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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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ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARING
TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO 20.11.100 NMAC MOTOR VEHICLE INSPECTION - DECENTRALIZED

On Wednesday, August 10, 2016, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM. The hearing will address a petition for regulatory change from the City of Albuquerque, Environmental Health Department (EHD), proposing to adopt amendments to 20.11.100 NMAC, *Motor Vehicle Inspection - Decentralized*, and request that the U.S. Environmental Protection Agency (EPA) make an administrative error correction to the New Mexico State Implementation Plan (SIP) for air quality.

Following the hearing, the Air Board at its regular monthly meeting the same evening is expected to consider adopting the amendments. The agenda for the regular monthly meeting will be viewable at least 72 hours in advance of the meeting at http://www.cabq.gov/airquality/air-quality-control-board/events/august-10-2016-air-quality-control-board-meeting.

EHD operates a decentralized vehicle emissions testing program, also known as the Inspection and Maintenance (I/M) Program, codified at 20.11.100 NMAC and authorized by the New Mexico Air Quality Control Act, NMSA 1978 § 74-2-4(E), the City of Albuquerque Motor Vehicle Emissions Control Ordinance, ROA § 7-8-1 et seq., the federal Clean Air Act, 42 U.S.C. § 7401 et seq., and EPA's implementing regulations, 40 C.F.R. §§ 51.350 to 51.373, Subpart S - *Inspection/Maintenance Program Requirements.*

After a legal review, EHD determined that provisions of 20.11.100 NMAC requiring emissions testing of diesel vehicles under twenty-six thousand pounds gross vehicle weight are not authorized under state and local law.

To realign 20.11.100 NMAC within state and local legal authority, EHD's proposed amendments would remove the language authorizing diesel testing. The Public Review Draft of the amended 20.11.100 NMAC may be reviewed during regular business hours at the Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, NM 87102. Copies of the Public Review Draft may be obtained by contacting Andrew Daffern, Air Quality Control Board Liaison, at (505) 768-2601 or adaffern@cabq.gov. The Public Review Draft and EHD's petition for regulatory change can also be found on the web site of EHD, Air Quality Program, at: http://www.cabq.gov/airquality/air-quality-control-board/documents/environmental-health-departments-petition-to-amend-20-11-100-nmac-motor-vehicle-inspection-decentralized.pdf.

If the Air Board adopts the amendments, the Air Board's attorney may request via letter that EPA remove the diesel emissions testing requirement using an administrative error correction process. 42 USC § 7410(k)(6).

The hearing on the proposed regulatory change will be conducted in accordance with NMSA 1978 § 74-2-6; City of Albuquerque Joint Air Quality Control Board Ordinance, ROA § 9-5-1-6, *Adoption of Regulations, Notice and Hearing*; Bernalillo County Ordinance, Section 30-35, *Adoption of Regulations, Notice and Hearings*; and 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Interested persons may present technical or non-technical testimony.

Persons wishing to present technical testimony must file with the hearing clerk a written notice of intent (NOI) to do so by 5:00 p.m. on Tuesday, July 26, 2016. The contact information for the hearing clerk is: Andrew Daffern, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102.

As required by 20.11.82.20 NMAC, the NOI 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 and state the anticipated duration of the testimony of that witness;
(4) include the text of any recommended modifications to the proposed regulatory change;
(5) list and attach an original and 15 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and
(6) be served on the petitioner, if the document is an NOI filed by any person other than the petitioner.

An NOI must also follow the filing and service requirements of 20.11.82.16 NMAC.

As provided by 20.11.82.22 NMAC, any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any member of the public may also offer exhibits in connection with non-technical testimony, as long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file the written statement prior to the hearing, or submit it at the hearing. Written statements submitted prior to the hearing may be directed to the hearing clerk, Andrew Daffern, at the above contact information.

NOTICE FOR PERSON WITH DISABILITIES OR SPECIAL NEEDS: If you have a disability or require special assistance to participate, including translation/interpretation service, or review of any agendas, minutes, or other public meeting documents, please contact Andrew Daffern, hearing clerk, by 5:00 p.m. on Tuesday, July 26, 2016, at (505) 768-2601, or adaffern@cabq.gov. TTY users requiring special assistance may call the New Mexico Relay at 1-800-659-8331.

ARCHITECTS, BOARD OF EXAMINERS FOR

Notice of Public Hearing

The Board of Examiners for Architects hereby gives notice that the Board will conduct a public hearing to obtain input on amending the following rules:

16.30.1 NMAC (General Provisions)

16.30.2 NMAC (Organization and Administration)

16.30.3 NMAC (Registration and Renewal, Duplicate Certificates, Seal Specifications and Document Identification)

16.30.4 NMAC (Code of Conduct)

16.30.5 NMAC (Enforcement)

The proposed rule amendments will be available on June 30, 2016 on the Board's website at the following link www.bea.state.nm.us or at the Board office, located at 5 Calle Medico Suite C Santa Fe, New Mexico 87505.

A public hearing regarding the proposed rule amendments will be held on Friday, August 12, 2016 at 10:00 am in room P104 at the School of Architecture and Planning's George Pearl Hall on the University of New Mexico Campus, Albuquerque, New Mexico 87131. The Board will take final action on the proposed amendments to the rules at a regular board meeting immediately following the public hearing on Friday, August 12, 2016.

Interested individuals may submit written comments prior to the public hearing and may testify at the hearing. Written comments can be submitted electronically to the Board's e-mail address, which is nmbea@state.nm.us or to the Board's mailing address, which is P. O. Box 509 Santa Fe, New Mexico 87504. The deadline for submitting written comments is 5:00 pm on Friday, July 29, 2016.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact the board office at (505) 982-2869 as soon as possible. The Board requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

RACING COMMISSION

NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on July 21, 2016. The hearing will be held during the Commission's regular business meeting with public session beginning at 8:30 a.m. The meeting will be held in the Turf Club at 26225 US Hwy. 70, Ruidoso, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.6 NMAC, 15.2.1 NMAC, 15.2.3 NMAC, 15.2.5 NMAC, and 15.2.4 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from the NMRC Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

/ Ismael Trejo/
Executive Director
Ismael Trejo

Dated: June 8, 2016

REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

LEGAL NOTICE
Public Rule Hearing

The Construction Industries Commission will convene a public hearing on proposed changes to repeal and amend the New Mexico Administrative Code. Amendments: NMAC 14.7.2 New Mexico Commercial Building Code, NMAC 14.7.3 New Mexico Residential Building Code, NMAC 14.7.7 New Mexico Existing Building Code, Building Standard Amendment to NMAC 14.7.4 New Mexico Earthen Building Material Code, Amendment to NMAC 14.7.8 New Mexico Historic Earthen Buildings, Amendment to NMAC 14.5.1 General Provisions, NMAC 14.5.2 Permits and NMAC 14.5.3 Inspections. Repeal: NMAC 14.7.5 New Mexico Non-Loading Baled Straw Construction. The hearing will be held before its designated hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing, and to examine witnesses testifying at the hearing. The hearing is scheduled as follows:

9:00 a.m., August 4th, 2016 at the New Mexico Regulation and Licensing Department (Toney Anaya Building-Hearing Room 2 on the 2nd Floor), located at 2550 Cerrillos Road, Santa Fe, NM 87504.

Please Note: All persons wishing to participate in the public hearing remotely may do so telephonically dialing into:

Dial-in Number: (712)432-1212

Meeting ID: 788-223-117

Interested persons may secure copies of the proposed changes by accessing the Construction Industries Division website (www.rld.state.nm.us/construction) or by request from the Santa Fe CID Office - Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM 87504. If you cannot attend the hearing, you may send your written comments to: Construction Industries Division P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4702. All comments must be received no later than 5:00 p.m., on July 21st, 2016. If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs please notify us as soon as possible. Telephone: 505-476-4674. Email: martin.romero@state.nm.us; Fax No. (505) 476-4702.

REGULATION AND LICENSING DEPARTMENT
PUBLIC ACCOUNTANCY BOARD

Public Accountancy Board Meeting and Public Rules Hearing

The New Mexico Public Accountancy Board ("Board") will convene a regular board meeting and a public rules hearing on Tuesday, August 16, 2016. The regular scheduled board meeting will be held at 9:00 a.m. and the Public Rules Hearing will immediately follow the board meeting in the Sandia Conference Room of the Regulation and Licensing Department Building, 5500 San Antonio Drive, NE Albuquerque, New Mexico 87109. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing board rules.

The Board's Rules Committee will recommend that the Board adopt amendments to the following rules:
16.60.1 NMAC—General Provisions
16.60.4 NMAC—Firm Permit Application, Renewal, Reinstatement, and Notification Requirements

Notice of the hearing and board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments and the meeting agenda on the Board's website at www.rld.state.nm.us/accountancy. Copies may also be obtained by contacting the board office at (505)222-9853. Written comments regarding the proposed amendments should be directed to Mrs. Jessica Chavez-Lance, Licensing Manager, New Mexico Public Accountancy Board, 5500 San Antonio Drive, NE Suite A, Albuquerque, New Mexico 87109; faxed to (505)222-9855; or sent via e-mail to Jessica.Chavez-Lanc@state.nm.us. Comments must be received by 5:00 p.m. on Monday, August 1, 2016; however, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the board office at (505) 222-9850 by 5:00 p.m. on Monday, August 1, 2016.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), New Mexico Office of Superintendent of Insurance (OSI), upon the Superintendent's own motion, and proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA Section 59A-1-1, *et seq.* (Insurance Code), proposes to promulgate new rules pertaining to provider payment and provider credentialing, to be codified in the New Mexico Administrative Code (NMAC) as Section 13.10.28 (**PROVIDER PAYMENT AND PROVIDER CREDENTIALING**).

1. The text of the proposed new rule is located on the OSI website at http://www.osi.state.nm.us/, under the "Rulemaking" tabs, and is incorporated by reference into this Notice of Proposed Rulemaking (NOPR).
2. Statutory authority for promulgation of this rule is found at Sections 59A-22-54; 59A-23-14; 59A-46-54 and 59A-47-48, NMSA 1978.
3. OSI staff, all health care insurers and health care providers conducting business in the state of New Mexico, and the public are encouraged to provide comments or file any written proposals or comments according to the criteria and schedule set forth as follows:
   a) Oral comments will be accepted at the public hearing from any interested persons;
   b) Written statements, proposals or comments may be submitted for the record, in lieu of providing oral comments at the hearing and are due no later than **4:00 p.m. on Friday, July 15, 2016**. Any responsive proposals or comments should be filed **no later than 4:00 p.m. on Friday, July 22, 2016**.
4. Written comments and written response comments shall be filed by sending original copies to:
   Mr. Mariano Romero
   OSI Records Management Bureau
   1120 Paseo de Peralta, Room 331
   P. O. Box 1689
   Santa Fe, NM 87504-1689
   ATTN: Docket No. 16-00021-RULE-LH
5. The Superintendent will hold a public comment hearing beginning at **10:00 a.m. on Friday, July 15, 2016**, at the Office of Superintendent of Insurance, in the Fourth Floor Hearing Room, OLD PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501. Deputy Superintendent Robert Doucette will be the designated hearing examiner for this case.
6. Any person with a disability requiring special assistance in order to participate in a hearing should contact **Lois Caroline Pedro, at 505-476-0305** at least 48 hours prior to the commencement of the hearing.
7. The Superintendent will consider all oral comments and will review all timely submitted written comments and responses.
8. The record in this rulemaking shall close at **5:00 p.m.** on **Friday, July 22, 2016,** at which time no further oral or written communication concerning this rulemaking will be entertained or considered by the Superintendent or the Hearing Examiner [or the date a Final Order is issued in this case.]
9. Copies of this NOPR shall be sent to all persons on the attached Certificate of Service, via electronic mail if possible and otherwise via U.S mail.

DONE AND ORDERED this 15th day of June, 2016.
JOHN G. FRANCHINI
Superintendent of Insurance

WATER QUALITY CONTROL COMMISSION

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENT TO 20.7.4 NMAC - UTILITY OPERATOR CERTIFICATION

The New Mexico Water Quality Control Commission ("Commission" or "WQCC") will hold a public hearing on August 9, 2016, at 9:00 a.m., and continuing thereafter as necessary, in the State Capitol building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to August 9, 2016, and those interested in attending should check the WQCC website: https://www.env.nm.gov/wqcc/index.html prior to the hearing. The purpose of the hearing is to consider proposed amendments to the New Mexico Utility Operator Certification Regulations (20.7.4 NMAC). The New Mexico Utility Operator Certification Advisory Board is the proponent of these regulations.

The proposed amendments to 20.7.4 NMAC would add a new section,

20.7.4.16 NMAC, and are necessary to conform to the requirements in the Utility Operators Certification Act and the Utility Operator Certification Regulations for providing general criteria for the level of professional conduct expected of certified operators in the state of New Mexico.

Please note formatting and minor technical changes in the regulations may occur. In addition, the Commission may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Commission and evidence presented at the hearing.

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the Commission:

Pam Castaneda, WQCC Administrator
New Mexico Environment Department
1190 S. St. Francis Drive, S-2102
Santa Fe, New Mexico, 87502
(505) 827-2425, Fax (505) 827-2818

The proposed amendments have been posted to the New Mexico Environment Department/Utility Operator Certification webpage at https://www.env.nm.gov/swqb/UOCP. Parties interested in receiving a hardcopy should contact Anne Keller by email at: anne.keller@state.nm.us or by phone at (505) 827-0149. Written comments regarding the new regulations may be addressed to Ms. Castenada at the above address, and should reference docket number WQCC 16-01 (R).

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and other applicable procedures. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings and the Hearing Guidelines may be obtained from Ms. Castenada; they are also available on the Commission's website at https://www.env.nm.gov/wqcc/index.html.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony during the hearing must file with the Commission a written Notice of Intent to do so. Notices must be filed with Pam Castaneda at the address above by 5:00 p.m. on July 26, 2016, and should reference the date of the hearing and docket number WQCC 16-01 (R).

The Notice shall include:

- identify the person for whom the witness(es) will testify;
- identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
- if the hearing will be conducted at multiple locations, indicate the location or locations at which the witness(es) will be present;
- summarize, or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Juan Carlos Borrego by July 26, 2016. Mr. Borrego's telephone number is 505-827-0424. He is the Chief of the Personnel Services Bureau, New Mexico Environment, Department, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico 87502, (505) 827-2844. (TDD or TDY users, please access his number via the New Mexico Relay Network at 1-800-659-8331.)

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Commission may convene a meeting after the hearing to consider action on the proposal.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

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

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

At its hearing on 6/1/2016, the Children, Youth and Families Department repealed its rule 8.14.5 NMAC, entitled Safety and Emergency Operations, filed 5/17/2010 and replaced it with a new rule 8.14.5 NMAC, entitled Safety and Emergency Operations, effective 7/01/2016.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 5 SAFETY AND EMERGENCY OPERATIONS

8.14.5.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.5.1 NMAC - Rp, 8.14.5.1 NMAC, 7/1/2016]

8.14.5.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.
[8.14.5.2 NMAC - Rp, 8.14.5.2 NMAC, 7/1/2016]

8.14.5.3 STATUTORY AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.5.3 NMAC - Rp, 8.14.5.3 NMAC, 7/1/2016]

8.14.5.4 DURATION: Permanent.
[8.14.5.4 NMAC - Rp, 8.14.5.4 NMAC, 7/1/2016]

8.14.5.5 EFFECTIVE DATE: July 1, 2016 unless a later date is cited at the end of a section.
[8.14.5.5 NMAC - Rp, 8.14.5.5 NMAC, 7/1/2016]

8.14.5.6 OBJECTIVE: To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision or in the custody of the department including implementation of Cambiar New Mexico. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to clients.
[8.14.5.6 NMAC - Rp, 8.14.5.6 NMAC, 7/1/2016]

8.14.5.7 DEFINITIONS:

A. "Cambiar (Change) New Mexico" is the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services' staff members build relationships and learn to interact in a completely different way than the old "correctional" model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. "Client" refers to a person who is committed to the custody of the CYFD juvenile justice services or who is receiving services from juvenile justice services.

C. "Delinquent act or delinquency" refers to an act committed by a juvenile that would be designated as a crime under the law if committed by an adult.

D. "Department" refers to the New Mexico children, youth and families department.

E. "Director" refers to the juvenile justice services director.

F. "Facility" refers to a facility operated by, or on behalf of the CYFD juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

G. "FACTS" (family automated client tracking system) refers to CYFD's mission critical electronic case management system supporting protective services, juvenile justice services, and early childhood services, which is accessed by CYFD staff and contractors while at CYFD locations. FACTS provides tracking of referrals for abuse/neglect and delinquency, investigation/preliminary inquiry, legal actions, placements, providers, and child care assistance.

H. "Incident" for purposes of this policy, refers to any non-routine or emergency action or occurrence that disrupts or is likely to disrupt the normal operation of the facility. This includes mechanical or physical restraint or other use of force.

I. "Juvenile justice services" or "juvenile justice division" refers to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

J. "Mechanical restraint" is defined as a use of force with mechanical devices to physically restrict a client's freedom of movement, performance of physical activity, or normal access to his or her body. Only staff trained in the proper use of mechanical restraints may apply them. Approved mechanical restraint devices are handcuffs, leg irons, and belt cuffs.

K. "Pat down search" refers to a visual and manual search of a clothed client and the client's clothing for contraband without the removal of the client's clothing.

L. "Physical restraint" is the physical use of force on a client by staff to control or restrict the movement of the client using a technique approved by CYFD and taught in a CYFD approved course.

M. "Secretary" refers to the secretary of CYFD.

N. "Secure facility" refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility designated as a secure facility by the juvenile justice services director.

O. "Serious incident report (SIR)" refers to any occurrence which compromises the safety, security,

or emotional well-being of clients, staff, and visitors or endangers the public. SIRs are completed by any facility discipline including medical, behavioral/mental health, education or any administrative discipline not involving potential client due process, using an approved form which is prepared and submitted to central office electronically within 24 hours of the occurrence.

P. "Staff" refers to employee(s) of CYFD.

Q. "Strip search" refers to a visual inspection of a client's body for weapons, contraband, and physical abnormalities requiring the client to remove their clothing. This also includes a thorough search of the client's clothing once it has been removed.

R. "Superintendent" refers to the chief administrator at a juvenile justice services facility.

S. "Youth care specialist" refers to juvenile justice services security staff members whose primary duties include working directly with clients.

[8.14.5.7 NMAC - Rp, 8.14.5.7 NMAC, 7/1/2016]

8.14.5.8 SECURITY MANUAL: Juvenile justice services maintains a security manual that designates locations of staff, referenced as posts, with specific direction delineated through post orders that provide standard and emergency operating procedures to each staff member. The security manual shall not generally be made available to the public or clients.

[8.14.5.8 NMAC - Rp, 8.14.5.8 NMAC, 7/1/2016]

8.14.5.9 CONTROL CENTER FUNCTIONS: To maintain the necessary security and control of the facility, to promote a primary communication vehicle, and to promote safe and orderly operations there shall be a designated control center at secure facilities, operating 24 hours per day to coordinate all security functions and emergency communications. Juvenile justice services shall designate space for these control centers in each of its secure facilities and provide a system that links the control center with all program, service, operational, and living areas of the facility.

[8.14.5.9 NMAC - Rp, 8.14.5.9 NMAC, 7/1/2016]

8.14.5.10 PERIMETER SECURITY: Each juvenile justice services facility's perimeter shall be controlled by appropriate means to ensure that pedestrian and vehicle traffic enter and exit through designated points and to prevent unauthorized client movement outside of the perimeter or unauthorized access to the facility by the general public.

[8.14.5.10 NMAC - Rp, 8.14.5.10 NMAC, 7/1/2016]

8.14.5.11 SECURITY EQUIPMENT: Juvenile justice services stores all security equipment and related items in a secured but accessible location outside of the client housing and activity areas and maintains a record of equipment distribution for both emergency and routine incidents.

[8.14.5.11 NMAC - Rp, 8.14.5.11 NMAC, 7/1/2016]

8.14.5.12 PERMANENT LOGS: Youth care specialists maintain a permanent log and prepare shift reports that record routine information, emergency situations, and unusual incidents. These logs and reports are reviewed by designated staff and filed for future reference.

[8.14.5.12 NMAC - Rp, 8.14.5.12 NMAC, 7/1/2016]

8.14.5.13 CLIENT COUNT AND MOVEMENTS: Juvenile justice services maintains a system of strict accountability for clients that includes maintaining an up-to-date and accurate master roster that accounts for client admissions, releases, transfers, escapes, absences from the facility, and transports. On-duty staff members are responsible for knowing where clients are at all times through formal and informal counts, physical proximity to clients, and continuous visual surveillance.

[8.14.5.13 NMAC - Rp, 8.14.5.13 NMAC, 7/1/2016]

8.14.5.14 GENERAL PATROLS AND INSPECTIONS: Juvenile justice services youth care specialist supervisors shall conduct regular daily patrols and inspections, including weekend and holidays, of all areas occupied by clients, and submit daily reports for managerial review. Weekly inspections shall be conducted of unoccupied areas.

[8.14.5.14 NMAC - Rp, 8.14.5.14 NMAC, 7/1/2016]

8.14.5.15 ADMINISTRATIVE PATROLS AND INSPECTIONS: The facility superintendent or designee, deputy superintendents, and designated supervisors shall conduct patrols and inspections of client living and activity areas on a weekly basis to encourage informal contact with staff and clients and informally observe living, working, and activity conditions.

[8.14.5.15 NMAC - Rp, 8.14.5.15 NMAC, 7/1/2016]

8.14.5.16 TOOL AND EQUIPMENT CONTROL: Juvenile justice services monitors the use, storage, and accessibility to keys, tools, and equipment through a documented check-in and check-out procedure and regularly scheduled inventories.

[8.14.5.16 NMAC - Rp, 8.14.5.16 NMAC, 7/1/2016]

8.14.5.17 KEY AND LOCKS CONTROL: Juvenile justice services governs the control and use of keys by designating an individual to maintain a facility key inventory which identifies the location of keys and associated locks. Facility keys are marked "do not duplicate" and can only be approved for duplication by the facility superintendent.

[8.14.5.17 NMAC - Rp, 8.14.5.17 NMAC, 7/1/2016]

8.14.5.18 USE OF VEHICLES: Juvenile justice services shall allow only authorized drivers and authorized passengers to drive or be transported in a juvenile justice services vehicle. Vehicles shall only be driven or occupied for official state business. Staff members, the public, visitors, and clients are encouraged to report any misuse of a state vehicle to the juvenile justice services director.

[8.14.5.18 NMAC - Rp, 8.14.5.18 NMAC, 7/1/2016]

8.14.5.19 CLIENT TRANSPORTS: Juvenile justice services shall transport its clients in a safe and secure manner that ensures control and maintenance of custody and supervision of the clients. Drivers shall be appropriately licensed for the vehicle and shall obey all traffic laws. Vehicles shall be properly equipped for the clients being transported, inspected to ensure compliance with applicable laws and regulations, and routinely maintained to ensure safe operating conditions. Clients shall be transported with appropriate security measures, and restraints shall be used according to client risk levels and other safety factors.

[8.14.5.19 NMAC - Rp, 8.14.5.19 NMAC, 7/1/2016]

8.14.5.20 SERIOUS INCIDENT REPORTING: Juvenile justice services shall utilize a standardized process for reporting serious incidents that involve clients in their custody, employees, or visitors. All serious incidents are reviewed by the facility superintendent and if appropriate filed in the client's permanent record.
[8.14.5.20 NMAC - Rp, 8.14.5.20 NMAC, 7/1/2016]

8.14.5.21 GANG MANAGEMENT: Juvenile justice services provides for and engages clients in pro-social skills development programs and services that work toward diminishing and eliminating gang involvement. No client or group of clients shall be given authority over other clients through formal or informal mechanisms.
[8.14.5.21 NMAC - Rp, 8.14.5.21 NMAC, 7/1/2016]

8.14.5.22 USE OF FORCE: Juvenile justice services restricts the use of physical force, including the use of physical and mechanical restraints, to instances of justifiable self-defense, protection of a client from hurting him or herself, protection of others, protection of property, and the prevention of escapes. Physical force is only used as a last resort in accordance with applicable law, statute and juvenile justice services' policy and procedure. In no event is physical force justifiable as punishment or may the force used exceed what is reasonably required to control the individual or situation.
[8.14.5.22 NMAC - Rp, 8.14.5.22 NMAC, 7/1/2016]

8.14.5.23 PROTECTION FROM HARM: All instances or complaints of alleged or suspected abuse are reported to the appropriate local law enforcement agency, protective services or the juvenile justice services director or designee immediately upon knowledge of the incident (Section 32A-4-3 NMSA 1978). The notification must also be noted in FACTS.
[8.14.5.23 NMAC - Rp, 8.14.5.23 NMAC, 7/1/2016]

8.14.5.24 PRISON RAPE ELIMINATION ACT: Juvenile justice services shall comply with the federal Prison Rape Elimination Act (PREA) and maintains an ongoing commitment to prevent, detect, and respond to all allegations of sexual misconduct – including sexual abuse and sexual harassment. Juvenile justice services is committed to providing a safe and secure environment, free from all forms of sexual misconduct and retaliation for clients and staff. To that end, juvenile justice services has a zero tolerance for sexual misconduct and maintains comprehensive procedures regarding prevention, detection, and response to such conduct. All sexual contact between staff and clients; contractors, volunteers, or student interns and clients; and clients and clients, regardless of consensual status, is prohibited and subject to disciplinary action and possible criminal prosecution. All staff, contractors, volunteers, and student interns are required to report any suspected or witnessed sexual misconduct.
[8.14.5.24 NMAC - Rp, 8.14.5.24 NMAC, 7/1/2016]

8.14.5.25 UNIT MANAGEMENT: Juvenile justice services increases contact between staff and clients, fosters interpersonal relationships and promotes more knowledge-based decision making by subdividing facilities into manageably-sized units with multidisciplinary decision making authority in programming and services.
[8.14.5.25 NMAC - Rp, 8.14.5.25 NMAC, 7/1/2016]

8.14.5.26 DEPLOYMENT: Staff to client ratios are assessed and maintained according to location, need, and safety. Juvenile justice services shall provide an environment that is safe, secure, and orderly by having sufficient staff, 24 hours a day, scheduled and located in client living and activity areas to provide for the safety and well-being of clients, staff, visitors, and the general public.
[8.14.5.26 NMAC - Rp, 8.14.5.26 NMAC, 7/1/2016]

8.14.5.27 GENDER RESPONSIVENESS: Juvenile justice services and its contractors and service providers are gender responsive. Juvenile justice services shall maintain at least one staff member of the same gender as a client being supervised in the location of the client.
[8.14.5.27 NMAC - Rp, 8.14.5.27 NMAC, 7/1/2016]

8.14.5.28 CONTRABAND CONTROL: Juvenile justice services considers any item found inside the perimeter of a facility or in possession of a client, staff member, or visitor inside the perimeter of a facility contraband if it is illegal to possess by law, illegal for minors to own or possess, or specifically listed in the department's prohibited item list. Seized items of contraband will be disposed of in accordance to New Mexico state statute or as detailed in applicable procedures, and may be turned over to law enforcement for prosecution.
[8.14.5.28 NMAC - Rp, 8.14.5.28 NMAC, 7/1/2016]

8.14.5.29 SEARCHES: Juvenile justice services staff, or if necessary supervisory staff or law enforcement personnel, may conduct or authorize pat down or strip searches anytime there is an articulated and documented safety or security issue. Staff may search clients, visitors, other staff, living units, program areas, and vehicles. Searches may be conducted to ensure health, safety, and security, to control contraband; or to recover missing persons or property. Upon entry or exit of a secure facility, all vehicles and personal belongings are subject to being searched. If there is an articulated and documented safety or security issue with a JJS staff member, supervisory staff or law enforcement personnel will be called to search the subject of the concern.
[8.14.5.29 NMAC - Rp, 8.14.5.29 NMAC, 7/1/2016]

8.14.5.30 BODY CAVITY SEARCHES: Juvenile justice services expressly prohibits manual or instrument inspections of body cavities without the execution of a warrant for probable cause by a sworn peace officer. If such a warrant is issued, such inspections shall only be conducted in an emergency room of a medical facility with a JJS medical staff member of the same gender as the client present to witness the search and record results.
[8.14.5.30 NMAC - Rp, 8.14.5.30 NMAC, 7/1/2016]

8.14.5.31 EVIDENCE DISPOSITION: Juvenile justice services provides for the recording, preservation, control, and disposition of all physical evidence obtained in connection with a violation of the criminal code or juvenile justice services' policy and procedure. Evidence or property seized shall have a documented chain of custody and be handled, stored and disposed of in a lawful manner.
[8.14.5.31 NMAC - Rp, 8.14.5.31 NMAC, 7/1/2016]

8.14.5.32 EMERGENCY OPERATIONS: Juvenile justice services' maintains written emergency plans and distributes and trains key

personnel in the manner which these plans are to be carried out during an actual emergency. These plans also include specific information on a means to immediately release clients from locked areas and procedures to be followed in situations that threaten facility security. Emergency procedures shall include plans for work actions, strikes, or staff walkouts; facility disturbances or riot control; natural disasters or inclement weather; escapes; utility failures; bomb threats and explosions; hostages and negotiations; epidemics or pandemics; fire emergencies or mass evacuations; and a person found hanging by the neck.
[8.14.5.32 NMAC - Rp, 8.14.5.32 NMAC, 7/1/2016]

8.14.5.33 PROCEDURES: The juvenile justice services director will make appropriate internal procedures available to the public but reserves the right to add, delete or modify internal procedures without notice or comment in furtherance of the mission and goals of the department or service area.
[8.14.5.33 NMAC- Rp, 8.14.5.33 NMAC, 7/1/2016]

HISTORY OF 8.14.5 NMAC:
Pre-NMAC History: The material in this part replaces the material that was previously filed with the State Records Center under:
DDC/GS 10-60, Special Leave of Absences for Juveniles, filed 5/23/90.
YDDC/GS 15-01, Equal Opportunities for Juveniles Programs, filed 5/23/90.
YDDC/GS 06-20, Participation in Religious Programming, filed 5/23/90.
YDDC/GS 06-21, Provision of Staff and Resources for Religious Program, filed 5/23/90.
YDDC/GS 08-02, Classification for Reintegration Center Transfers, filed 5/23/90.
YDDC/GS 08-10, Classification of Juveniles with Special Needs, filed 5/23/90.
YDDC/GS 08-11, Juvenile Releases, filed 5/23/90.
BS 67-19, Boys Personal Property, filed 5/23/67.
BS 67-23, Students Supervision, filed 5/23/67.
BS 67-45, Students Personal Property, filed 5/23/67.
BS 67-49, Organization and Management Policy Cigarette and Candy Issue, filed 5/23/67.
BS 67-53, Students Notification of Parents Change of Status, filed 8/16/67.
BS 67-54, Students On-Campus Group Work, filed 9/5/67.
YDDC/GS 07-05, Escape Plans, filed 5/23/90.
YDDC/GS 07-06, Emergency and Evacuation Plans, filed 5/23/90.
YDDC/GS 07-14, Disturbance, Riots and Hostage Situations, filed 5/23/90.
YDDC/GS 07-20, Bomb Threats, filed 5/23/90.
BS 67-15, Administrative Morning Report, filed 5/23/67.
BS 67-16, Charting Procedure, filed 5/23/67.
BS 67-27, Security, filed 5/23/67.
BS 67-40, Students Concerning Reports to the Administration Regarding Runaways, filed 5/23/67.
BS 67-41, Students Procedure for the Cooperative Search and Apprehension of New Mexico Boys School Runaways, filed 5/23/67.
BS 67-43, Students Work Pass Policy, filed 5/23/67.
BS 67-47, Organization and Management Policy Institutional Safety Inspection, filed 5/23/67.
BS 67-57, Students Procedure for the Cooperative Search and Apprehension of New Mexico Boys School Runaways, filed 11/13/67.
BS 67-22, Students Discipline, filed 5/23/67.
DDC/GS 10-11, Mail Regulations, filed 5/23/90.
YDDC/GS 10-12, Resident Telephone Regulations, filed 5/23/90.
YDDC/GS 10-50, Visiting on Grounds with Residents, filed 5/23/90.
BS 67-29, Students Parents Visiting Lodges, filed 5/23/67.
BS 67-50, Undated, Students Visiting, filed 5/23/67.
BS 67-56, Communications Mail, filed 9/18/67.

History of Repealed Material:
8 NMAC 14.3, Facility Programs, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.5, Facility Food Service, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.6, Facility Safety and Security, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.7, Facility Rules and Discipline, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.8, Clients' Access to Communication, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.9, Facility Sanitation and Hygiene, filed 11/2/98 - Repealed effective 12/30/2005.
8.14.5 NMAC, Facility Operations, filed 12/16/2005 - Repealed effective 8/15/2008.
8.14.5 NMAC, Facility Operations, filed 7/24/2008 - Repealed effective 6/1/2010.
8.14.5 NMAC, Facility Operations, filed 5/17/2010 - Repealed effective 7/1/2016.

ECONOMIC DEVELOPMENT DEPARTMENT

The Job Training Incentive Program Board of the New Mexico Economic Development Department at its meeting on June 10, 2016, repealed its rule 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 6-16-2014, and replaced it with 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, effective 6-30-16.

ECONOMIC DEVELOPMENT DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS
PART 51 DEVELOPMENT EMPLOYMENT FUNDING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES

5.5.51.1 ISSUING AGENCY: New Mexico Economic Development Department
[5.5.51.1 NMAC - Rp, 5.5.51.1 NMAC, 6-30-2016]

5.5.51.2 SCOPE: Film and multimedia production companies and New Mexico residents in film and multimedia crew professions.
[5.5.51.2 NMAC - Rp, 5.5.51.2 NMAC, 6-30-2016]

5.5.51.3 STATUTORY AUTHORITY: Section 21-19-7.1 NMSA 1978, established in 2003, directs the industrial training board, also referred to as the job training incentive program (JTIP) board, to consult with the New Mexico film division of the New Mexico economic development department to create and adopt rules for development funding for film and multimedia production companies. The program is administered by the New Mexico film division of the New Mexico economic development department and the training reimbursement of fifty percent of salaries

(wages) of qualified participants shall be made by the New Mexico film division without further action or approval of the industrial training board.
[5.5.51.3 NMAC - Rp, 5.5.51.3 NMAC, 6-30-2016]

5.5.51.4 DURATION: Permanent.
[5.5.51.4 NMAC - Rp, 5.5.51.4 NMAC, 6-30-2016]

5.5.51.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.
[5.5.51.5 NMAC - Rp, 5.5.51.5 NMAC, 6-30-2016]

5.5.51.6 OBJECTIVE: The object of this rule is to establish standards for an on-the-job development training programs for film and multimedia companies in New Mexico. These training programs are divided into three sub-programs which include: the film crew advancement program **(FCAP) for physical production**, intended to provide reimbursement funds to film and television production companies for the training of New Mexico residents working primarily in below-the-line job positions for the preparation and advancement of continual employment in the industry; and for **FCAP for qualifying permanent companies**, intended to provide reimbursement funds to film and multimedia production companies creating new jobs as a result of expansion, startup or relocation to New Mexico. To the extent possible, training shall be technical and directly contribute to the creation of a production as determined by the New Mexico film office (NMFO) and shall not relate to distribution of end product(s); and **FCAP for qualifying permanent emerging media and digital media companies**, intended to provide reimbursement funds to emerging and digital media companies creating new jobs, similar to internships, as a result of expansion, startup or relocation to New Mexico by providing training opportunities. To the extent possible, training shall be technical and directly contribute to the creation of a production as determined by the NMFO and shall not relate to distribution of end product(s).
[5.5.51.6 NMAC - Rp, 5.5.51.6 NMAC, 6-30-2016]

5.5.51.7 DEFINITIONS: For use in this part, the following definitions apply.

A. "Above-the-line" is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

B. "Below-the-line" is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew that does not have direct creative or financial control of the project nor receive residuals.

C. "Company" means the company that either is or creates a temporary film, multimedia and digital media production company to produce one film, multimedia and digital media product, as it applies to FCAP for physical production or a company that is permanently based in New Mexico with full-time employees and creates film, multimedia and digital media production products.

D. "Craft" means the specialized area or department in which a film technician works.

E. "Crew" means the employees hired by a company to complete a film or multimedia project(s).

F. "Deal memo" means the film industry contract that defines the exact terms of a crew member's employment including but not limited to position title and pay rate.

G. "Digital media company" refers to a company engaged in the business of producing digital media intended for: (i.) film, special effects, holography, computer vision, virtual reality, television, and online web based production; (ii.) video game production and immersive or augmented reality industries; (iii.) aiding in education, defense, disaster relief, medical, health care, or scientific visualization.

H. "Emerging media" includes, but is not limited to: (i.) video game industries that develop technology and content intended for online-multiplayer, console, mobile, and social environments; (ii.) immersive and augmented reality industries focused on the display of imagery and information in three dimensional and holographic form, video-mapping, multi-touch surfaces, and other forms of advanced visualization; (iii.) the design of new platforms and display environments for data and information visualization of social, medical, scientific and industrial information through the use of creative computing; and (iv.) the production of images using special effects, and software developed for the exclusive use of a special effects production company, as approved by the New Mexico film division. Emerging media does not include: software development designed and developed primarily for internal or operational purposes of the digital media production company; however, this exclusion does not apply to software developed for the exclusive use of a New Mexico company producing images using special effects where the software makes the company uniquely competitive; nor (v.) largely static Internet sites designed to provide information about a person, business, company, or firm.

