and has not started for a minimum of 120 days since its last race; and

(b) the horse is entered for a claiming price equal to or greater than the claiming price [at which it last started] of the horse's last start.

(2) Failure to declare the horse ineligible at the time of entry may not be remedied.

(3) Ineligibility shall apply only to the first start following each such layoff.

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**G. TRANSFER OF CLAIMED HORSES:**

(1) Upon successful claim, the stewards shall issue, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the stewards and the racing secretary. Upon notification by the stewards, the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price, applicable taxes and transfer fees.

(2) A person shall not refuse to deliver a properly claimed horse to the successful claimant.

(3) Transfer of possession of a claimed horse shall take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the testbarn for post-race testing, the original trainer or his/her representative shall maintain physical custody of the claimed horse and shall observe the testing procedure and sign the test sample tag. The successful claimant

or his/her representative shall also accompany the horse to the testbarn.

(4) When a horse is claimed out of a claiming race, the horse's engagements are transferred, with the horse, to the claimant.

(5) Ownership interest in any horse claimed from a race shall not be resold or transferred for 30 days after such horse was claimed, except by claim from a subsequent race.

(6) A claimed horse shall not race elsewhere, except within state, or out of state stake races for a period of [~~thirty days~~] 30 days or the end of the meet, whichever occurs first.

(7) A claimed horse shall not remain in the same stable or under the control or management of its former owner.

[15.2.4.8 NMAC - Rp, 15 NMAC 2.4.8, 03/15/2001; A, 10/31/2006; A, 06/15/2009; A, 06/30/2009; A, 01/01/2013; A, 06/01/2016]

**RACING COMMISSION**

Explanatory paragraph: This is an amendment to 15.2.5 NMAC, Sections 8, 10 and 13, effective June 1, 2016. In Section 8, Subsection A and Subsections C through I were not published as there were no changes. In Section 10, Subsection A, Subsections D and E were not published as there were no changes. In Section 13, Subsections B and D were not published as there were no changes.

**15.2.5.8 ENTRIES AND NOMINATIONS:**

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**B. PROCEDURE:**

(1) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

(2) An entry shall be in the name of the horse's [licensed] owner and made by the owner, trainer or a licensed designee of the owner or trainer. Any horse which is in a race or on the also-eligible list may not be sold or transferred until that obligation is completed, except with permission of the stewards.

(3) Numbered races printed in the condition book shall have preference over extra races. Should any race fail to draw seven [(7)] separate wagering interests, it may be called off.

(4) An entry must be in writing, by telephone, electronically or facsimile machine to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(5) The person making an entry shall clearly designate the horse so entered.

(6) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the stewards.

(7) No horse may be entered in more than one race (with the exception of stakes races) to be run on the same day at the same track on which pari-mutuel wagering is conducted. If a horse is entered in more than one stakes race to be run on the same day, at the time of draw, the trainer must declare which race the horse will run in.

(8) No horse may be entered to run at two different tracks on the same day on which pari-mutuel wagering is conducted.

(9) Any permitted medication must be declared on the original entry at each race meet. No further declaration will be required at that meet unless there is a change.

(10) Any approved change of equipment must be declared at time of entry. Any changes after that time must be approved by the stewards.

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[15.2.5.8 NMAC - Rp, 15 NMAC 2.5.8, 03/15/2001; A, 05/15/2001; A, 11/15/2001; A, 12/14/2001; A, 03/31/2003; A, 05/30/2003; A, 06/13/2003; A, 09/29/2006; A, 10/31/2006; A, 01/01/2013; A, 06/01/2016]

**15.2.5.10 WEIGHTS:**

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**B. PENALTIES:**

(1) Weight penalties are obligatory.

(2) Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race.

(3) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race.

(4) Penalties incurred and allowances due in steeplechase or hurdle races shall not

apply to races on the flat, and vice versa.

(5) The reports, records and statistics as published by Daily Racing Form, Equibase or other recognized publications shall be considered official in determining eligibility, allowances and penalties, but may be corrected.

(6) When a race is in dispute, both the horse that finished first and any horse claiming the race, shall be liable to all penalties attaching to the winner of that race, until the matter is decided. In case of a positive test of the winner of a race, no horse other than the winner shall be liable to penalty of weight or condition until [it has received the winning purse of the race in question] the case has been adjudicated; the ruling disqualifying the horse with the positive test issued; and all appeals exhausted.