I. "FCAP" means film crew advancement program.

J. "Film" for this program means work on a film or television production.

K. "Film or television credit" for this program means work on a film or television production for more than one week which was not a student film, internship, unpaid position, documentary, commercial, nor on a project where the budget was under five hundred thousand dollars ($500,000.00) and the company did not participate in this program.

L. "Film technician" means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

M. "General safety certified" means a crew member has completed a class or course that meets Occupational Safety and Health Administration standards for general safety associated with working on a film and multimedia project.

N. "JTIP" means job training incentive program.

O. "Intern" means a trainee who is enrolled in, or has graduated within the past twelve months from a post-secondary training or academic program as it relates to the film, television and emerging media and meets the FCAP for qualifying permanent emerging media and digital media company eligibility requirements. The intern is a student or trainee who is supervised and monitored in order to learn a new skill set or while investing practical applications of academically learned skill sets.

P. "Non-union" means the job position is not in the contractual

jurisdiction of a film union or film guild.

Q. "Mentor" means the go-to person for questions and direction or the supervisor of a program participant and has a stronger skill set in relation to the job position in which that participant was hired.

R. "NM" means New Mexico.

S. "Open hours" means a trainee that qualified for FCAP during a production did not use all 1,040 hours available. Hours that remain are considered "open" and may be used for that job position on another production upon qualification.

T. "On-the-job training" means gaining experience in a hired position increasing job opportunities for continual employment in the film and multimedia industry.

U. "Payroll report" means the report generated from a payroll company hired by the company to act as the crew's payment agent for the film and multimedia project.

V. "Physical production" means companies that produce a project or series on location or at a temporary location.

W. "Principal photography" means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

X. "Production" means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

Y. "Reserve component members" refers to a New Mexico member who served in the army, naval, marine corps, air force and coast guard reserves and the national and air national guard of the United States.

Z. "Resident" means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

AA. "Salaries" means wages or the hourly pay rate for hours physically worked by trainee during a production.

BB. "Trainee" means an applicant that shall be learning a new skill set or graduating to a higher job classification through FCAP and is synonymous with the term "program participant" or "crew member".

CC. "Veterans" means a New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

DD. "Wages" means the hourly pay rate for hours physically worked by trainee during production. It does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project. [5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 6-30-2016]

5.5.51.8 PROGRAM OUTLINE:

A. The following shall apply for **FCAP for physical production**:

(1) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(2) Trainee's pay rate shall be consistent with the trainee's job position per this crew member's contract with company, and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee per union contractual agreement where applicable.

(3) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division and if approve, noted in file.

(4) Each trainee qualifies for a maximum of 1,040 hours. As the trainee works on a film or television project, the hours shall be deducted accordingly.

(5) Trainees shall work at least 80 hours in their hired position in order to qualify.

(6) Trainees may qualify for an additional 1,040 hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(7) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the 1,040 hours are exhausted.

(8) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and department.

(9) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by companies.

(10) The number of film and television production credits and the amount of experience required for a participant to qualify shall be determined by the New Mexico film division based on the total budget of the project and the extent to which the participant is adding to their skill set.

(11) The number of trainees allowed to participate in each craft department shall be determined by the New Mexico film division based on the total budget of the project, department crew size and the company location.

B. The following shall apply to **FCAP for qualifying permanent companies:**

(1) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(2) Trainee's pay rate shall be consistent with trainee's job position per this crew member's contract with company, and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee per contractual agreement where applicable.

(3) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division and if approved, noted in file.

(4) Trainees shall complete a minimum of 80 hours and up to 1,040 hours to qualify.

(5) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(6) Qualifying trainees shall work in standard industry job positions as determined by New Mexico film division for permanent

companies creating products.

(7) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee has completed all 1,040 hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the company and by the trainee that verifies the trainee will be advancing to a higher job classification.

C. The following shall apply for **FCAP for qualifying permanent emerging media and digital media companies:**

(1) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(2) Trainee's pay rate shall be consistent with trainee's job position per this crew member's contract with company, and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee per union contractual agreement where applicable.

(3) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division and if approved, noted in file.

(4) Trainees shall complete a minimum of 80 hours and up 640 hours to qualify.

(5) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(6) Qualifying trainees shall work in standard industry job positions as determined by New Mexico film division for permanent companies creating products.

(7) Qualifying participants may only participate one time in the program as an intern of this company; however, where the trainee has completed all 640 hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the company and by the trainee that verifies the trainee will be advancing to a higher job classification.

(8) The New Mexico film division shall contract qualified companies to provide training opportunities, similar to internships, to students currently enrolled in a higher education institution or a graduate who has recently graduated within one year from a higher education institution that relates to digital or post-production technology (emerging or digital media) for the multi-media and entertainment-related industries as approved by the New Mexico film division.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 6-30-2016]

5.5.51.9 TRAINEE ELIGIBILITY:

A. The following shall apply for **FCAP for physical production**:

(1) Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

(2) Trainee applicants shall be at least 18 years of age.

(3) Qualifying trainees shall not be permitted to participate in JTIP manufacturing.

(4) Trainee applicants shall be New Mexico residents.

(5) Trainee applicants shall raise their film or television position to a higher classification or add a completely new skill set.

(6) Applicants shall not have a film or television credit as defined by this program in a higher position in that department to qualify for a maximum 1,040 training hours for that position. However, exceptions may be considered by the New Mexico film division if the participant's credits are from a project's budget that did not exceed two million dollars ($2,000,000.00) and the participant is applying to the program again on a qualifying production with a larger total budget and a higher degree of complexity.

(7) Trainee shall not be a mentor simultaneously.

(8) Additional positions are available for veterans and or reserve component members.

(9) Qualifying trainees shall be approved as such by the New Mexico film division.

B. The following shall apply to **FCAP for qualifying permanent companies:**

(1) Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

(2) Trainee applicants shall be at least 18 years of age.

(3) Trainee applicants shall be New Mexico residents.

(4) Qualifying trainees shall be approved as such by the New Mexico film division.

C. The following shall apply for **FCAP for qualifying permanent emerging media and digital media companies:**

(1) Training applicants shall be certified as a film, multimedia and digital media trainee by the New Mexico film division.

(2) Trainee applicants shall be at least 18 years of age.

(3) Company shall ensure all trainees have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training or qualified for in-state tuition by their higher educational institution during at least two of their most recent semesters in which they were enrolled in the emerging/digital media-related program.

(4) Qualifying trainees shall be approved as such by the New Mexico film division.

[5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 6-30-2016]

5.5.51.10 MENTOR ELIGIBILITY AND QUALIFICATIONS:

A. Mentors shall be certified as a film or television and multimedia mentor by the New Mexico film division.

B. A mentor shall not be a trainee simultaneously during a production on projects produced by temporary companies.

C. Mentors shall work in the same or directly related department with the trainees that they supervise for this program.

[5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 6-30-2016]

5.5.51.11 COMPANY ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:

A. The following shall apply for **FCAP for physical production**:

(1) Company shall submit the JTIP for film and multimedia application part one for FCAP prior to when training begins.

(2) Company shall enter into a contract as outlined by the New Mexico film division; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training

opportunities for the qualified individuals and complete paperwork involved.

(3) The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

(4) Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

(5) The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

(6) Company entering into a contractual agreement with the New Mexico film division shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to principal photography.

(7) Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

(8) Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

(9) Company reimbursement shall not exceed fifty percent of the trainees' rates for up to 1,040 hours per participant.

(10) Company shall submit time records and reimbursement invoices as established by the New Mexico film division, which is the payment agent.

(11) The participating company shall submit forms and reports as established by the New Mexico film division which may include:

(a) JTIP for film & multimedia application part one for FCAP;

(b) department of finance and administration (DFA) tax information form or federal tax information form;

(c) JTIP for film & multimedia application part two for FCAP;

(d) JTIP for film & multimedia agreement for FCAP;

(e) industry top sheet of budget;

(f) FCAP participant applications and resumes;

(g) a production's crew list or production report or equivalent as determined by the New Mexico film division;

(h) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division;

(i) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

(j) a claim or invoice.

(12) All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

(13) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

(14) The company shall submit paperwork including the claim or invoice to the development training program administrator or manager of the New Mexico film division.

(15) Total project budget shall be equal to or greater than two-hundred thousand dollars ($200,000.00), but shall not exceed two million dollars ($2,000,000.00); or

(16) Where the total project budget exceeds two million dollars ($2,000,000.00), companies shall employ eight New Mexico residents in standard first level or key job positions or higher level job positions in a minimum of six different craft departments as determined by the New Mexico film division.

B. The following shall apply to **FCAP for qualifying permanent companies:**

(1) Company shall submit the JTIP for film & multimedia application part one for FCAP prior to when training begins.

(2) Company shall enter into a contract as outlined by the New Mexico film division of the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

(3) The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

(4) Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

(5) The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

(6) Company entering into a contractual agreement with the New Mexico film division shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to training begins.

(7) Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

(8) Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

(9) Company reimbursement shall not exceed fifty percent of the trainees' rates for up to 1,040 hours per participant.

(10) Company shall submit time records and reimbursement invoices as established by the New Mexico film division, which is the payment agent.

(11) The participating company shall submit forms and reports as established by the New Mexico film division, which may include:

(a) JTIP for film & multimedia application part one for FCAP;

(b) department of finance and administration (DFA) tax information form or federal tax information form;

(c) JTIP for film & multimedia application part two for FCAP;

(d) JTIP for film & multimedia agreement for FCAP;

(e) industry top sheet of budget;

(f)

FCAP participant applications and resumes;

(g) a production's crew list or production report or equivalent as determined by the New Mexico film division;

(h) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division;

(i) payroll reports for each qualified trainee that verify hours worked and all rates per hours;

(j) a claim or invoice;

(k) company shall submit financials for the period for which they are available to include: company business plan, pro forma financial statements, tax returns, evidence of operating capital and investment funding, evidence of signed contracts, and sales projections which would substantiate their business expansion and sustainability;

(l) company shall submit overview documents to include: background/ history, target markets, NM operations summary, equal employment statement and supplemental information; and

(m) a training plan, job description of duties and responsibilities for each applicant and estimated job wage per JTIP manufacturing job zone and job description.

(12) All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

(13) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

(14) The company shall submit paperwork including the claim or invoice to the development training program administrator or manager of the New Mexico film division.

(15) Each trainee shall complete 1,040 hours to qualify.

C. The following shall apply for **FCAP for qualifying permanent emerging media and digital media companies:**

(1) Company shall submit the JTIP for film & multimedia application part one for FCAP prior to when training begins.

(2) Company shall enter into a contract as outlined by the New Mexico film division of the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

(3) The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

(4) Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

(5) The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

(6) Company entering into a contractual agreement with the New Mexico film division of the New Mexico economic development department shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to principal photography.

(7) Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

(8) Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

(9) Company reimbursement shall not exceed fifty percent of the trainees' rates for up to 640 hours per participant.

(10) Company shall submit time records and reimbursement invoices as established by the New Mexico film division of the New Mexico economic development department, which is the payment agent.

(11) The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:

(a) JTIP for film & multimedia application part one for FCAP;

(b) department of finance and administration (DFA) tax information form or federal tax information form;

(c) JTIP for film & multimedia application part two for FCAP;

(d) JTIP for film & multimedia agreement for FCAP;

(e) industry top sheet of budget;

(f) FCAP participant applications and resumes;

(g) a production's crew list or production report or equivalent as determined by the New Mexico film division;

(h) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division;

(i) payroll reports for each qualified trainee that verify hours worked and all rates per hours;

(j) a claim or invoice;

(k) company shall submit financials for the period for which they are available to include: company business plan, pro forma financial statements, tax returns, evidence of operating capital and investment funding, evidence of signed contracts, and sales projections which would substantiate their business expansion and sustainability;

(l) company shall submit overview documents to include: background/ history, target markets, NM operations summary, equal employment statement and supplemental information; and

(m) a training plan, job description of duties and responsibilities for each applicant and estimated job wage per JTIP manufacturing job zone and job description.

(12) All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

(13) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

(14) The

company shall submit paperwork including the claim or invoice to the development training program administrator or manager of the New Mexico film division.

(15) Each trainee shall complete up to 640 hours to qualify.

(16) Qualifying companies must be creating new jobs as a result of expansion, startup or relocation to the state of New Mexico. The company shall be financially stable to ensure training opportunities as determined by the New Mexico film division.

(17) An approved company may participate more than once in this program if the company is able to show expansion of employees or has hired a recent participating trainee.

(18) Company shall ensure that the trainee's pay rate shall be consistent throughout training and meet applicable minimum wage ordinances per JTIP job zone and job descriptions.

(19) Company shall qualify trainees based on additional criteria required by the company.

(20) Number of trainees permissible:

(a) Companies with five or fewer full-time employees at a given time may train two participants for up to 640 hours.

(b) Companies with five or more full-time employees at a given time may train four participants for up to 640 hours.

(21) Training of each participant shall not exceed one semester or 16 weeks.

(22) Company shall only allow a trainee to participate one time in the program. A trainee who has participated in the program previously for any company shall not be approved unless the company and trainee can demonstrate to the satisfaction of the New Mexico film division, which the training applies to a new skill set and a new job position.

(23) Companies approved for reimbursement though this program shall not be approved for any other JTIP for film and multimedia programs; however, they may apply to JTIP manufacturing if they meet that program's requirements.

[5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 6-30-2016]

5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:

A. Reimbursement shall be made to the participating company in accordance with the terms of JTIP for film and multimedia agreement for FCAP.

B. Failure to fully and accurately complete administrative requirements may delay reimbursement payment.

C. The claim or invoice for reimbursement may be submitted during the agreement period, when trainees complete the number of agreement hours.

D. Trainee wages shall be reimbursed upon completion of the training project, not to exceed 1,040 hours for (FCAP) for physical production and FCAP for qualifying permanent companies and not to exceed 640 for FCAP for qualifying permanent emerging media and digital media companies, at the conclusion of the production in New Mexico.

E. Reimbursement from the state shall be based on the FCAP agreement.

F. Reimbursements shall be based upon the number of trainees who have qualified for the training program.

G. Reimbursement shall not exceed fifty percent of the trainees' rates.

H. Training costs shall be reimbursed to the company based on the number of qualified participants and their wages from hours physically worked.

I. The agreement amount established shall remain the same for the length of the agreement.

J. Trainee wages shall be reimbursed upon completion of training with the company which shall not exceed 1,040 hours per approved trainee application at the conclusion of training in New Mexico and when company qualifications and requirements have been met.

K. The New Mexico film division shall make arrangements to have an audit at the end of the agreement that may be facilitated by and completed at the New Mexico film division to verify program compliance by either an independent accountant or a representative of the New Mexico film division.

L. In the case where overpayment has been made by the state of New Mexico to the company, the company shall refund the department the difference of the correct reimbursement payment from the paid reimbursement amount.

M. The New Mexico film division may not issue reimbursement payment until all obligations the company has incurred have been paid in New Mexico as related to the New Mexico film credit program.

[5.5.51.12 NMAC - Rp, 5.5.51.12 NMAC, 6-30-2016]

HISTORY OF 5.5.51 NMAC:

History of Repealed Material:
5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 5-28-2008 is repealed effective 4-30-2009.
5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 4-30-2009 - Repealed effective 6-30-2014.
5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 6-16-2014 - Repealed effective 6-30-2016.

ECONOMIC DEVELOPMENT DEPARTMENT

Explanatory paragraph: This is an amendment to 5.5.50 NMAC, Sections 6, 8, 10, 12 and 15, effective 6-30-2016. In 5.5.50.6 NMAC, Subsections A, C and E were not published, as there were no changes. In 5.5.50.8 NMAC, Subsections B and C were not published, as there were no changes. In 5.5.50.10 NMAC, Subsection C was not published, as there were no changes. In 5.5.50.12 NMAC, Subsections A-L and N were not published, as there were no changes. In 5.5.50.15 NMAC, Subsections A-K and M-W were not published, as there were no changes.

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves.

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B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum

of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to twenty percent of the total number of jobs applied for in the proposal, and may include non-executive, professional support positions. Jobs must also meet a wage requirement to be eligible for funding. [~~For contract-based call centers, the position must meet or exceed at least the local entry wage for the industry according to the most current occupational employment statistics wage data available through the NM department of workforce solutions economic research and analysis bureau.~~] The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. An additional incentive may be offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least fifty percent of the premium for employees who elect coverage.

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

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

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

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

[~~(c) A portion of approved travel expenses up to 75 percent with a cap of 5 percent of total funding for wages may be available.~~]

(2) Positions which meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional five percent wage reimbursement above the standard rates.

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

(4) Companies which hire trainees who have graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent wage reimbursement above the standard rates.

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

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

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

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[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-2014; A, 06-30-2015; A, 06-30-16]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

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

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators, film digital production companies such as animation and video game production, and film post production companies are eligible under the manufacturing category. Non-traditional agricultural entities that provide unique export opportunities for industry that may not have otherwise existed in New Mexico may be eligible under the manufacturing category provided that the operation is a year-round, value-added production facility in a controlled and enclosed environment. Such operations may have mechanized processes, require a specialized workforce or may be involved with research and development or technology transfer. A company whose employees are compensated solely on piecework is not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of fifty percent of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service remotely rather than provide the service directly to a customer via face to face interaction. Companies that derive their revenues from within New Mexico or via face-to-face customer interaction at the company site or customer site are only eligible if they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Corporate, international, national, regional and divisional headquarters located in New Mexico may qualify for JTIP provided at least fifty percent of the company's revenues are derived from operations

outside New Mexico. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national, [~~or~~] multi-state, or commercial entities. Major United States research [~~labs~~] laboratories or companies which operate major United States research [~~and development national~~] laboratories are not eligible. JTIP will not consider contractors which solely rely on income that is already in the state of New Mexico through national laboratories already existing in New Mexico. Eligible government contractors must generate at least fifty percent of revenues from a customer base outside the state of New Mexico, which may include other government contracts not related to national laboratories, or commercial contracts. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of fifty percent of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, collections or telemarketing are not eligible for JTIP funds, unless they are in response to inbound requests and existing clients or business to business. Contract-based [~~call~~] customer support centers have special [~~wage~~] eligibility requirements. Contract-based [~~call~~] customer support centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based [~~call~~] customer support centers do not have a core expertise; rather they communicate information provided to them by their clients. [~~For contract-based call centers, the positions must meet or exceed at least the local entry wage for the industry according to the most current occupational employment statistics wage data available through the NM department of workforce solutions economic research and analysis bureau.~~] Contract-based customer support centers must provide evidence of a minimum 5-year lease or purchase of a facility in NM. Contract-based customer support centers must offer employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage. Another category of non-retail business service providers is shared services centers that solely serve regional or national divisions. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least fifty percent of the customer base is located outside of New Mexico. Aviation maintenance, repair and overhaul (MRO) operations with a minimum of fifty percent of revenue coming from a customer base outside the state of New Mexico are eligible; a contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the North American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the two prior years. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels. A company may be allowed to exclude JTIP intern positions when calculating the two-year average headcount.

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

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

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

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP

board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP reimbursement exceeds $100,000. The board will require a refund of funds within 90 days of notification.

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

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

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[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-2014; A, 06-30-2015; A, 06-30-16]

5.5.50.10 REIMBURSABLE EXPENSES:

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

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

[~~(2) A percentage of travel expenses associated with training.~~]

[~~(3)~~] (2) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of $35 per hour of training per trainee and a cap of $1,000 per employee.

[~~(4)~~] (3) A percentage of intern wages for up to 640 training hours.

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

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

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

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

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

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D. Wage reimbursement:

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

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at http://onetonline.org. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	**Definitions**	**SVP Range/ Conversions**	**Hours**	**Min. Wage @ Hiring - Urban**	**Min. Wage @ Hiring - Rural**	**Days**	**Weeks**
[~~1a~~]	[~~Little or no preparation needed~~]	[~~Below 4.0~~]	[~~160~~]	[~~9.00~~]	[~~8.00~~]	[~~20~~]	[~~4~~]
1	Little or no preparation needed	Below 4.0	320	[~~10.00~~] 11.00	[~~8.50~~] 9.50	40	8
2a	Some preparation needed	4.0 to < 6.0	480	[~~11.50~~] 12.50	[~~9.00~~] 10.00	60	12
2	Some preparation needed	4.0 to < 6.0	640	[~~13.00~~] 14.00	[~~9.50~~] 10.50	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	[~~14.50~~] 15.50	[~~11.00~~] 12.00	100	20

3	Medium preparation needed	6.0 to < 7.0	960	[~~16.00~~] 17.00	[~~12.00~~] 13.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	[~~19.00~~] 20.00	[~~13.00~~] 14.00	130	26
	Align with HWJTC	Additional five percent	[~~1040~~]	28.85	19.23	[~~130~~]	[~~26~~]

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

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

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

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

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

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

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

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

(f) Companies located in federally designated colonias in New Mexico are eligible for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of $60,000 or higher in an urban or class A county and a hiring salary of $40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility.

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

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

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

(10) Additional guidelines for wage reimbursement:

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

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

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

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

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

(f) Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement: 1) the trainee took the WorkKeys® assessments as part of the hiring process; 2) the trainee graduated within the past twelve months from a New Mexico institution of higher education; 3) the trainee is a

U.S. veteran.

E. Reimbursement for custom classroom training: Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of $35 per hour per trainee with a cap of $1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, [~~fringe benefits,~~] relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds.

[~~**F. Travel cost and reimbursement for trainees and trainers:** Trainee travel may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel deemed reasonable and necessary will be consistent with the rates as designated by location and are limited to transportation and lodging expenses. Total travel cost is not to exceed five (5percent) of the amount requested for wages and may be adjusted accordingly if amendments to the wage budget occur.~~]

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-2014; A, 06-30-2015; A, 06/30/16]

5.5.50.12 PROCEDURAL OVERVIEW: The procedure for completing a funding proposal is explained in detail in the JTIP online application and proposal guide. The procedure for program participation once funding is approved is described in the JTIP orientation for program administration. This summary is intended to provide a general overview of the process. JTIP staff is available for assistance with these processes.

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M. Yearly follow-ups may be conducted to show effectiveness of the program, including surveys to address company retention, [~~and~~] wage rates of program trainees and business and industry needs for industry recognized certifications and credentials by the economic development department, [~~and~~] the department of workforce solutions and the public education department.

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[5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2010; A, 06-30-2011; A, 06-28-2013; A, 06-30-2014; A, 06-30-2015; A, 06/30/16]

5.5.50.15 GLOSSARY:

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

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[5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-30-2014; A, 06-30-2015; A, 06-30-16]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.3 NMAC, Section 9, effective June 30, 2016.

2.82.3.9 REFUNDS OF CONTRIBUTIONS:

A. In the event that a member should terminate employment for reasons other than retirement, disability, or death, the member shall be entitled to a refund of the member's contributions, plus interest calculated at the refund rate, reduced by the sum of any disability benefits which that member might have previously received. Contributions made by an employer on behalf of an employee (also referred to as a "member") pursuant to Section 22-11-21(A) are "employee contributions" and are subject to refund. A member is not entitled to a refund of any "employer contributions" (also referred to as "local administrative unit contributions") made pursuant to Section 22-11-21(B) NMSA 1978. Interest paid by a member to reinstate withdrawn service credit is nonrefundable.

B. Any employee who was retired pursuant to the Public Employees Retirement Act (Chapter 10, Article 11 NMSA 1978) and who had made contributions to the fund prior to July 1, 2003, shall be entitled to a refund of such contributions, with interest calculated at the refund rate upon a bona fide termination of employment with the local administrative unit.

C. In order to obtain a refund of contributions, the eligible member must file a written request with the director on forms provided by the board.

D. A refund of a terminated member's contributions shall be made as soon as practical after receipt of a fully executed refund request form in the office of the board. If [~~the terminated member's last employer has certified the member's termination on the last employer report filed with the board, or if~~] the member's record has been inactive for a full calendar quarter, the refund may be processed without further certification of termination by the last employer or the final monthly report upon which the member appears. If the member requesting a refund has an active record (i.e., a record reflecting contributions made in the preceding completed calendar quarter), [~~and is not certified to be terminated on the last monthly report filed by the member's employer,~~] the refund request [~~cannot~~] shall not be processed without the last employer's certification of termination [~~on the refund request form~~] and the final monthly report upon which the refunding member will appear. No refund shall be processed until the board has received all required contributions. The board shall not accept contributions subsequent to the submission of the final monthly report, as certified by the employer. If a refunding member returns to employment with any local administrative unit before the refund process is complete, the refund request shall be denied. For purposes of this rule, "termination" means a complete severance of the employment relationship with no contract for, promise of, or expectation of future employment with any local administrative unit.

[~~**E.** Whenever a member's refund request is properly filed, with the appropriate certification of termination, if required, and the member's termination date has passed, the director shall refund the amount of contributions on deposit with the board through the date of the last quarterly reporting period, if the member desires, and any balance owing to the member shall be paid when received by the board.~~

~~**F.**~~] **E.** Refund of contributions for any period of service performed subsequent to July 1, 1957,

will cancel all "prior service" credit which may have been credited to the member at the time of the refund. Restoration of all contributions withdrawn, together with interest calculated at the refund rate, will cause the prior service to be restored; provided, however, that as set forth Subsection C of 2.82.3.10 NMAC, effective July 1, 2011, a member who was a member at any time prior to July 1, 2010 and who, on or before June 30, 2010, had all of his or her member contributions refunded pursuant to Section 22-11-15 NMSA 1978, and who, on or after July 1, 2010, returns to employment or returns the withdrawn contributions to the fund together with interest at the rate set by the board, is eligible to retire as if initially becoming a member on or after July 1, 2010.

[~~G.~~] **F.** Whenever a terminated member leaves a balance of $500.00 or less in the member's account, the account shall be closed into "unallocated income" after the member has been terminated for a period of not less than two years. The record of the terminated member's contribution balance at the time that it was closed into "unallocated income" shall be maintained. If the terminated member subsequently returns to employment, the balance shall be restored to that member's account. Alternatively, if the terminated member should later claim or request a refund of the amount transferred to unallocated income, such amount shall be restored to the terminated member's account and refunded.

[~~H.~~] **G.** Whenever a terminated member has received a refund in excess of the amount due the member, such excess may be "closed out" into unallocated income by the director if it does not exceed $1,000.00 after the excess refund has been outstanding for a period of not less than two years, provided that staff has first made two or more separate attempts to contact the terminated member in writing and collect the excess refund. All such attempts must be documented by staff. All such "close out" actions shall be reported to the board in writing at its first regular meeting following that action. If a terminated member who received an excess refund that was closed into "unallocated income" should return to employment, such excess refund shall be charged to the member's contribution account.

[~~I.~~] **H.** If a terminated member shall have received a refund in excess of $1,000.00 over the amount due that member, and two or more separate attempts have been made to contact the terminated member and collect the excess refund, the director may, after taking into account the costs of doing so, direct staff to pursue legal action to recover the excess. If the amount is deemed uncollectible by the director, the matter shall be brought before the board to determine any further action.

[~~J.~~] **I.** Member contributions which have been withheld and paid to the educational retirement fund in error for a member who is not eligible to receive service credit for the time covered by the withholding, shall be returned to the employer, without interest, upon the member's written request or upon the board learning that the member was not eligible to receive service credit for the time covered. The employer shall be responsible for returning such contributions to the member.

[2.82.3.9 NMAC - Rp, 2.82.3.9 NMAC, 7-1-2012; A, 6-30-2016]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.4 NMAC, Section 8, effective June 30, 2016.

2.82.4.8 EARNED SERVICE CREDIT:

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

B. [~~Earned service credit shall be granted for employment after July 1, 1957, on a quarterly basis.~~] A member shall receive one quarter of credit for each calendar quarter in which the member has earnings from regular employment and renders services for a minimum of 16 days. A member is considered to have rendered services for each day upon which the member is paid salary, regardless of whether the member is on annual, sick, administrative or other form of paid leave. Four calendar quarters of credit shall constitute one year. The calendar quarters of a year shall begin and end as follows: July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30.

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

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

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

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

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

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

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

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

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

[~~H.~~] **G.** Provisional members who were employed between July 1, 1957 and July 1, 1961 and who were not covered at that time, may receive earned service credit for such service if the contributory requirements set forth in Section 22-11-17 are met, and if such provisional members do not exempt themselves.

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

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

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

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

[~~M.~~] **L.** In the event that a member was neither covered nor exempt from coverage under ERA, the member shall have the right to purchase such service, or portion thereof, at a cost calculated in the same manner as for the purchase of exempt service delineated in Section 22-11-17(C). In such cases, the local administrative unit must pay the employer cost, but only if the member purchases non-covered time.

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

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

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

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

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

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

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

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

(3) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases, or indemnification to the board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

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

(5) The board may not accept rollovers or transfers in excess of the amount required to restore the withdrawn earned service credit.

[6-30-99; 2.82.4.8 NMAC - Rn, 2 NMAC 82.4.8, 11-30-2001; A, 4-15-2002; A, 7-15-2003; A, 6-16-2015; A, 6-30-2016]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.5 NMAC, Sections 13 and 14, effective June 30, 2016.

2.82.5.13 OPTIONS:

A. Option B provided in accordance with Section 22-11-29, Paragraph D, shall be operative:

(1) during periods of non-participation, if contributions are not withdrawn, and

(2) during periods of time when a member is receiving disability benefits, and

(3) during the period of time from a member's effective retirement date until the final election of option is received in the ERB office.

B. If a member with option B coverage should terminate employment and withdraw his contributions, thereby causing the option B to become inoperative, the member may restore the amount withdrawn, together with required interest, and cause the option to become operative again.

C. An option election on file with the director by a member who has not retired shall become void on July 1, 1984 at which time the member will automatically be afforded the coverage of option B.

D. Upon retirement, a member may elect an optional benefit in accordance with Section 22-11-29. If electing coverage under Option B, the member may not designate a beneficiary

more than 10 years younger than the member unless the beneficiary is the member's spouse. In order that the retiring member may have the opportunity to properly consider this decision and to allow sufficient time for the member and the board to carry out necessary administrative procedures relating to the election of an option, an option election filed with the director subsequent to the effective date of retirement, but prior to commencement of benefit payments, shall be deemed to have been filed in accordance with the provisions of Section 22-11-29 NMSA 1978.

E. Whenever a member with option B coverage dies prior to the member's effective retirement date, it shall be incumbent upon the member's beneficiary to furnish proof of death to the director. The director shall then advise the beneficiary of the amount payable as a lump-sum settlement. Additionally, the director shall advise the beneficiary of the monthly amount of benefit payable as of the first of the month following the death of the member, as well as the approximate monthly amount payable, if the beneficiary defers receipt of the benefit to the date on which the member would have been age 60, had the member lived. The beneficiary shall then advise the director, in writing, whether he wishes to receive a lump-sum payment, commence the benefit at the earliest possible date, or defer the benefit to a date not later than the date on which the member would have attained age 60, had the member lived. If the beneficiary chooses a monthly benefit, he shall not be required to make formal application for such benefit as required of members seeking retirement status. If the beneficiary chooses to defer the benefit to a later date, he must advise the director at least thirty days in advance of the date on which he wishes benefit to start.

F. Upon the death of a member who has the automatic option B coverage, and who has failed to name or who has incorrectly named a beneficiary under the option, the following shall apply:

(1) If the member has named one person on the form 42, that person shall be declared the beneficiary under option B.

(2) If more than one person is named on the form 42 of which one is the spouse of the member, the spouse shall be declared the beneficiary for option B purposes.

(3) If the beneficiary named on the form 42 is deceased, a lump-sum payment of contributions plus applicable interest will be paid to the estate of the member.

(4) If the beneficiary named on the form 42 is a minor child, the legal guardian, if other than the parent, will designate the manner in which the alternative payments under option B will be paid to the minor.

(5) If the beneficiary named on the form 42 is a minor child in the care and custody of a parent, the parent shall designate the method of payment to the minor child under the option B.

(6) If more than one person is named on the form 42, none of which is the spouse of the member, a lump-sum payment of contributions plus appropriate interest shall be made to the beneficiaries as per the directions of the member on the form 42. In the absence of contrary directions by the member, equal shares will be made. If one or more of the beneficiaries are minors, the distribution to the minor(s) shall be made to:

(a) a trust fund for the minor(s), if established, or

(b) on behalf of the minor(s), a person who has care and custody of the minor, or

(c) directly to the beneficiary(ies) upon attainment of age 18.

(d) these methods of distribution of payments shall also apply to Paragraphs 4 and 5 above.

(7) If a person(s) is not named on the form 42, a lump-sum payment of the member's contributions plus applicable interest will be made as the member has directed on the form 42.

[6-30-99; 2.82.5.13 NMAC - Rn, 2 NMAC 82.5.13, 11-30-2001; A, 6-30-2016]

2.82.5.14 COST-OF-LIVING ADJUSTMENTS:

A. The adjustment factor to be applied annually to eligible benefits shall be determined by using the "Consumer Price Index for All Urban Consumers U.S. City Average All Items".

B. If a member who was certified by the board as disabled at the time of regular retirement returns to gainful employment with a local administrative unit in a position commensurate with the member's background, education and experience, the member's benefit shall no longer be subject to adjustments as provided for in Subsection G of Section 22-11-31 NMSA 1978. Any adjustments made prior to the date of reemployment shall remain in effect. All future adjustments shall be made solely as provided for in Subsections B and C of Section 22-11-31, NMSA 1978.

[6-30-99; 2.82.5.14 NMAC - Rn, 2 NMAC 82.5.14, 11-30-2001; A, 6-30-2016]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

Explanatory paragraph: This is an amendment to 19.15.2 NMAC, Section 7, effective 06/30/2016. In 19.15.2.7 NMAC, Subsections A through N and P through W were not published as there were no changes.

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

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O. Definitions beginning with the letter "O".

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

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

(3) "Oil field waste" means non-domestic waste [~~generated in conjunction with the exploration for, drilling for, production of, refining of, processing of, gathering of or transportation of oil, gas or carbon dioxide; waste generated from oil field service company operations; and waste generated from oil field remediation or abatement activity regardless of the date of release~~] resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the

date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

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

(5) "Operator" means a person who, duly authorized, is in charge of a lease's development or a producing property's operation, or who is in charge of a facility's operation or management.

(6) "Overproduction" means the amount of oil or gas produced during a proration period in excess of the amount authorized on the proration schedule.

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

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[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/08; A, 3/31/15; A, 6/30/16]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

This is an amendment to 19.15.35 NMAC, Sections 2 and 6-8, effective 06/30/2016.

19.15.35.2 SCOPE: 19.15.35 NMAC applies to persons engaged in oil and gas exploration, development, [~~and~~] production, storage, transportation, treatment and refinement and the oil field service industry within New Mexico.
[19.15.35.2 NMAC - Rp, 19.15.9.2 NMAC, 12/1/08; A, 6/30/16]

19.15.35.6 OBJECTIVE: To establish procedures for the disposal of certain [~~non-domestic~~] oil field waste at solid waste facilities permitted by the New Mexico environment department and for the disposal of regulated NORM associated with the oil and gas industry.
[19.15.35.6 NMAC - Rp, 19.15.9.6 NMAC, 12/1/08; A, 6/30/16]

19.15.35.7 DEFINITIONS:

A. "Discharge plan" means a plan the operator submits and the division approves pursuant to NMSA 1978, Section 70-2-12(B)(22) and WQCC rules.

B. "EPA clean" means the cleanliness standards established by the EPA in 40 C.F.R. section 261.7(b).

C. "NESHAP" means the National Emission Standards for Hazardous Air Pollutants of the EPA, 40 C.F.R. Part 61.

D. "Solid waste facility" means a facility permitted or authorized as a solid waste facility by the New Mexico environment department pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1 *et seq.* and New Mexico environmental improvement board rules to accept industrial solid waste or other special waste.

E. "TCLP" means the testing protocol established by the EPA in 40 C.F.R. Part 261, entitled "Toxicity Characteristic Leaching Procedure" or an alternative hazardous constituent analysis the division has approved.

[~~**F.** "Waste" means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to NMSA 1978, Section 70-2-12(B)(21) and non-domestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of oil or gas pursuant to NMSA 1978, Section 70-2-12(B)(22).~~]
[19.15.35.7 NMAC - Rp, 19.15.9.712 NMAC, 12/1/08; A, 6/30/16]

19.15.35.8 DISPOSAL OF CERTAIN [~~NON-DOMESTIC~~] OIL FIELD WASTE AT SOLID WASTE FACILITIES:

A. A person may dispose of certain [~~non-domestic waste arising from the exploration, development, production or storage of oil or gas; certain non-domestic waste arising from the oil field service industry; and certain non-domestic waste arising from oil or gas' transportation, treatment or refinement~~] oil field waste at a solid waste facility in accordance with 19.15.35.8 NMAC.

B. Procedure.

(1) A person may dispose of oil field waste listed in Paragraph (1) of Subsection [~~D~~] C of 19.15.35.8 NMAC at a solid waste facility without the division's prior written authorization.

(2) A person may dispose of oil field waste listed in Paragraph (2) of Subsection [~~D~~] C of 19.15.35.8 NMAC at a solid waste facility after testing and the division's prior written authorization. Before the division grants authorization, the applicant for the authorization shall provide copies of test results to the division and to the solid waste facility where the applicant will dispose of the oil field waste. In appropriate cases and so long as a representative sample is tested, the division may authorize disposal of a waste stream listed in Paragraph (2) of Subsection [~~D~~] C of 19.15.35.8 NMAC without individual testing of each delivery.

(3) A person may dispose of oil field waste listed in Paragraph (3) of Subsection [~~D~~] C of 19.15.35.8 NMAC at a solid waste facility on a case-by-case basis after testing the division may require and the division's prior written authorization. Before the division grants authorization, the applicant for the authorization shall provide copies of test results to the division and to the solid waste facility where it will dispose of the oil field waste.

(4) Simplified procedure for holders of discharge plans. Holders of an approved discharge plan may amend the discharge plan to provide for disposal of oil field waste listed in Paragraph (2) of Subsection [~~D~~] C of 19.15.35.8 NMAC and, as applicable, Paragraph (3) of Subsection [~~D~~] C of 19.15.35.8 NMAC. If the division approves the amendment to the discharge plan, the holder may dispose of oil field wastes listed in Paragraphs (2) and (3) of Subsection [~~D~~] C of 19.15.35.8 NMAC at a solid waste facility without obtaining the division's prior written authorization.

C. The following provisions apply to the types of oil field waste described below as specified.

(1) The person disposing of the oil field waste does not have to test the following oil field waste before disposal:

(a) barrels, drums, five-gallon buckets or one-gallon containers so long as they are empty and EPA-clean;

(b) uncontaminated brush and vegetation arising from clearing operations;

(c) uncontaminated concrete;

(d) uncontaminated construction debris;

(e) non-friable asbestos and asbestos contaminated waste material, so long as the disposal complies with applicable federal regulations and state rules for

non-friable asbestos materials and so long as the facility operator removes the asbestos from steel pipes and boilers and, if applicable, recycles the steel;

(f) detergent buckets, so long as the buckets are completely empty;

(g) fiberglass tanks so long as the tank is empty, cut up or shredded and EPA clean;

(h) grease buckets, so long as empty and EPA clean;

(i) uncontaminated ferrous sulfate or elemental sulfur so long as recovery and sale as a raw material is not possible;

(j) metal plate and metal cable;

(k) office trash;

(l) paper and paper bags, so long as the paper bags are empty;

(m) plastic pit liners, so long as the person cleans them well;

(n) soiled rags or gloves, which if wet pass the paint filter test prior to disposal; or

(o) uncontaminated wood pallets.

(2) The person disposing of the oil field waste shall test the following oil field wastes for the substances indicated prior to disposal:

(a) activated alumina for TPH and BTEX;

(b) activated carbon for TPH and BTEX;

(c) amine filters, which the facility operator air-dries for at least 48 hours before testing, for BTEX;

(d) friable asbestos and asbestos-contaminated waste material, which the facility operator removes asbestos from steel pipes and boilers and, if applicable, recycles the steel before disposal, where the disposal otherwise complies with applicable federal regulations and state rules for friable asbestos materials pursuant to NESHAP;

(e) cooling tower filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for TCLP/chromium;

(f) dehydration filter media, which the facility operator drains and then air-dries for at least 48 hours before testing, for TPH and BTEX;

(g) gas condensate filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for BTEX;

(h) glycol filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for BTEX;

(i) iron sponge, which the facility operator oxidizes completely, for ignitability testing;

(j) junked pipes, valves and metal pipe for NORM;

(k) molecular sieves, which the facility operator cools in a non-hydrocarbon inert atmosphere and hydrates in ambient air for at least 24 hours before testing, for TPH and BTEX;

(l) pipe scale and other deposits removed from pipeline and equipment for TPH, TCLP/metals and NORM;

(m) produced water filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for corrosivity;

(n) sandblasting sand for TCLP/metals or, if the division requires, TCLP/total metals; or

(o) waste oil filters, which the facility operator drains thoroughly of oil at least 24 hours before testing and recycles the oil and metal parts, for TCLP/metals.

(3) A person may dispose of the following oil field wastes on a case-by-case basis with the division's approval:

(a) sulfur contaminated soil;

(b) catalysts;

(c) contaminated soil other than petroleum contaminated soil;

(d) petroleum contaminated soil in the event of a director-declared emergency;

(e) contaminated concrete;

(f) demolition debris not otherwise specified in 19.15.35.8 NMAC;

(g) unused dry chemicals; in addition to testing the division requires, the person applying for division approval shall forward a copy of the material safety data sheet to the division and the solid waste facility on each chemical proposed for disposal;

(h) contaminated ferrous sulfate or elemental sulfur;

(i) unused pipe dope;

(j) support balls;

(k) tower packing materials;

(l) contaminated wood pallets;

(m) partial sacks of unused drilling mud; in addition to testing the division requires, the person applying for division approval shall forward a copy of the material safety data sheet to division and the solid waste facility at which the it will dispose of the partial sacks; or

(n) other oil field wastes as applicable.

D. Testing.

(1) The person applying for division approval to dispose of oil field waste in a solid waste facility shall conduct testing required by 19.15.35.8 NMAC according to the Test Methods for Evaluating Solid Waste, EPA No. SW-846 and shall direct questions concerning the standards or a particular testing facility to the division.

(2) The testing facility shall conduct testing according to the test method listed:

(a) TPH: EPA method 418.1 or 8015 (DRO and GRO only) or an alternative, division-approved hydrocarbon analysis;

(b) TCLP: EPA Method 1311 or an alternative hazardous constituent analysis approved by the division;

(c) paint filter test: EPA Method 9095A;

(d) ignitability test: EPA Method 1030;

(e) corrosivity: EPA Method 1110;

(f) reactivity: test procedures and standards the division establishes on a case-by-case basis; and

(g) NORM. 20.3.14 NMAC.

(3) To be eligible for disposal pursuant to 19.15.35.8 NMAC, the concentration of substances the testing facility identifies during testing shall not exceed the following limits:

(a) benzene: 9.99 mg/kg;

(b) BTEX: 499.99 mg/kg (sum of all);

(c) TPH: 1000 mg/kg;

(d)
hazardous air pollutants: the standards set forth in NESHAP; and

(e)
TCLP:

(i)
arsenic: 5 mg/l,

(ii)
barium: 100 mg/l,

(iii)
cadmium: 1 mg/l,

(iv)
chromium: 5 mg/l,

(v)
lead: 5 mg/l,

(vi)
mercury: 0.2 mg/l,

(vii)
selenium: 1 mg/l, and

(viii)
silver: 5 mg/l.

[19.15.35.8 NMAC - Rp, 19.15.9.712 NMAC, 12/1/08; A, 6/30/16]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

This is an amendment to 19.15.36 NMAC, Sections 2, 6 through 15, and 17 through 20, effective 06/30/2016.

19.15.36.2 SCOPE: 19.15.36 NMAC applies to persons or entities that [~~own or~~] operate surface waste management facilities as defined in Subsection S of [~~19.15.1.7~~] 19.15.2.7 NMAC.

[19.15.36.2 NMAC - N, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.6 OBJECTIVE: To regulate the disposal of oil field waste and the construction, operation, [~~and~~] closure and post closure of surface waste management facilities.

[19.15.36.6 NMAC - N, 2/14/2007; A, 6/30/16]

19.15.36.7 DEFINITIONS:

A. Definitions relating to types of surface waste management facilities.

(1) "Centralized facility" means a surface waste management facility:

(a)
that is used exclusively by one generator subject to New Mexico's Oil and Gas Conservation Tax Act, NMSA 1978, Section 7-30-1, as amended;

(b)
where the generator or operator does not receive compensation for oil field waste management at that facility; and

(c)
receives exclusively oil field wastes that are generated from production units or leases the generator, or an affiliate of the generator, operates (for this provision's purposes, an affiliate of a generator is a person who controls, is controlled by or is under common control with the generator).

(2)
"Commercial facility" means a surface waste management facility that is not a centralized facility.

(3) "Landfarm" means a discrete area of land designated and used for the remediation of petroleum hydrocarbon-contaminated soils and drill cuttings.

(4) "Landfill" means a discrete area of land or an excavation designed for permanent disposal of exempt or non-hazardous waste.

(5) "Small landfarm" means a centralized landfarm of two acres or less that has a total capacity of 2000 cubic yards or less in a single lift of eight inches or less, remains active for a maximum of three years from the date of its registration and that receives only petroleum hydrocarbon-contaminated soils (excluding drill cuttings) that are exempt or non-hazardous waste.

B. Other definitions.

(1) "Active portion" means that part of a surface waste management facility that has received or is receiving oil field waste and has not been closed.

(2) "Cell" means a confined area engineered for the disposal or treatment of oil field waste.

(3) "Composite liner" means a liner that may consist of multiple layers of geosynthetics and low-permeability soils. The different layers of a composite liner may have different material properties and may be applied at different stages of landfill liner installation.

(4)
"Geosynthetic" means the general classification of synthetic materials used in geotechnical applications, including the following classifications:

(a)
"geocomposite" means a manufactured material using geotextiles, geogrids or geomembranes, or combinations thereof, in a laminated or composite form;

(b)
"geogrid" means a deformed or non-deformed, netlike polymeric material used to provide reinforcement to soil slopes;

(c)
"geomembrane" means an impermeable polymeric sheet material that is impervious to liquid and gas as long as it maintains its integrity, and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system;

(d)
"geonet" means a type of geogrid that allows planar flow of liquids and serves as a drainage system;

(e)
"geosynthetic clay liner (GCL)" means a relatively thin layer of processed clay (typically bentonite) that is either bonded to a geomembrane or fixed between two sheets of geotextile; and

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

(5) "Leachate" means the liquid that has passed through or emerged from oil field waste and contains soluble, suspended or miscible materials.

(6) "Landfarm cell" means a bermed area of 10 acres or less within a landfarm.

(7) "Landfarm lift" means an accumulation of soil or drill cuttings predominately contaminated by petroleum hydrocarbons that is placed into a landfarm cell for treatment.

(8) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 77 degrees fahrenheit and atmospheric pressure.

(9) "Major modification" means a modification of a surface waste management facility that involves an increase in the land area that the permitted surface waste management facility occupies; a change in the design capacity or nature of the permitted oil field waste stream; addition of a new treatment process; an exception to, waiver of or change to a numerical standard provided in 19.15.36 NMAC; or other modification that the division determines is sufficiently substantial that public notice and public participation in the application process are

appropriate.

(10) "Minor modification" means a modification of a surface waste management facility that is not a major modification.

(11) "Operator" means the [~~operator of a~~] person who owns the surface waste management facility.

(12) "Poor foundation conditions" are features that indicate that a natural or human-induced event may result in inadequate foundational support for a surface waste management facility's structural components.

(13) "Run-off" means rainwater, leachate or other liquid that drains over land from any part of a surface waste management facility.

(14) "Structural components of a landfill" are liners, leachate collection and removal systems, final covers, run-on/run-off systems and other components used in a landfill's construction or operation that are necessary for protection of fresh water, public health [~~safety~~] or the environment. [19.15.36.7 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.8 SURFACE WASTE MANAGEMENT FACILITY PERMITS AND APPLICATION REQUIREMENTS:

A. Permit required. No person shall operate a surface waste management facility (other than a small landfarm registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC) except pursuant to and in accordance with the terms and conditions of a division-issued surface waste management facility permit. The applicant for a permit or permit modification, renewal or transfer shall be the operator of the surface waste management facility. The operator is responsible for the actions of the operator's officers, employees, consultants, contractors and subcontractors as they relate to the operation of the surface waste management facility. Any person who is involved in a surface waste management facility's operation shall comply with 19.15.36 NMAC and the permit.

B. Permitting requirements. Except for small landfarms registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC, new commercial or centralized facilities prior to commencement of construction, and existing commercial or centralized facilities prior to modification or permit renewal, shall be permitted by the division in accordance with the applicable requirements of Subsection C of 19.15.36.8 NMAC and 19.15.36.11 NMAC.

C. Application requirements for new facilities, major modifications and permit renewals. An applicant or operator shall file an application, form C-137, for a permit for a new surface waste management facility, to modify an existing surface waste management facility or for permit renewal with the environmental bureau in the division's Santa Fe office. The application shall include:

(1) the names and addresses of the applicant and principal officers and owners of [~~25~~] twenty-five percent or more of the applicant;

(2) a plat and topographic map showing the surface waste management facility's location in relation to governmental surveys (quarter-quarter section, township and range); highways or roads giving access to the surface waste management facility site; watercourses; fresh water sources, including wells and springs; and inhabited buildings within one-half mile of the site's perimeter based upon the records of the applicable county clerk or clerk's office;

(3) the names and addresses of the surface owners of the real property on which the surface waste management facility is sited and surface owners of the real property within one mile of the site's perimeter;

(4) a description of the surface waste management facility with a diagram indicating the location of fences and cattle guards, and detailed construction/installation diagrams of pits, liners, dikes, piping, sprayers, tanks, roads, fences, gates, berms, pipelines crossing the surface waste management facility, buildings and chemical storage areas;

(5) engineering designs, certified by a registered professional engineer, including technical data on the design elements of each applicable treatment, remediation and disposal method and detailed designs of surface impoundments;

(6) a plan for management of approved oil field wastes that complies with the applicable requirements contained in 19.15.36.13 NMAC, 19.15.36.14 NMAC, 19.15.36.15 NMAC and 19.15.36.17 NMAC;

(7) an inspection and maintenance plan that complies with the requirements contained in Subsection L of 19.15.36.13 NMAC;

(8) a hydrogen sulfide prevention and contingency plan that complies with those provisions of 19.15.11 NMAC that apply to surface waste management facilities;

(9) a closure and post closure plan, including a responsible third party contractor's cost estimate, sufficient to close the surface waste management facility in a manner that will protect fresh water, public health [~~safety~~] and the environment, [~~(the closure and post closure plan shall comply with the requirements contained in Subsection D of 19.15.36.18 NMAC)~~] and to comply with the closure and post closure requirements contained in Subsections A through F of 19.15.36.18 NMAC;

(10) a contingency plan that complies with the requirements of Subsection N of 19.15.36.13 NMAC and with NMSA 1978, Sections 12-12-1 through 12-12-30, as amended;

(11) a plan to control run-on water onto the site and run-off water from the site that complies with the requirements of Subsection M of 19.15.36.13 NMAC;

(12) in the case of an application to permit a new or expanded landfill, a leachate management plan that describes the anticipated amount of leachate that will be generated and the leachate's handling, storage, treatment and disposal, including final post closure options;

(13) in the case of an application to permit a new or expanded landfill, a gas safety management plan that complies with the requirements of Subsection O of 19.15.36.13 NMAC;

(14) a best management practice plan to ensure protection of fresh water, public health [~~safety~~] and the environment;

(15) geological/hydrological data including:

(a) a map showing names and location of streams, springs or other watercourses, and water wells within one mile of the site;

(b) laboratory analyses, performed by an independent commercial laboratory, for major cations and anions; BTEX; RCRA metals; and TDS of ground water samples of the shallowest fresh water aquifer beneath the proposed site;

(c) depth to, formation name, type and

thickness of the shallowest fresh water aquifer;

(d) soil types beneath the proposed surface waste management facility, including a lithologic description of soil and rock members from ground surface down to the top of the shallowest fresh water aquifer;

(e) geologic cross-sections;

(f) potentiometric maps for the shallowest fresh water aquifer; and

(g) porosity, permeability, conductivity, compaction ratios and swelling characteristics for the sediments on which the contaminated soils will be placed;

(16) certification by the applicant that information submitted in the application is true, accurate and complete to the best of the applicant's knowledge, after reasonable inquiry; and

(17) other information that the division may require to demonstrate that the surface waste management facility's operation will not adversely impact fresh water, public health [~~safety~~] or the environment and that the surface waste management facility will comply with division rules and orders.

D. Application requirements for minor modifications. Before making a minor modification, the operator of an existing surface waste management facility [~~applying for a minor modification~~] shall file a form [~~C-137~~] C-137A with the environmental bureau in the division's Santa Fe office describing the proposed change [~~and identifying information that has changed from its last C-137 filing~~]. Minor modifications are not subject to Subsection C of 19.15.36.8 NMAC. If the division denies the application for a minor modification, the operator may request a hearing pursuant to Subsection B of 19.15.36.10 NMAC.

[~~**E.** Determination that an application is administratively complete. Upon receipt of an application for a surface waste management facility permit or modification or renewal of an existing surface waste management facility permit, the division shall review the application for administrative completeness. To be deemed administratively complete, the application shall provide information required by Subsection C or D (as applicable) of 19.15.36.8 NMAC. The division shall notify the applicant in writing when it deems the application administratively complete. If the division determines that the application is not administratively complete, the division shall notify the applicant of the deficiencies in writing within 30 days after the application's receipt and state what additional information is necessary.~~] [19.15.36.8 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.9 [~~NOTICE REQUIREMENTS FOR NEW SURFACE WASTE MANAGEMENT FACILITIES, MAJOR MODIFICATIONS OR RENEWALS AND ISSUANCE OF A TENTATIVE DECISION:~~

~~**A.** Upon receipt of notification of the division's determination that the application is administratively complete, the applicant for a new surface waste management facility permit, permit renewal or major modification shall give written notice of the application, by certified mail, return receipt requested, to the surface owners of record within one-half mile of the surface waste management facility, the county commission of the county where the surface waste management facility site is located, the appropriate city officials if the surface waste management facility site is within city limits or within one-half mile of the city limits, and affected federal, tribal or pueblo governmental agencies. The notice shall contain the information in Paragraphs (1) through (4) of Subsection F of 19.15.36.9 NMAC. The division may extend the distance requirements for notice if the division determines that the proposed surface waste management facility has the potential to adversely impact fresh water, public health, safety or the environment at a distance greater than one-half mile. The applicant shall furnish proof that it has given the required notices.~~

~~**B.** The division shall distribute notice of its determination that an application for a new surface waste management facility or for a renewal or major modification of an existing surface waste management facility is administratively complete to persons who have requested notification of division and commission hearing dockets within 30 days following the date that the division determines the application to be administratively complete.~~

~~**C.** A person wishing to comment on an application prior to the division's preliminary consideration of the application may file comments within 30 days, or as extended by the director, after the later of the date when the applicant mails the notice required by Subsection A of 19.15.36.9 NMAC or the date when the division distributes the notice provided in Subsection B of 19.5.36.9 NMAC.~~

~~**D.** Within 60 days after the end of the public comment period provided in Subsection C of 19.15.36.9 NMAC, the division shall issue a tentative decision concerning the application, renewal or modification, including proposed conditions for approval or reasons for disapproval, as applicable. The division shall mail notice of the tentative decision, together with a copy of the decision, by certified mail, return receipt requested, to the applicant and shall post notice on the division's website, together with a copy of the tentative decision.~~

~~**E.** Within 30 days after receiving the division's tentative decision, the applicant shall provide notice of the tentative decision by:~~

~~**(1)** publishing a display ad in English and Spanish, in a form approved by the division, in a newspaper of general circulation in this state and in a newspaper of general circulation in the county where the surface waste management facility is or will be located; the display ad shall be at least three inches by four inches and shall not be published in the newspaper's legal or classified sections;~~

~~**(2)** mailing notice by first class mail or e-mail to persons, as identified to the applicant by the division, who have requested notification of applications generally, or of the particular application, including persons who have filed comments on the particular application during the initial public comment period, and who have included in such comments a legible return address or e-mail address; and~~

~~**(3)** mailing notice by first class or e-mail to affected local, state, federal or tribal governmental agencies, as determined and identified to the applicant by the division.~~

~~**F.** This notice issued pursuant to Subsection E of 19.15.36.9 NMAC shall include:~~

~~**(1)** the applicant's name and address;~~

~~**(2)** the surface waste management facility's location, including a street address if available, and sufficient information to locate the surface waste management facility with reference to surrounding roads and landmarks;~~

~~**(3)** a brief description of the proposed surface waste management facility;~~

~~**(4)** the depth to, and TDS concentration of, the ground water in the shallowest aquifer beneath the~~

~~surface waste management facility site;~~

~~(5) a statement that the division's tentative decision is available on the division's website, or, upon request, from the division clerk, including the division clerk's name, address and telephone number;~~

~~(6) a description of alternatives, exceptions or waivers that may be under consideration in accordance with Subsection G of 19.15.36.18 NMAC or 19.15.36.19 NMAC;~~

~~(7) a statement of the comment period and of the procedures for requesting a hearing on the application; and~~

~~(8) a brief statement of the procedures the division shall follow in making a final decision.~~] **APPLICATION PROCESS AND NOTICE REQUIREMENTS FOR NEW SURFACE WASTE MANAGEMENT FACILITIES, MAJOR MODIFICATIONS OR RENEWALS AND ISSUANCE OF A FINAL DECISION:**

A. Submittal of application. The applicant shall submit three copies (two paper copies and one electronic copy) of the application to the division's Santa Fe office for consideration of approval. Upon receipt of an application for a new surface waste management facility, or a renewal or major modification of an existing permit, the division shall post a notice on the division's website that lists the type of facility, type of application, county or municipality where the facility is located and name of the applicant, and provides information on where the application can be viewed and whom to contact to be placed on a mailing list for notice regarding a proposed decision.

B. Division review: Within 90 days after the receipt of an application, the division shall review the application and determine if the application is approvable, approval with conditions or not approvable.

(1) Upon completion of the division's review, if the division determines the application is approvable, the division shall, within 30 days following such determination, prepare a proposed decision, which may include conditions, and mail notice of the proposed approval, together with a copy of the proposed decision, by certified mail, return receipt requested, to the applicant. The division shall post the proposed decision on the division's website.

(2) Upon completion of the division's review, if the division determines the application is not approvable, the division shall, within 60 days of such determination, mail a deficiency letter by certified mail, return receipt requested, to the applicant. The deficiency letter shall identify and address all of the division's concerns regarding the application in specific detail allowing the applicant the opportunity to correct the deficiencies by submitting a revised application.

(3) If the division issues a deficiency letter, the applicant shall have 60 days from the division's issuance of the deficiency letter to submit a revised application. The applicant may request, in writing, additional time to submit a revised application. The division shall grant additional time for good cause. The applicant may notify the division that it will not submit a revised application. Within 10 days of receipt of the notification the division shall deny the application without prejudice. If the applicant fails to timely submit a revised application or notify the division that it will not submit a revised application, the division shall deny the application without prejudice within 10 days after the 60 day time limit for the applicant to respond to the deficiency letter has expired.

(4) If the applicant timely submits a revised application, within 90 days of the receipt of the revised application the division shall review the revised application and determine if the revised application is approvable, approvable with conditions or not approvable. The division shall mail notice of denial or the proposed approval with or without conditions, together with a copy of the decision to deny or the proposed decision to approve with or without conditions, by certified mail, return receipt requested, to the applicant. A denial letter shall identify and address all of the division's reasons for denial of the revised application. The division shall post the decision to deny the application or the proposed decision to approve the application with or without conditions on the division's website.

(5) The process provided in Subsection B of 19.15.36.9 NMAC is not intended to limit informal informational exchanges during the application review period or prior to submission of an application. The process also does not prohibit an applicant from withdrawing an application and submitting a new application under Subsection A of 19.15.36.9 NMAC.

C. Upon receipt of a proposed decision to approve an application with or without conditions, the applicant shall provide a division-approved notice of the proposed approval by:

(1) giving written notice, by certified mail, return receipt requested, of the division's proposed decision to approve the application with or without conditions to the surface owners within one-half mile of the surface waste facility;

(2) publishing in a newspaper of general circulation in the county or counties where the surface waste management facility is or will be located;

(3) mailing notice by first class mail or e-mail to persons, as identified to the applicant by the division, who have requested notification of applications generally, or of the particular application, and who have provided a legible return address or e-mail address; and

(4) mailing notice by first class or e-mail to affected local, state, federal or tribal governmental agencies, as determined and identified to the applicant by the division.

D. This notice issued pursuant to Subsection C of 19.15.36.9 NMAC shall include:

(1) the applicant's name and address;

(2) the surface waste management facility's location, including a street address if available, and sufficient information to locate the surface waste management facility with reference to surrounding roads and landmarks;

(3) a brief description including the type of facility (*i.e.* landfarm, landfill, treating plant, etc.) of the proposed surface waste management facility;

(4) the depth to, and TDS concentration of, the ground water in the shallowest aquifer beneath the surface waste management facility site;

(5) a statement that the division's proposed decision to approve the application with or without conditions is available on the division's website, or, upon request, from the division clerk, including the division clerk's name, address and telephone number;

(6) a division-approved description of alternatives, exceptions or waivers that may be under consideration in accordance with Subsection F of 19.15.36.18 NMAC or 19.15.36.19 NMAC; and

(7) a statement of the procedures for requesting a hearing on the application pursuant to 19.15.4

NMAC.

E. The applicant shall mail notice that is required to be mailed on or before publication of the notice that is published in a newspaper of general circulation in the county or counties where the surface waste management facility is or will be located.

F. The applicant shall provide the division with proof that the public notice requirements of Subsections C and D of 19.15.36.9 NMAC have been met prior to the division scheduling a hearing pursuant to 19.15.36.10 NMAC or issuing the permit.

G. If after the applicant provides notice as required herein, no requests for hearing are timely filed with the division as provided by 19.15.36.10 NMAC, or any such requests for hearing are filed by persons the division determines lack standing, and the division does not otherwise schedule a hearing pursuant to 19.15.36.10 NMAC, the division's proposed decision to approve the application with or without conditions shall become final and the division shall issue the permit upon the applicant providing financial assurance as provided in 19.15.36.10 NMAC.

[19.15.36.9 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; Repealed, 6/30/16; 19.15.36.9 NMAC - N, 6/30/16]

19.15.36.10 COMMENTS AND HEARING ON APPLICATION:

[~~**A.** A person, whether or not such person has previously submitted comments, may file comments or request a hearing on the application by filing their comments or, in accordance with 19.15.4.9 NMAC, a hearing request with the division clerk within 30 days after the date that the applicant issued public notice of the division's tentative decision. A request for a hearing shall be in writing and shall state specifically the reasons why a hearing should be held. The division shall schedule a public hearing on the application if, in addition to the requirements in 19.15.4.9 NMAC:~~

~~**(1)** the division has proposed to deny the application or grant it subject to conditions not expressly required by rule, and the applicant requests a hearing;~~

~~**(2)** the director determines that there is significant public interest in the application;~~

~~**(3)** the director determines that comments have raised objections that have probable technical merit; or~~

~~**(4)** determination of the application requires that the division make a finding, pursuant to Paragraph (3) of Subsection F of 19.15.2.7 NMAC, whether a water source has a present or reasonably foreseeable beneficial use that contamination would impair.~~

~~**B.** If the division schedules a hearing on an application, the hearing shall be conducted according to 19.15.14.1206 through 19.15.14.1215 NMAC.~~] **A.** A person who wishes to comment or request a hearing shall file comments or request a hearing on the proposed approval of an application with the division clerk within 90 days after the date of the newspaper publication provided in Subsection C of 19.15.36.9 NMAC. A request for a hearing shall be in writing and shall state specifically the reasons why a hearing should be held. The director may deny a request for hearing if the director determines the person requesting the hearing lacks standing.

B. If the division denies an application pursuant to Paragraphs (3) or (4) of Subsection B of 19.15.39.9 NMAC, the applicant may request a hearing within 30 days of the receipt of the notice of denial and the division shall schedule a hearing.

C. In addition to the requests for hearing provided in Subsections A and B of 19.15.36.10 NMAC, the division shall schedule a hearing on the application if:

(1) the division's proposed decision to approve the application includes conditions not expressly required by rule, and the applicant requests a hearing within 90 days of receipt of the notice of proposed approval;

(2) the director determines that there is significant public interest in the application;

(3) the director determines that comments have raised objections that have probable technical merit; or

(4) approval of the application requires that the division make a finding, pursuant to Paragraph (3) of Subsection F of 19.15.2.7 NMAC, whether a water source has a present or reasonably foreseeable beneficial use that contamination would impair.

D. If the division schedules a hearing on an application, the hearing shall be conducted according to 19.15.4 NMAC.

[19.15.36.10 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.11 FINANCIAL ASSURANCE REQUIREMENTS:

A. Centralized facilities. Upon notification by the division that it has approved a permit but prior to the division issuing the permit, an applicant for a new centralized facility permit shall submit acceptable financial assurance in the amount of $25,000 per centralized facility, or a statewide "blanket" financial assurance in the amount of $50,000 to cover all of that applicant's centralized facilities, unless such applicant has previously posted a blanket financial assurance for centralized facilities.

B. New commercial facilities or major modifications of existing commercial facilities. Upon notification by the division that it has approved a permit for a new commercial facility or a major modification of an existing commercial facility but prior to the division issuing the permit, the applicant shall submit acceptable financial assurance in the amount of the commercial facility's estimated closure and post closure cost, or $25,000, whichever is greater. The commercial facility's estimated closure and post closure cost shall be the amount provided in the closure and post closure plan the applicant submitted pursuant to Paragraph (9) of Subsection C of 19.15.36.8 NMAC unless the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost to implement the closure and post closure plan, in which event, the division shall determine the estimated closure and post closure cost and shall include such determination in its [~~tentative~~] proposed decision. If the applicant disagrees with the division's determination of estimated closure and post closure cost, the applicant may request a hearing as provided in 19.15.36.10 NMAC. If the applicant so requests, and no other person files a request for a hearing regarding the [~~application~~] proposed decision, the hearing shall be limited to determination of estimated closure and post closure cost.

C. Terms of financial assurance. The financial assurance shall be on division-prescribed forms, or forms otherwise acceptable to the division, payable to the [~~state of New Mexico~~] energy, minerals and natural resources department, oil conservation division and conditioned upon the surface waste management facility's proper operation, site closure and post closure [~~monitoring~~] operations in compliance with state of New Mexico statutes, division rules, applicable division orders and the surface waste management facility permit terms.

[~~The applicant shall notify the division of a material change affecting the financial assurance within 30 days of discovery of such change.~~] The division may require proof that the individual signing for an entity on a financial assurance document or any amendment thereto has the authority to obligate that entity.

D. Forfeiture of financial assurance. The division shall give the operator 20 days' notice and an opportunity for a hearing prior to forfeiting financial assurance. All forfeitures the division demands pursuant to 19.15.36 NMAC shall be made payable to the energy, minerals and natural resources department, oil conservation division upon demand by the division.

E. Forms of financial assurance. The division may accept the following forms of financial assurance.

(1) Surety bonds. A surety bond shall be executed and notarized by the applicant and by a corporate surety licensed by the superintendent of insurance to do business in the state [~~, and shall be non-cancelable~~]. All surety bonds shall be non-cancelable and payable to the energy, minerals and natural resources department, oil conservation division within 45 days after demand is made by the division. All surety bonds shall be governed by the laws of the state of New Mexico.

(2) Letters of credit. A letter of credit shall be issued by a [~~bank organized or authorized to do commercial banking business in the United States~~] national or state-chartered banking association, shall be irrevocable for a term of not less than five years and shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least [~~90~~] 120 days before its expiration date. [~~The letter of credit shall be payable to the state of New Mexico in part or in full upon receipt from the director or the director's authorized representative of demand for payment accompanied by a notice of forfeiture.~~] All letters of credit shall be governed by the laws of the state of New Mexico. If a letter of credit is not replaced by an approved financial assurance within 30 days of notice of non-renewal provided to the division, the division may demand and collect a letter of credit.

(3) Cash accounts. An [~~applicant~~] operator may provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts in a financial institution, provided that the operator and the financial institution shall execute as to each such account a collateral assignment of the account to the division, which shall provide that only the division may authorize withdrawals from the account. In the event of forfeiture pursuant to [~~Subsection C of 19.15.36.18~~] 19.15.36 NMAC, the division may, at any time and from time to time, direct payment of all or part of the balance of such account (excluding interest accrued on the account) to itself or its designee for the surface waste management facility's closure and post closure. Any assignment of cash collateral shall be governed by the laws of the state of New Mexico and shall be on division-prescribed forms.

F. Replacement of financial assurance.

(1) The division may allow an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.

(2) The division shall not release existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement.

(3) Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on division-prescribed forms within 30 days. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on division-prescribed forms within 45 days after notice to the operator from the division.

G. Review of adequacy of financial assurance. The division may at any time not less than five years after initial acceptance of financial assurance for a commercial facility, or whenever the operator applies for a major modification of the commercial facility's permit, and at least once during every successive five-year period, initiate a review of such financial assurance's adequacy. Additionally, whenever the division determines that a landfarm operator has not achieved the closure standards specified in Paragraph (3) of Subsection G of 19.15.36.15 NMAC, the division may review the adequacy of the landfarm operator's financial assurance, without regard to the date of its last review. Upon determination, after notice to the operator and an opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of a commercial facility's closure and post closure [~~monitoring~~] operations, the division may require the operator to furnish additional financial assurance sufficient to cover such reasonable and probable cost. [~~, provided that the financial assurance required of a commercial facility permitted prior to the effective date of 19.15.36 NMAC shall not exceed $250,000 except in the event of a major modification of the commercial facility. If such a commercial facility applies for a major modification , the division shall determine the applicable financial assurance requirement based on the total estimated closure and post closure cost of the commercial facility as modified, without regard to the $250,000 limit.~~]

H. Duty to report. Any operator who files for bankruptcy shall provide notice to the division, through the process provided for under the rules of the United States bankruptcy court, and the New Mexico attorney general.

[19.15.36.11 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 6/30/16]

19.15.36.12 PERMIT APPROVAL, DENIAL, REVOCATION, SUSPENSION, MODIFICATION OR TRANSFER:

A. Granting of permit.

(1) The division may issue a permit for an new surface waste management facility or major modification upon finding that an acceptable application has been filed, that the conditions of 19.15.36.9 NMAC and 19.15.36.11 NMAC have been met and that the surface waste management facility or modification can be constructed and operated in compliance with applicable statutes and rules and without endangering fresh water, public health [~~safety~~] or the environment.

(2) Each permit the division issues for a new surface waste management facility shall remain in effect for 10 years from the date of its issuance. If the division grants a permit for a major modification of a surface waste management facility, the permit for that surface waste management facility shall remain in effect for 10 years from the date the division approves the major modification.

(a) A surface waste management facility permit may be renewed for successive 10-year terms. If the holder of a surface waste management facility permit submits an application for permit renewal at least 120 days before the surface waste management facility permit expires, and the operator

is not in violation of the surface waste management facility permit on the date of its expiration, then the existing surface waste management facility permit for the same activity shall not expire until the division has approved or denied an application for renewal. If the division has not notified the operator of a violation, if the operator is diligently pursuing procedures to contest a violation or if the operator and the division have signed an agreed compliance order providing for remedying the violation, then the surface waste management facility permit shall continue in effect as above provided notwithstanding the surface waste management facility permit violation's existence. A surface waste management facility permit continued under this provision remains fully effective and enforceable.

(b) An application for permit renewal shall include and adequately address the information necessary for evaluation of a new surface waste management facility permit as provided in Subsection C of 19.15.36.8 NMAC. Previously submitted materials may be included by reference provided they are current, readily available to the division and sufficiently identified so that the division may retrieve them.

(c) Upon receipt of a proposed decision to approve a renewal application, the operator shall give public notice [~~of the renewal application~~] in the manner prescribed by 19.15.36.9 NMAC. The division shall grant an application for renewal if the division finds that an acceptable application has been filed, that the conditions of 19.15.36.9 NMAC and 19.15.36.11 NMAC have been met and that the surface waste management facility can be operated in compliance with applicable statutes and rules and without endangering fresh water, public health [~~safety~~] or the environment.

(3) The division shall review each surface waste management facility permit at least once during the 10-year term, and shall review surface waste management facility permits to which Paragraph (2) of Subsection A of 19.15.36.12 NMAC does not apply at least every five years. The review shall address the operation, compliance history, financial assurance and technical requirements for the surface waste management facility. The division, after notice to the operator and an opportunity for a hearing, may require appropriate modifications of the surface waste management facility permit, including modifications necessary to make the surface waste management facility permit terms and conditions consistent with statutes, rules or judicial decisions.

B. Denial of permit. The division may deny an application for a surface waste management facility permit or modification of a surface waste management facility permit if it finds that the proposed surface waste management facility or modification may be detrimental to fresh water, public health [~~safety~~] or the environment. The division may also deny an application for a surface waste management facility permit if the applicant, an owner of [~~25~~] twenty-five percent or greater interest in the applicant or an affiliate of the applicant has a history of failure to comply with division rules and orders or state or federal environmental laws; is subject to a division or commission order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty. An affiliate of an applicant, for purposes of Subsection B of 19.15.36.12 NMAC, shall be a person who controls, is controlled by or under is common control with the applicant or a [~~25~~] twenty-five percent or greater owner of the applicant.

C. Additional requirements. The division may impose conditions or requirements, in addition to the operational requirements set forth in 19.15.36 NMAC, that it determines are necessary and proper for the protection of fresh water, public health [~~safety~~] or the environment. The division shall incorporate such additional conditions or requirements into the surface waste management facility permit.

D. Revocation, suspension or modification of a permit. The division may revoke, suspend or impose additional operating conditions or limitations on a surface waste management facility permit at any time, for good cause, after notice to the operator and an opportunity for a hearing. The division may suspend a surface waste management facility permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to fresh water, public health [~~safety~~] or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended. If the division initiates a major modification it shall provide notice in accordance with 19.15.36.9 NMAC. Suspension of a surface waste management facility permit may be for a fixed period of time or until the operator remedies the violation or potential violation. If the division suspends a surface waste management facility's permit, the surface waste management facility shall not accept oil field waste during the suspension period.

E. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of [~~25~~] twenty-five percent or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

[19.15.36.12 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.13 SITING AND OPERATIONAL REQUIREMENTS APPLICABLE TO ALL PERMITTED SURFACE WASTE MANAGEMENT FACILITIES: Except as otherwise provided in 19.15.36 NMAC.

A. Depth to ground water.

(1) No landfill shall be located where ground water is less than 100 feet below the lowest elevation of the design depth at which the operator will place oil field waste.

(2) No landfarm that accepts soil or drill cuttings with a chloride concentration that exceeds 500 mg/kg shall be located where ground water is less than 100 feet below the lowest elevation at which the operator will place oil field waste. See Subsection A of 19.15.36.15 NMAC for oil field waste acceptance criteria.

(3) No landfarm that accepts soil or drill cuttings with a chloride concentration that is 500 mg/kg or less shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

(4) No small landfarm shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place

oil field waste.

(5) No other surface waste management facility shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

B. No surface waste management facility shall be located:

(1) within 200 feet of a watercourse, lakebed, sinkhole or playa lake;

(2) within an existing wellhead protection area or 100-year floodplain;

(3) within, or within 500 feet of, a wetland;

(4) within the area overlying a subsurface mine;

(5) within 500 feet from the nearest permanent residence, school, hospital, institution or church in existence at the time of initial application; or

(6) within an unstable area, unless the operator demonstrates that engineering measures have been incorporated into the surface waste management facility design to ensure that the surface waste management facility's integrity will not be compromised.

C. No surface waste management facility shall exceed 500 acres.

D. The operator shall not accept oil field wastes transported by motor vehicle at the surface waste management facility unless the transporter has a form C-133, authorization to move liquid waste, approved by the division.

E. The operator shall not place oil field waste containing free liquids in a landfill or landfarm cell. The operator shall use the paint filter test, as prescribed by the EPA (EPA SW-846, method 9095) to determine conformance of the oil field waste to this criterion.

F. Surface waste management facilities shall accept only exempt or non-hazardous waste, except as provided in Paragraph (3) of Subsection F of 19.15.36.13 NMAC. The operator shall not accept hazardous waste at a surface waste management facility. The operator shall not accept wastes containing NORM at a surface waste management facility except as provided in 19.15.35 NMAC. The operator shall require the following documentation for accepting oil field wastes, and both the operator and the generator shall maintain and make the documentation available for division inspection.

(1) Exempt oil field wastes. The operator shall require a certification on form C-138, signed by the generator or the generator's authorized agent, that represents and warrants that the oil field wastes are generated from oil and gas exploration and production operations, are exempt waste and are not mixed with non-exempt waste. The operator shall have the option to accept such certifications on a monthly, weekly or per load basis. The operator shall maintain and shall make the certificates available for the division's inspection.

(2) Non-exempt, non-hazardous, oil field wastes. The operator shall require a form C-138, oil field waste document, signed by the generator or its authorized agent. This form shall be accompanied by acceptable documentation to determine that the oil field waste is non-hazardous.

(3) Emergency non-oil field wastes. The operator may accept non-hazardous, non-oil field wastes in an emergency if ordered by the department of public safety. The operator shall complete a form C-138, oil field waste document, describing the waste, and maintain the same, accompanied by the department of public safety order, subject to division inspection.

G. The operator of a commercial facility shall maintain records reflecting the generator, the location of origin, the location of disposal within the commercial facility, the volume and type of oil field waste, the date of disposal and the hauling company for each load or category of oil field waste accepted at the commercial facility. The operator shall maintain such records for a period of not less than five years after the commercial facility's closure, subject to division inspection.

H. Disposal at a commercial facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The surface waste management facility shall be secured to prevent unauthorized disposal.

I. To protect migratory birds, tanks exceeding eight feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon the operator's written application, the division may grant an exception to screening, netting or covering upon the operator's showing that an alternative method will protect migratory birds or that the surface waste management facility is not hazardous to migratory birds. Surface waste management facilities shall be fenced in a manner approved by the division.

J. Surface waste management facilities shall have a sign, readable from a distance of 50 feet and containing the operator's name; surface waste management facility permit or order number; surface waste management facility location by unit letter, section, township and range; and emergency telephone numbers.

K. The operators shall comply with the spill reporting and corrective action provisions of 19.15.30 NMAC or 19.15.29 NMAC.

L. Each operator shall have an inspection and maintenance plan that includes the following:

(1) monthly inspection of leak detection sumps including sampling if fluids are present with analyses of fluid samples furnished to the division; and maintenance of records of inspection dates, the inspector and the leak detection system's status;

(2) semi-annual inspection and sampling of monitoring wells as required, with analyses of ground water furnished to the division; and maintenance of records of inspection dates, the inspector and ground water monitoring wells' status; and

(3) inspections of the berms and the outside walls of pond levees quarterly and after a major rainfall or windstorm, and maintenance of berms in such a manner as to prevent erosion.

M. Each operator shall have a plan to control run-on water onto the site and run-off water from the site, such that:

(1) the run-on and run-off control system shall prevent flow onto the surface waste management facility's active portion during the peak discharge from a 25-year storm; and

(2) run-off from the surface waste management facility's active portion shall not be allowed to discharge a pollutant to the waters of the state or United States that violates state water quality standards.

N. Contingency plan. Each operator shall have a contingency plan. The operator shall provide the division's environmental bureau with a copy of an amendment to the contingency plan, including amendments required by Paragraph (8) of Subsection N of 19.15.36.13 NMAC; and promptly notify the division's environmental bureau of changes in the emergency coordinator or in the emergency coordinator's contact information. The contingency plan shall be designed to minimize hazards to fresh water, public health [~~safety~~] or the environment from fires,

explosions or an unplanned sudden or non-sudden release of contaminants or oil field waste to air, soil, surface water or ground water. The operator shall carry out the plan's provisions immediately whenever there is a fire, explosion or release of contaminants or oil field waste constituents that could threaten fresh water, public health [~~safety~~] or the environment; provided that the emergency coordinator may deviate from the plan as necessary in an emergency situation. The contingency plan for emergencies shall:

(1) describe the actions surface waste management facility personnel shall take in response to fires, explosions or releases to air, soil, surface water or ground water of contaminants or oil field waste containing constituents that could threaten fresh water, public health [~~safety~~] or the environment;

(2) describe arrangements with local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services;

(3) list the emergency coordinator's name; address; and office, home and mobile phone numbers (where more than one person is listed, one shall be named as the primary emergency coordinator);

(4) include a list, which shall be kept current, of emergency equipment at the surface waste management facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment, containing a physical description of each item on the list and a brief outline of its capabilities;

(5) include an evacuation plan for surface waste management facility personnel that describes signals to be used to begin evacuation, evacuation routes and alternate evacuation routes in cases where fire or releases of wastes could block the primary routes;

(6) include an evaluation of expected contaminants, expected media contaminated and procedures for investigation, containment and correction or remediation;

(7) list where copies of the contingency plan will be kept, which shall include the surface waste management facility; local police departments, fire departments and hospitals; and state and local emergency response teams;

(8) indicate when the contingency plan will be amended, which shall be within five working days whenever:

(a) the surface waste management facility permit is revised or modified;

(b) the plan fails in an emergency;

(c) the surface waste management facility changes design, construction, operation, maintenance or other circumstances in a way that increases the potential for fires, explosions or releases of oil field waste constituents that could threaten fresh water, public health [~~safety~~] or the environment or change the response necessary in an emergency;

(d) the list of emergency coordinators or their contact information changes; or

(e) the list of emergency equipment changes;

(9) describe how the emergency coordinator or the coordinator's designee, whenever there is an imminent or actual emergency situation, will immediately;

(a) activate internal surface waste management facility alarms or communication systems, where applicable, to notify surface waste management facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(10) describe how the emergency coordinator, whenever there is a release, fire or explosion, will immediately identify the character, exact source, amount and extent of released materials (the emergency coordinator may do this by observation or review of surface waste management facility records or manifests, and, if necessary, by chemical analysis) and describe how the emergency coordinator will concurrently assess possible hazards to fresh water, public health [~~safety~~] or the environment that may result from the release, fire or explosion (this assessment shall consider both the direct and indirect hazard of the release, fire or explosion);

(11) describe how, if the surface waste management facility stops operations in response to fire, explosion or release, the emergency coordinator will monitor for leaks, pressure buildup, gas generation or rupture in valves, pipes or the equipment, wherever this is appropriate;

(12) describe how the emergency coordinator, immediately after an emergency, will provide for treating, storing or disposing of recovered oil field waste, or other material that results from a release, fire or explosion at a surface waste management facility;

(13) describe how the emergency coordinator will ensure that no oil field waste, which may be incompatible with the released material, is treated, stored or disposed of until cleanup procedures are complete; and

(14) provide that the emergency coordinator may amend the plan during an emergency as necessary to protect fresh water, public health [~~safety~~] or the environment.

O. Gas safety management plan. Each operator of a surface waste management facility that includes a landfill shall have a gas safety management plan that describes in detail procedures and methods that will be used to prevent landfill-generated gases from interfering or conflicting with the landfill's operation and protect fresh water, public health [~~safety~~] and the environment. The plan shall address anticipated amounts and types of gases that may be generated, an air monitoring plan that includes the vadose zone and measuring, sampling, analyzing, handling, control and processing methods. The plan shall also include final post closure monitoring and control options.

P. Training program. Each operator shall conduct an annual training program for key personnel that includes general operations, permit conditions, emergencies proper sampling methods and identification of exempt and non-exempt waste and hazardous waste. The operator shall maintain records of such training, subject to division inspection, for five years.

[19.15.36.13 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.14 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFILLS:

A. General operating requirements.

(1) The operator shall confine the landfill's working face to the smallest practical area and compact the oil field waste to the smallest practical volume. The operator shall not use equipment that may damage the integrity of the liner system in direct contact with a geosynthetic liner.

(2) The operator shall prevent unauthorized access by the public and entry by large animals to the

landfill's active portion through the use of fences, gates, locks or other means that attain equivalent protection.

(3) The operator shall prevent and extinguish fires.

(4) The operator shall control litter and odors.

(5) The operator shall not excavate a closed cell or allow others to excavate a closed cell except as approved by the division.

(6) The operator shall provide adequate cover for the landfill's active face as needed to control dust, debris, odors or other nuisances, or as otherwise required by the division.

(7) For areas of the landfill that will not receive additional oil field waste for one month or more, but have not reached the final waste elevation, the operator shall provide intermediate cover that shall be:

(a) approved by the division;

(b) stabilized with vegetation; and

(c) inspected and maintained to prevent erosion and manage infiltration or leachate during the oil field waste deposition process.

(8) When the operator has filled a landfill cell, the operator shall close it pursuant to the conditions contained in the surface waste management facility permit and the requirements of Paragraph (2) of Subsection [~~D~~] C of 19.15.36.18 NMAC. The operator shall notify the division's environmental bureau at least three working days prior to a landfill cell's closure.

B. Ground water monitoring program. If fresh ground water exists at a site, the operator shall, unless otherwise approved by the division, establish a ground water monitoring program, approved by the division's environmental bureau, which shall include a ground water monitoring work plan, a sampling and analysis plan, a ground water monitoring system and a plan for reporting ground water monitoring results. The ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) represent the quality of background ground water that leakage from a landfill has not affected; and

(2) represent the quality of ground water passing beneath and down gradient of the surface waste management facility.

C. Landfill design specification. New landfill design systems shall include a base layer and a lower geomembrane liner (*e.g.*, composite liner), a leak detection system, an upper geomembrane liner, a leachate collection and removal system, a leachate collection and removal system protective layer, an oil field waste zone and a top landfill cover.

(1) The base layer shall, at a minimum, consist of two feet of clay soil compacted to a minimum [~~90~~] ninety percent standard proctor density (ASTM D-698)(Copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. This document is available for public viewing at the New Mexico state records center and archives and may not be reproduced, in full or in part. A copy of this publication may be obtained from ASTM International, www.astm.org.) with a hydraulic conductivity of 1 x 10^{-7} cm/sec or less. In areas where no ground water is present, the operator may propose an alternative base layer design, subject to division approval.

(2) The lower geomembrane liner shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division.

(3) The operator shall place the leak detection system, which shall consist of two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-5} cm/sec or greater, between the lower and upper geomembrane liners. The leak detection system shall consist of a drainage and collection system placed no more than six inches above the lower geomembrane liner in depressions and sloped so as to facilitate the earliest possible leak detection at designated collection points. Drainage piping shall be designed to withstand chemical attack from oil field waste and leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction, and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the landfill sub-grade and drainage pipes and laterals shall be at least two percent grade; *i.e.*, two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected liquids to a corrosion-proof sump or sumps located outside the landfill's perimeter for observation, storage, treatment or disposal. The operator may install alternative designs as approved by the division.

(4) The operator shall place the upper geomembrane liner, which shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division, over the leak detection system.

(5) The operator shall place the leachate collection and removal system, which shall consist of at least two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater, over the upper geomembrane liner to facilitate drainage. The leachate collection and removal system shall consist of a drainage and collection and removal system placed no more than six inches above the upper geomembrane liner in depressions and sloped so as to facilitate the maximum leachate collection. Piping shall be designed to withstand chemical attack from oil field waste or leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the upper geomembrane liner and drainage lines and laterals shall be at least two percent grade; *i.e.*, two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected fluids outside the landfill's perimeter for storage, treatment and disposal. The operator may install alternative designs as approved by the division.

(6) The operator shall place the leachate collection and removal system protection layer, which shall consist of a soil layer at least one foot thick with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater, over the leachate collection and removal system.

(7) The operator shall place oil field waste over the leachate collection and removal system protective

layer.

(8) The top landfill cover design shall consist of the following layers (top to bottom): a soil erosion layer composed of at least 12 inches of fertile topsoil re-vegetated in accordance with the post closure provisions of Subparagraph (b) of Paragraph (2) of Subsection [~~D~~] C of 19.15.36.18 NMAC; a protection or frost protection layer composed of 12 to 30 inches of native soil; a drainage layer composed of at least 12 inches of sand or gravel with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater and a minimum bottom slope of four percent, a hydraulic barrier-layer-geomembrane (minimum of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division); and a gas vent or foundation layer composed of at least 12 inches of sand or gravel above oil field waste with soils compacted to the minimum [~~80~~] eighty percent Standard Proctor Density. The operator shall install the top landfill cover within one year of achieving the final landfill cell waste elevation. The operator shall ensure that the final landfill design elevation of the working face of the oil field waste is achieved in a timely manner with the date recorded in a field construction log. The operator shall also record the date of top landfill cover installation to document the timely installation of top landfill covers. The operator shall provide a minimum of three working days' notice to the division in advance of the top landfill cover's installation to allow the division to witness the top landfill cover's installation.

(9) Alternatively, the operator may propose a performance-based landfill design system using geosynthetics or geocomposites, including geogrids, geonets, geosynthetic clay liners, composite liner systems, etc., when supported by EPA's "hydrologic evaluation of landfill performance" (HELP) model or other division-approved model. The operator shall design the landfill to prevent the "bathtub effect". The bathtub effect occurs when a more permeable cover is placed over a less permeable bottom liner or natural subsoil.

(10) External piping, *e.g.*, leachate collection, leak detection and sump removal systems shall be designed for installation of a sidewall riser pipe. Pipes shall not penetrate the liner with the exception of gas vent or collection wells where the operator shall install a flexible clamped pipe riser through the top landfill cover liner that will accommodate oil field waste settling and will prevent tears.

D. Liner specifications and requirements.

(1) General requirements.

(a) Geomembrane liner specifications. Geomembrane liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. Geomembrane liners shall have a hydraulic conductivity no greater than 1 x 10^{-9} cm/sec. Geomembrane liners shall be composed of impervious, geosynthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liners shall also be resistant to ultraviolet light, or the operator shall make provisions to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 method 9090A.

(b) Liners shall be able to withstand projected loading stresses, settling and disturbances from overlying oil field waste, cover materials and equipment operations.

(c) The operator shall construct liners with a minimum of two percent slope to promote positive drainage and to facilitate leachate collection and leak detection.

(2) Additional requirements for geomembranes.

(a) Geomembranes shall be compatible with the oil field waste to be disposed. Geomembranes shall be resistant to chemical attack from the oil field waste or leachate. The operator shall demonstrate this by means of the manufacturer's test reports, laboratory analyses or other division-approved method.

(b) Geosynthetic material the operator installs on a slope greater than [~~25~~] twenty-five percent shall be designed to withstand the calculated tensile forces acting upon the material. The design shall consider the maximum friction angle of the geosynthetic with regard to a soil-geosynthetic or geosynthetic-geosynthetic interface and shall ensure that overall slope stability is maintained.

(c) The operator shall thermally seal (hot wedge) field seams in geosynthetic material with a double track weld to create an air pocket for non-destructive air channel testing. In areas where double-track welding cannot be achieved, the operator may propose alternative thermal seaming methods. A stabilized air pressure of 35psi, plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and shall orient seams parallel to the line of maximum slope; *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. The operator shall use factory seams whenever possible. The operator shall not install horizontal seams within five feet of the slope's toe. Qualified personnel shall perform all field seaming.

E. Requirements for the soil component of composite liners.

(1) The operator shall place and compact the base layer to [~~90~~] ninety percent standard proctor density on a prepared sub-grade.

(2) The soil surface upon which the operator installs a geosynthetic shall be free of stones greater than one half inch in any dimension, organic matter, local irregularities, protrusions, loose soil and abrupt changes in grade that could damage the geosynthetic.

(3) The operator shall compact a clay soil component of a composite liner to a minimum of [~~90~~] ninety percent standard proctor density, which shall have, unless otherwise approved by the division, a plasticity index greater than [~~10~~] ten percent, a liquid limit between [~~25 and 50~~] twenty-five and fifty percent, a portion of material passing the no. 200 sieve (0.074 mm and less fraction) greater than [~~40~~] forty percent by weight; and a clay content greater than [~~18~~] eighteen percent by weight.

F. The leachate collection and removal system protective layer and the soil component of the leak detection system shall consist of soil materials that shall be free of organic matter, shall have a portion of material passing the no. 200 sieve no greater than five percent by weight and shall have a uniformity coefficient (Cu) less than 6, where Cu is defined as D60/D10. Geosynthetic materials or geocomposites including geonets and geotextiles, if used as components of the leachate collection and removal or leak detection system, shall have a hydraulic conductivity, transmissivity and chemical and physical qualities that oil field waste placement, equipment operation or leachate generation will not adversely affect. These geosynthetics or geocomposites, if used in conjunction with the soil protective cover for liners, shall have a hydraulic conductivity designed to ensure that the liner's hydraulic head never

exceeds one foot.

G. Landfill gas control systems. If the gas safety management plan or requirements of other federal, state or local agencies require the installation of a gas control system at a landfill, the operator shall submit a plan for division approval, which shall include the following:

(1) the system's design, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that the operator will install (gas vent or collection wells shall incorporate a clamped and seamed pipe riser design through the top cover liner);

(2) if gas recovery is proposed, the design of the proposed gas recovery system and the system's major on-site components, including storage, transportation, processing, treatment or disposal measures required in the management of generated gases, condensates or other residues;

(3) if gas processing is proposed, a processing plan designed in a manner that does not interfere or conflict with the activities on the site or required control measures or create or cause danger to persons or property;

(4) if gas disposal is proposed, a disposal plan designed:

(a) in a manner that does not interfere or conflict with the activities on the site or with required control measures;

(b) so as not to create or cause danger to persons or property; and

(c) with active forced ventilation, using vents located at least one foot above the landfill surface at each gas vent's location;

(5) physical and chemical characterization of condensates or residues that are generated and a plan for their disposal;

(6) means that the operator will implement to prevent gas' generation and lateral migration such that:

(a) the concentration of the gases the landfill generates does not exceed [~~25~~] twenty-five percent of the lower explosive limit for gases in surface waste management facility structures (excluding gas control or recovery system components); and

(b) the concentration of gases does not exceed the lower explosive limit for gases at the surface waste management facility boundary; and

(7) a routine gas monitoring program providing for monitoring at least quarterly; the specific type and frequency of monitoring to be determined based on the following:

(a) soil conditions;

(b) the hydrogeologic and hydraulic conditions surrounding the surface waste management facility; and

(c) the location of surface waste management facility structures and property lines.

H. Landfill gas response. If gas levels exceed the limits specified in Paragraph (6) of Subsection G of 19.15.36.14 NMAC, the operator shall:

(1) immediately take all necessary steps to ensure protection of fresh water, public health [~~safety~~] and the environment and notify the division;

(2) within seven days of detection, record gas levels detected and a description of the steps taken to protect fresh water, public health [~~safety~~] and the environment;

(3) within 30 days of detection, submit a remediation plan for gas releases that describes the problem's nature and extent and the proposed remedy; and

(4) within 60 days after division approval, implement the remediation plan and notify the division that the plan has been implemented.

[19.15.36.14 NMAC - N, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.15 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFARMS:

A. Oil field waste acceptance criteria. Only soils and drill cuttings predominantly contaminated by petroleum hydrocarbons shall be placed in a landfarm. The division may approve placement of tank bottoms in a landfarm if the operator demonstrates that the tank bottoms do not contain economically recoverable petroleum hydrocarbons. Soils and drill cuttings placed in a landfarm shall be sufficiently free of liquid content to pass the paint filter test, and shall not have a chloride concentration exceeding 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or exceeding 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The person tendering oil field waste for treatment at a landfarm shall certify, on form C-138, that representative samples of the oil field waste have been subjected to the paint filter test and tested for chloride content, and that the samples have been found to conform to these requirements. The landfarm's operator shall not accept oil field waste for landfarm treatment unless accompanied by this certification.

B. Background testing. Prior to beginning operation of a new landfarm or to opening a new cell at an existing landfarm at which the operator has not already established background, the operator shall take, at a minimum, 12 composite background soil samples, with each consisting of 16 discrete samples from areas that previous operations have not impacted at least six inches below the original ground surface, to establish background soil concentrations for the entire surface waste management facility. The operator shall analyze the background soil samples for TPH, as determined by EPA method 418.1 or other EPA method approved by the division; BTEX, as determined by EPA SW-846 method 8021B or 8260B; chlorides; and other constituents listed in Subsections A and B of 20.6.2.3103 NMAC, using approved EPA methods.

C. Operation and oil field waste treatment.

(1) The operator shall berm each landfarm cell to prevent rainwater run-on and run-off.

(2) The operator shall not place contaminated soils received after the effective date of 19.15.36 NMAC within 100 feet of the surface waste management facility's boundary.

(3) The operator shall not place contaminated soils received at a landfarm after the effective date of 19.15.36 NMAC within 20 feet of a pipeline crossing the landfarm.

(4) With 72 hours after receipt, the operator shall spread and disk contaminated soils in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift or biopile.

(5) The operator shall ensure that soils are disked biweekly and biopiles are turned at least monthly.

(6) The operator shall add moisture, as necessary, to enhance bioremediation and to control blowing dust.

(7) The application of microbes for the purposes of enhancing bioremediation requires

prior division approval.

(8) Pooling of liquids in the landfarm is prohibited. The operator shall remove freestanding water within 24 hours.

(9) The operator shall maintain records of the landfarm's remediation activities in a form readily accessible for division inspection.

(10) The division's environmental bureau may approve other treatment procedures if the operator demonstrates that they provide equivalent protection for fresh water, public health [~~safety~~] and the environment.

D. Treatment zone monitoring. The operator shall spread contaminated soils on the surface in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift. The operator shall conduct treatment zone monitoring to ensure that prior to adding an additional lift the TPH concentration of each lift, as determined by EPA SW-846 method 8015M or EPA method 418.1 or other EPA method approved by the division, does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The operator shall collect and analyze at least one composite soil sample, consisting of four discrete samples, from the treatment zone at least semi-annually using the methods specified below for TPH and chlorides. The maximum thickness of treated soils in a landfarm cell shall not exceed two feet or approximately 3000 cubic yards per acre. When that thickness is reached, the operator shall not place additional oil field waste in the landfarm cell until it has demonstrated by monitoring the treatment zone at least semi-annually that the contaminated soil has been treated to the standards specified in Subsection F of 19.15.36.15 NMAC or the contaminated soils have been removed to a division-approved surface waste management facility.

E. Vadose zone monitoring.

(1) Sampling. The operator shall monitor the vadose zone beneath the treatment zone in each landfarm cell. The operator shall take the vadose zone samples from soils between three and four feet below the cell's original ground surface.

(2) Semi-annual monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone at least semi-annually using the methods specified below for TPH, BTEX and chlorides and shall compare each result to the higher of the PQL or the background soil concentrations to determine whether a release has occurred.

(3) Five year monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone, using the methods specified below for the constituents listed in Subsections A and B of 20.6.2.3103 NMAC at least every five years and shall compare each result to the higher of the PQL or the background soil concentrations to determine whether a release has occurred.

(4) Record keeping. The operator shall maintain a copy of the monitoring reports in a form readily accessible for division inspection.

(5) Release response. If vadose zone sampling results show that the concentrations of TPH, BTEX or chlorides exceed the higher of the PQL or the background soil concentrations, then the operator shall notify the division's environmental bureau of the exceedance, and shall immediately collect and analyze a minimum of four randomly selected, independent samples for TPH, BTEX, chlorides and the constituents listed in Subsections A and B of 20.6.2.3103 NMAC. The operator shall submit the results of the re-sampling event and a response action plan for the division's approval within 45 days of the initial notification. The response action plan shall address changes in the landfarm's operation to prevent further contamination and, if necessary, a plan for remediating existing contamination.

F. Treatment zone closure performance standards. After the operator has filled a landfarm cell to the maximum thickness of two feet or approximately 3000 cubic yards per acre, the operator shall continue treatment until the contaminated soil has been remediated to the higher of the background concentrations or the following closure performance standards. The operator shall demonstrate compliance with the closure performance standards by collecting and analyzing a minimum of one composite soil sample, consisting of four discrete samples.

(1) Benzene, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 0.2 mg/kg.

(2) Total BTEX, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 50 mg/kg.

(3) The GRO and DRO combined fractions, as determined by EPA SW-846 method 8015M, shall not exceed 500 mg/kg. TPH, as determined by EPA method 418.1 or other EPA method approved by the division, shall not exceed 2500 mg/kg.

(4) Chlorides, as determined by EPA method 300.1, shall not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste.

(5) The concentration of constituents listed in Subsections A and B of 20.6.2.3103 NMAC shall be determined by EPA SW-846 methods 6010B or 6020 or other methods approved by the division. If the concentration of those constituents exceed the PQL or background concentration, the operator shall either perform a site specific risk assessment using EPA approved methods and shall propose closure standards based upon individual site conditions that protect fresh water, public health [~~safety~~] and the environment, which shall be subject to division approval or remove pursuant to Paragraph (2) of Subsection G of 19.15.36.15 NMAC.

G. Disposition of treated soils.

(1) If the operator achieves the closure performance standards specified in Subsection F of 19.15.36.15 NMAC, then the operator may either leave the treated soils in place, or, with prior division approval, dispose or reuse of the treated soils in an alternative manner.

(2) If the operator cannot achieve the closure performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the operator shall remove contaminated soils from the landfarm cell and properly dispose of it at a division-permitted landfill, or reuse or recycle it in a manner approved by the division.

(3) If the operator cannot achieve the closure

performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the division may review the adequacy of the operator's financial assurance, as provided in Subsection G of 19.15.36.11 NMAC. In that event, the division may require the operator to modify its financial assurance to provide for the appropriate disposition of contaminated soil in a manner acceptable to the division.

(4) The operator may request approval of an alternative soil closure standard from the division, provided that the operator shall give division-approved public notice of an application for alternative soil closure standards in the manner provided in 19.15.36.9 NMAC. The division may grant the request administratively if no person files an objection thereto within 30 days after publication of notice; otherwise the division shall set the matter for hearing.

H. Environmentally acceptable bioremediation endpoint approach.

(1) A landfarm operator may use an environmentally acceptable bioremediation endpoint approach to landfarm management in lieu of compliance with the requirements of Paragraph (3) of Subsection F of 19.15.36.15 NMAC. The bioremediation endpoint occurs when TPH, as determined by EPA method 418.1 or other EPA method approved by the division, is reduced to a minimal concentration as a result of bioremediation and is dependent upon the bioavailability of residual hydrocarbons. An environmentally acceptable bioremediation endpoint occurs when the TPH concentration has been reduced by at least [~~80~~] eighty percent by a combination of physical, biological and chemical processes and the rate of change in the reduction in the TPH concentration is negligible. The environmentally acceptable bioremediation endpoint in soil is determined statistically by the operator's demonstration that the rate of change in the reduction of TPH concentration is negligible.

(2) In addition to the requirements specified in Subsection C of 19.15.36.8 NMAC, an operator who plans to use an environmentally acceptable bioremediation endpoint approach shall submit for the division's review and approval a detailed landfarm operation plan for those landfarm cells exclusively dedicated to the use of the environmentally acceptable bioremediation endpoint approach. At a minimum, the operations plan shall include detailed information on the native soils, procedures to characterize each lift of contaminated soil, operating procedures and management procedures that the operator shall follow.

(3) In addition to other operational requirements specified in 19.15.36.15 NMAC, the operator using an environmentally acceptable bioremediation endpoint approach shall comply with the following.

(a) Native soil information required. The operator shall submit detailed information on the soil conditions present for each of its landfarm cells immediately prior to the application of the petroleum hydrocarbon-contaminated soils, including: treatment cell size, soil porosity, soil bulk density, soil pH, moisture content, field capacity, organic matter concentration, soil structure, SAR, EC, soil composition, soil temperature, soil nutrient (C:N:P) (calcium, nitrogen and phosphate) concentrations and oxygen content.

(b) Characterization of contaminated soil. The operator shall submit a description of the procedures that it will follow to characterize each lift of contaminated soil or drill cuttings, prior to treating each lift of contaminated soil or drill cuttings, for petroleum hydrocarbon loading factor, TPH, BTEX, chlorides, constituents listed in Subsections A and B of 20.6.2.3103 NMAC, contaminated soil moisture, contaminated soil pH and API gravity of the petroleum hydrocarbons.

(c) Operating procedures. The operator shall submit a description of the procedures, including a schedule, that it shall follow to properly monitor and amend each lift of contaminated soil in order to maximize bioremediation, including tilling procedures and schedule; procedures to limit petroleum hydrocarbon loading to less than five percent; procedures to maintain pH between six and eight; procedures to monitor and apply proper nutrients; procedures to monitor, apply and maintain moisture to [~~60 to 80~~] sixty to eighty percent of field capacity; and procedures to monitor TPH concentrations.

(d) Management procedures. The operator shall submit a description of the management procedures that it shall follow to properly schedule landfarming operations, including modifications during cold weather, record keeping, sampling and analysis, statistical procedures, routine reporting, determination and reporting of achievement of the environmentally acceptable bioremediation endpoint and closure and post-closure plans.

[19.15.36.15 NMAC - N, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.17 SPECIFIC REQUIREMENTS APPLICABLE TO EVAPORATION, STORAGE, TREATMENT AND SKIMMER PONDS:

A. Engineering design plan. An applicant for a surface waste management facility permit or modification requesting inclusion of a skimmer pit; an evaporation, storage or treatment pond; or a below-grade tank shall submit with the surface waste management facility permit application a detailed engineering design plan, certified by a registered profession engineer, including operating and maintenance procedures; a closure plan; and a hydrologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the division to evaluate the actual and potential effects on soils, surface water and ground water. The plan shall include detailed information on dike protection and structural integrity; leak detection, including an adequate fluid collection and removal system; liner specifications and compatibility; freeboard and overtopping prevention; prevention of nuisance and hazardous odors such as H2S; an emergency response plan, unless the pit is part of a surface waste management facility that has an integrated contingency plan; type of oil field waste stream, including chemical analysis; climatological factors, including freeze-thaw cycles; a monitoring and inspection plan; erosion control; and other pertinent information the division requests.

B. Construction, standards.

(1) In general. The operator shall ensure each pit, pond and below-grade tank is designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health [~~safety~~] and the environment.

(2) Liners required. Each pit or pond shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions.

(3) Liner specifications. Liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by

the division. Synthetic (geomembrane) liners shall have a hydraulic conductivity no greater than 1 x 10^{-9} cm/sec. Geomembrane liners shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner materials shall be resistant to ultraviolet light, or the operator shall make provisions to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) Alternative liner media. The division may approve other liner media if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health [~~safety~~] and the environment as effectively as the specified media.

(5) Each pit or pond shall have a properly constructed foundation or firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities, in order to prevent rupture or tear of the liner and an adequate anchor trench; and shall be constructed so that the inside grade of the levee is no steeper than 2H:1V. Levees shall have an outside grade no steeper than 3H:1V. The levees' tops shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance. The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. A stabilized air pressure of 35 psi, plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and orient seams parallel to the line of maximum slope, i.e., oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field seaming.

(6) At a point of discharge into or suction from the lined pit, the liner shall be protected from excessive hydrostatic force or mechanical damage, and external discharge lines shall not penetrate the liner.

(7) Primary liners shall be constructed of a synthetic material.

(8) A secondary liner may be a synthetic liner or an alternative liner approved by the division. Secondary liners constructed with compacted soil membranes, i.e., natural or processed clay and other soils, shall be at least three feet thick, placed in six-inch lifts and compacted to [~~95~~] ninety-five percent of the material's standard proctor density, or equivalent. Compacted soil membranes used in a liner shall undergo permeability testing in conformity with ASTM standards and methods approved by the division before and after construction. Compacted soil membranes shall have a hydraulic conductivity of no greater than 1 x 10^{-8} cm/sec. The operator shall submit results of pre-construction testing to the division for approval prior to construction.

(9) The operator shall place a leak detection system between the lower and upper geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped so as to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction; and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior sub-grade and of drainage lines and laterals shall be at least a two percent grade, i.e., two feet vertical drop per 100 horizontal feet. The piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the perimeter of the pit or pond. The operator may install alternative methods as approved by the division.

(10) The operator shall notify the division at least 72 hours prior to the primary liner's installation so that a division representative may inspect the leak detection system before it is covered.

(11) The operator shall construct pits and ponds in a manner that prevents overtopping due to wave action or rainfall, and maintain a three foot freeboard at all times.

(12) The maximum size of an evaporation or storage pond shall not exceed 10 acre-feet.

C. Operating standards.

(1) The operator shall ensure that only produced fluids or non-hazardous waste are discharged into or stored in a pit or pond; and that no measurable or visible oil layer is allowed to accumulate or remain anywhere on a pit's surface except an approved skimmer pit.

(2) The operator shall monitor leak detection systems pursuant to the approved surface waste management facility permit conditions, maintain monitoring records in a form readily accessible for division inspection and report discovery of liquids in the leak detection system to the division within 24 hours.

(3) Fencing and netting. The operator shall fence or enclose pits or ponds to prevent unauthorized access and maintain fences in good repair. Fences are not required if there is an adequate perimeter fence surrounding the surface waste management facility. The operator shall screen, net, cover or otherwise render non-hazardous to migratory birds tanks exceeding eight feet in diameter and exposed pits and ponds. Upon written application, the division may grant an exception to screening, netting or covering requirements upon the operator's showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(4) The division may approve spray systems to enhance natural evaporation. The operator shall submit engineering designs for spray systems to the division's environmental bureau for approval prior to installation. The operator shall ensure that spray evaporation systems are operated so that spray-borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

(5) The operator shall use skimmer pits or tanks to separate oil from produced water prior to water discharge into a pond. The operator shall install a trap device in connected ponds to prevent solids and oils from transferring from one pond to another unless approved in the surface waste management facility permit.

D. Below-grade tanks and sumps.

(1) The operator shall construct below-grade tanks with

secondary containment and leak detection. The operator shall not allow below-grade tanks to overflow. The operator shall install only below-grade tanks of materials resistant to the tank's particular contents and to damage from sunlight.

(2) The operator shall test sumps' integrity annually, and shall promptly repair or replace a sump that does not demonstrate integrity. The operator may test sumps that can be removed from their emplacements by visual inspection. The operator shall test other sumps by appropriate mechanical means. The operator shall maintain records of sump inspection and testing and make such records available for division inspection.

E. Closure required. The operator shall properly close pits, ponds and below-grade tanks within six months after cessation of use.

[19.15.36.17 NMAC - N, 2/14/2007; A, 6/30/16]

19.15.36.18 CLOSURE AND POST CLOSURE:

A. Surface waste management facility closure by operator.

(1) The operator shall notify the division's environmental bureau at least 60 days prior to cessation of operations at the surface waste management facility and provide a proposed schedule for closure. Upon receipt of such notice and proposed schedule, the division shall review the current closure and post closure plan (post closure is not required for oil treating plants) for adequacy and inspect the surface waste management facility.

(2) The division shall notify the operator within 60 days after the date of cessation of operations specified in the operator's closure notice of modifications of the closure and post closure plan and proposed schedule or additional requirements that it determines are necessary for the protection of fresh water, public health [~~safety~~] or the environment.

(3) If the division does not notify the operator of additional closure or post closure requirements within 60 days as provided, the operator may proceed with closure in accordance with the approved closure and post closure plan; provided that the director may, for good cause, extend the time for the division's response for an additional period not to exceed 60 days by written notice to the operator.

(4) The operator shall be entitled to a hearing concerning a modification or additional requirement the division seeks to impose if it files an application for a hearing within 10 days after receipt of written notice of the proposed modifications or additional requirements.