**C. WEIGHT**

**CONVERSIONS:** For the purpose of determining weight assignments [and/or] and allowances for imported horses, the following weight conversions shall be used:

(1) 1 kilogram = [2-1/4 pounds] two and one-fourth pounds

(2) 1 stone = 14 pounds  
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[15.2.5.10 NMAC - Rp, 15 NMAC 2.5.10, 03/15/2001; A, 01/01/2013; A, 06/01/2016]

**15.2.5.13 RUNNING OF THE RACE:**

**A. EQUIPMENT.**

(1) All riding crops are subject to inspection and approval by the stewards and the clerk of scales. This rule will become effective December 10, 2010.

**(a)**

[For all thoroughbred races (measured in furlongs) the riding] All riding crops shall have a shaft and a flap and will be allowed in flat racing including training. No riding crop shall weigh more than eight ounces nor exceed 30 inches in length, including the [shaft] flap. No riding crop shall be used unless the shaft is a minimum of [one-half] three-eighths inch in diameter; and the shaft contact area must be smooth, with no protrusions or raised surface and covered by shock absorbing material that gives a compression factor of at least one-millimeter throughout its circumference.

**(b)**

The flap is the only allowable attachment to the shaft and must meet the following specifications. The length beyond the end

of the shaft shall be a maximum of one inch with a minimum width of .08 inch and a maximum of 1.6 inches. There shall be no reinforcements or additions beyond the end of the shaft. There shall be no binding within seven inches of the end of the shaft and the flap must include shock absorbing characteristics similar to those of the contact area of the shaft.

**(c)**

~~For all quarter horse races (measured in yards) riding crops will be allowed in flat racing including training. No riding crop shall weigh more than one pound nor exceed 31 inches in length, including the popper. No riding crop shall be used unless it has affixed to the end a looped popper not less than one and one-quarter (1 1/4) inches in width, and not over three (3) inches in length, and be feathered (3) inches in length, and be feathered (3) rows of feathers, each feather not less than one (1) inch in length. There shall be no holes in the popper.~~

(2) No bridle

shall exceed two pounds.

(3) Reins. No

jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein. A safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp.

(4) Toe grabs

with a height greater than two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

(5) A horse's

tongue may be tied down with clean bandages, gauze or tongue strap.

(6) No licensee

may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.

(7) No licensee

may change any equipment used on a horse in its last race without approval of the paddock judge or stewards.

(8) Any

licensed assistant starter and any licensee mounted on a horse or stable pony on the association's racing surface (racetrack surface) must wear a properly fastened New Mexico racing commission approved protective helmet and safety vest.

**(a)**

The helmet worn must comply with one of

the following minimum safety standards or later revisions:

- (i) American society for testing materials (ASTM 1163); or,
- (ii) UK standards (EN-1384 and PAS-015); or,
- (iii) Australian/New Zealand standard (AS/NZ 3838).

(b)

The safety vest worn by a jockey shall weigh no more than two pounds and must comply with one of the following minimum standards or later revisions:

- (i) British equestrian trade association (BETA):2000 level 1; or,
- (ii) euro norm (EN) 13158:2000 1; or
- (iii) American society for testing and materials (ASTM) F2681-08 or F1937; or
- (iv) shoe and allied trade research association (SATRA) jockey vests document M6 Issue 3; or,
- (v) Australian racing board (ARB) standard 1.1998.

(c)

A safety helmet or safety vest shall not be altered in any manner nor shall the product marking be removed or defaced.

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**C. JOCKEY REQUIREMENTS.**

(1) Jockeys shall report to the jockeys' quarters at the time designated by the association. Jockeys shall report their engagements and any overweight to the clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled except as approved by the stewards.

(2) A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the stewards and must be accompanied by an association security guard.

(3) Except as otherwise provided by this subsection, a jockey engaged for a certain race or for a specified time may not fail or refuse to abide by the engagement agreement, unless excused by the stewards. Failure to fulfill riding engagements may result in disciplinary action.

(4) A jockey may be excused by the stewards from fulfilling the jockey's riding engagement if the jockey believes the horse he or she is to ride is unsafe, or the racecourse he or she is to ride on is unsafe, or the jockey is ill or injured, or other extenuating circumstances. No jockey may take off a mount for reasons of safety without first mounting and taking that horse to the track and/or commission veterinarian unless that horse is unruly in the paddock. In that event a jockey's fee is not earned.

(5) ~~he stewards may require a jockey who is excused from fulfilling a riding engagement, because of illness or injury, to pass a physical examination conducted by a licensed physician not employed by the association before resuming race riding.~~ Any jockey unseated or thrown from their mount in the saddling paddock, during the parade to post, while being loaded in the starting gate, during the race, or after the race, may be required by the stewards to be examined by the paramedic, doctor or registered nurse before being allowed to ride. Refusal to be examined or receive medical treatment may be grounds for the stewards to take the rider off their mount for that race and any other races on that day. In the event the jockey is injured or unable to ride they shall be required to provide a doctor's medical release before they are allowed to resume participation in racing or training.

(6) ~~The stewards may require a jockey who is excused from fulfilling a riding engagement, because of illness or injury, to pass a physical examination conducted by a licensed physician not employed by the association before resuming race riding.~~

(7) ~~(7)~~ While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the jockeys' quarters other than commission personnel and officials, an owner or trainer for whom the jockey is riding or a representative of the regular news media, except with the permission of the stewards. Any communication permitted by the stewards may be conducted only in the presence of the clerk of scales or other person designated by the stewards

(8) ~~(8)~~ Jockeys shall be weighed out for their respective mounts by the clerk of scales not more than 30 minutes before post time for each race

(9) ~~(9)~~ A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of

scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a rider at the time of draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards. All jockey protests must be filed prior to the race.

(10) ~~(9)~~ Only valets employed by the association shall assist jockeys in weighing out.

(11) ~~(10)~~ A jockey's weight shall include his/her clothing, boots, saddle and its attachments and any other equipment except the whip, bridle, bit or reins, safety helmet, safety vest, blinkers, goggles and number cloth. Upon the stewards' approval, jockeys may be allowed up to three ~~(13)~~ pounds more than published and announced weights to account for inclement weather clothing and equipment when weighing in.

(12) ~~(11)~~ Seven pounds is the limit of overweight any horse is permitted to carry.

(13) ~~(12)~~ Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be re-admitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

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**E. POST TO FINISH.**

(1) ~~(1)~~ The starter is responsible for assuring that each participant receives a fair start.

(b) ~~(b)~~ If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a non-starter.

(c) ~~(c)~~ Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse shall be declared a non-starter by the stewards.

(d) ~~(d)~~ Should an accident or malfunction of the

starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the stewards may declare individual horses to be non-starters, [exclude] excluding individual horses from [one or more] all pari-mutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multi-race wagers.

(2) Interference, jostling or striking.

(a) A jockey shall not ride carelessly or willfully so as to permit his/her mount to interfere with, impede or intimidate any other horse in the race.

(b) No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment.

(c) No jockey shall unnecessarily cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(3) Maintaining a straight course.

(a) When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede or intimidate any other horse, it is a foul.

(b) The offending horse may be disqualified, if in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

(c) If the stewards determine the foul was intentional, or due to careless riding, they may fine or suspend the guilty jockey.

(d) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane in such a manner that it interferes with, impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

(4) Disqualification.

(a) When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horse as in their judgment it interfered with, or they may place it last.

(b) If a horse is disqualified for a foul, any horse or horses with which it is coupled as an entry may also be disqualified.

(c) When a horse is disqualified for

interference in a time trial race, it shall receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(d) The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and trial qualification.

(e) In determining the extent of disqualification, the stewards in their discretion may: declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry; affirm the placing judges' order of finish and suspend or fine a jockey if, in the stewards' opinion, the foul riding did not affect the order of finish; disqualify the offending horse and not penalize a jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

(5) Horses shall be ridden out: All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without adequate cause, even if the horse has no apparent chance to win prize money.

(6) Use of riding crops.

(a) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

(b) In all races where a jockey will ride without a riding crop, an announcement of such fact shall be made over the public address system.

(c) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.

(d) Riding crops shall not be used on two-year-old horses before March 1 of each year.

(e) Indiscriminate use of the whip is prohibited including whipping a horse: on the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to

control a horse; during the post parade or after the finish of the race except when necessary to control the horse; excessively or brutally causing welts or breaks in the skin; when the horse is clearly out of the race or has obtained its maximum placing; persistently even though the horse is showing no response under the riding crop; or striking another rider or horse.