(5) Closure shall proceed in accordance with the approved closure and post closure plan and schedule and modifications or additional requirements the division imposes. During closure operations the operator shall maintain the surface waste management facility to protect fresh water, public health [~~safety~~] and the environment.

(6) Upon completion of closure, the operator shall re-vegetate the site unless the division has approved an alternative site use plan as provided in Subsection [~~G~~] F of 19.15.36.18 NMAC. Re-vegetation, except for landfill cells, shall consist of establishment of a vegetative cover equal to [~~70~~] seventy percent of the native perennial vegetative cover (un-impacted by overgrazing, fire or other intrusion damaging to native vegetation) or scientifically documented ecological description consisting of at least three native plant species, including at least one grass, but not including noxious weeds, and maintenance of that cover through two successive growing seasons.

B. Release of financial assurance.

(1) When the division determines that closure is complete it shall release the financial assurance, except for the amount needed to maintain monitoring wells for the applicable post closure care period, to perform semi-annual analyses of such monitoring wells and to re-vegetate the site. Prior to the partial release of the financial assurance covering the surface waste management facility, the division shall inspect the site to determine that closure is complete.

(2) After the applicable post closure care period has expired, the division shall release the remainder of the financial assurance if the monitoring wells show no contamination and the re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful. If monitoring wells or other monitoring or leak detection systems reveal contamination during the surface waste management facility's operation or in the applicable post closure care period following the surface waste management facility's closure the division shall not release the financial assurance until the contamination is remediated in accordance with 19.15.30 NMAC and 19.15.29 NMAC, as applicable.

(3) In any event, the division shall not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC, or, if the division has approved an alternative site use plan, until the landowner has obtained the necessary regulatory approvals and begun implementation of the use.

[~~**C.** Surface waste management facility closure initiated by the division. Forfeiture of financial assurance.~~

~~**(1)** For good cause, the division may, after notice to the operator and an opportunity for a hearing, order immediate cessation of a surface waste management facility's operation when it appears that cessation is necessary to protect fresh water, public health, safety or the environment, or to assure compliance with statutes or division rules and orders. The division may order closure without notice and an opportunity for hearing in the event of an emergency, subject to NMSA 1978, Section 70-2-23, as amended.~~

~~**(2)** If the operator refuses or is unable to conduct operations at a surface waste management facility in a manner that protects fresh water, public health, safety and the environment; refuses or is unable to conduct or complete an approved closure plan; is in material breach of the terms and conditions of its surface waste management facility permit; or the operator defaults on the conditions under which the division accepted the surface waste management facility's financial assurance; or if disposal operations have ceased and there has been no significant activity at the surface waste management facility for six months the division may take the following actions to forfeit all or part of the financial assurance:~~

~~**(a)** send written notice by certified mail, return receipt requested, to the operator and the surety, if any, informing them of the decision to close the surface waste management facility and to forfeit the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the operator and surety that a hearing request or other response shall be made within 10 days of receipt of the notice; and~~

~~**(b)** advise the operator and surety of the conditions under which they may~~

~~avoid the forfeiture; such conditions may include but are not limited to an agreement by the operator or another party to perform closure and post closure operations in accordance with the surface waste management facility permit conditions, the closure plan (including modifications or additional requirements imposed by the division) and division rules, and satisfactory demonstration that the operator or other party has the ability to perform such agreement.~~

~~(3) The division may allow a surety to perform closure if the surety can demonstrate an ability to timely complete the closure and post closure in accordance with the approved plan.~~

~~(4) If the operator and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if the operator or surety has timely requested a hearing, to declare the financial assurance's forfeiture. The division may then proceed to collect the forfeited amount and use the funds to complete the closure, or, at the division's election, to close the surface waste management facility and collect the forfeited amount as reimbursement.~~

~~(a) The division shall deposit amounts collected as a result of forfeiture of financial assurance in the oil and gas reclamation fund.~~

~~(b) In the event the amount forfeited and collected is insufficient for closure, the operator shall be liable for the deficiency. The division may complete or authorize completion of closure and post closure and may recover from the operator reasonably incurred costs of closure and forfeiture in excess of the amount collected pursuant to the forfeiture.~~

~~(c) In the event the amount collected pursuant to the forfeiture was more than the amount necessary to complete closure, including remediation costs, and forfeiture costs, the division shall return the excess to the operator or surety, as applicable, reserving such amount as may be reasonably necessary for post closure monitoring and re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC. The division shall return excess of the amount retained over the actual cost of post closure monitoring and re-vegetation to the operator or surety at the later of conclusion of the applicable post closure period or when the site re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful.~~

~~(5) If the operator abandons the surface waste management facility or cannot fulfill the conditions and obligations of the surface waste management facility permit or division rules, the state of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the state shall have all rights of entry into, over and upon the surface waste management facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the surface waste management facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials and all other rights necessary for the surface waste management facility's operation, termination and closure in accordance with the surface waste management facility permit and to conduct post closure monitoring.~~

~~D.~~] C. Surface waste management facility and cell closure and post closure standards. The following minimum standards shall apply to closure and post closure of the installations indicated, whether the entire surface waste management facility is being closed or only a part of the surface waste management facility.

(1) Oil treating plant closure. The operator shall ensure that:

(a) tanks and equipment used for oil treatment are cleaned and oil field waste is disposed of at a division-approved surface waste management facility (the operator shall reuse, recycle or remove tanks and equipment from the site within 90 days of closure);

(b) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods, for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(c) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(2) Landfill cell closure.

(a) The operator shall properly close landfill cells, covering the cell with a top cover pursuant to Paragraph (8) of Subsection C of 19.15.36.14 NMAC, with soil contoured to promote drainage of precipitation; side slopes shall not exceed a [~~25~~] twenty-five percent grade (four feet horizontal to one foot vertical), such that the final cover of the landfill's top portion has a gradient of two percent to five percent, and the slopes are sufficient to prevent the ponding of water and erosion of the cover material.

(b) The operator shall re-vegetate the area overlying the cell with native grass covering at least [~~70~~] seventy percent of the landfill cover and surrounding areas, consisting of at least two grasses and not including noxious weeds or deep rooted shrubs or trees, and maintain that cover through the post closure period.

(3) Landfill post closure. Following landfill closure, the post closure care period for a landfill shall be 30 years.

(a) A post closure care and monitoring plan shall include maintenance of cover integrity, maintenance and operation of a leak detection system and leachate collection and removal system and operation of gas and ground water monitoring systems.

(b) The operator or other responsible entity shall sample existing ground water monitoring wells annually and submit reports of monitoring performance and data collected within 45 days after the end of each calendar year. The operator shall report any exceedance of a ground water standard that it discovers during monitoring pursuant to 19.15.29 NMAC.

(4) Landfarm closure. The operator shall ensure that:

(a) disking and addition of bioremediation enhancing materials continues until soils within the cells are remediated to the standards provided in Subsection F of 19.15.36.15 NMAC, or as otherwise approved by the division;

(b) soils remediated to the foregoing standards and left in place are re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(c) landfarmed soils that have not been or cannot be remediated to the standards in Subsection F of 19.15.36.15 NMAC are removed to a division-approved surface waste management facility and the landfarm remediation area is filled in with

native soil and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(d) if treated soils are removed, the cell is filled in with native soils and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(e) berms are removed;

(f) buildings, fences, roads and equipment are removed, the site cleaned-up and tests conducted on the soils for contamination;

(g) annual reports of vadose zone and treatment zone sampling are submitted to the division's environmental bureau until the division has approved the surface waste management facility's final closure; and

(h) for an operator who chooses to use the landfarm methods specified in Subsection H of 19.15.36.15 NMAC, that the soil has an ECs of less than or equal to 4.0 mmhos/cm (dS/m) and a SAR of less than or equal to 13.0.

[~~E.~~] **D.** Pond and pit closure. The operator shall ensure that:

(1) liquids in the ponds or pits are removed and disposed of in a division-approved surface waste management facility;

(2) liners are disposed of in a division-approved surface waste management facility;

(3) equipment associated with the surface waste management facility is removed;

(4) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods for TPH, BTEX, metals and other inorganics listed in Subsections A and B of 20.6.2.3103 NMAC, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(5) sample results are submitted to the environmental bureau in the division's Santa Fe office.

[~~F.~~] **E.** Landfarm and pond and pit post closure. The post-closure care period for a landfarm or pond or pit shall be three years if the operator has achieved clean closure. During that period the operator or other responsible entity shall regularly inspect and maintain required re-vegetation. If there has been a release to the vadose zone or to ground water, then the operator shall comply with the applicable requirements of 19.15.30 NMAC and 19.15.29 NMAC.

[~~G.~~] **F.** Alternatives to re-vegetation. If the landowner contemplates use of the land where a cell or surface waste management facility is located for purposes inconsistent with re-vegetation, the landowner may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to re-vegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the landowner has obtained necessary regulatory approvals and begun implementation of such alternative use.

G. Surface waste management facility closure initiated by the division. Forfeiture of financial assurance.

(1) For good cause, the division may, after notice to the operator and an opportunity for a hearing, order immediate cessation of a surface waste management facility's operation when it appears that cessation is necessary to protect fresh water, public health or the environment, or to assure compliance with statutes or division rules and orders. The division may order closure without first having a hearing in the event of an emergency, subject to Section 70-2-23 NMSA 1978, as amended.

(2) If the operator refuses or is unable to conduct operations at a surface waste management facility in a manner that protects fresh water, public health and the environment; refuses or is unable to conduct or complete an approved closure and post closure plan; is in material breach of the terms and conditions of its surface waste management facility permit; or the operator defaults on the conditions under which the division accepted the surface waste management facility's financial assurance; or if disposal operations have ceased and there has been no significant activity at the surface waste management facility for six months the division may take the following actions to forfeit all or part of the financial assurance:

(a) send written notice by certified mail, return receipt requested, to the operator and the surety, if any, informing them of the decision to close the surface waste management facility and to forfeit the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the operator and surety that a hearing request or other response shall be made within 20 days of receipt of the notice; and

(b) advise the operator and surety of the conditions under which they may avoid the forfeiture; such conditions may include but are not limited to an agreement by the operator or another party to perform closure and post closure operations in accordance with the surface waste management facility permit conditions, the closure and post closure plan (including modifications or additional requirements imposed by the division) and division rules, and satisfactory demonstration that the operator or other party has the ability to perform such agreement.

(3) The division may allow a surety to perform closure and post closure if the surety can demonstrate an ability to timely complete the closure and post closure in accordance with the approved plan.

(4) If the operator and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if the operator or surety has timely requested a hearing, to declare the financial assurance's forfeiture. The division may then proceed to collect the forfeited amount and use the funds to complete the closure and post closure, or, at the division's election, to close the surface waste management facility and collect the forfeited amount as reimbursement.

(a) The division shall deposit amounts collected as a result of forfeiture of financial assurance in the oil and gas reclamation fund.

(b) In the event the amount forfeited and collected is insufficient for closure and post closure, the operator shall be liable for the deficiency. The division may complete or authorize completion of closure and post closure and may recover from the operator reasonably incurred costs of closure and post closure and forfeiture in excess of the amount collected pursuant to the forfeiture.

(c) In the event the amount collected pursuant to the forfeiture was more than the amount necessary to complete closure and post closure, including remediation costs, and forfeiture costs, the division shall return the excess to the operator or surety, as applicable, reserving such amount as may be reasonably necessary for post closure operations and re-vegetation in accordance with Paragraph (6) of Subsection A of

19.15.36.18 NMAC. The division shall return excess of the amount retained over the actual cost of post closure operations and re-vegetation to the operator or surety at the later of the conclusion of the applicable post closure period or when the site re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful.

(5) If the operator abandons the surface waste management facility or cannot fulfill the conditions and obligations of the surface waste management facility permit or division rules, after notice and an opportunity for hearing, the state of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the state shall have all rights of entry into, over and upon the surface waste management facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the surface waste management facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials and all other rights necessary for the surface waste management facility's operation, termination and closure in accordance with the surface waste management facility permit and to conduct post closure operations.

[19.15.36.18 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.19 EXCEPTIONS AND WAIVERS:

A. In a surface waste management facility permit application, the applicant may propose alternatives to requirements of 19.15.36 NMAC, and the division may approve such alternatives if it determines that the proposed alternatives will provide equivalent protection of fresh water, public health [~~safety~~] and the environment.

B. The division may grant exceptions to, or waivers of, or approve alternatives to requirements of 19.15.36 NMAC in an emergency without notice or hearing. The operator requesting an exception or waiver, except in an emergency, shall apply for a surface waste management facility permit modification in accordance with Subsection C of 19.15.36.8 NMAC. If the requested modification is a major modification, the operator shall provide notice of the request in accordance with 19.15.36.9 NMAC.

[19.15.36.19 NMAC - N, 2/14/2007; A, 6/30/16]

19.15.36.20 TRANSITIONAL PROVISIONS: Existing permitted facilities. Surface waste management facilities in operation prior to the effective date of 19.15.36 NMAC pursuant to division permits or orders may continue to operate in accordance with such permits or orders, subject to the following provisions.

A. Existing surface waste management facilities shall comply with the financial assurance, operational, monitoring, waste acceptance and closure and post closure requirements provided in 19.15.36 NMAC, except as otherwise specifically provided in the applicable permit or order, or in a specific waiver, exception or agreement that the division has granted in writing to the particular surface waste management facility.

B. The division shall not require financial assurance for a commercial facility permitted prior to the effective date of 19.15.36 NMAC that exceeds $250,000 until such time as:

(1) the division reviews the commercial facility's permit pursuant to Paragraph (3) of Subsection A of 19.15.36.12 NMAC, at which time the division may require the operator to submit a closure and post closure plan; which shall include a responsible third party contractor's cost estimate to complete closure and post closure of the surface waste management facility pursuant to the requirements of Subsections A through F of 19.15.36.18 NMAC:

(a) if the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost, the division shall determine the estimated closure and post closure cost and shall provide its determination of estimated closure and post closure cost to the operator;

(b) if the operator disagrees with the division's determination of estimated closure and post closure cost, the operator may request a hearing, which shall be conducted according to 19.15.4 NMAC; or

(2) the commercial facility applies for a major modification.

[~~**B.**~~] **C.** Major modification of an existing surface waste management facility and a new landfarm cells constructed at an existing surface waste management facility shall comply with the requirements provided in 19.15.36 NMAC.

[~~**C.** The division shall process an application for a surface waste management facility permit filed prior to May 18, 2006 in accordance with 19.15.9.711 NMAC, and an application filed after May 18, 2006 in accordance with 19.15.36 NMAC.~~]

[19.15.36.20 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 6/30/16]

GAME AND FISH, DEPARTMENT OF

The State Game Commission at its 5/16/2016 meeting repealed its rule 19.31.6 NMAC, Migratory Game Bird, filed 8/31/2015, and replaced it with 19.31.6 NMAC Migratory Game Bird, effective 6/30/2016.

The State Game Commission at its meeting on 5/12/2016, repealed its rule 19.34.3 NMAC, Use of State Game Commission Lands, filed 10/30/2009 and replaced it with 19.34.3 NMAC, Use of State Game Commission Lands, effective 6/30/2016.

GAME AND FISH, DEPARTMENT OF

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 6 MIGRATORY GAME BIRD

19.31.6.1 ISSUING AGENCY: New Mexico Department of Game and Fish.

[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 9-1-2016]

19.31.6.2 SCOPE: Sportspersons interested in migratory game bird management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19 NMAC.

[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 9-1-2016]

19.31.6.3 STATUTORY AUTHORITY: Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 9-1-2016]

19.31.6.4 DURATION:
September 1, 2016 - March 31, 2017.
[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 9-1-2016]

19.31.6.5 EFFECTIVE DATE:
September 1, 2016 unless a later date is cited at end of a section.
[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 9-1-2016]

19.31.6.6 OBJECTIVE:
Establishing seasons on dove, band-tailed pigeon, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, Virginia rail, and setting falconry seasons for migratory game birds.
[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 9-1-2016]

19.31.6.7 DEFINITIONS:
Areas, species, non-toxic shot, and possession limit defined.

A. "Adult/youth" (A/Y) as used herein, shall mean that hunt designation where the adult and youth are permitted to hunt together.

B. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

C. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take migratory game birds.

D. "Bernardo pond unit" shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and west of the unit 7 drain.

E. "Bernardo youth unit" shall mean that portion of Bernardo wildlife management area immediately south of the Quagmire and east of the unit 7 drain.

F. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

G. "Central flyway" shall mean that portion of New Mexico east of the continental divide, with the exception of the Jicarilla Apache Indian reservation.

H. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

I. "Dark goose" shall mean Canada goose or white-fronted goose.

J. "Department" shall mean the New Mexico department of game and fish.

K. "Department offices" shall mean department offices in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell.

L. "Director" shall mean the director of the New Mexico department of game and fish.

M. "Dove north zone" (north zone) shall mean that portion of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

N. "Dove south zone" (south zone) shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

O. "Eastern New Mexico sandhill crane hunt area" (eastern) shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

P. "Established road" is defined as follows:

(1) a road, built or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

Q. "Estancia valley sandhill crane hunt area" (EV) shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

R. "Falconry" shall mean hunting migratory game birds using raptors.

S. "Federal youth waterfowl hunting days" shall mean the special seasons where only those under 16 years of age may hunt ducks and geese. A supervising adult must accompany the youth hunter. The adult may not hunt ducks; but may participate in other seasons that are open on the special youth days.

T. "License year" shall mean the period from April 1 through March 31.

U. "Light geese" shall mean snow geese, blue phase snow geese, and Ross's geese.

V. "Light goose conservation order" shall mean those methods, bag and possession limits, and dates approved by the U. S. fish and wildlife service (USFWS) towards reducing over-abundant light goose populations.

W. "Middle Rio Grande valley dark goose hunt area" shall mean Sierra, Socorro and Valencia counties.

X. "Middle Rio Grande valley sandhill crane hunt area" (MRGV) shall mean Valencia and Socorro counties.

Y. "Migratory game bird" shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, and Virginia rail.

Z. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

AA. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

BB. "Non-toxic shot" shall mean that non-toxic shot approved for use by the USFWS.

CC. "North zone" shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway north of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

DD. "Pacific flyway" shall mean that portion of New Mexico west of the continental divide including the Jicarilla Apache Indian reservation.

EE. "Permanent mobility limitation" shall mean an individual that permanently has restricted movement in

both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations. EXCEPTION: For the purposes of hunting migratory game birds from a vehicle, mobility limitation individuals are those that have permanently lost one or both legs.

FF. "Possession limit" shall mean three times the daily bag limit one can have in their ownership, except where otherwise defined.

GG. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

HH. "Quagmire" shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and east of the unit 7 drain.

II. "Regular band-tailed pigeon hunting area" (regular BPHA) shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

JJ. "Retention" or "retain" shall mean the holding of in captivity.

KK. "South zone" shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway south of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

LL. "Southwest band-tailed pigeon hunting area" (southwest BPHA) shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

MM. "Southwest New Mexico sandhill crane hunt area" (SW) shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

NN. "State game commission owned properties" shall mean all department owned or managed wildlife management areas (WMAs), Sandhills prairie conservation area, and lesser prairie-chicken areas as described in state game commission rule 19.34.5 NMAC.

OO. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

PP. "Youth" shall mean those less than 18 years of age except where otherwise defined.

[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 9-1-2016]

19.31.6.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS AND HARVEST LIMITS: The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits, authorizations, or harvest limits, up or down by no more than twenty percent to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the entry hunt codes

[19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 9-1-2016]

19.31.6.9 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt migratory game birds without having purchased a valid license for the current license year. A migratory bird permit number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp).

(1) For eastern sandhill crane hunting and falconry: in addition to a valid license, a free federal sandhill crane hunting permit obtained from department offices or website shall be required.

(2) For EV sandhill crane, MRGV sandhill crane, MRGV youth-only sandhill crane, and SW sandhill crane, in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

(4) For band-tailed pigeon hunting: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area printed on the permit or license.

C. Applications: Applications for EV sandhill crane, MRGV sandhill crane, SW sandhill crane, and MRGV youth-only sandhill crane hunt permits shall be submitted via the department website.

(1) For permits issued by drawing, the appropriate application fee as defined by 19.30.9 NMAC shall be required by each applicant per application submitted.

(2) No more than four persons may apply per application. For the MRGV youth-only sandhill crane hunt, no more than two persons may apply per application.

(3) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(4) Applications may be rejected if such applications do not supply adequate information.

(5) Applicants may apply for a first, second and third choice of seasons, if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(6) All applications must be submitted via the department website unless otherwise specifically allowed by rule.

(7) The application deadline date for the EV, MRGV, MRGV youth-only, and SW sandhill crane hunt permits shall be on date(s) set by the state game commission. If any permits are available after the drawing, those permits may be sold online via a secondary sale.

(8) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department.

(9) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth-only hunt, except that during the federal youth waterfowl hunt days only those who have not reached their 16th birthday may hunt waterfowl.
[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 9-1-2016]

19.31.6.10 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season: Migratory game birds may be hunted or taken only during open seasons.

B. Hours: Migratory game birds may be hunted or taken only during the period from one half hour before sunrise to sunset, unless otherwise specifically allowed by rule.

(1) On most wildlife management areas, the lesser prairie-chicken areas, and the Sandhills prairie conservation area, hunting hours shall be from one-half hour before sunrise to sunset.

(2) On the following wildlife management areas: Bernardo, Casa Colorada, Charette lake, Jackson lake, La Joya, McAllister lake, Wagon Mound, Tucumcari, and W.S. Huey; and the Bottomless lakes overflow, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. unless otherwise stated in rule. For hunting September teal on Bernardo and La Joya WMAs, hunting hours are from one-half hour before sunrise to sunset.

(3) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset, excluding the WMAs listed in (2) above.

C. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation, unless otherwise specifically allowed by rule. There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any migratory game birds that are illegally obtained.

E. Use of bait: It shall be unlawful for anyone to take or attempt to take any migratory game bird by use of bait such as grain, salt or other feed.

F. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any migratory game bird.

G. Use of calling devices: It shall be unlawful to use any electronically or mechanically recorded calling device in taking or attempting to take any migratory game bird, unless otherwise specifically allowed by rule. During the light goose conservation order hunt dates, electronic calling devices are allowed.

H. Killing out-of-season: It shall be unlawful to kill any migratory game bird out-of-season.

I. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for migratory game birds:

(a) shotguns no larger than 10 gauge firing shot, shotguns shall not be capable of holding more than three shells;

(b) muzzle-loading shotguns firing shot;

(c) bows and arrows;

(d) crossbows and bolts; and

(e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three shells are lawful.

(2) Non-toxic shot use is required for hunting:

(a) all migratory game bird species, excluding dove, band-tailed pigeon, and eastern sandhill crane; and

(b) on all state game commission owned lands.

(3) Use of lead shot: It shall be unlawful for any person hunting migratory game birds, other than dove, band-tailed pigeon and eastern sandhill crane, to hunt with or be in possession of any shotgun shells loaded with toxic shot or for any person using a muzzleloader to be in possession of lead shot.

J. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or bolt, or use arrows or bolts driven by explosives.

K. Proof of species or sex: One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the bird has arrived at the personal abode of the possessor or storage facility.

L. Possession or sale of migratory game bird: It shall be unlawful to possess, sell, or offer for sale all or part of any migratory game bird except as provided below.

(1) License or permit: A person may possess migratory game bird or parts thereof they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any migratory game bird or parts thereof that have been lawfully taken by another person if they possess a written statement which shall be provided by the donor of the migratory game bird, or parts thereof, and which shall contain the following:

(a) the kind and number of game parts donated;

(b) the date and county where the game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the game was lawfully taken; and

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain migratory game birds in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those migratory game bird species listed on the permit; and

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the migratory game bird being transported.

(4) Sale of game animal parts: It shall be unlawful to sell or barter any parts or feathers from migratory game birds.

(5) Falconry provisions for possession: The falconry hunter shall not retain nor possess any migratory game bird of bird taken by a raptor except those species of protected birds taken during open falconry season.

M. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any migratory game bird, without first obtaining a permit from the department.

N. Use of vehicles and roads in hunting migratory game birds:

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any migratory game bird on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any migratory game bird from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION: Migratory game birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

(3) Harassing migratory game birds: It shall be unlawful, at any time, to pursue, harass, harry, drive, or rally any migratory game bird by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) Vehicle off of established road: During the seasons established for any migratory game bird, it shall be unlawful to drive or ride in a motor vehicle which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) snowmobiles; and 2) all landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any migratory game bird, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill migratory game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take migratory game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any migratory game bird which has clearly been wounded by the licensed mobility impaired hunter. Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed.

O. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt migratory game birds, camp, or trespass upon state game commission owned lands unless otherwise specifically allowed by rule.

(4) State wildlife management areas open, species that can be hunted, and days open for hunting (use of vehicles will be restricted to designated areas):

(a) Bernardo WMA:

(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the federal youth waterfowl days. That portion of the Bernardo WMA north of U.S. 60 is closed except during the light goose conservation order.

(ii) The Quagmire shall be open only on Tuesday, Thursday, and Sunday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) The Bernardo pond unit shall be open for general waterfowl hunting from one-half hour before sunrise to 1:00 p.m. on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) The Bernardo youth unit shall be open for youth waterfowl hunting from one-half hour before sunrise to 1:00 p.m. on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(b) The Charette lake WMA shall be open each day of the federal youth waterfowl days and on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons. Charette lake WMA is closed during the September teal season.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting dove and band-tailed pigeon during established seasons.

(d) The portion of Jackson lake WMA west of N.M. 170 shall be open on Mondays, Wednesdays, and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe. The portion of Jackson lake WMA east of N.M. 170 shall be open to falconry only migratory game bird hunting during established seasons.

(e) The lesser prairie-chicken management areas and Sandhills prairie conservation area shall be open to hunt dove during established seasons.

(f) La Joya WMA:

(i) the entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the federal youth waterfowl days;

(ii) that portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays, and Wednesdays

to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule;

(iii) that portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, Sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule;

(iv) that portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(g) The McAllister lake WMA shall be open each day of the federal youth waterfowl days, each day of the September teal season, and on Monday, Wednesday, and Saturday to hunt ducks, dark and light geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons. McAllister lake WMA shall also be open each day of the dove season for dove hunting.

(h) The Wagon Mound WMA shall be open to teal hunting each day of the September teal season and federal youth waterfowl days and open on Monday, Wednesday, and Saturday for ducks, geese, Virginia rail, sora, common moorhen, American coot and common Snipe during established seasons.

(i) The Socorro-Escondida wildlife management area shall be open for migratory game bird hunting during established seasons.

(j) The Tucumcari WMA shall be open each day of the September teal and federal youth waterfowl days and on Saturday, Sunday, and Wednesday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(k) The William S. Huey WMA shall be open for dove hunting only on Monday, Wednesday, and Saturday during established statewide seasons.

(5) The Big Hatchet mountain special management area shall be open for dove hunting during established seasons.

(6) The Brantley WMA (excluding the Seven Rivers portion, as posted) shall be open for all migratory game bird hunting during established statewide seasons.

(7) Seven Rivers shall be open each day of the federal youth waterfowl days and for migratory game bird hunting in designated areas as posted only on Monday, Wednesday, and Saturday during established statewide seasons.

(8) The Sandia ranger district of the Cibola national forest shall be open to archery only migratory game bird hunting during established seasons.

(9) All wildlife management areas shall be open to falconry waterfowl hunting each day of the established falconry season, unless otherwise restricted by rule.

P. Areas closed to migratory game bird hunting: All areas noted in 19.31.10.16 NMAC shall remain closed to hunting, except as permitted by regulation.

(1) That portion of the stilling basin below Navajo dam lying within a line starting from N.M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N.M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

(2) Areas within Valencia county may be closed to migratory game bird hunting that meets the following criteria:

(a) The discharge of a shotgun in the area has been identified by department personnel as a public safety risk because of its proximity to an inhabited area. For the purpose of this section, "public safety risk" shall be defined as a reasonable potential risk of injury at an occupied place of residence.

(b) The discharge of a shotgun in the area is not prohibited by any other statute, rule, regulation or ordinance.

(c) These areas shall be designated by posting of signs and identified on the department website.

Q. Regulations pertaining to boats, other floating devices, and motors:

(1) On Bernardo, La Joya, Wagon Mound and Jackson lake WMAs, only boats and other floating devices using no motors shall be permitted during waterfowl season**.**

(2) On Tucumcari WMA, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On Charette and McAllister lakes boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department personnel or persons authorized by the director may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 9-1-2016]

Continued On The Following Page

19.31.6.11 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:

A. 2016-2017 season; all dates are 2016 unless otherwise specified. Possession limits are three times the daily bag limit unless otherwise specified.

species	open areas	season dates	daily bag limit
mourning and white-winged dove	north zone	Sept. 1 - Nov. 29	15 (singly or in aggregate)
	south zone	Sept. 1 - Oct. 30 and Dec. 3 – Jan. 1, 2017	
band-tailed pigeon	southwest BPHA	Oct. 1 – 14	2
	regular BPHA	Sept. 1 – 14	
regular season sandhill crane (free permit required)	eastern	Oct. 29 - Jan. 29, 2017	3 (6 in possession)
special season sandhill crane (special draw permit required)	MRGV southwest MRGV MRGV southwest MRGV	Oct. 29 - 30 Oct. 29 - Nov. 6 Nov. 26 - 27 Dec. 17 - 18 Jan. 7 - 8, 2017 Jan. 7 - 8, 2017	3 (6 in possession)
	EV	Oct. 29 - Nov. 6	3 (6 in possession)
	MRGV youth-only	Nov. 5	3

CENTRAL FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.

species	season dates	daily bag limit
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 17 - 25	6 (singly or in the aggregate)
ducks	north zone: Oct. 15 – Jan. 18, 2017	6 (singly or in the aggregate); that consists of no more than 5 mallard (of which only 2 may be female mallard, [Mexican-like ducks are included towards the mallard bag limit]), 3 wood duck, 3 scaup, 2 redhead, 2 hooded merganser, 2 pintail, and 2 canvasback
	south zone: Oct. 26 - Jan. 29, 2017	
youth waterfowl days	north zone: Oct. 1 - 2	
	south zone: Oct. 8 - 9	
American coot	north zone: Oct. 15 - Jan. 18, 2017	15
	south zone: Oct. 26 - Jan. 29, 2017	
common moorhen	Sept. 17 – Nov. 25	1
common snipe	Oct. 15 - Jan. 29, 2017	8
Virginia rail & sora	Sept. 17 - Nov. 25	10 (singly or in the aggregate); 20 in possession
dark goose: Canada & white-fronted geese (regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 15 - Jan. 29, 2017	5
dark goose: special MRGV season	Dec. 24 - Jan. 17, 2017	2 (2 per season)
light goose: Ross's & snow geese	Oct. 15 - Jan. 29, 2017	50 (no possession limit)
light goose conservation order	Feb. 1 - Mar. 10, 2017	no bag or possession limit

PACIFIC FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.

Species	season dates	daily bag limit
youth waterfowl days	Oct. 8 - 9	7 (singly or in the aggregate); that consists of no more than 2 female mallard, 2 redhead, 2 pintail, and 2 canvasback
ducks	Oct. 17 - Jan. 29, 2017	
scaup	Oct. 17 - Jan. 10, 2017	3 (as part of the aggregate duck bag)

American coot and common moorhen	Oct. 17 - Jan. 29, 2017	25 daily (singly or in the aggregate)
common snipe	Oct. 17 - Jan. 31, 2017	8
Virginia rail & sora	Sept. 17 - Nov. 25	25 daily (singly or in the aggregate)
goose	north zone: Sept. 24 - Oct. 9 and Oct. 31 - Jan. 29, 2017	3 Canada geese, 10 white-fronted geese, and 20 light geese
	south zone: Oct. 15 – Jan. 29, 2017	

B. Light goose conservation measures: Under the director's discretion with the verbal concurrence of the state game commission chairman or his designee, the department may implement the light goose conservation measures approved by the USFWS. Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS. A free permit is required.
[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 9-1-2016]

19.31.6.12 FALCONRY SEASONS: 2016-2017 season, all dates are 2016 unless otherwise specified. Bag limits are three singly or in the aggregate and nine in possession unless otherwise specified.

CENTRAL FLYWAY		
species	**open areas**	**season dates**
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 24 – Jan. 4, 2017
	south	Sept. 1 - Nov. 7 and Nov. 24 - Jan. 1, 2017
band-tailed pigeon	southwest BPHA	Oct. 1 – 14
	regular BPHA	Sept. 1 – 14
sora and Virginia rail	all	Sept. 17 - Jan. 1, 2017
common snipe	all	Oct. 15 - Jan. 29, 2017
common moorhen	all	Sept. 17 - Jan. 1, 2017
ducks	north	Sept. 17 - 25 and Oct. 15 – Jan 18. 2017
	south	Sept. 17 - 25 and Oct. 26 - Jan 29. 2017
goose (light and dark)	all	Oct. 15 - Jan. Jan. 29, 2017
goose (dark)	MRGV	Dec. 24 - Jan. 17, 2017
sandhill crane	regular (eastern)	Oct. 15 - Jan. 29, 2017; 3 (6 in possession)
	Estancia Valley	Oct. 29 - Dec. 27; 3 (6 in possession)
PACIFIC FLYWAY		
species	**open areas**	**season dates**
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 24 – Jan. 4, 2017
	south	Sept. 1 - Nov. 7 and Nov. 24 - Jan. 1, 2017
band-tailed pigeon	southwest BPHA	Oct. 1 - Oct. 14
	regular BPHA	Sept. 1 – Sept. 14
duck	all	Oct. 17 - Jan. 29, 2017
scaup	all	Oct. 17 - Jan. 10, 2017
goose	north	Sept. 24 - Oct. 9 and Oct. 31 – Jan. 29, 2017
	south	Oct. 15 - Jan. 29, 2017
common snipe	all	Oct. 17 - Jan. 31, 2017
coots and common moorhen	all	Oct. 17 - Jan. 29, 2017
sora and Virginia rail	all	Sept. 17 - Nov. 25

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 9-1-2016]

19.31.6.13 FEDERAL YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. Youth hunters must be under 16 years old.

B. An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks but may participate in other seasons that are open on the special youth days).

C. Only ducks, coots, and moorhens may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).
[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 9-1-2016]

19.31.6.14 REQUIREMENTS FOR THE SPECIAL BERNARDO YOUTH WATERFOWL UNIT:

A. The Bernardo youth hunt unit will only be open for youth waterfowl hunting.

B. Blind selection will be available on a first-come, first-serve basis from one-half hour before sunrise to 1:00 p.m. Youth hunters must be accompanied by a supervising adult who may not hunt. A maximum of four people is allowed per blind, at least fifty percent of which must be youth hunters.
[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 9-1-2016]

19.31.6.15 HUNT CODES AND PERMITS NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. The hunting seasons for 2016-2017 are:

season dates	hunt code	hunt location	no. of permits		season dates	hunt code	hunt location	no. of permits
Oct. 29 - 30	SCR-0-101	MRGV	75		Oct. 29 - Nov. 6	SCR-0-105	SW	70
Oct. 29 - Nov. 6	SCR-0-102	EV	65		Jan. 7 - 8, 2017	SCR-0-106	MRGV	60
Nov. 26 - 27	SCR-0-103	MRGV	60		Jan. 7 - 8, 2017	SCR-0-107	SW	60
Dec. 17 - 18	SCR-0-104	MRGV	60		Nov. 5	SCR-0-109	MRGV youth	24

B. Hunters who participate in the EV and MRGV seasons shall be required to check-out at designated check stations when they harvest any sandhill cranes.

C. All EV, MRGV and SW sandhill crane hunters are required to submit a special permit sandhill crane harvest report to the department within five days after the end of their hunt. Hunters that do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a sandhill crane permit the following year.

D. The department may cancel one or more EV, MRGV or SW sandhill crane hunts if harvest is expected to exceed our federal allocation of greater sandhill cranes.
[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 9-1-2016]

HISTORY OF 19.31.6 NMAC:

Pre-NMAC Filing History: The material in this part was derived from that previously filed with the State Records Center & Archives under: Regulation No. 486, Establishing 1967 Seasons On Quail, Pheasants, Prairie Chickens, and Lesser Sandhill (Little Brown) Crane And Additional Seasons On Migratory Waterfowl, filed 9/22/67; Regulation No. 494, Establishing 1968 Seasons On Migratory Waterfowl, Common Snipe, Lesser Sandhill Crane, Scaled, Gambel's, And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 10/2/68; Regulation No. 508, Establishing 1969 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Scaled, Gambel's And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 9/19/69; Regulation No. 527, Establishing 1971 Seasons On Migratory Waterfowl And Lesser Sandhill Cranes, filed 9/10/71; Regulation No. 540, Establishing 1972 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, And Wilson's Swipe, filed 9/26/72; Regulation No. 551, Establishing 1973 Seasons On Migratory Waterfowl And Lesser Sandhill Crane, filed 8/20/73; Regulation No. 560, Establishing 1974 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/21/74; Regulation No. 570, Establishing 1975 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/5/75; Regulation No. 578, Establishing 1976 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 8/31/76; Regulation No. 588, Establishing 1977 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/6/77; Regulation No. 594, Establishing 1978 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/11/78; Regulation No. 601, Establishing 1979 Seasons on Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/30/79; Regulation No. 606, Establishing 1980 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/3/80; Regulation No. 611, Establishing 1981 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/4/81; Regulation No. 616, Establishing 1982 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/3/82; Regulation No. 626, Establishing 1983 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/7/83; Regulation No. 631, Establishing 1984 Seasons On Migratory Waterfowl, filed 8/31/84; Regulation No. 638, Establishing 1985 Seasons On Migratory Waterfowl, filed 9/11/85; Regulation No. 643, Establishing 1986-87 Seasons On Migratory Birds, filed 8/24/87; Regulation No. 660, Establishing 1988-89 Seasons On Migratory Birds, filed 6/28/88; Regulation No. 669, Establishing 1989-90 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Sandhill Crane, Band-tailed Pigeon, Dove, And Setting Falconry Seasons, filed 10/5/89; Regulation No. 680, Establishing 1990-91 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 9/28/90; Regulation No. 687, Establishing 1991-92 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/91; Regulation No. 698, Establishing 1991-92 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/91; Regulation No. 698, Establishing 1992-93

Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry seasons, filed 9/15/92; Regulation No. 704, Establishing 1993-94 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 3/11/93; Regulation No. 707,Establishing The 1994-95, 1995-96, 1996-97 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 7/28/94; Regulation No. 708, Establishing The 1994-95, 1995-96, And 1996-97 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 9/7/94.