(f) The riding crop shall only be used for safety, correction and encouragement.

(g) After the race, the horses will be subject to inspection by a racing or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

(h) The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions.

(7) Horse leaving the racecourse. If a horse leaves the racecourse during a race, it must turn back and resume the race from the point at which it originally left the course.

(8) Returning after the finish.

(a) After a race has been run, the jockey shall ride promptly to the finish line, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

(b) If a jockey is prevented from riding to the finish line because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales, or may be excused from weighing in by the stewards.

(9) Unsaddling. No person shall assist a jockey with unsaddling except with permission of the stewards and no one shall place a covering over a horse before it is unsaddled.

(10) Weighing in.

(a) A jockey shall weigh in at no less than the same weight at which he or she weighed out, and if under that weight by more than two pounds and after consideration of mitigating circumstances by the board of stewards, his or her mount may be disqualified from any portion of the purse money.

(b) In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

(c)

If any jockey weighs in at more than three pounds over the proper or declared weight, the jockey may be fined, suspended or ruled off by the stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the commission for such action, as it may deem proper.

(d)

Upon approval of the stewards, the jockeys may be allowed up to three pounds more than published and announced weights to account for inclement weather clothing and equipment when weighing in.

(e)

The post-race weight of jockeys includes any sweat, dirt and mud that have accumulated on the jockey, jockey's clothing and jockey's safety equipment. This accounts for additional weight, depending on specific equipment, as well as weather, track and racing conditions.

(11) Dead heats.

(a)

When a race results in a dead heat, the dead heat shall not be run off, owners shall divide except where division would conflict with the conditions of the races.

(b)

When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

(c)

In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

(d)

When a dead heat is run for second place and an objection is made to the winner of the race, and sustained, the horses, which ran a dead heat, shall be deemed to have run a dead heat for first place.

(e)

If the dividing owners cannot agree as to which of them is to have a cup or other prize, which cannot be divided, the question shall be determined by lot by the stewards.

(f)

On a dead heat for a match, the match is off for pari-mutuel payoffs and mutuels are refunded.

[15.2.5.13 NMAC - Rp, 15 NMAC 2.5.13, 03/15/01; A, 08/30/07; A, 12/01/08; A, 06/30/09; A, 09/15/09; A, 08/16/10; A, 09/01/10; A, 10/15/14; A, 06/01/2016]

## RACING COMMISSION

Explanatory paragraph: This is an amendment to 16.47.1 NMAC, Section 8 and 10, effective June 1, 2016. In Section 8, Subsections C through V were not published as there were no changes. In Section 10, Subsections B through F were not published as there were no changes.

### 16.47.1.8 GENERAL PROVISIONS:

#### A. LICENSES

**REQUIRED:** A person as defined by Subsection P, Paragraph (7) of 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the commission, or be employed by an association who is a gaming operator, without a valid license issued by the commission.

#### (1) License

categories shall include the following and others as may be established by the commission: **GROUP A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. **GROUP B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **GROUP C** - supervisory racing officials. **GROUP D** - persons employed by the association, or employed by a person or concern contracting with the association, to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **GROUP E** - racetrack employees and authorized agents.

#### (2) Persons

required to be licensed shall submit a completed application on forms furnished by the commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

**Continued on the following page.**

Announcer	\$55.00	Simulcast coordinator	\$55.00
Assistant general manager	\$80.00	Simulcast operator	\$80.00
Assistant racing secretary	\$15.00	Special event, 1 or 2 day	\$100.00
Association	\$80.00	Stable name (3 year)	\$100.00
Auditor, official	\$55.00	Stable name (1 year)	\$80.00
Authorized agent	\$ 5.00	Stable superintendent	\$55.00
Clerk of scales	\$15.00	Starter	\$55.00
Clocker	\$15.00	Starter assistant	\$15.00
Club, racetrack	\$80.00	Ticket seller (admissions)	\$ 5.00
Concession employee	\$ 5.00	Timer	\$15.00
Concession operator	\$80.00	Totalisator employee	\$ 5.00
Custodian of jockey room	\$15.00	Totalisator operator	\$80.00
Director or corporate officer	\$80.00	Track maintenance, employee	\$ 5.00
Director of operations	\$55.00	Track physician	\$80.00
Director of racing	\$55.00	Track superintendent	\$55.00
Exercise person	\$15.00	Trainer (3 year)	\$100.00
General manager	\$80.00	Trainer (1 year)	\$80.00
Groom	\$ 5.00	Trainer assistant	\$15.00
Horseman's bookkeeper	\$15.00	Veterinarian assistant	\$15.00
Identifier (horse)	\$15.00	Veterinarian, practicing (3 year)	\$100.00
Janitor	\$ 5.00	Veterinarian, practicing (1 year)	\$80.00
Jockey (3 year)	\$100.00	Veterinarian, racing (3 year)	\$100.00
Jockey (1 year)	\$80.00	Veterinarian, racing (1 year)	\$80.00
Jockey (apprentice) (3 year)	\$100.00	Watchman	\$ 5.00
Jockey (apprentice) (1 year)	\$80.00		
Jockey agent	\$55.00		
Jockey valet	\$ 5.00		
Laborer	\$ 5.00		
Official personnel (specify position)	\$ 5.00		
Official veterinarian (3 year)	\$100.00		
Official veterinarian (1 year)	\$80.00		
Outrider	\$15.00		
Owner (3 year)	\$100.00		
Owner (1 year)	\$80.00		
Paddock judge	\$15.00		
Pari mutuel employee	\$ 5.00		
Pari mutuel manager	\$55.00		
Placing judge	\$15.00		
Photo employee	\$ 5.00		
Plater	\$80.00		
Pony person	\$ 5.00		
Private barns	\$ 80.00		
Racing secretary-handicapper	\$55.00		
Security chief	\$55.00		
Security staff	\$ 5.00		
Simulcast company employee	\$ 5.00		

**Continued on the following page.**

(3) License applicants shall be required to furnish to the commission a set(s) of fingerprints and a recent photograph.

(a) All license applicants ~~[may]~~ shall be required to be re-fingerprinted ~~[or]~~ every 6 years and re-photographed periodically as determined by the commission.

(b) Requirements for fingerprints may be fulfilled by:

- (i) submission of fingerprints; or
- (ii) verification that fingerprints were submitted for processing; ~~[or]~~
- (iii) submission of a fingerprint reciprocity affidavit; or
- (iv) provide proof of licensure from another jurisdiction to which fingerprints were submitted within the last six years.

~~[(c) License applicants for owner, trainer or jockey will only need to be fingerprinted upon first application. If there is a break of three years or more in license continuity or if the commission determines it is necessary, reprinting will be undertaken by the owner, trainer or jockey.]~~

(4) License applicants for groom, watchman, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

**B. MULTI-STATE LICENSING INFORMATION:**  
Applicants may be permitted to submit an association of racing commissioners international, inc. ~~[(RCI)]~~ multi-state license information form and ~~[RCI]~~ association of racing commissioners international, inc. fingerprint card and thereby obtain a criminal records check that can be used in other jurisdictions.

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[16.47.1.8 NMAC - Rp, 16 NMAC 47.1.8, 03/15/2001, A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 02/14/2002; A, 11/14/2002; A, 03/31/2003; A, 07/15/2003; A, 09/29/2006; A, 03/30/2007; A, 08/14/2008; A, 06/15/2009; A, 09/15/2009; A, 01/01/2014; A, 04/01/2014; A, 06/01/2016]

**16.47.1.10 TRAINERS: ELIGIBILITY:**  
A. (1) An applicant

for a license as trainer or assistant trainer must be at least 18 years of age.

(2) Applicants not previously licensed as a trainer shall be qualified, as determined by the stewards or other commission designee, by reason of:

(a) At least two ~~[(2)]~~ years' experience as a licensed assistant trainer, or comparable experience in other equine disciplines, or college-level education in equine science or horsemanship or both.

(b) Shall be required to pass a written examination, oral interviews with stewards ~~[or]~~ and a regulatory veterinarian; and demonstrate practical skills.

(c) Must submit two ~~[(2)]~~ written statements from trainers currently licensed in New Mexico as to the character and qualifications of the applicant and one written statement from a currently licensed owner stating intent to place one ~~[(1)]~~ or more horses with the applicant, when licensed.

(d) Applicants failing the first written/oral examination must wait ~~[thirty]~~ 30 days before retaking the trainer's test.