NMAC History:
19 NMAC 31.6, Waterfowl, filed 8-31-1995
19.31.6 NMAC, Waterfowl, filed 8-15-2000
19.31.6 NMAC, Waterfowl, filed 8-26-2002
19.31.6 NMAC, Waterfowl, filed 8-12-2003
19.31.6 NMAC, Waterfowl, filed 8-2-2004
19.31.6 NMAC, Waterfowl, filed 8-8-2005
19.31.6 NMAC, Waterfowl, filed 8-1-2006
19.31.6 NMAC, Waterfowl, filed 8-16-2007
19.31.6 NMAC, Migratory Game Bird, filed 8-13-2008
19.31.6 NMAC, Migratory Game Bird, filed 8-17-2009
19.31.6 NMAC, Migratory Game Bird, filed 8-2-2010
19.31.6 NMAC, Migratory Game Bird, filed 8-1-2011
19.31.6 NMAC, Migratory Game Bird, filed 8-14-2012
19.31.6 NMAC, Migratory Game Bird, filed 8-29-2013

History of Repealed Material:
19.31.6 NMAC, Waterfowl, filed 8-15-2000 - duration expired 3-31-2002
19.31.6 NMAC, Waterfowl, filed 8-26-2002 - duration expired 3-31-2003
19.31.6 NMAC, Waterfowl, filed 8-12-2003 - duration expired 3-31-2004
19.31.6 NMAC, Waterfowl, filed 8-2-2004 - duration expired 3-31-2005
19.31.6 NMAC, Waterfowl, filed 8-8-2005 - duration expired 3-31-2006
19.31.6 NMAC, Waterfowl, filed 8-1-2006 - duration expired 3-31-2007
19.31.6 NMAC, Waterfowl, filed 8-16-2007 - duration expired 3-31-2008
19.31.6 NMAC, Migratory Game Bird, filed 8-13-2008 - duration expired 3-31-2009
19.31.6 NMAC, Migratory Game Bird, filed 8-17-2009 - duration expired 3-31-2010
19.31.6 NMAC, Migratory Game Bird, filed 8-2-2010 - duration expired 3-31-2011
19.31.6 NMAC, Migratory Game Bird, filed 8-1-2011 - duration expired 3-31-2012
19.31.6 NMAC, Migratory Game Bird, filed 8-14-2012 - duration expired 3-31-2013
19.31.6 NMAC, Migratory Game Bird, filed 8-29-2013 - duration expired 3-31-2014
19.31.6 NMAC, Migratory Game Bird, filed 8-31-2014 - duration expired 3-31-2015
19.31.6 NMAC, Migratory Game Bird, filed 9-1-2015 - duration expired 3-31-2016.

GAME AND FISH, DEPARTMENT OF

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 34 WILDLIFE HABITAT AND LANDS
PART 3 USE OF STATE GAME COMMISSION LANDS

19.34.3.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[19.34.3.1 NMAC - Rp, 19.34.3.1 NMAC, 6-30-2016]

19.34.3.2 SCOPE: Department staff; licensed hunters, anglers, and trappers; and habitat management and access validation (HMAV) holders.
[19.34.3.2 NMAC - Rp, 19.34.3.2 NMAC, 6-30-2016]

19.34.3.3 STATUTORY AUTHORITY: Sections 17-1-1, 17-1-14, 17-1-26, 17-4-1, and 17-4-33 NMSA 1978, provide the New Mexico state game commission with the authority to acquire lands, to provide for use of game and fish for use and development for public recreation, and to establish rules that it may deem necessary to carry out the purposes of Chapter 17, NMSA 1978.
[19.34.3.3 NMAC - Rp, 19.34.3.3 NMAC, 6-30-2016]

19.34.3.4 DURATION: Permanent.
[19.34.3.4 NMAC - Rp, 19.34.3.4 NMAC, 6-30-2016]

19.34.3.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.
[19.34.3.5 NMAC - Rp, 19.34.3.5 NMAC, 6-30-2016]

19.34.3.6 OBJECTIVE: To establish terms and conditions for use of land owned, controlled or operated by the commission.
[19.34.3.6 NMAC - Rp, 19.34.3.6 NMAC, 6/30/16]

19.34.3.7 DEFINITIONS:

A. "Access" shall mean consent for an individual to enter upon and use designated lands for hunting, fishing, trapping, or gaining access into nature activities. Access excludes commercial activity.

B. "Access rules" shall mean restrictions or prohibitions on access applicable to designated land pursuant to 19.34.3.10 NMAC.

C. "Big game" shall mean deer, elk, pronghorn antelope, bighorn sheep, ibex, Barbary sheep, oryx, turkey, javelina, bear, and cougar.

D. "Commercial activity" means any activity conducted within land for which a fee is charged or compensation or anything else of value is received by the person or business conducting the activity, except for hunting activities conducted by an outfitter registered with the department.

E. "Commission" shall mean the New Mexico state game commission.

F. "Director" shall mean the director of the New Mexico department of game and fish.

G. "Department" shall mean the New Mexico department of game and fish.

H. "Designated area(s)" shall mean those areas within designated land where access is either allowed or restricted.

I. "Designated land(s)" shall mean land on which access is allowed for hunting, fishing, trapping, gaining access into nature activities, or activities authorized by the director pursuant to 19.34.3.9 NMAC

J. "Gaining access into nature" or " GAIN" shall mean a program to provide broadly based wildlife-associated recreation opportunity, not to include hunting, trapping, or fishing, pursuant to 17-4-33 NMSA 1978.

K. "GAIN activities" shall mean activities that provide broadly based wildlife-associated recreation, not to include hunting, trapping, or fishing..

L. "Group" shall mean at least one (1) individual in possession of a hunting license, fishing license, trapping license, or habitat management and access validation (HMAV) valid for the current license year and up to three (3) accompanying individuals. Youth under the age of 18 are exempt from this definition.

M. "Land(s)" shall mean property owned, operated, or controlled by the commission except property upon which state parks are located and operated by the state parks division of the energy, minerals, and natural resources department. Activities on commission-owned land within state parks operated by the state parks division of the energy, minerals and natural resources department shall be subject to state parks division rules.

N. "License year" shall mean the period of April 1 through March 31.

O. "Operator" shall mean any person or entity that conducts commercial activity on land pursuant to a commercial permit issued by the department and that person's or entity's agents.

[19.34.3.7 NMAC - Rp, 19.34.3.7 NMAC, 6-30-2016]

19.34.3.8 PROHIBITION OF DISCRIMINATION: No one shall be denied use of lands on the basis of race, color, religion, sex, disability, family status or national origin.

[19.34.3.8 NMAC - Rp, 19.34.3.10 NMAC, 6-30-2016]

19.34.3.9 AUTHORITY OF DIRECTOR: The director shall have the authority to specify designated lands, specify access rules, and to close, in whole or in part, or otherwise restrict the use of land when in the opinion of the director such closure or restriction is reasonably necessary for the protection of such land, wildlife, habitat, the public or otherwise, to respond to circumstances concerning such land. The director shall have the authority to authorize an activity prohibited or restricted by access rules or not otherwise specified on land when in the opinion of the director such activity is not detrimental to the land, wildlife or purpose(s) for which the land is managed and will not result in any expenditure from the game protection fund that is inconsistent with Sections 17-1-28 and 17-1-29 NMSA 1978.

[19.34.3.9 NMAC - Rp, 19.34.3.12 NMAC, 6-30-2016]

19.34.3.10 ACCESS RULES:

A. It shall be unlawful for any individual to enter upon land not designated for access.

B. It shall be unlawful to operate any vehicle off of established roads or on closed roads within land, except as allowed by the director through permit or commission rule, or any county, state or federal law enforcement officer in the discharge of his/her official duties.

C. It shall be unlawful for an individual or group to enter upon designated land without possessing at least one (1) hunting license, fishing license, trapping license, or habitatat management and access validation (HMAV) valid for the current license year. Youth under the age of 18 are exempt from this access rule.

D. It shall be unlawful to deface or remove rocks, minerals, plants (including fruits, nuts, and berries), animals, firewood, or man made feature from any land unless specifically allowed by commission rule.

E. It shall be unlawful for any person to excavate, injure, destroy, or remove any cultural resource or artifact from any land.

F. It shall be unlawful for any individual to access designated land, outside designated areas, during published big game and waterfowl hunting seasons for the respective designated land.

G. It shall be unlawful to camp in excess of fourteen (14) consecutive days, except by licensed hunters and their guests concurrent with their licensed hunt and scouting period.

H. It shall be unlawful to have an open fire unless safely contained.

I. It shall be unlawful to use or possess any hay or feed for domestic livestock use on land other than pelleted or grain feed, or hay certified as weed free.

J. It shall be unlawful to conduct a commercial activity on land without first obtaining a commercial permit as described in 19.34.3.12 NMAC.

K. Nothing in this rule shall prevent state employees or contract workers from performing administrative duties on land.

L. It shall be unlawful to possess unleashed dogs or other pets on land. Exceptions: dogs may be unleashed for permitted field trial or hunting purposes during established seasons only and only on land where use of dogs for hunting purposes is allowed by rule; dogs may be unleashed when allowed for authorized department personnel; and dogs may be unleashed for authorized wildlife management activities.

M. Properly-licensed big game hunters and up to three (3) guests are exempt from closures during a seven (7) day scouting period prior to the start of the licensed hunt period on the respective designated land.

N. It shall be unlawful to violate any access rule specified by the director for specific designated land and disseminated by posting or notice provision by the department (e.g. posted signs, New Mexico fishing and hunting rules and information, or the department website).

[19.34.3.10 NMAC - N, 6-30-2016]

19.34.3.11 USE OF LAND: Designated land for hunting, fishing, or trapping access shall be specified by the department and shall be disseminated through the annual publication of New Mexico hunting and fishing rules and information. Designated land for GAIN activities shall be specified by the director and shall be posted on the department website (www.wildlife.state.nm.us). Access to designated land is allowed unless otherwise restricted or prohibited by access rules pursuant to 19.34.3.10 NMAC. Land not designated for access shall remain closed. Applications for the Jamie Koch community shelter shall be accepted only at the department office in Santa Fe. Reservations are made on a first come first serve basis. The fee shall cover the day use shelter for a 24 hour period up to four (4) consecutive days. The permit fee shall be established by the director.

[19.34.3.11 NMAC - Rp, 19.34.3.13 NMAC, 6-30-2016]

19.34.3.12 COMMERCIAL PERMITS:

A. A commercial permit is required for any person or business to conduct a commercial activity on designated land and must be in the possession of the permittee while the permittee is on designated land.

B. Requests for commercial permits may be submitted to the department office in Santa Fe for review.

C. Each commercial permit shall specify the number of employees or agents authorized to conduct activities on behalf of the permittee pursuant to said permit. A copy of the commercial permit must be in the possession of the operator and every employee or agent while on designated land.

D. No commercial permit shall be issued until the applicant has

provided proof of insurance or bond in the amount of not less than $1,000,000 naming the department, the commission and state of New Mexico as additional insureds.

E. Operators and their clients are subject to all applicable state and federal regulations.

F. Commercial permits are not transferable. A commercial permit cannot be sold or transferred for any reason. The department will not refund any portion of the commercial permit fee for any reason.

G. The director may limit the number and type of commercial permits in order to protect resources. The director may prescribe special requirements and conditions for commercial permits when, in his sole discretion, it is in the best interests of the state to do so. Special requirements may include, but are not limited to: limitations on use of designated land, grounds and facilities; designation of a specific area within the designated land in which an operator is allowed to operate; designation of specific days or hours during which an operator is allowed to operate; number of participants, requirements for submission of use and price data; and training requirements.

H. No operator shall violate any condition of the commercial permit or restriction of the designated land. Violation of the commercial permit or a restriction may result in the immediate revocation of the commercial permit. Operators shall be subject to the procedural provisions of Section 17-3-34 NMSA 1978 and Subsection C of 19.31.2.10 NMAC, and 19.31.2.11 NMAC through 19.31.2.24 NMAC.

I. The director may deny any application for a commercial permit.

J. The department shall establish the fee for each individual commercial permit it issues.

K. The department reserves the right to cancel or modify any commercial permit in emergency circumstances as determined by the director.

[19.34.3.12 NMAC - Rp, 19.34.3.14 NMAC, 6-30-2016]

HISTORY OF 19.34.3 NMAC:

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

DGF 70-1, Regulation No. 510, Establishing Camping Fees on Department Controlled Lands, 1/19/70.

DGF 70-1, Amendment No. 1, Order No. 8-70, Amending State Game Commission's Regulation No. 510 and Repealing State Game Commission's Regulation No. 458, 1/14/71.

DGF 70-5, Regulation No. 515, Establishing Camping Fees on Department Controlled Lands, 4/20/70.

DGF 71-2, Regulation No. 519, Establishing Camping Fees on Department Controlled Lands, 3/9/71.

DGF 72-6.1, Regulation No. 537, Establishing Camping Fees on Department Controlled Lands, 6/6/72.

DGF 72-6.1, Amendment No. 1, Order No. 4-72, Amending State Game Commission Regulation No. 537, 8/16/72.

DGF 74-3, Regulation No. 553, Establishing Camping Fees on Department Controlled Lands, 1/11/74.

DGF 76-3, Regulation No. 574, Establishing Camping Fees on Department Controlled Lands, 3/16/76.

DGF 76-3, Amendment No. 1, Order No. 3-78, Amending Regulation No. 574, 2/15/78.

DGF 79-3, Regulation No. 598, Establishing Fees, Dates and Other Rules for Use of Department Controlled Lands, 6/27/79.

DGF 79-3, Amendment No. 1, Order No. 1-81, Amendment No. 1 to Regulation No. 598, 3/5/81.

Regulation No. 666, Establishing Fees, Dates and Other Rules for Use of Department Controlled Lands, 3/20/89.

Regulation No. 671, Establishing Fees, Dates and Other Rules for Use of Department Controlled Lands, 9/1/89.

Order No. 3-84, Amendment to Regulation No. 598, 3/16/84.

History of Repealed Material:

19.34.3 NMAC, Use of Department of Game and Fish Lands, filed 1/18/05 - Repealed effective 10-30-09.

19.34.3 NMAC, Use of Department of Game and Fish Lands, filed 10/30/09 - Repealed effective 6-30-16.

GAMING CONTROL BOARD

On June 30, 2016, the Gaming Control Board repealed 15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, and replaced it with 15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, effective June 30, 2016.

GAMING CONTROL BOARD

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS
PART 5 APPLICATION FOR LICENSURE UNDER THE GAMING CONTROL ACT

15.1.5.1 ISSUING AGENCY: New Mexico Gaming Control Board.

[15.1.5.1 NMAC - Rp, 15.1.5.1 NMAC, 6/30/16]

15.1.5.2 SCOPE: This rule applies to all licensees or applicants for licensure, certification, registration, renewal, finding of suitability, or other approval under the New Mexico Gaming Control Act.

[15.1.5.2 NMAC - Rp, 15.1.5.2 NMAC, 6/30/16]

15.1.5.3 STATUTORY AUTHORITY: Paragraph (3) of Subsection B of Section 60-2E-7 of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Paragraph (1) of Subsection C of 60-2E-8 NMSA 1978 specifically directs the board to adopt regulations prescribing the method and form of application to be filed by the applicant.

[15.1.5.3 NMAC - Rp, 15.1.5.3 NMAC, 6/30/16]

15.1.5.4 DURATION: Permanent.

[15.1.5.4 NMAC - Rp, 15.1.5.4 NMAC, 6/30/16]

15.1.5.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.

[15.1.5.5 NMAC - Rp, 15.1.5.5 NMAC, 6/30/16]

15.1.5.6 OBJECTIVE: This rule establishes standards and requirements for licensure, certification, registration, renewal, finding of suitability, and other approval under the Gaming Control Act.

[15.1.5.6 NMAC - Rp, 15.1.5.6 NMAC, 6/30/16]

15.1.5.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. "Act" means the New Mexico Gaming Control Act.

B. "Auxiliary member" means an individual who has qualified as an auxiliary member in accordance with the national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary that is organized in accordance with the bylaws and regulations of a nonprofit organization gaming operator licensee or applicant and in accordance with federal Internal Revenue Code, Section 501(c)(19) or (23) and applicable regulations; "auxiliary member" does not include any other person or membership class whose participation in gaming activity would create taxable gaming income for the licensee or would threaten the licensee's tax exempt status.

C. "Component" means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, erasable programmable read-only memory (EPROM), bill acceptor, progressive system, monitoring system, meter; and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

D. "Control," when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or licensee; when used as a verb, "control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

E. "Key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose annual base compensation exceeds $250,000.

F. "Foreign institutional investor" means a government related pension plan or a person that meets the requirements of a qualified institutional buyer as defined by the governing financial regulatory agency of the country where the company primary operations are located, and is registered or licensed in that country as a bank; an insurance company; an investment company; an investment advisor; collective trust funds; an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or a group comprised entirely of entities specified by this subsection.

G. "Gaming protection plan" means a written plan delineating the electronic and physical security measures to be taken by a licensee to insure the integrity of each game and any associated equipment including, if applicable, progressive gaming systems, bonusing or points systems and slot accounting systems. A gaming protection plan shall include a plan for data backup and recovery.

H. "Licensed premises" means the area that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

I. "Limited use distributor's license" means a restricted authorization to sell gaming machines or associated equipment.

J. "Majority interest" means an ownership interest, whether direct or indirect, of more than fifty percent in the licensee.

K. "Manage" means to take charge of, direct, superintend, restrict, regulate, administer, or oversee the operation of a gaming activity or other activity or function.

L. "Manufacturer" means a person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes modifications to any gaming device for use or play in the state or for sale, lease or distribution outside the state from any location within the state.

M. "Member" means an individual who has qualified for and been granted full membership in a nonprofit organization by swearing in, approval vote of the membership, or approval vote of a designated committee pursuant to the nonprofit organization's charter, articles of incorporation, bylaws, or rules, and who is in good standing.

N. "Modification" means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs; "modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game; replacement of one component with another pre-approved component, or the rebuilding of a previously approved gaming machine with pre-approved components.

O. "Person" means a legal entity or an individual.

P. "Premises" means the land together with all buildings improvements and personal property located on the land.

Q. "State" means the state of New Mexico.

R. "Technical violation" means a violation of board rules or the gaming laws and regulations of any jurisdiction that does not reflect adversely on the applicant's moral character, honesty and integrity, business probity or financial viability.

S. "This title" means Title 15, Chapter 1 of the New Mexico Administrative Code.

[15.1.5.7 NMAC - Rp, 15.1.5.7 NMAC, 6/30/16]

15.1.5.8 NATURE OF LICENSE AND APPLICATION REQUEST:

A. Any license, certification, registration, renewal, finding of suitability, or other approval issued by the board is deemed a revocable privilege. No person holding such a license, certification, registration, renewal, finding of suitability, or other approval is deemed to have any rights therein.

B. Any application submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

C. Any application for license, certification, registration, renewal, finding of suitability, or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board. Without limiting the foregoing, the investigation shall include a background investigation and a credit check of the applicant and all persons having a substantial interest in the applicant.

D. By applying for and obtaining any license, certification,

registration, renewal, finding of suitability, or other approval from the board, the holder agrees to abide by all provisions of the act and this rule.

E. By applying for a license, certification, registration, renewal, finding of suitability, or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the board.

[15.1.5.8 NMAC - Rp, 15.1.5.8 NMAC, 6/30/16]

15.1.5.9 LICENSE CLASSIFICATIONS:

A. Licenses include:

(1) manufacturer's license, which authorizes the approved licensee to manufacture, fabricate, assemble, produce, program, make modifications to, or sell to licensed distributors or licensed gaming operators, any gaming machine or associated equipment in accordance with the act and board rules;

(2) distributor's license, which authorizes the approved licensee to buy, sell, distribute or market any gaming machine or associated equipment in or outside the State in accordance with the act and board rules;

(3) gaming operator's license, which authorizes the approved licensee to acquire, own, lease, possess, and operate gaming devices on its licensed premises; a gaming operator's license may be issued to a nonprofit organization or to a racetrack licensed by the state racing commission pursuant to the New Mexico Horse Racing Act;

(4) gaming machine license, pursuant to which an approved gaming machine is licensed for the play of authorized games on a licensed premises under a gaming operator's license; and

(5) a limited use distributor's license which authorizes the approved licensee to sell, on a limited basis, gaming machines and associated equipment.

B. Certifications, registrations, and other approvals include:

(1) certification of finding of suitability, which is a determination by the board that the applicant is suitable to be associated with a licensee for the specific involvement sought;

(2) approval of gaming machine, associated equipment, modification, or game, under which a particular brand and type of gaming device, an equipment modification, or a game, is authorized for sale, distribution, and operation;

(3) if a company applicant or licensee is or becomes a subsidiary, registration of each non-publicly traded holding company and intermediary company with respect to the subsidiary company;

(4) approval to amend a gaming operator's license to show a change in the number of authorized gaming machines on the licensed premises; and

(5) work permit, which authorizes the employment of the holder as a gaming employee.

[15.1.5.9 NMAC - Rp, 15.1.5.9 NMAC, 6/30/16]

15.1.5.10 APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:

A. Every application, statement, and notice required to be filed under the act or this rule shall be submitted on forms supplied or approved by the board and shall contain such information and documents as specified.

B. The applicant shall file with the application all supplemental forms provided by the board. Such forms require full disclosure of all details relative to the applicant's antecedents, immediate family, habits and character, criminal record, business activities, financial affairs and business associates for the 10-year period immediately preceding the filing date of the application.

C. Upon request of the board, the applicant shall further supplement any information provided in the application. The applicant shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless good cause is shown.

D. An applicant shall submit evidence satisfactory to the board that the applicant is sufficiently capitalized to conduct the business proposed in the application. In determining whether an applicant is sufficiently capitalized, the board shall consider such things as the applicant's annual financial statements and federal tax returns for the preceding three years, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

E. All information required to be included in an application shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information contained in the application, the applicant shall file a written amendment in accordance with this rule.

F. The application and any amendments shall be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

G. The applicant shall cooperate fully with the board and any agent of the board with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board shall examine the background, personal history, financial associations, character, record and reputation of the applicant, including an applicant seeking a finding of suitability, to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

H. The board shall automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the act and this rule.

I. Neither the state, the board, any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, shall be held liable for any inaccurate information obtained through such an investigation.

J. All new applications submitted to the New Mexico gaming control board shall be completed within 120 days of receipt of the application, which time may be extended by the board upon good cause. Failure to complete the application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

[15.1.5.10 NMAC - Rp, 15.1.5.10 NMAC, 6/30/16]

15.1.5.11 SEPARATE APPLICATIONS REQUIRED; HOLDING OF MULTIPLE LICENSE TYPES PROHIBITED:

A. A licensee shall not be issued more than one type of license. A licensee shall not own a majority interest in, manage, or otherwise control a holder of another type of license issued pursuant to the provisions of the act.

B. No affiliate or affiliated company shall hold any type of license except the type held by the affiliated licensee unless the affiliate or affiliated company does not own a majority interest in, manage, or otherwise control the affiliated licensee and the board determines that such licensure shall not unduly impair competition in the state gaming industry or otherwise be contrary to the public health, safety, morals, or general welfare.

C. This rule is not intended to prohibit a gaming operator licensee from obtaining licensure of its gaming machines as required by the act and this rule or from transferring or disposing of a gaming machine in accordance with this title.

[15.1.5.11 NMAC - Rp, 15.1.5.11 NMAC, 6/30/16]

15.1.5.12 ORGANIZATION AND MEMBERSHIP REQUIREMENTS FOR NONPROFIT ORGANIZATIONS; GAMING MACHINES FOR MEMBERS ONLY:

A. Only active members and auxiliary members of a nonprofit organization gaming operator licensee shall play gaming machines on the licensed premises. No guest or member of the public shall play a gaming machine licensed to a nonprofit organization gaming operator licensee. No member of the public shall enter the licensed premises except during the course of authorized business and provided the person remains on the licensed premises no longer than reasonably necessary to conduct such business.

B. To qualify to hold and operate a gaming operator's license, the nonprofit organization shall have at least 50 bona fide active, sworn members who pay dues on a monthly, quarterly, annual, or other periodic basis. The organization may have, in addition to its regular members, auxiliary members, but auxiliary members may not be counted in order to meet the minimum membership requirements described in this subsection.

C. The applicant shall submit to the board, with the initial application, a copy of the applicant's current charter, articles of incorporation, bylaws, or rules that establish membership requirements. In addition, with the initial application and license renewal applications, the organization shall submit evidence of good standing and the names and addresses of the applicant's current bona fide members and any auxiliary members. In lieu of the membership list, the board may accept, in its discretion, a statement from the highest ranking official of the nonprofit organization attesting to the fact that the organization meets the membership requirements described in this subsection. The applicant shall also submit the name, home address, phone number and email address of each member of the governing board.

[15.1.5.12 NMAC - Rp, 15.1.5.12 NMAC, 6/30/16]

15.1.5.13 SPECIAL REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE APPLICANTS:

A. To qualify to hold and operate a gaming operator's license, a racetrack shall be licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races.

B. The applicant shall submit to the board a copy of the applicant's current license from the horse racing commission to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year. Thereafter, a licensee shall submit to the board, within 10 ten days of issuance by the state horse racing commission, a copy of the licensee's current license to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year.

C. Racetrack gaming operator licensees may permit the operation of gaming machines on their premises only on days when the racetrack is conducting live horse races or simulcasting horse race meets. The gaming machines may be played for a daily period not to exceed 18 hours and no more than 112 hours in a one-week period, beginning on Tuesday at 8 a.m. and ending at 8 a.m. on the following Tuesday, at the licensee's discretion. "Daily period" means the 24-hour period beginning at 12:01 a.m. and ending at 12:00 midnight.

[15.1.5.13 NMAC - Rp, 15.1.5.13 NMAC, 6/30/16]

15.1.5.14 BUSINESS PLAN:

A. The applicant for a gaming operator's license shall submit with the application a proposed business plan for the conduct of gaming. The plan shall include the following:

(1) an 8-1/2" x 11" drawing to scale of the building in which the applicant proposes to conduct gaming, with the area designated as the proposed licensed premises clearly outlined;

(2) a description of the type and number of gaming machines proposed for operation, including details of machine features, such as whether the machines are video versus spinning reel or are coin-in/coin-out versus coin-in/credit-out machines;

(3) generic description of the games to be played on the machines and the proposed placement of the machines on the licensed premises;

(4) administrative, accounting, and internal control procedures, including monetary control operations;

(5) security plan;

(6) staffing plan for gaming operations, including identification of key executives and employees;

(7) advertising and marketing plan;

(8) method to be used for prize payouts;

(9) details of any proposed progressive systems;

(10) gaming protection plan; and

(11) any other information requested by the board or its agents.

B. The business plan must provide for the following accounts:

(1) an escrow account or accounts to be established and maintained in accordance with board requirements for the purpose of holding in reserve large or progressive prizes to be won by participants; and

(2) a depository account exclusively for the collection and payment of the gaming tax in accordance with the provisions of the Tax Administration Act, Chapter 7, Article 1 NMSA 1978.

C. The business plan shall provide for payment from gaming machines such that the payouts are not less than eighty percent over the lifetime of the machine.

D. A gaming operator's license shall not be granted unless the

board first determines that the business plan submitted is suitable for the type of operation proposed and otherwise complies with the requirements of the act and this rule.
[15.1.5.14 NMAC - Rp, 15.1.5.14 NMAC, 6/30/16]

15.1.5.15 COMPULSIVE GAMBLING ASSISTANCE PLAN:

A. An applicant for a gaming operator's license shall submit with the application a plan for assisting in the prevention, education, and treatment of compulsive gambling. The plan shall include all information required in 15.1.18 NMAC.

B. No gaming operator's application shall be approved unless the board first approves the applicant's compulsive gambling assistance plan.

C. Failure to implement the compulsive gambling assistance plan or to satisfactorily maintain and administer the plan once implemented shall be grounds for suspension or revocation of the gaming operator's license, assessment of a fine, or both.

D. The board shall establish minimum standards for the content, structure and implementation of, and periodic reporting requirements on, the compulsive gambling assistance plan.

E. The board may contract with the state of New Mexico department of health or such other entity deemed qualified by the department of health to provide technical assistance in reviewing and recommending to the board approval of compulsive gambling assistance plans.
[15.1.5.15 NMAC - Rp, 15.1.5.15 NMAC, 6/30/16]

15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:

A. The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.

B. Pursuant to the act, this rule constitutes a request and requirement by the board that each key executive employed by a licensee shall submit an application of finding of suitability within 30 days of the first day of employment as a key executive. The licensee shall send a facsimile or e-mail notice to the board no later than 96 hours after the first day of employment listing the date of employment, name, and title of position of the key executive.

C. The following persons are, or may be, subject to that requirement:

(1) any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming;

(2) any person who does business on the gaming establishment;

(3) any person who provides goods or services to a gaming operator licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

(4) an officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

(5) the key executives of a company licensee or company applicant;

(6) if the applicant or licensee is or will be a subsidiary, the holder of five percent or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

(7) an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

(8) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the state;

(9) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of ten percent or more of any class of voting securities in a publicly traded corporation certified by the board;

(10) the following members of a nonprofit organization gaming operator applicant or licensee:

(a) the president or commander if the president or commander will have the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or will be directly involved in the gaming activities of the licensee;

(b) officers with check-writing authority or other financial responsibility;

(c) board members;

(d) key executives, such as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and

(e) any person who has access to the internal structure or software of any gaming machine or associated equipment;

(11) the person with primary ownership interest in or managerial responsibility for an applicant for a limited use distributor's license, provided, however, that the board may provide for an expedited application process for such an applicant; and

(12) any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

D. A finding of suitability relates only to the involvement specified in the application. A key executive shall seek a new determination from the board within 30 days if there is any change in the nature of the involvement from that for which the key executive was previously found suitable by the board.

E. The board may waive the requirement for finding of suitability of an institutional investor or foreign institutional investor unless the board determines that public policy requires that the institutional investor or foreign institutional investor apply for such a finding. A waiver of certification of finding of suitability shall be valid for three years, after which the institutional investor or foreign institutional investor may reapply for a waiver.

F. A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to Paragraph (8) of Subsection C of 15.1.5.16 NMAC or Paragraph (9) of Subsection C of 15.1.5.16 NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

G. In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the

board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

H. The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

I. Upon final determination by the board of the applicant's suitability, the board shall issue a certification of such finding to the applicant.

J. A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key executive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

K. An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the act and this rule. The board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

L. No licensee shall employ as a key executive any person who has failed to file an application for finding of suitability as required by this rule. A licensee shall ensure that each key executive has made the required application.

[15.1.5.16 NMAC - Rp, 15.1.5.16 NMAC, 6/30/16]

15.1.5.17 APPLICATION FOR WORK PERMIT:

A. Application for a work permit shall be made in the same manner as set forth in the act or this rule for other applications. At the board's discretion, the board may delegate authority to the executive director or another designee to process and make the initial determination on all work permits. Except as provided for in Subsection I of Section 15.1.5.17 NMAC, no person shall be employed as a gaming employee unless the board, the executive director or the board's designee has first approved the application for such a permit.

B. The applicant shall submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of, and certified by, a state police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identification technician. The photographs shall be no smaller than 2" x 3" and must be satisfactory to the board. The photographs shall be taken no earlier than three months before the date the application for work permit was filed.

C. In addition to grounds for denial of an application described in the act and this rule, the board shall deny the application if the applicant has had a work permit revoked in any jurisdiction or has committed any act that is grounds for revocation of a work permit under the act or this rule.

D. A work permit issued to a gaming employee shall have clearly imprinted on the permit a statement that the permit is valid for gaming purposes. A licensee who employs an employee currently holding a valid work permit shall ensure that the employee registers his or her employment with the board in writing within three days of the employee's date of hire.

E. A work permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished his or her fingerprints and photograph to the board as required by this rule.

F. A licensee shall notify the board in writing that a work permittee has terminated his or her employment with the licensee within three business days of the termination.

G. Any otherwise qualified person may obtain a work permit to work as a gaming employee for a nonprofit gaming operator licensee and is not required to be a member of the nonprofit organization. A person holding a work permit may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

H. Upon the receipt of a completed application, an applicant shall be provided a provisional work permit which shall expire 60 days after the date of issuance, upon the issuance of a permanent work permit or upon the written determination by the board to deny the work permit, whichever occurs first. An applicant whose provisional work permit expires after 60 days may apply for an extension of the provisional work permit not to exceed an additional 60 days. The board or its designee may allow the 60 day extension for good cause shown.

[15.1.5.17 NMAC - Rp, 15.1.5.17 NMAC, 6/30/16]

15.1.5.18 APPLICATION FOR GAMING MACHINE LICENSE:

A. Application for a gaming machine license shall be made, processed, and determined in the same manner as set forth in the act and this rule for other applications. No gaming machine or associated equipment shall be used for gaming by any licensee without prior written approval of the board.

B. No gaming machine shall be licensed unless it is of a brand, type, and series that has been approved by the board pursuant to the mandatory testing procedures set forth in this title. In addition, each individual gaming machine shall be licensed by the board before the gaming machine shall be used in any gaming activity. Such licensure shall include a license number assigned by the board to the individual gaming machine.

C. The application for a gaming machine license shall include a detailed description of the gaming machine for which approval is sought, including the manufacturer's name, the model, and the permanent serial number.

D. A gaming operator licensee shall license all gaming machines maintained on its gaming premises, up to the maximum number of gaming machines the gaming operator is statutorily permitted to operate, whether or not such machines are in operation on the gaming floor.

E. If a gaming operator licensee maintains gaming machines on its licensed premises in excess of the maximum number of gaming machines the gaming operator is statutorily permitted to operate, the gaming operator shall register such machines in accordance with 15.1.16.13 NMAC.

F. A gaming operator licensee that maintains one or more gaming machines solely to provide spare parts is not required to license such machines, but shall register such machines in accordance with 15.1.16.13 NMAC.

[15.1.5.18 NMAC - Rp, 15.1.5.18 NMAC, 6/30/16]

15.1.5.19 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:

A. A person may act as a manufacturer, distributor or limited

use distributor only if that person has received from the board a license specifically authorizing that person to act as a manufacturer, distributor, or limited use distributor or is a manufacturer of associated equipment that has been issued a waiver pursuant to Subsection D of Section 60-2E-13 of the act.

B. Applications for manufacturer's, distributor's or limited use distributor's licenses shall be made, processed, and determined in the same manner as applications for other gaming licenses as set forth in the act and this rule.

C. An applicant for a manufacturer's, distributor's or limited use distributor's license may be required to post, as a condition of issuance of the license, a bond or irrevocable letter of credit in a manner and in an amount established by the board. Any such instrument shall be issued by a surety company authorized to transact business in New Mexico and shall be satisfactory to the board.

[15.1.5.19 NMAC - Rp, 15.1.5.19 NMAC, 6/30/16]

15.1.5.20 APPLICATION AMENDMENT AND WITHDRAWAL:

A. If there is any change in the information submitted to the board in the application, the applicant shall file, within 10 days of the change, a written amendment disclosing all facts necessary to adequately inform the board of the change in circumstances before the board takes the requested action.

B. An applicant may amend the application at any time prior to final action by the board. The date of receipt of the amendment by the board shall establish the new filing date of the application with respect to the time requirements for action on the application.

C. An amendment to an application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, shall become effective on the date determined by the board.

D. An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the board.

[15.1.5.20 NMAC - Rp, 15.1.5.20 NMAC, 6/30/16]

15.1.5.21 LIMITED USE DISTRIBUTOR'S LICENSE; CONDITIONS: A limited use distributor's license is subject to the following conditions:

A. A limited use distributor shall not maintain an office or physical location within the state. If the limited use distributor opens an office or physical location within the state, the distributor shall apply to convert the license to a distributor's license pursuant to 15.1.5.21 NMAC.

B. A limited use distributor shall maintain an office or physical location in another jurisdiction and shall be in good standing with all applicable regulatory agencies within that jurisdiction and any jurisdiction where the limited use distributor is located.

C. A limited use distributor shall be limited to selling gaming machines and associated equipment to a person with a distributor's license issued by the board.

D. All gaming machines sold by a limited use distributor shall have been manufactured by a manufacturer licensed by the board, shall be approved for use in this state pursuant to all applicable board regulations, shall meet all technical standards established by the board and shall be compatible with the board's central monitoring system.