(e) Applicants failing the second written/oral examination must wait ~~[sixty]~~ 60 days before retaking the trainer's test.

(f) Applicants failing the third written/oral examination must wait one ~~[(1)]~~ year before retaking the trainer's test.

(3) A trainer licensed and in good standing in another jurisdiction, having been issued within a ~~[twenty-four]~~ 24 month period, and having no record of a class 1 or 2 violation, or has less than three class 3, 4, 5 violations in the preceding 24 month period in any jurisdiction may be accepted ~~[of]~~ if evidence of experience and qualifications are provided. Evidence of qualifications shall require passing one or more of the following:

- (a) A written test.
- (b) A demonstration of practical skills.
- (c) An interview with the stewards.

~~[(d) Have no record of a class 1 or 2 violation, or has less than three class 3, 4, or 5 violations in the preceding twenty-four (24) month period in the jurisdiction the license was issued.]~~

(4) Upon timely

request to the steward's or commission designee due to disability or other factors affecting the applicant's ability to effectively complete the trainer's test (such as illiteracy or language barriers), reasonable accommodations shall be made for the applicant including, but not limited to, oral administration of the examination, use of a pre-approved translator, and aid from pre-approved assistant where deemed appropriate by the stewards or commission designee administering the examination.

~~[(5) Beginning in 2015, trainers shall take and pass a written examination every three (3) years prior to renewing their license. All trainer licenses expiring in the year 2015 and thereafter are subject to this requirement.]~~

~~[(6) A trainer, with a New Mexico trainer's license obtained before 2015 and that has been maintained for ten (10) consecutive years, is exempt from the written examination requirement in Paragraph (5) of this subsection, provided the trainer has no record of a class 1 or 2 violation, or has less than three class 3, 4, or 5 violations in the preceding twenty-four (24) month period in New Mexico.]~~

~~[(7) (5) Beginning no later than June 1, 2016, in order to maintain a current license, trainers must complete at least ~~[(4)]~~ four hours per calendar year of continuing education courses approved by the ~~[arci]~~ association of racing commissioners international, inc. or the New Mexico racing commission.]~~

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[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007; A, 06/30/2009; A, 09/15/2009; A, 07/05/2010; A, 05/16/2014; A, 09/15/2014; A, 03/15/2016; A, 06/01/2016]

**REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF**

**This is an amendment to 16.19.2 NMAC, Sections 1, 3, 8 thru 10 and 12 thru 14, effective 06-08-2016.**

**16.19.2.1 ISSUING AGENCY:**  
Regulation and Licensing Department - Board of Pharmacy, [1650 University Blvd, NE - Ste. 400B;] Albuquerque, NM [87102, (505) 841-9102].  
[02-15-96; 16.19.2.1 NMAC - Rn, 16

NMAC 19.2.1, 03-30-02; A, 06-08-16]

### 16.19.2.3 STATUTORY

**AUTHORITY:** Section 61-11-9 NMSA 1978 establishes qualifications for [registration] licensure as a pharmacist by examination. Section 61-11-6.A.(2) NMSA 1978 requires that the board of pharmacy provide for at least two examinations a year of applicants for [registration] licensure as pharmacists. [02-15-96; 16.19.2.3 NMAC - Rn, 16 NMAC 19.2.3, 03-30-02; A, 06-08-16]

### 16.19.2.8 APPLICATIONS

**- SUBJECTS:** Applicants for licensure by examination shall pass the standard national examination currently known as the North American Pharmacist Licensure Examination (NAPLEX) and pass the [NABP] multi-state pharmacy jurisprudence examination (MPJE).

#### A. EXAMINATIONS:

(1) In order to sit for the examination based on NAPLEX subjects, the applicant must be a graduate from a college of pharmacy accredited by the American council on pharmaceutical education (ACPE).

(2) To pass an examination, the candidate shall have a score of at least 75 in the NAPLEX examination.

(3) To pass the [jurisprudence examination] MPJE in the state of New Mexico, the candidate shall have a score of at least 75.

(4) Candidates taking NAPLEX in participating states may transfer scores in compliance with national association of board of pharmacy (NABP) "score transfer program", upon payment of the fee to the New Mexico board of pharmacy for [registration] licensure by examination, and in compliance with such other requirements set by the New Mexico board of pharmacy so long as New Mexico participates in the NABP "score transfer program".