E. Both the limited use distributor and the licensed distributor purchasing gaming machines from the limited use distributor shall be responsible for compliance with all board rules relating to the sale, transportation, technical specifications and licensing of all gaming machines sold and purchased pursuant to the limited use distributor's license.

F. A limited use distributor's license shall not be subject to renewal.

[15.1.5.21 NMAC - N, 6/30/16]

15.1.5.22 LIMITED USE DISTRIBUTOR'S LICENSE; PROCEDURES: The application procedures for a limited use distributor's license shall be as follows:

A. The applicant shall complete a licensing application prescribed by the board and shall pay the applicable application fee and costs for any background investigation.

B. The applicant shall not transport any gaming machines into the state until a license is granted by the board.

C. The limited use distributor selling the gaming machines and the distributor purchasing the gaming machines shall notify the board on forms prescribed by the board prior to transporting any gaming machines into the state.

D. In addition to the application fee, a limited use distributor shall pay to the board a transaction fee of $1,500 for each transaction in which the limited use distributor sells gaming machines to a distributor prior to completing the transaction.

E. A limited use distributor shall not conduct more than two transactions per license year unless the limited use distributor obtains a distributor's license prior to conducting the third transaction.

F. A limited use distributor may request to convert its limited use distributor's license to a distributor's license by submitting an additional fee of $1,000 plus the costs of conducting a background investigation to the board and completing an application prescribed by the board prior to the expiration of the limited use distributor's license. All fees paid prior to the application for a distributor's license shall be applied to the application.

G. A distributor's license issued as a result of a conversion from a limited use distributor's license shall be valid for one year from the initial limited use licensure.

[15.1.5.22 NMAC - N, 6/30/16]

15.1.5.23 APPLICATION FEES:

A. The applicant shall pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

B. Applicants shall submit the following nonrefundable fees with an application for licensure or other approval:

(1) gaming machine manufacturer's license, $10,000;

(2) associated equipment manufacturer's license, $2,500;

(3) gaming machine distributor's license, $5,000;

(4) associated equipment distributor's license, $1,000;

(5) gaming operator's license for racetrack, $25,000;

(6) gaming operator's license for nonprofit organization, $100;

(7) gaming machine license, $100 per machine;

(8) work permit, $75;

(9) certification of finding of suitability, $100 for each person requiring investigation;

(10) limited use

distributor's license, $1,000; and

(11) replacement fee for identification badge, $10.

C. In addition to any nonrefundable license or approval fee paid, the applicant shall pay all supplementary investigative fees and costs, as follows:

(1) an applicant for a manufacturer's license, distributor's license, or gaming operator's license for a racetrack shall pay, in advance, an amount equal to the license fee as a deposit on fees and costs of the investigation; upon completion of the investigation and determination of the actual fees and costs, the board shall refund overpayments or charge the applicant for underpayments in an amount sufficient to reimburse the board for actual fees and costs;

(2) all other applicants shall reimburse the board in an amount sufficient to cover actual fees and costs of the investigation upon completion of the investigation; and

(3) all applicants shall fully reimburse the board within 30 days of receipt of notice of actual fees and costs incurred by the board for any underpayment or other amount owed by the applicant.

D. Investigative fees are charged at the rate of $50 per hour for each hour spent by investigators of the board or the board's agents in conducting an investigation. In addition to fees, costs to be paid by the applicant include transportation, lodging, meals, and other expenses associated with traveling, which expenses shall be reimbursed based on state mileage and per diem rules, and office expenses, document copying costs, and other reasonable expenses incurred. Checks shall be made payable to the New Mexico gaming control board.

E. In addition to any nonrefundable application and supplementary investigation fees and costs, licensed manufacturers and distributors shall pay a gaming device inspection fee in an amount not to exceed the actual cost of the inspection. The manufacturer or distributor shall pay the estimated cost of the inspection in advance. Upon completion of the inspection and determination of the actual cost, the board shall refund overpayments or charge the manufacturer or distributor for underpayments in an amount sufficient to reimburse the board for the actual cost. The manufacturer or distributor shall fully reimburse the board within 30 days of receipt of notice of underpayment. Lab fees are charged at the rate of $50 per hour for each hour spent by the board's technical personnel to inspect or test a gaming device.

F. The board may refuse to take final action on any application unless all license, approval, and investigation fees and costs have been paid in full. The board shall deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant shall be debarred from filing any other application with the board until all such fees and costs are paid in full.

G. If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board shall notify the applicant, in writing. The board shall discontinue investigation and processing of the application and shall issue a final, written order denying the application.

H. The maximum fee for processing any application shall not exceed $100,000, regardless of actual costs of supplemental investigations.

I. The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

J. Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation shall be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

K. Gaming machine licensing fees may be pro-rated if the license is granted within three months of December 31.

[15.1.5.23 NMAC - Rp, 15.1.5.21 NMAC, 6/30/16]

15.1.5.24 DISCLOSURE OF GAMING CONTRACTS:

A. An applicant or a licensee shall submit to the board copies of all written gaming contracts and summaries of all oral gaming contracts under which the contractor receives, directly or indirectly, any compensation based on earnings, profits, receipts, or net take from gaming in the state. The board may review the contracts and require the applicant or licensee to modify the gaming contracts to conform to the provisions of the act or this title. Failure to modify the contracts as required by the board shall be grounds for denial of the application or for other action against the licensee.

B. Every person who is a party to any such contract with an applicant or a licensee shall provide any information requested by the board, including filing an application for finding of suitability, if requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, reputation, and all other information requested by the board.

C. Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's gaming contract with any person who failed to provide the requested information.

[15.1.5.24 NMAC - Rp, 15.1.5.22 NMAC, 6/30/16]

15.1.5.25 CONDITIONS OF APPROVAL OF APPLICATION: The approval of any application or renewal of licensure is subject to the following conditions and constitutes the following agreements by the licensee:

A. The licensee shall at all times make its gaming establishment or business premises available for inspection by the board or its authorized representatives, with or without prior announcement.

B. The licensee consents to the examination of all accounts, bank accounts, and records of, or under the control of, the licensee, an affiliate, or any entity in which the licensee has a direct or indirect controlling interest. Upon request of the board or its authorized representative, the licensee shall authorize all third parties in possession or control of the requested documents to allow the board or representative to examine such documents.

C. The licensee accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of material or information supplied to the agency in connection with any application to the board.

D. With respect to new license applications, the licensee shall commence the activity approved by the board within 90 days after the date of approval by the board on the application. Failure to commence the approved activity voids the board's approval, and the licensee shall file a new application. The board, in its discretion, may waive the requirements of a new application. The licensee shall make written application

for waiver to the board within 30 days of the date the board's action on the original application becomes void.

E. The licensee shall be responsible for all registration, taxation, and licensing imposed by the act or other state law upon the license, gaming machine, or associated equipment. Nothing in this subsection shall be construed as authorizing the imposition of any license fee or tax in contravention of Section 60-2E-39 of the act.

[15.1.5.25 NMAC - Rp, 15.1.5.23 NMAC, 6/30/16]

15.1.5.26 GROUNDS FOR DENIAL OF APPLICATION; CONDITIONAL LICENSES:

A. The board may deny an application on any grounds deemed reasonable by the board. Without limiting the foregoing, the board may deny the application on any of the following grounds:

(1) evidence of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the board or made in connection with any investigation, including the background investigation;

(2) conviction of any crime in any jurisdiction;

(3) conviction of any gambling offense in any jurisdiction;

(4) entry of a civil judgment against the applicant that is based, in whole or in part, on conduct that allegedly constituted a crime;

(5) direct or indirect association with persons or businesses of known criminal background or persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(6) any aspect of the applicant's past conduct, character, or behavior that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(7) failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;

(8) failure to demonstrate adequate financing for the operation proposed in the application;

(9) failure to satisfy any requirement for application or to timely respond to any request by the board for additional information;

(10) permanent suspension, revocation, denial or other limiting action on any gaming license issued by any jurisdiction; or

(11) approval of the application would otherwise be contrary to New Mexico law or public policy.

B. The board may issue a license subject to conditions deemed appropriate by the board. Such conditions may include the imposition of a probationary period, specific limitations on gaming activities permitted under the license, administrative fines, or such other terms as the board requires.

[15.1.5.26 NMAC - Rp, 15.1.5.24 NMAC, 6/30/16]

15.1.5.27 RESTRICTION ON REAPPLICATION: Any applicant whose application has been denied or whose license has been permanently suspended, revoked, or subjected to other limiting action in any jurisdiction shall not reapply for licensing or approval by the board at any time.

[15.1.5.27 NMAC - Rp, 15.1.5.25 NMAC, 6/30/16]

15.1.5.28 CHANGE IN NUMBER OF GAMING MACHINES; APPLICATION TO AMEND GAMING OPERATOR LICENSE: A gaming operator licensee shall not increase the number of gaming machines on, or remove a gaming machine from, the licensed premises without prior written approval from the board.

A. If the requested change is an increase in the number of gaming machines on the licensed premises, the applicant shall also submit, in accordance with this rule and with 15.1.18 NMAC, an application for gaming machine license or a registration form for each additional machine. The licensee also shall submit a detailed diagram of the licensed premises showing the proposed location of all gaming machines.

B. If the requested change is a reduction in the number of machines due to the sale, transfer or disposal of one or more machines, the applicant shall ensure that such sale, transfer, or disposal is made in accordance with the procedures set forth in 15.1.16 NMAC.

[15.1.5.28 NMAC - Rp, 15.1.5.26 NMAC, 6/30/16]

15.1.5.29 REGISTRATION OF NONPUBLICLY TRADED HOLDING AND INTERMEDIARY COMPANIES:

A. If a company applicant or company licensee is or becomes a subsidiary, each non-publicly traded holding company or intermediary company with respect to the subsidiary company shall:

(1) qualify to do business in the state of New Mexico; and

(2) register with the board.

B. Registration shall be accomplished by notifying the board in writing of the registrant's status as a nonpublicly traded holding or intermediary company, specifically identifying the company applicant or licensee that is the registrant's subsidiary and specifically describing the relationship between the registrant and the company applicant or licensee, and providing to the board all information required by Paragraph (2) of Subsection A of Section 60-2E-21 of the act.

C. If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

D. Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection C of 15.1.5.29 NMAC, it is unlawful for the unsuitable person to:

(1) receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;

(2) exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or

(3) receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

E. A holding company or intermediary company subject to the provisions of Subsection A of 15.1.5.29 NMAC shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

F. This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 24 of the Gaming Control Act.

[15.1.5.29 NMAC - Rp, 15.1.5.27 NMAC, 6/30/16]

HISTORY OF 15.1.5 NMAC:
Pre NMAC History: None.

History of Repealed Material:
15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, filed 3-16-00 - Repealed effective 6-30-16.

Other History:
15 NMAC 1.5, Application for Licensure Under the Gaming Control Act, effective 11/30/98.
15 NMAC 1.5, Application for Licensure Under the Gaming Control Act (filed 11/13/98) reformatted, renumbered, amended and replaced by 15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, effective, 03/31/2000.
15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, (filed 3-16-00) was repealed and replaced by 15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, effective 6-30-16.

GAMING CONTROL BOARD

This is an amendment to 15.1.9.8 NMAC, Sections 3, 8 and 16, effective 6/30/16.

15.1.9.3 STATUTORY AUTHORITY: [~~Section 60-2E-7(B)(3)~~] Paragraph (3) of Subsection B of Section 60-2E-7 of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. [~~Section 60-2E-8(C)(12)~~] Paragraph (12) of Subsection C of Section 60-2E-8 of the Act directs the Gaming Control Board to adopt regulations prescribing internal control requirements for licensees.

[N, 12/31/98; 15.1.9.3 NMAC - Rn, 15 NMAC 1.9.3, 1/31/02; A, 6/30/16]

15.1.9.8 GENERAL REQUIREMENTS:

A. The gaming operator [~~licensee~~] or applicant shall develop, implement and maintain appropriate written internal procedures and controls for the operation of gaming machines on the licensed premises which shall be reviewed by the board or board's designated representatives. The procedures and controls shall be sufficient, as determined by the board, to ensure the accuracy, reliability, and security of the function performed, process used, and information produced. The gaming operator licensee's internal controls shall provide at least the level of control described in this rule, and shall, at a minimum conform to the standards established in the minimum internal controls for nonprofits gaming operations licensees dated [~~March, 2007~~] February, 2014 or the minimum internal controls for racetrack gaming operations, dated [~~August, 2006, appended hereto as appendix 1 and 2 respectively~~] April, 2014 as posted on the board's website (www.nmgcb.org/minimum-internal-controls.aspx), unless a variance has been approved by the board.

B. Whether or not specified in a particular section or paragraph, the gaming operator licensee's internal controls shall identify the employees authorized to perform each function and shall ensure an appropriate level of security for each function.

C. Computer applications that provide controls equivalent in accuracy, reliability, and security to the standards set forth in this rule or otherwise adopted by the board shall be acceptable to the board.

D. Any amendment to a licensee's internal controls shall be provided in writing to the board or the board's designee before implementation by the licensee.

E. Any amendment that does not meet the standards of the minimum internal controls shall come before the board for approval.

F. The board, in its discretion, may waive specific standards contained in this rule upon submission by the licensee of alternative procedures that ensure a comparable level of security.

[N, 12/31/98; 15.1.9.8 NMAC - Rn & A, 15 NMAC 1.9.8, 1/31/02; A, 2/28/05; A, 5/15/07; A, 6/30/08; A, 6/30/16]

15.1.9.16 GAMING MEDIA TESTING AND DUPLICATION:

A. Gaming media shall not be duplicated except with board approval, unless the person seeking to duplicate the program is a licensed manufacturer. In either case, the licensee shall ensure compliance with all applicable federal copyright laws. Approval by the board to duplicate game program gaming media does not constitute an opinion as to such compliance.

B. The licensee shall develop and maintain procedures for each of the following:

(1) removal of gaming media from devices, verification of the existence of errors, and correction of errors by duplication from the master game program;

(2) copying one gaming device program to another approved program;

(3) verification of duplicated gaming media with electrical failures;

(4) destruction, as needed, of gaming media with electrical failures or physical damage; and

(5) securing the gaming media duplicator and master game gaming media from unrestricted access.

C. Records shall be maintained documenting the procedures described in [~~this section~~] 15.1.9.16 NMAC. The records include the date, gaming machine number for both source and destination machines, manufacturer, program number, personnel involved, reason for duplication, disposition of any permanent gaming media, and lab approval number.

D. Gaming media returned to gaming devices shall include the date and information that is identical to that shown on the manufacturer's label.

[N, 12/31/98; 15.1.9.16 NMAC - Rn, 15 NMAC 1.9.16, 1/31/02; A, 2/28/05; A, 12/15/10; A, 6/30/16]

HEALTH, DEPARTMENT OF

The New Mexico Department of Health approved, at its 6/2/2016 hearing, to repeal its rule 7.30.9 NMAC, Birthing Workforce Retention Fund (filed 12/8/2008) and replace it with 7.30.9 NMAC, Birthing Workforce Retention Fund, effective 06/30/2016.

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH
CHAPTER 30 FAMILY AND CHILDREN HEALTH CARE SERVICES
PART 9 BIRTHING WORKFORCE RETENTION FUND

7.30.9.1 ISSUING AGENCY: New Mexico Department of Health, Public Health Division, Family Health Bureau, Maternal/Child Health Program.
[7.30.9.1 NMAC - Rp, 7.30.9.1 NMAC, 6/30/2016]

7.30.9.2 SCOPE: These rules apply to certified nurse-midwives and physicians licensed in New Mexico who provide birthing services and apply for funds from the birthing workforce retention fund.
[7.30.9.2 NMAC - Rp, 7.30.9.2 NMAC, 6/30/2016]

7.30.9.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the department of health by authority of Section 9-7-6E NMSA 1978, and implement Section 41-5-26.1 NMSA 1978.
[7.30.9.3 NMAC - Rp, 7.30.9.3 NMAC, 6/30/2016]

7.30.9.4 DURATION: Permanent.
[7.30.9.4 NMAC - Rp, 7.30.9.4 NMAC, 6/30/2016]

7.30.9.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.
[7.30.9.5 NMAC - Rp, 7.30.9.5 NMAC, 6/30/2016]

7.30.9.6 OBJECTIVE: These rules are promulgated pursuant to statute for the purpose of establishing criteria for the application for and award of money from the birthing workforce retention fund.
[7.30.9.6 NMAC - Rp, 7.30.9.6 NMAC, 6/30/2016]

7.30.9.7 DEFINITIONS:

A. "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who possesses evidence of American College of Nurse-Midwives Certification Council, Inc. (ACC) certification.

B. "Department" means the New Mexico department of health.

C. "Fund" means the birthing workforce retention fund, as established by Section 41-5-26.1 NMSA 1978, which provides malpractice insurance premium assistance to eligible awardees.

D. "Indigent" means those individuals having a household income under two hundred thirty-five percent of federal poverty guidelines who are not covered by any private third-party health insurance and who are not eligible for medicaid coverage.

E. "Physician" means a medical doctor licensed under the New Mexico Medical Practice Act to practice medicine in New Mexico.

F. "Program" means the maternal/child health program of the family health bureau of the public health division of the New Mexico department of health.

G. "Secretary" means the secretary of the department of health.

H. "Tail coverage" means insurance coverage providing an extended reporting period for any claims related to conduct that occurred during the period covered by the claims-based medical malpractice policy after it has expired or been canceled.
[7.30.9.7 NMAC - Rp, 7.30.9.7 NMAC, 6/30/2016]

7.30.9.8 ELIGIBILITY: In order to be eligible for award of money from the fund, the applicant must:

A. be a certified nurse-midwife licensed in New Mexico or a physician licensed in New Mexico;

B. demonstrate need by showing that medicaid or indigent patients constitute at least one-half of the obstetric practice of the applicant;

C. have a current malpractice liability insurance policy covering birthing services;

D. show intent to continue his/her obstetrics practice in New Mexico during the period covered by the award; and

E. provide attestation statement stating that award will not be used to provide premium assistance for tail coverage purchased upon applicant's termination from his/her work practice.
[7.30.9.8 NMAC - Rp, 7.30.9.8 NMAC, 6/30/2016]

7.30.9.9 APPLICATIONS:

A. Requirements: The applicant shall present to the program, via mail or fax, a completed department application which is available on the department's website at http://nmhealth.org/about/phd/fhb/mwp/or by contacting the program at (505) 476-8907. Along with the application the applicant must submit:

(1) a copy of the applicant's current New Mexico license to practice certified nurse-midwifery or medicine;

(2) proof of the applicant's current malpractice liability insurance policy premium covering birthing services;

(3) proof of both the number and the percentage of medicaid and indigent patients seen in the applicant's birthing practice in each of the previous two years;

(4) proof of all payments and any funding the applicant received for delivery services for each of the previous two years; and

(5) proof that the applicant provides both prenatal and birthing services in his/her practice.

B. Deadline for application: Deadline for application will be available through the program and will be listed on the application.
[7.30.9.9 NMAC - Rp, 7.30.9.9 NMAC, 6/30/2016]

7.30.9.10 COMMITTEE TO REVIEW APPLICATIONS: The secretary or the secretary's designee shall appoint a committee to evaluate applications and select awardees. The committee shall consist of such members as chosen by the secretary or the secretary's designee, including, at a minimum:

A. a member of the maternal child health program of the department; and

B. a member of the health systems bureau of the department.
[7.30.9.10 NMAC - Rp, 7.30.9.10 NMAC, 6/30/2016]

7.30.9.11 EVALUATION OF APPLICATIONS:

A. Basis for disbursal: Awards shall be disbursed based on the percentage of the CNM or physician's patients seen for birthing services who are covered by medicaid or are indigent, with a minimum of fifty percent of the practitioner's obstetric practice consisting of medicaid or indigent patients.

B. Criteria upon which the committee shall evaluate and prioritize the need of the applicant and the merits of the application:

(1) the relative

availability of birthing services for medicaid and indigent patients in the applicant's community, based on the department's annual study of geographic access to birthing care providers;

(2) the number of medicaid and indigent patients seen in the practice for birthing services;

(3) the ratio of the revenue received from deliveries to the liability insurance premium; and

(4) the provision of comprehensive prenatal and delivery services to clients who present for them.

[7.30.9.11 NMAC - Rp, 7.30.9.11 NMAC 6/30/2016]

7.30.9.12 PRIORITY OF AWARDS: Priority for the award of money from the birthing workforce retention fund shall be in the following order:

A. to certified nurse-midwives; and

B. to family practice physicians and obstetricians.

[7.30.9.12 NMAC - Rp, 7.30.9.12 NMAC 6/30/2016]

7.30.9.13 AWARDS: Subject to availability of funds, each award shall be a minimum of five thousand dollars ($5,000) and shall not exceed ten thousand dollars ($10,000).

A. Awardees will be notified within 45 days after the application deadline.

B. Awardees shall submit proof of payment of a malpractice liability insurance policy covering birthing services to the program within nine months of receipt of the award.

[7.30.9.13 NMAC - Rp, 7.30.9.13 NMAC 6/30/2016]

HISTORY OF 7.30.9 NMAC:

History of Repealed Material:
7.30.9 NMAC, Birthing Workforce Retention Fund, filed 12/31/2008 - Repealed effective 6-30-2016.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.308.10 NMAC, Sections 8 and 9, effective 7/1/2016.

8.308.10.8 [~~MISSION STATEMENT:~~ ~~To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.~~] **[RESERVED]**

[8.308.10.8 NMAC - N, 1-1-14; Repealed, 7-1-2016]

8.308.10.9 CARE COORDINATION:

A. **General requirements:**

(1) Care coordination services are provided and coordinated with the eligible recipient member and his or her family, as appropriate. Care coordination involves, but is not limited to, the following: planning treatment strategies; developing treatment and service plans; monitoring outcomes and resource use; coordinating visits with primary care and specialists providers; organizing care to avoid duplication of services; sharing information among medical and behavioral care professionals and the member's family; facilitating access to services; and actively managing transitions of care, including participation in hospital discharge planning.

(2) Every member has the right to refuse to participate in care coordination. In the event the member refuses this service, managed care organization (MCO) will document the refusal in the member's file and report it to HSD.

(3) If a native American member requests assignment to a native American care coordinator and the MCO is unable to provide a native American care coordinator to such member, the MCO must ensure that a mutually-agreed upon community health worker is present for all in–person meetings between the care coordinator and the member.

(4) Individuals with special health care needs (ISHCN) require a broad range of primary, specialized medical, behavioral health and related services. ISHCN are individuals who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition and who require health and related services of a type or amount beyond that required by other members. ISHCN have ongoing health conditions, high or complex service utilization, and low to severe functional limitations. The primary purpose of the definition is to identify these individuals so that the MCO shall facilitate access to appropriate services through its care coordination process and comply with provisions of 42 CFR Section 438.208.

B. **Health risk assessment (HRA):**

[~~(1) Within 30 calendar days of the member's enrollment with a MCO,~~] The MCO shall conduct a human services department (HSD) health risk assessment (HRA) either by telephone, in person or as otherwise approved by HSD. The HRA is conducted for the purpose of: (a) introducing the MCO to the member; (b) obtaining basic health and demographic information about the member; and (c) [~~assisting the MCO in determining the level of care coordination services needed by him or her~~] confirming the need for a comprehensive needs assessment (CNA); and (d) determining the need for a nursing facility (NF) or intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care (LOC) assessment, as applicable. Requirements for health risk assessments are defined in the managed care policy manual (Section 04 Care Coordination).

[~~(2) The MCO shall provide the following to every member during the HRA:~~

~~(a) information about the services are available through care coordination;~~

~~(b) notification of the care coordination level;~~

~~(c) notification of the member's right to request a higher level of care coordination;~~

~~(d) requirement for an in-person comprehensive needs assessment for the purpose of providing services associated with care coordination Levels 2 or 3; and~~

~~(e) information detailing specific next steps for the member.~~]

C. **Assignment to care coordination [~~levels~~]:**

[~~(1) Within seven calendar days of completion of the HRA, a member shall be informed of either a Level 1 care coordination assignment or the need for an comprehensive needs assessment to determine the need for the Level 2 or Level 3 care coordination.~~

~~(2) Within 10 calendar days of completion of the HRA, the member shall receive:~~

~~(a) contact information for the contractor's care coordination unit;~~

~~(b) the name of the assigned care coordinator if applicable; and~~

~~(c) a timeframe during which he or she~~

can expect to be contacted by the care coordination unit or individual care coordinator.

D. **Level 1 care coordination:** a member who is assigned this level will not receive a comprehensive needs assessment and is not assigned to an individual care coordinator.

E. **Level 2 and Level 3 care coordination:** a member meeting one of the indicators below shall have a comprehensive needs assessment conducted by the MCO to determine whether the member shall be in Level 2 or Level 3 care coordination. The member:

(1) is a high-cost user as defined by the MCO;

(2) is in out-of-state medical placement;

(3) is a dependent child in out-of-home placement;

(4) is a transplant patient;

(5) is identified as having a high risk pregnancy;

(6) has a behavioral health diagnosis including substance abuse that adversely affects his or her life;

(7) is medically fragile or is an ISHCN;

(8) is designated as an ICF/IID or has a HSD-recognized developmental delay (DD);

(9) has high emergency room use, as defined by the MCO ;

(10) has an acute or terminal disease;

(11) is readmitted to the hospital within 30 calendar days of discharge; or

(12) has other indicators as prior approved by HSD.

F. **Care coordination requirements for Level 1:** Each member will receive, at a minimum, the following care coordination:

(1) a HRA annual review to determine appropriate care coordination level; and

(2) a review of claims and utilization data at least quarterly to determine if the member is in need of a comprehensive needs assessment and potentially higher care coordination level.

G. **Comprehensive needs assessment for Level 2 and Level 3 care coordination:**

(1) The MCO shall schedule an in-person comprehensive needs assessment within 14 calendar days of the member receiving notification of the need for a comprehensive needs assessment for a Level 2 or Level 3 care coordination assignment.

(2) Within 30 calendar days of the HRA, the MCO shall complete the comprehensive needs assessment.

(3) For all members who become newly eligible on January 1, 2014 or later, the MCO will conduct the HRA within 30 calendar days of the member's enrollment. For members transitioning from legacy medicaid programs on January 1, 2014, the MCO shall conduct the HRA and, if required, a comprehensive needs assessment and a CCP within 180 calendar days.

(4) The comprehensive needs assessment shall be conducted at least annually or as the care coordinator deems necessary as a result of a request from the member, provider or family member, or as a result of change in the member's health status.

(5) At a minimum, the comprehensive needs assessment shall:

(a) assess the member's physical, behavioral health, and long-term care and social needs; and

(b) identify targeted needs, such as improving health, functional outcomes, or quality of life outcomes.

H. **Care coordination services requirements for Level 2:** The MCO shall assign a specific care coordinator to each member in Level 2. The care coordinator for a member in Level 2 shall, at the minimum, arrange for or provide the following care coordination:

(1) the development and implementation of a care plan;

(2) the monitoring of the care plan to determine if the plan is meeting the members identified needs;

(3) the assessment of need for assignment to a health home;

(4) targeted health education, including disease management;

(5) the annual in-person comprehensive needs assessment;

(6) the semi-annual in-person visits with the member; and

(7) the quarterly telephone contact with the member.

I. **Care coordination requirement for Level 3:** The MCO shall assign a specific care coordinator to each member in Level 3. The care coordinator for a member in Level 3 shall arrange for or provide the following care coordination services:

(1) the development and implementation of a care plan;

(2) the monitoring of the care plan to determine if the plan is meeting the member's identified needs;

(3) the assessment of need for assignment to a health home;

(4) targeted health education, including disease management;

(5) the semi-annual in-person comprehensive needs assessment;

(6) the quarterly in-person visits with the member; and

(7) monthly telephone contact with the member.] For members who require it, the MCO shall conduct a HSD approved CNA to assess the member's medical, behavioral health, and long term care needs and determine the care coordination level. Requirements for care coordination level 2 and 3 determinations are defined in the managed care policy manual (Section 04 Care Coordination).

[J.] D. **Increase in the level of care coordination services:**

[(1) The following triggers, at a minimum, shall identify a member's need for a comprehensive needs assessment for a higher level of care coordination:

(a) a referral from his or her primary care provider (PCP), specialist, another provider, or from another referral source;

(b) member's self-referral or a referral by his or her authorized representative;

(c) a referral from the member's MCO staff or at the request of HSD staff;

(d) the notification of a hospital admission or emergency room visit; and

(e) claims or encounter data, hospital admission, discharge data, pharmacy data and data collected through the MCO's utilization management (UM) or the quality management (QM) processes.

(2) The MCO shall contact the member within 10 calendar days of receiving the referral,

~~or request, or while conducting a data review or becoming aware of a change in the member's condition, to conduct the comprehensive needs assessment for a higher level of care coordination.~~] The requirements establishing a need for a comprehensive needs assessment for a higher level of care coordination determination are defined in the managed care policy manual (Section 04 Care Coordination).

[~~K.~~] E. **Comprehensive care plan requirements:**

[~~(1) The MCO shall develop and implement a comprehensive care plan (CCP) for a member in Level 2 or 3 care coordination within 14 business days of the completion of the comprehensive needs assessment.~~

~~(2) The MCO is not required to develop and implement a CCP for a member in Level 1 care coordination.~~

~~(3) The MCO shall ensure that the member and his or her authorized representative participate in the development of the CCP.~~

~~(4) The MCO shall ensure that the care coordinator consults with the member's PCP, specialists, behavioral health providers, other providers, and interdisciplinary team experts, as needed in the development of the CCP.~~] The MCO shall develop a comprehensive care plan (CCP) for members in care coordination levels 2 and 3. Requirements for CCP development are defined in the managed care policy manual (Section 04 Care Coordination).

[~~L.~~] F. **On-going reporting:** The MCO shall require that the following information about the member's care is shared amongst medical, behavioral health, and long-term care providers:

(1) drug therapy;

(2) laboratory and radiology results;

(3) sentinel events, such as hospitalization, emergencies, or incarceration;

(4) discharge from a psychiatric hospital, a residential treatment service, treatment foster care or from other behavioral health services; and

(5) all LOC transitions.

[~~M.~~] G. **Electronic visit verification (EVV) system:**

(1) The MCO, together with the other MCOs, shall contract with a vendor to implement [~~an~~] a statewide electronic visit verification system to monitor the member's receipt of and utilization of a covered community benefit.

(2) The MCOs shall ensure that all contracted personal care service providers are participating in the EVV system unless granted an exception as approved by HSD.

(3) The MCO shall monitor and use information from the electronic verification system to verify that services are provided as specified in the member's CCP, and in accordance with the established schedule, including verification of the amount, frequency, duration, and the scope of each service and that service gaps are identified and addressed immediately, including late and missed visits. The MCO shall monitor all approved services that a member is receiving, including after the MCO's regular business hours.

[8.308.10.9 NMAC - N, 1-1-14; A, 7-1-2016]

LAND OFFICE, STATE

The State Land Commissioner, on June 30, 2016, repealed the rule 19.2.18 NMAC entitled: Relating to State Land Trusts Advisory Board, filed on September 30, 2002 and replaced it with 19.2.18 NMAC entitled: Relating to State Land Trusts Advisory Board, effective June 30, 2016.

The State Land Commissioner, on June 30, 2016, repealed the rule 19.2.100 NMAC entitled: Relating to Oil and Gas Leases, filed on December 13, 2002 and replaced it with 19.2.100 NMAC entitled: Relating to Oil and Gas Leases, effective June 30, 2016.

LAND OFFICE, STATE

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 18 RELATING TO STATE LAND TRUSTS ADVISORY BOARD

19.2.18.1 ISSUING AGENCY: Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P. O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713
[19.2.18.1 NMAC - Rp, 19.2.18.1 NMAC, 06/30/16]

19.2.18.2 SCOPE: This rule pertains to the working relationship between the commissioner of public lands and the state land trusts advisory board.
[19.2.18.2 NMAC - Rp, 19.2.18.2 NMAC, 06/30/16]

19.2.18.3 STATUTORY AUTHORITY: The commissioner's authority to manage the state trust lands is found in Article 13, Section 2 of the constitution of New Mexico, and in 19-1-1 NMSA 1978. The authority to promulgate this rule is found in 19-1-2 NMSA 1978. Provisions authorizing the state land trust advisory board are found in 19-1-1.1 through 19-1-1.4 NMSA 1978.
[19.2.18.3 NMAC - Rp, 19.2.18.3 NMAC, 06/30/16]

19.2.18.4 DURATION: Permanent.
[19.2.18.4 NMAC - Rp, 19.2.18.4 NMAC, 06/30/16]

19.2.18.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.
[19.2.18.5 NMAC - Rp, 19.2.18.5 NMAC, 06/30/16]

19.2.18.6 OBJECTIVE: The objective of 19.2.18 NMAC is to provide for the orderly and productive working relationship between the commissioner of public lands and the state land trusts advisory board.
[19.2.18.6 NMAC - Rp, 19.2.18.6 NMAC, 06/30/16]

19.2.18.7 DEFINITIONS: [RESERVED]
[19.2.18.7 NMAC - Rp, 19.2.18.7 NMAC, 06/30/16]

19.2.18.8 POLICY AND MEETINGS: It is the policy of the commissioner of public lands to provide the state land trusts advisory board with all information requested by the board regarding the policies and procedures, rules, and financial information of the New Mexico state land office. The commissioner shall cooperate with the board, which shall provide advice and assistance to the commissioner in protecting and maintaining the assets and resources of the state trust lands, and in maximizing the income from trust assets, as mandated by the constitution of New Mexico, the Enabling Act, and by state statute.

A. The commissioner and staff shall hold at least one meeting per year jointly with the state land trusts advisory board and the administrative head or designee of the beneficiary

institutions. At this annual meeting, the commissioner shall inform and discuss the plans, goals, objectives, budget, revenue projections, asset management issues, and all other pertinent information regarding the state land trusts.

B. At least two times per year (in addition to the annual joint meeting with the state land trusts advisory board and beneficiaries), the commissioner shall meet with the board. The non-beneficiary board meetings shall be held when called by the chairman of the board, a majority of board members, or at the request of the commissioner. Board members may choose to participate in properly noticed meetings by telephone or other similar communications equipment, but only when attendance in person is difficult or impossible. Each board member participating by telephone or other similar equipment must be identified when speaking, all board members must be able to hear each other at the same time and hear any speaker, and members of the public attending the meeting must be able to hear any board member.

C. No action of the board is binding on the commissioner, who alone has the constitutional and fiduciary responsibility as trustee for the trusts.
[19.2.18.8 NMAC - Rp, 19.2.18.8 NMAC, 06/30/16]

19.2.18.9 REPORTS: Upon the call of a meeting with the board, the commissioner shall appear before the board to review and report on the policies and practices of the commissioner, which may include proposed land exchanges, fee setting matters, proposed land sales, litigation, rules, or other matters, at the commissioner's discretion.
[19.2.18.9 NMAC - Rp, 19.2.18.9 NMAC, 06/30/16]

19.2.18.10 ADMINISTRATIVE SUPPORT:

A. The commissioner shall assist the board with a secretary. The secretary shall keep minutes of all board meetings, retain custody of board records, and carry out such further duties customary of the office of secretary.