(5) Only those score-transfer applicants who have passed the NAPLEX [examination] and received their score may take the MPJE.

**B.** Graduates of schools or colleges of pharmacy not accredited by the [American council on pharmaceutical education] ACPE, shall be eligible to take the licensing examination required under this section by providing evidence satisfactory to the board that the applicant has satisfied the requirements of 61-11-9 NMSA 1978:

(1) has submitted an application on a form supplied by the board;

(2) has completed the internship requirements of [Part-5] 16.19.5 NMAC; and

(3) has successfully completed the [national association of board of pharmacy] NABP foreign pharmacy graduate equivalency examination (FPGEE) [committee] certification program.

**C.** Applicants with work experience as a pharmacist in another country may petition the board to accept the work experience in lieu of internship requirements of 16.19.5 NMAC. The board may elect to accept all, a portion or none of the experience as a substitute for internship requirements.

[04-30-98; 16.19.2.8 NMAC - Rn, 16 NMAC 19.2.8, 03-30-02; A, 02-15-03; A, 12-15-05; A, 06-08-16]

### 16.19.2.9 EXAMINATION

**REPEATS:** A candidate who fails either the NAPLEX [and/or Jurisprudence Examination] or MPJE may repeat that examination upon submittal of the proper application and fee. A candidate may not take either the NAPLEX or MPJE more than five consecutive times without passing. Failure to finish an examination is counted as an attempt. Candidates who fail or do not complete the NAPLEX shall wait a period of at least 91 days prior to retaking the examination. Candidates who fail or do not complete the MPJE shall wait a period of at least 30 days prior to retaking the examination.

[04-30-98; 16.19.2.9 NMAC - Rn, 16 NMAC 19.2.9, 03-30-02; A, 06-08-16]

### 16.19.2.10 AGREEMENT OF

**[REGISTRATION] LICENSURE:** All [registrants] licensees by examination will be required to sign an agreement of [registration] licensure.

[04-30-98; 16.19.2.10 NMAC - Rn, 16 NMAC 19.2.10, 03-30-02; A, 06-08-16]

### 16.19.2.12 QUALIFICATIONS:

The board shall not recognize as sufficient qualifications for [registration] licensure the diploma of any school or college of pharmacy.

[04-30-98; 16.19.2.12 NMAC - Rn, 16 NMAC 19.2.12, 03-30-02; A, 06-08-16]

### 16.19.2.13 PHOTO

**REQUIRED:** Each applicant for [registration] licensure shall furnish two permanent photographs, head and shoulders only, approximately 3 x 4 inches and signed and dated on the back.

[04-30-98; 16.19.2.13 NMAC - Rn, 16 NMAC 19.2.13, 03-30-02; A, 06-08-16]

### 16.19.2.14 REINSTATEMENT [EXAMINATION] EXAMINATIONS:

**A.** The board may require an applicant for reinstatement of [registration] licensure, for any reason, including revocation, to make a passing score on either the NAPLEX [examination] and/or the Board approved Jurisprudence Examination] and MPJE or both.

**B.** The criteria for passing these examinations shall be the same as required by [16.19.2.8.A.(2)] this regulation.

**C.** If a pharmacist has not been active in the area of pharmacy practice for greater than one year but less than six years, the pharmacist candidate shall complete the following:

(1) submit renewal form;

(2) pay past renewal fees and reinstatement fees;

(3) submit proof of continuing education for each inactive renewal period;

(4) submit proof of completed internship of minimum of 60 hours for each year of inactivity;

(5) successfully complete the MPJE; or

**D.** In lieu of past renewal fees, reinstatement fees and proof of continuing education an inactive pharmacist may successfully complete the internship minimum of 60 hours for each year of inactivity, and successfully pass the NAPLEX and the MPJE.

**E.** If a pharmacist has not been active in the area of pharmacy practice for six years or more, the pharmacist candidate shall:

(1) complete the internship minimum of 60 hours for each year of inactivity; and

(2) successfully pass the NAPLEX and the MPJE.

**F.** The applicant must follow the same rules and procedures as if reciprocating his license as described in 16.19.3 NMAC.

[04-30-98; 16.19.2.14 NMAC - Rn, 16 NMAC 19.2.14, 03-30-02; A, 06-08-16]

## REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

**Explanatory paragraph: This is an amendment to 16.19.8 NMAC, Section 7, effective 06-08-2016. In 16.19.8.7 NMAC, Subsections A through X and Z through KK were not published as**



there were no changes.

**16.19.8.7 DEFINITIONS:**

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**Y. “Normal distribution channel”** means a chain of custody, including intracompany sales, transactions or transfers, for a prescription drug that goes directly or by drop shipment from the manufacturer, its affiliated group as defined in Section 1504 of the Internal Revenue Code, manufacturer’s co-licensed partner or its affiliated group or from any of these entities to their third party logistics provider or exclusive distributor without respect to whether title is transferred to:

- (1) either a pharmacy or to other designated persons authorized by law to dispense or administer such drug to a patient; or
- (2) an authorized distributor of record and then to either a pharmacy or to other designated persons authorized by law to dispense or administer such drug to a patient; or
- (3) an authorized distributor of record to one other authorized distributor of record to an office-based healthcare practitioner or pharmacy or to other designated persons authorized by law to dispense or administer such drug to a patient; or
- (4) a pharmacy warehouse to the pharmacy warehouse’s intracompany pharmacy to either a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or
- (5) an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse’s intracompany pharmacy to either a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or
- (6) sale of drugs from pharmacies to wholesaler for resale is prohibited.

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[16.19.8.7 NMAC - Rp, 16.19.8.7 NMAC, 12-02-09; A, 06-08-16]

**REGULATION AND LICENSING DEPARTMENT  
PHARMACY, BOARD OF**

**This is an amendment to 16.19.22 NMAC, Section 9, effective 06-08-2016.**

**16.19.22.9 TRAINING AND EDUCATION:**

- A.** The pharmacist-in-charge shall ensure that the pharmacy technician has completed initial training which includes:
- (1) federal and state laws and regulations that affect pharmacy practice; specific regulations which address the use of supportive personnel and technicians;
  - (2) ethical and professional standards of practice;
  - (3) medical and pharmaceutical terminology, symbols and abbreviations used in the practice of pharmacy and components of a prescription;
  - (4) pharmaceutical calculations necessary for the preparation and dispensing of drug products;
  - (5) manufacturing, preparation, packaging, labeling and proper storage of drug products;
  - (6) dosage forms and routes of administration; and
  - (7) trade and generic names for medications frequently dispensed by the pharmacy;
  - (8) basic comprehension of pharmacology;
  - (9) basic knowledge of appropriate pharmacy references.
- B.** If the duties of the technician will include the preparation of sterile products then, in addition to the training and education requirements listed in this section, the technician will complete training outlined in ~~[Paragraph (2) of Subsection C of 16.19.6.11 NMAC]~~ Subsection C of 16.19.36.13 NMAC.
- C.** A written record of training and education will be maintained by the pharmacy technician and contain the following:
- (1) name of person receiving the training;
  - (2) date(s) of the training;
  - (3) description of the topics covered;
  - (4) names of the person(s) who provided the training; and
  - (5) signature of the technician and the technician training sponsor.
- D.** A written record of training and education must be submitted to the board with certification exam documentation to obtain certified pharmacy technician registration.
- E.** All technicians

are required to obtain board approved certification within one year of registration with the board as a technician. Extensions will no longer be granted to pharmacy technicians registered on or after November 15, 2010.

**F.** The pharmacist-in-charge shall be responsible for the implementation of policies and procedures for additional training appropriate to duties and responsibilities performed by a pharmacy technician as well as an ongoing quality assurance plan to assure competency.  
[16.19.22.9 NMAC - Rp, 16 NMAC 19.22.9, 06-27-01; A, 11-15-10; A, 11-27-11; A, 06-08-16]

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**END OF ADOPTED RULES**

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# 2016 New Mexico Register

## Submittal Deadlines and Publication Dates

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Issue 9	May 2	May 13
Issue 10	May 16	May 31
Issue 11	June 1	June 15
Issue 12	June 16	June 30
Issue 13	July 1	July 15
Issue 14	July 18	July 29
Issue 15	August 1	August 15
Issue 16	August 16	August 31
Issue 17	September 1	September 15
Issue 18	September 16	September 30
Issue 19	October 3	October 14
Issue 20	October 17	October 31
Issue 21	November 1	November 15
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