B. The commissioner shall provide written notice of regular meetings to board members at least three weeks prior to the meeting. A final written agenda prepared by the commissioner shall be available on the commissioner's webpage and posted in the commissioner's office at least 72 hours prior to the meeting.
[19.2.18.10 NMAC - Rp, 19.2.18.10 NMAC, 06/30/16]

HISTORY OF 19.2.18 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
SLO Rule 18, Relating to the State Land Trusts Advisory Board, filed 12/29/89.
19 NMAC 2. SLO 18 reformatted 12/31/99
19.2.18 NMAC, re-numbered 09/30/02

History of Repealed Material:
19.2.18 NMAC, Relating to State Land Trusts Advisory Board, re-numbered 09/30/02, repealed 06/30/16

LAND OFFICE, STATE

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 100 RELATING TO OIL AND GAS LEASES

19.2.100.1 ISSUING AGENCY: Commissioner of Public Lands, New Mexico State Land Office, P.O. Box 1148, Santa Fe, New Mexico 87504-1148.
[19.2.100.1 NMAC - Rp, 19.2.100.1 NMAC, 06/30/2016]

19.2.100.2 SCOPE: This rule pertains to all oil and gas leases on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands).
[19.2.100.2 NMAC - Rp, 19.2.100.2 NMAC, 06/30/2016]

19.2.100.3 STATUTORY AUTHORITY: The commissioner's authority to manage trust lands is found in Article 13 of the constitution of New Mexico, and in Section 19-1-1 NMSA 1978. The commissioner's authority to promulgate this rule is found in Section 19-1-2 NMSA 1978. The commissioner's authority over lessees and leases for the exploration, development and production of oil and natural gas on trust lands is found in Sections 19-10-1 *et seq* NMSA 1978.
[19.2.100.3 NMAC - Rp, 19.2.100.3 NMAC, 06/30/2016]

19.2.100.4 DURATION: Permanent.
[19.2.100.4 NMAC - Rp, 19.2.100.4 NMAC, 06/30/2016]

19.2.100.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.
[19.2.100.5 NMAC - Rp, 19.2.100.5 NMAC, 06/30/2016]

19.2.100.6 OBJECTIVE: The objective of 19.2.100 NMAC is to provide for the orderly and lawful administration, and the appropriate exploration, development and production, of oil and natural gas on trust lands.
[19.2.100.6 NMAC - Rp, 19.2.100.6 NMAC, 06/30/2016]

19.2.100.7 DEFINITIONS: **"Schedule of fees"** means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[19.2.100.7 NMAC - Rp, 19.2.100.7 NMAC, 06/30/2016]

19.2.100.8 PRODUCTS INCLUDED: The commissioner is authorized to execute and issue oil and gas leases covering state common school and institutional trust lands as lessor in the name of the state of New Mexico. The form of basic lease is statutory and includes carbon dioxide. All leases issued after June 9, 1963, include helium. Leases issued on or before June 9, 1963, do not include helium gas unless stipulated as provided in 19.2.100.55 NMAC. All forms are provided by the land office.
[19.2.100.8 NMAC - Rp, 19.2.100.8 NMAC, 06/30/2016]

19.2.100.9 CLASSIFICATION INTO DISTRICTS: There are two types of districts, known respectively as restricted districts and non or unrestricted districts. A restricted district comprises an area usually in a proven oil and gas area and is created by statute or by authority of the commissioner. A non- or unrestricted district includes all lands outside the exterior boundaries of restricted districts.
[19.2.100.9 NMAC - Rp, 19.2.100.9 NMAC, 06/30/2016]

19.2.100.10 LANDS SUBJECT TO LEASE: All state lands presently open for oil and gas lease purposes, or lands which may become open in the future due to the cancellation or expiration of leases, or for any other reason, may be leased only by competitive bid after public notice in accordance with 19.2.100.25

NMAC hereof, except as provided in 19.2.100.12 NMAC.
[19.2.100.10 NMAC - Rp, 19.2.100.10 NMAC, 06/30/2016]

19.2.100.11 RESTRICTED DISTRICTS - LEASING:

A. All lands within a restricted district are classified as restricted lands and no tract of such lands shall be leased without being further categorized by the commissioner as either regular or premium based upon five factors: oil and gas trends; oil and gas traps; reservoir volume and recovery rating; lease bonus rating; and exploration and activity. A percentage of zero percent to twenty percent shall be allocated to each factor. In allocating percentages, the following procedures and criteria shall be used:

(1) Oil and gas trends, i.e., where depositional and structural conditions are favorable for accumulation of oil and gas, shall be determined as accurately as possible by the commissioner upon the advice of a qualified geologist using drilling patterns, geological society data, well records and logs, available seismic surface and subsurface geological information and structural maps;

(2) The likelihood of locating structural or stratographic oil and gas traps necessary for the accumulation of oil or gas in commercial quantities shall be determined by the commissioner upon the advice of a qualified geologist and a petroleum engineer based upon available seismic and geological data;

(3) Reservoir volume and recovery rating shall be determined considering the nearest known reservoir conditions which may be reasonably assumed to be applicable. Known porosity, permeability, water saturation, pressures and recovery factors shall be included when available and shall be utilized by a qualified petroleum engineer in recommending a reservoir volume and recovery rating;

(4) Lease bonus rating shall be based upon all available recent leasing data which may be reasonably assumed to be applicable. In the absence of sufficient recent leasing data, drilling patterns, geological trends, available seismic data and known or reasonably assumed structural features may be considered in determining the lease bonus rating; and

(5) Exploration and drilling activity shall be determined considering all available information which may include drilling patterns, approved drilling permits, progress reports of drilling wells, workover notices and other information which may be reasonably assumed to be applicable.

B. If the total percentage of all factors for a tract of land is less than seventy-five percent, the tract shall be categorized as regular. If the total percentage of all factors for a tract of land is seventy-five percent or more, the tract shall be categorized as premium.
[19.2.100.11 NMAC - Rp, 19.2.100.11 NMAC, 06/30/2016]

19.2.100.12 UNRESTRICTED DISTRICTS: Lands in an unrestricted district are ordinarily leased by offering them for sale at public auction to the highest and best bidder, as hereinafter explained and in accordance with 19.2.100.25 NMAC *et seq*. However, such lands may be leased on application without bidding if, in the opinion of the commissioner, the best interests of the trust will be served by so doing.
[19.2.100.12 NMAC - Rp, 19.2.100.12 NMAC, 06/30/2016]

19.2.100.13 TERM AND FORM OF LEASES: The commissioner shall issue oil and gas leases upon one of three statutory forms as follows, the form and royalty rate to be specified in the regular notice of public lease sale:

A. For lands classified as non-restricted lands under Section 19-10-3 NMSA 1978 and 19.2.100.9 NMAC, the commissioner shall use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978.

B. For lands classified as restricted lands and categorized as regular under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the commissioner, in his discretion, may use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978 or the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978.

C. For lands classified as restricted lands and categorized as premium under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the commissioner, in his discretion, may use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978, the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978 or the development lease form as set forth in Section 19-10-4.3 NMSA 1978; provided, that in using the development lease form for a tract receiving less than ninety total percentage points under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the royalty rate shall not exceed three-sixteenths.
[19.2.100.13 NMAC - Rp, 19.2.100.13 NMAC, 06/30/2016]

19.2.100.14 ANNUAL RENTAL - PRIMARY AND SECONDARY TERM: All leases issued by the commissioner shall provide for an annual rental to be paid by the lessee, whether or not a lease is producing oil or gas. The initial rental shall be fixed by the commissioner, but in no case shall the initial amount be less than twenty-five cents ($0.25) nor more than one dollar ($1.00) per acre. For ten-year leases, if production in paying quantities is obtained during the primary term of the first five years, then the initial rental rate shall be applicable as long as the lease is held by such production. If no production in paying quantities is obtained during the primary term and the lease enters the secondary term of five years, the rental for the remaining life of the lease shall be either double that of the primary term or the highest rate of rental prevailing in the area at the commencement of the secondary term, whichever is higher.
[19.2.100.14 NMAC - Rp, 19.2.100.14 NMAC, 06/30/2016]

19.2.100.15 MINIMUM CHARGE: The minimum initial charge for any lease shall be one hundred dollars ($100.00) or the minimum rental rate, whichever is greater, plus the application fee as set forth in the schedule of fees. Minimum rental rate is computed by multiplying the rental rate by the acreage in each advertised tract.
[19.2.100.15 NMAC - Rp, 19.2.100.15 NMAC, 06/30/2016]

19.2.100.16 LIMITATION OF ACREAGE: Unless otherwise approved and granted by the commissioner, no oil and gas lease shall be issued to cover more than the total number of acres of two sections of land to be wholly or partially included in the lease, regardless of the number of acres within those sections, provided that the lease may incorporate lands within more than two different sections of land.
[19.2.100.16 NMAC - Rp, 19.2.100.16 NMAC, 06/30/2016]

19.2.100.17 DIFFERENT RENTAL DISTRICTS - HIGHEST RENTAL PREVAILING: Where part of the lands in any lease are situated in one rental district and part thereof in another, or other districts, the lessee shall pay the rental prevailing in the district wherein

part of the lands affected are situated having the highest rental.
[19.2.100.17 NMAC - Rp, 19.2.100.17 NMAC, 06/30/2016]

19.2.100.18 [RESERVED]
[19.2.100.18 NMAC - Rp, 19.2.100.18, 06/30/2016]

19.2.100.19 CLEAR-LIST OF LANDS FROM UNITED STATES ESSENTIAL BEFORE ISSUANCE OF LEASE: Ordinarily, leases will not be issued for selected lands which have not been clear-listed or for any lands where the records of the state land office show the title of the state to be in question, controversy or dispute.
[19.2.100.19 NMAC - Rp, 19.2.100.19 NMAC, 06/30/2016]

19.2.100.20 LIMITATION TO NOT MORE THAN TWO PERSONS OR LEGAL ENTITIES - TRUST LIMITATIONS - WAIVERS: As a matter of administration and without affecting property rights in oil and gas leases, whenever more than two persons or legal entities apply for the issuance of an oil and gas lease, the commissioner shall grant the lease in the names of no more than two persons acting as attorneys-in-fact for all potential interest owners. In the case of a trust, the trust must be express and a copy of the creating document filed with the commissioner. If more than two trustees are named, a lease shall be granted in the names of no more than two trustees acting as attorneys-in-fact for all trustees. The limitations in this rule may be waived by the commissioner for good cause.
[19.2.100.20 NMAC - Rp, 19.2.100.20 NMAC, 06/30/2016]

19.2.100.21 LEASE WITHIN 25 MILES SQUARE - RIGHT OF COMMISSIONER: No one lease may be issued for lands which will not fall within the area of a square twenty-five miles long by twenty-five miles wide; however, this requirement may be waived by the commissioner in any proper case.
[19.2.100.21 NMAC - Rp, 19.2.100.21 NMAC, 06/30/2016]

19.2.100.22 LIMITATION TO NOT MORE THAN ONE BENEFICIARY INSTITUTION: Leases will not be issued covering lands belonging to more than one beneficiary institution.
[19.2.100.22 NMAC - Rp, 19.2.100.22 NMAC, 06/30/2016]

19.2.100.23 SURETY TO PROTECT SURFACE PURCHASER AND LESSEE - WAIVERS:

A. Before any lessee shall commence development or operations, including any and all prospecting activities upon the lands, such lessee or operator shall execute and file with the commissioner a good and sufficient bond or other surety, in an amount to be fixed by the commissioner but not less than ten thousand dollars ($10,000) in favor of the state of New Mexico for the benefit of the appropriate trust beneficiary and the state's contract purchasers, patentees and surface lessees, to secure payment to the extent allowed by law for such damage to their interests and tangible improvements upon such lands as may be suffered by reason of development, use and occupation of the lands by the oil and gas lessee.

B. A bond or other surety in the minimum amount of ten thousand dollars ($10,000) for each lease shall be deemed sufficient unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided, however, that if a lessee holds more than one oil and gas lease, a blanket bond or other surety in the amount of twenty thousand dollars ($20,000) will be acceptable unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided further, that if any purchaser, patentees or surface lessees shall file with the commissioner a waiver duly executed and acknowledged by him of his right to require such bond or other surety pursuant to Section 19-10-26 NMSA 1978 the development, occupation and use of the lands by the oil and gas lessee may in the discretion of the commissioner be permitted without said surety.

C. With the approval of the commissioner, in lieu of the single and blanket bonds for oil and gas lessees, a twenty-five thousand dollar ($25,000) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.
[19.2.100.23 NMAC - Rp, 19.2.100.23 NMAC, 06/30/2016]

19.2.100.24 [RESERVED]
[19.2.100.24 NMAC - Rp, 19.2.100.24, 06/30/2016]

19.2.100.25 COMPETITIVE BIDDING ON ALL LANDS WITHIN RESTRICTED DISTRICTS: No oil and gas leases upon any state lands within any restricted district will be issued except to the highest and best bidder after competitive offers by sealed bids or a public auction. Regularly advertised sales covering lands within restricted areas are held on the third Tuesday of each month, or on the next business day following where the third Tuesday falls on a legal holiday. Lands outside the restricted districts may also be offered on said third Tuesday when it is deemed advisable. The commissioner may, in his discretion, hold oil and gas lease sales, as aforesaid, by a combination of the methods set out above, and may also hold any sale at the county seat of the county where the lands or the greater part thereof are situated.
[19.2.100.25 NMAC - Rp, 19.2.100.25 NMAC, 06/30/2016]

19.2.100.26 NOTICE OF SALE: On or before ten days prior to the date of any such sale, notice of the same shall be posted in a conspicuous place in the state land office specifying the place, date and hour of the sale, and containing a description of the lands to be offered for lease, with a statement of the minimum bid which will be accepted.
[19.2.100.26 NMAC - Rp, 19.2.100.26 NMAC, 06/30/2016]

19.2.100.27 ACCEPTANCE OF BIDS: Up to the hour set for such sale, the commissioner will receive sealed bids for an oil and gas lease upon any tract of land described in the posted notice. All sealed bids submitted will be opened at the hour mentioned in the notice, and the lease will be awarded to the highest and best bidder, subject to the discretionary right of the commissioner to reject any bid.
[19.2.100.27 NMAC - Rp, 19.2.100.27 NMAC, 06/30/2016]

19.2.100.28 WHERE NO SEALED BIDS RECEIVED: Each of said tracts described in the notice on which no sealed bids are received may be offered for lease at public auction to the highest and best bidder, for cash, and lease will be awarded to such highest and best bidder if the offer shall be deemed acceptable. If no sealed bids or other bids are received for any tract described in the notice, such tract will be withdrawn until further notice at the discretion of the commissioner.
[19.2.100.28 NMAC - Rp, 19.2.100.28 NMAC, 06/30/2016]

19.2.100.29 APPLICATION UNDER OATH - FEES: Application for lease accompanying sealed bids shall be executed under oath by the applicant, or by his agent or attorney, duly authorized in writing, or by an officer or attorney-in-fact of a corporation, if application is by a corporation, and must be accompanied by a bid fee as set forth in the schedule of fees (applied toward application fee for successful bidder) and the amount of the first year's rental and bonus offered. Unless approval of the commissioner for use of non-certified exchange is obtained, payment shall be made in cash, money order or certified check on a solvent bank. The land office furnishes application blanks upon request.
[19.2.100.29 NMAC - Rp, 19.2.100.29 NMAC, 06/30/2016]

19.2.100.30 TIE BIDS: When two or more sealed highest and best bids received for the same tract of land are equal, the commissioner (if such highest and best bidders are present and cannot agree, by stipulation in writing, on how such tract shall be disposed of) shall call such equal highest and best bidders before him in the state land office (or if such sale is held in the county in which such lands are located, the person conducting such sale shall call such equal highest and best bidders before him) on the same day such bids are opened, and again offer such tracts at auction to such bidders only, and grant such lease to the then highest and best bidder. If such bidders are not present when such bids are opened, then the commissioner will notify such bidders to submit sealed proposals within ten days next following the date of the sale at which such bids were determined to be equal.
[19.2.100.30 NMAC - Rp, 19.2.100.30 NMAC, 06/30/2016]

19.2.100.31 RIGHT TO REJECT ANY AND ALL BIDS - WITHHOLDING FROM LEASING: The commissioner reserves the right to reject any and all bids not in conformity with law and the posted notice of sale, and to require higher rentals, impose additional restrictions and requirements and to withhold lands from leasing whenever, in his discretion, he shall deem it to be for the best interests of the trust to do so.
[19.2.100.31 NMAC - Rp, 19.2.100.31 NMAC, 06/30/2016]

19.2.100.32 TRANSFER AND ASSIGNMENT OF OIL AND GAS LEASES: Any transfer of an oil and gas lease or assignment is considered to convey an interest in real property and is therefore required to be formally executed by the proper parties and upon prescribed forms furnished by the state land office before such transfer or assignment shall be approved by the commissioner. Ordinarily, leases shall be transferred or assigned in the names of no more than two persons or legal entities as provided in 19.2.100.20 NMAC.
[19.2.100.32 NMAC - Rp, 19.2.100.32 NMAC, 06/30/2016]

19.2.100.33 JOINT TENANTS: Where an oil and gas lease is held in joint tenancy with the right of survivorship and a tenant dies, the lease shall be considered as belonging to the survivor or survivors and shall be so transferred upon presentation of a certified copy of the death certificate of the deceased tenant and payment of the proper rentals and fees.
[19.2.100.33 NMAC - Rp, 19.2.100.33 NMAC, 06/30/2016]

19.2.100.34 RESIDENT DECEDENT: To effect transfer of regular interest in state oil and gas leases of a deceased person resident in New Mexico, proper probate proceedings should be had in the county of residence of the deceased and certified copies of such proceedings, showing proper legal authority to transfer, should be filed with the commissioner.
[19.2.100.34 NMAC - Rp, 19.2.100.34 NMAC, 06/30/2016]

19.2.100.35 FOREIGN DECEDENT: In the event a decedent owner of a lease was resident of a state other than New Mexico, the estate must be probated in the state of such residence and ancillary proceedings conducted in the proper New Mexico court, and certified copies of such proceedings showing proper legal authority to transfer must be filed with the commissioner. Provided, however, where the decedent died on or after July 1, 1976, the lease may be transferred upon the foreign personal representative's compliance with the provisions of the New Mexico Probate Code.
[19.2.100.35 NMAC - Rp, 19.2.100.35 NMAC, 06/30/2016]

19.2.100.36 CO-OPERATIVE AGREEMENTS: Assignments of acreage committed to unit or co-operative agreements shall meet the requirements of Subsection G of 19.2.100.51 NMAC.
[19.2.100.36 NMAC - Rp, 19.2.100.36 NMAC, 06/30/2016]

19.2.100.37 [RESERVED]
[19.2.100.37 NMAC - Rp, 19.2.100.37, 06/30/2016]

19.2.100.38 LEASE CONTINUED BY PRODUCTION IN PAYING QUANTITIES: Except as otherwise provided in a co-operative agreement, production in paying quantities upon any part of the acreage included in any state oil and gas lease continues the lease upon every subdivision thereof (whether the same remains in the original lease or is assigned before or after production is had) subject, however, to the continued payment of rentals at the rate in effect at the time of production, and further subject to the implied covenants of development contained in any such lease.
[19.2.100.38 NMAC - Rp, 19.2.100.38 NMAC, 06/30/2016]

19.2.100.39 ASSIGNMENTS TO BE IN TRIPLICATE - ACKNOWLEDGMENT REQUIRED: Assignments of oil and gas leases shall be filed in triplicate in the office of the commissioner and must be executed and acknowledged in the manner provided for transfer of real estate in New Mexico. The original copy of each assignment will be recorded and filed as a public record in the state land office and one copy returned to the person entitled to same.
[19.2.100.39 NMAC - Rp, 19.2.100.39 NMAC, 06/30/2016]

19.2.100.40 ASSIGNMENTS TO BE RECORDED IN THE LAND OFFICE: Assignments must be filed with the commissioner for approval within one hundred days after having been signed by the assignor as shown upon the face of the instrument, accompanied by a filing fee as set forth in the schedule of

fees. Those presented after expiration of that time shall not be approved unless it can be shown to the satisfaction of the commissioner that extreme hardship will result to one or more of the parties and that no prejudice to the rights of the state will occur. An additional fee as set forth in the schedule of fees will be charged for each such assignment (or each group of assignments if the same basic facts are involved) to cover expense of investigation and records search.
[19.2.100.40 NMAC - Rp, 19.2.100.40 NMAC, 06/30/2016]

19.2.100.41 RESTRICTIONS: Assignments shall not be accepted nor approved by the commissioner:

A. for less than assignor's entire interest in any legal subdivision (except where transfer is by operation of law);

B. for less than a legal subdivision;

C. in the names of more than two persons or legal entities. (See 19.2.100.20 NMAC);

D. in the name of a trusteeship unless the trust is expressly set forth and not more than two persons are named as trustee;

E. after *lis pendens* is filed;

F. for any assignment containing any language other than the approved form;

G. where the assignment covers acreage included in more than one lease;

H. if the lease is not in good standing; or

I. unless the assignor covenants to the assignee and the commissioner that the assigned leasehold estate is valid and subsisting and that all rental and royalties due thereunder have been properly paid.

[19.2.100.41 NMAC - Rp, 19.2.100.41 NMAC, 06/30/2016]

19.2.100.42 APPROVAL AND FILING WITHHELD:

A. When assignments are accompanied by personal checks, the commissioner reserves the right to withhold approval of any and all assignments until checks are cleared and rentals on the lease from which assignments are made must be fully paid before assignments are subject to filing in the state land office.

B. When an assignment is presented to the commissioner for approval and the address of record of the assignee thereon is the same as that of the assignor, or when such address had not been established on the records of the state land office, or when the approved assignment is to be returned to the assignor, the commissioner reserves the right to withhold approval and filing of the assignment until the assignee has verified, under oath, the address and his acceptance of the assignment of the lease.

[19.2.100.42 NMAC - Rp, 19.2.100.42 NMAC, 06/30/2016]

19.2.100.43 EFFECT OF COMMISSIONER'S APPROVAL - MISCELLANEOUS INSTRUMENTS: Upon approval by the commissioner, the assignor shall be relieved from all obligations owing to the state with respect to the lands embraced in the assignment, and the state shall be likewise relieved from all obligations to the assignor as to the said lands, and the assignee shall succeed to all of the rights and privileges of the assignor and assumes all of the duties and obligations of the assignor as to the said lands. Provided, however, any record owner of any lease may enter into any contract for development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner, but nothing contained in these items shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments entered into by the lessee with other persons, neither the state of New Mexico nor the commissioner shall be a necessary party. All such contracts and other instruments may be filed either in the office of the commissioner or recorded in the office of the county clerk wherein the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instrument so filed. The fee for filing such miscellaneous instruments in the office of the commissioner shall be as set forth in the schedule of fees.
[19.2.100.43 NMAC - Rp, 19.2.100.43 NMAC, 06/30/2016]

19.2.100.44 [RESERVED]
[19.2.100.44 NMAC - Rp, 19.2.100.44 NMAC, 06/30/2016]

19.2.100.45 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY PURCHASE: Transfer of oil and gas interests by corporations shall be formally executed, as in the case of transfer of real estate in New Mexico, in conformity with statute and by payment of proper fees as provided in this rule.
[19.2.100.45 NMAC - Rp, 19.2.100.45 NMAC, 06/30/2016]

19.2.100.46 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY CONSOLIDATION: In cases where corporations consolidate, transfer of oil and gas interests to the newly created corporation shall be accomplished pursuant to 19.2.100.39 through 19.2.100.45 NMAC.
[19.2.100.46 NMAC - Rp, 19.2.100.46 NMAC, 06/30/2016]

19.2.100.47 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY MERGER: In cases where two or more corporations merge, transfer of oil and gas interests to the surviving corporation shall be accomplished by filing with the commissioner a copy of the merger agreement or certificate of merger. Thereafter, the oil and gas lease shall be transferred on the books of the land office in the name of the surviving corporation.
[19.2.100.47 NMAC - Rp, 19.2.100.47 NMAC, 06/30/2016]

19.2.100.48 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY REORGANIZATION: Where the assets of any corporation are taken over under court order by a corporation, the procedure will follow the provisions of the court order, which should direct separate assignments to be executed and filed for approval in the state land office.
[19.2.100.48 NMAC - Rp, 19.2.100.48 NMAC, 06/30/2016]

19.2.100.49 NOTICE OF PENDENCY OF SUIT FEES - EFFECT ON THE ABILITY TO ASSIGN LEASE: At the time of filing of any suit affecting an oil and gas lease or the interest of any person therein, or at any time thereafter before judgment, the plaintiff may file with the commissioner a notice of pendency of suit containing the names of the parties thereto, the object of the action and a description of the lands affected, and upon filing of such notice and payment of the required fees as set forth in the schedule of fees, the land

affected by such suit will not be subject to assignment or other disposition until such suit shall be finally determined and disposed of.
[19.2.100.49 NMAC - Rp, 19.2.100.49 NMAC, 06/30/2016]

19.2.100.50 CANCELLATION FOR DEFAULT: The commissioner may cancel any lease or assignment thereof for default upon giving the lessee or assignee notice by registered mail (certified mail if the lease so provides) of his intention to cancel, specifying the default and, unless the lessee or assignee remedies the default within thirty days of the mailing date, the commissioner may cancel the lease or assignment. Proof of receipt of notice is not necessary or required before a valid cancellation may be entered.
[19.2.100.50 NMAC - Rp, 19.2.100.50 NMAC, 06/30/2016]

19.2.100.51 CO-OPERATIVE AND UNIT AGREEMENTS:

A. Purpose - consent: The commissioner may consent to and approve agreements made by lessees of state lands for any of the purposes enumerated in Section 19-10-45 NMSA 1978.

B. Application - requisites of agreements: Formal application shall be filed with the commissioner for approval of a co-operative or unit agreement at least twenty days in advance of the New Mexico oil conservation division's hearing date. A filing fee as set forth in the schedule of fees shall be paid for each section or fractional part thereof, whether the acreage is federal, state or privately owned. A unit agreement presented must have a unique unit name that will identify the agreement for so long as the agreement remains in effect and only under extraordinary circumstances will a unit name change be allowed after initial approval is granted. Applications for approval shall contain a statement of facts showing:

(1) that such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy;

(2) that under the proposed unit operation, the state of New Mexico will receive its fair share of the recoverable oil and gas in place under its lands in the proposed unit area;

(3) that each beneficiary institution of the state of New Mexico will receive its fair and equitable share of the recoverable oil and gas under its lands within the unit area; and

(4) that such unit agreement is in other respects for the best interest of the trust.

C. Information to be furnished:

(1) Complete geological and engineering data shall be presented with the application and the information offered for the commissioner's action must be in clear and understandable form. Such data shall be kept confidential by the commissioner pursuant to Section 19-1-2.1 NMSA 1978 for a period of six months or until the unit agreement is approved, whichever first occurs. Then such data will be made a permanent part of the records and open for public inspection. If for any reason such proposed agreement is not approved, then at the request of the applicant, the data shall be returned to the applicant.

(2) Use of fresh water: The use of fresh water in waterflood units is discouraged in the cases where salt water is practical. If an operator plans to use fresh water in a proposed unit, the following specific information should also be provided:

(a) laboratory analyses of water compatibility tests (fresh vs. salt water);

(b) reservoir analyses for swelling clays and soluble salts;

(c) estimate of monthly make-up water required for operations; and

(d) location and depth of area salt water wells or quantities of produced water available for injection.

D. Decision postponed: In any matter respecting co-operative and unit agreements, the commissioner may postpone his decision pending action by the oil conservation division and may use any information obtained by his own investigators, or obtained by the oil conservation division to enable him to act properly on the matter. The applicant shall deposit with the commissioner a sum of money estimated to be sufficient to meet the actual and necessary expenses of any investigation or inspection by representatives of the state land office.

E. Leases conformed: When any co-operative or unit agreement has been approved by the commissioner and executed by the lessee, the terms and provisions of the lease, so far as they apply to lands within the unit area, are automatically amended to conform to the terms and provisions of the co-operative agreement; otherwise, said terms and provisions shall remain in full force and effect.

F. Posting to tract books: In every case where a co-operative unit agreement is finally approved by the commissioner such agreement and the application therefor shall be entered upon the tract books of the state land office, filed and recorded, together with any order respecting the same issued by the New Mexico oil conservation division; any modification or dissolution of such co-operative or unit agreement shall be likewise entered and filed. The fees therefor shall be as set forth in the schedule of fees.

G. Assignments: No assignment of acreage under lease within any unitized or co-operative area will be approved by the commissioner unless the assignment is subject to the provisions of the co-operative or unit agreement covering the area within which the acreage sought to be assigned lies, or unless the commissioner and all parties to the co-operative agreement agree, in writing, that such acreage is not needed for proper co-operative operations.

H. Form of agreement: No specific forms for the various types of co-operative or unit operating agreements are required; however, sample forms of agreements now in operation will be furnished for guidance upon request, if available. Agreements submitted for approval must be submitted in duplicate. At least one copy must contain original signatures, which copy, after approval of the agreement, will be retained by the commissioner as the approved copy.
[19.2.100.51 NMAC - Rp, 19.2.100.51 NMAC, 06/30/2016]

19.2.100.52 FORCED POOLING - OIL CONSERVATION DIVISION ORDER:

A. The record owner or operator of all oil and gas leases covering the state owned lands forced pooled by order of the New Mexico oil conservation division, either under Section 70-2-17 NMSA 1978 (gas proration unit) or under Section 70-7-1 NMSA 1978 (statutory unitization act for secondary recovery), shall file with the commissioner the following information:

(1) one copy of application for hearing for forced pooling at least ten days prior to date set for hearing;

(2) state lease number, record owner and legal description of all state lands forced pooled;

(3) oil conservation division order number and

date;

(4) legal description and type (federal, fee, or Indian) of all lands included in forced pooling order;

(5) location, formation, and depth of well;

(6) oil conservation division approved copies of forms numbered C-101, C-102, C-103, C-104 and C-105. These are to be filed at same time as filed with oil conservation division;

(7) date production commenced; and

(8) a copy of the agreement for unit operations involving state lands approved in writing by the oil conservation division, and signed by parties required by the agreement to initially pay at least seventy-five percent of unit operating costs, and by owners of at least seventy-five percent of the non-cost bearing interests such as royalties, overriding royalties and production payments.

B. This rule has no application to a situation wherein all parties have voluntarily executed a communitization agreement covering all lands in a proration unit or a secondary recovery unit and such agreement has been approved by the commissioner.

[19.2.100.52 NMAC - Rp, 19.2.100.52 NMAC, 06/30/2016]

19.2.100.53 COMMINGLING AND OFF-LEASE STORAGE OF OIL AND GAS ON STATE TRUST LANDS:

A. Commingling prohibited: Unless approved pursuant to Subsection B of 19.2.100.53 NMAC, the commingling, confusion or the intercommunication of oil or gas production from any state well with any production from any other well, whether state or non-state, by the use of common tankage facilities or central delivery points, is strictly prohibited.

B. Commingling allowed - off-lease storage:

(1) Commingling of oil and gas production, including downhole commingling, if properly metered or allocated and accounted for, may be permitted within the discretion of the commissioner only after his receipt of a written application containing the information specified in Subsection C of 19.2.100.53 NMAC and an application fee as set forth in the schedule of fees.

(2) Off-lease storage of production may be permitted if properly metered or allocated and accounted for, within the discretion of the commissioner only after his receipt of a written application containing the information specified in Subsection C of 19.2.100.53 NMAC and an application fee as set forth in the schedule of fees.

C. Application for permission to commingle or off-lease store production. Applications for permission to commingle or off-lease store production shall be directed to the commissioner and shall include:

(1) formal application stating the type of permission desired and the reasons therefor, accompanied by an application fee as set forth in the schedule of fees;

(2) plat showing the location of leases, wells, flow lines, metering facilities and common tankage. All plats and diagrams should differentiate between surface and underground pipe;

(3) a list of the involved leases arranged by their state land office lease number, their legal description and including state beneficiaries;

(4) a designation of the pool from which each well produces;

(5) an economic analysis of proposed operation showing profit or loss to the state of New Mexico;

(6) schematic diagram of entire system from production manifold to pipeline connection showing position of all components of flow stream;

(7) description of the operating sequence explaining the complete operation;

(8) the applicant's proposal for allocating or metering production so that all production is properly accounted for at the well; and

(9) any other pertinent data that will assist the commissioner in deciding upon the application.

[19.2.100.53 NMAC - Rp, 19.2.100.53 NMAC, 06/30/2016]

19.2.100.54 ACREAGE TAKEN FOR MILITARY PURPOSES - WAIVER OF DEVELOPMENT REQUIREMENTS:

A. Where the use of lands embraced in any state oil and gas lease is taken by the United States government for military purposes, under such circumstances as will prevent drilling and development by the lessee, the commissioner may, on application by the lessee, waive compliance with the drilling and development requirements of any such lease during the period of such use and for six months thereafter, but in no event for more than five years from the beginning of such use by the United States. Where the use of only part of the lands embraced in such oil and gas lease is taken, any waiver shall extend only to the lands the use of which is so taken.

B. In all cases, the lessee shall continue to pay rentals at the rate which is in effect at the time of taking, and failure to so pay rentals subjects the lease to the regular cancellation procedure.

C. Waivers, when executed and approved, relate back to the date of the notice of taking by the United States.

[19.2.100.54 NMAC - Rp, 19.2.100.54 NMAC, 06/30/2016]

19.2.100.55 STIPULATION TO CURRENT LEASE PROVISIONS:

A. The owner of any oil and gas lease issued by the commissioner which does not contain all of the provisions of the current applicable five- or ten-year lease form or which does not include helium gas within its terms may file an application to include all the provisions of such applicable lease form and to include helium gas, provided the lease has been maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations.

B. The application for stipulation shall be made in duplicate and on a form prescribed and furnished by the commissioner and shall be filed in duplicate, accompanied by the fee as set forth in the schedule of fees.

C. Upon filing of such an application and determination by the commissioner that the application conforms to the governing statutes and this rule, the commissioner shall execute a stipulation and thereupon the provisions of the current applicable five- or ten-year lease form and inclusion of helium gas will be part of said existing lease with the like effect as if originally incorporated therein; provided, however, that no such stipulation shall be effective or binding on any of the parties until each and every working interest owner and record owner of the original lease or approved assignment thereof has signed the stipulation.

D. One executed copy of the stipulation will be attached to the original lease in the files of the commissioner. The remaining copy will be forwarded to the applicant with the receipt of the state land office evidencing payment of the filing fee.

[19.2.100.55 NMAC - Rp, 19.2.100.55

NMAC, 06/30/2016]

19.2.100.56 CONTINUATION OF LEASE AFTER EXPIRATION OF TERM:

A. The payment in advance of rentals for the lease year commencing at the expiration of the secondary term in a ten-year lease or at the expiration of the five-year term in a five-year lease shall be a prerequisite for relying upon current bona fide drilling or reworking operations to extend the lease beyond such term. There will be no refund by the state land office of any sum received by it as rental under the terms of any oil and gas lease issued by the commissioner, whether in the primary or secondary term or subsequent to the expiration thereof.

B. The owner of any oil and gas lease proposing to conduct drilling or reworking operations and proposing to rely upon such operations to extend the lease beyond the fixed term in accordance with the provisions thereof shall file in the oil and gas division of the state land office, prior to the expiration of the secondary term of a ten-year lease or the primary term of a five-year lease, a statement in writing of the location of the proposed well, the drilling or reworking of which will be relied upon to continue said lease in effect, the depth to which it is proposed to drill said well, the reworking operations which, if any, are contemplated and the name and address of the drilling contractor or other persons who will conduct such operations. The approval by the commissioner of the operations so proposed will normally be evidenced by the signature of the commissioner on a copy of such statement, but any such proposed operation, about which a statement has been filed in accordance with this item, shall be conclusively presumed to have been approved by the commissioner prior to the expiration of the lease to which it relates, unless the commissioner shall, prior to the expiration of said lease, advise the applicant, in writing, of his disapproval and the reasons therefor.

C. The owner of an oil and gas lease who, subsequent to the expiration of the secondary term in a ten-year lease or the primary term in a five-year lease, is engaged in drilling or reworking operations on lands embraced therein, and who proposes to rely upon such operations as extending said lease in accordance with the provisions thereof shall file a report of the status of such operations for each thirty day period during which they are continued. It shall contain a statement of the depth of said well, the status of any reworking operations at the end of said thirty day period, a general statement of the drilling or reworking operations that have been accomplished during the preceding thirty days, and the fact, if it is a fact, that such operations are bona fide in progress and will be continued. Status reports filed in the office of the commissioner within fifteen days after the close of such a thirty day period shall meet the requirements of the lease. If operations have ceased during any period covered by a status report, such report shall state the date of cessation and the reason therefore, and the date of resumption of operations, if any.

D. Each application and stipulation filed under Subsection B of 19.2.100.56 NMAC shall be signed by the lease owner, if an individual; and if a partnership or corporation, by a responsible official thereof. The application shall be verified under oath and the stipulation shall be acknowledged. Each statement of operations and status report filed under this rule shall be signed by the lease owner, if an individual, or by a responsible official, if a partnership or corporation, and shall be verified by affidavit of the signer.

E. Operations conducted by any person under the terms of an oil and gas lease issued by the commissioner, including all operations conducted pursuant to this rule shall be subject to inspection at all reasonable times by representatives of the state land office. [19.2.100.56 NMAC - Rp, 19.2.100.56 NMAC, 06/30/2016]

19.2.100.57 CALCULATING AND REMITTING OIL AND GAS ROYALTIES:

A. Payment of royalties - appeal to commissioner: Payment shall be made in the time and in the manner described below:

(1) Each lessee whose average monthly state royalty payment for the twelve months ending with the latest March 31, was twenty-five thousand dollars ($25,000) or less shall pay royalties on or before the twenty-fifth day of the second month following the month for which royalties are due. Unless the remitter elects to pay royalties by means of electronic funds transfer, payment shall be made by check payable to the commissioner of public lands. Payment shall be mailed or delivered to the taxation and revenue department along with any paper report. If the remitter elects to pay royalties by means of electronic funds transfer, payment shall be made in accordance with Option 1 or Option 2 in Paragraph (4) of Subsection A of 19.2.100.57 NMAC and shall conform with the special instructions on electronic transmission of state royalty payments for separate oil and gas royalty reporting in the ONGARD system.

(2) Unless an election is timely made to pay royalties pursuant to Paragraph (3) of this Subsection, each lessee whose average monthly state royalty payment for the twelve months ending with the latest March 31, was greater than twenty-five thousand dollars ($25,000) shall pay royalties on or before the twentieth day of the month following the month for which the royalties are due. Payment shall be made in accordance with Paragraph (4) of this Subsection.

(3) In lieu of paying royalties within the time specified by Paragraph (2) of this Subsection, a lessee may submit to the lessor, in writing, an election to pay royalties within the time frames specified for state severance taxes. Royalties paid by any lessee making the election under this Paragraph shall be due on the twenty-fifth day of the second month following the month for which the royalties are due. However, on or before the twenty-fifth day of the month in which the election is made and on or before the twenty-fifth day of each month thereafter, the lessee shall also make an advance royalty payment. Beginning with royalties initially paid under this Paragraph and each month thereafter, the previous month's advance royalty payment shall be taken as a credit. The amount of the advance royalty payment shall be adjusted by July 25 of each year and shall equal the average monthly royalty paid during the twelve months ending with the latest March 31. Payment shall be made in accordance with Paragraph (4) of this Subsection.

(4) Lessees remitting royalties under the provisions of Paragraphs (2) and (3) of this Subsection shall make payments in accordance with one of the four options listed below. For payment to be considered timely, the state land office must have access to funds on the due date for royalty remittances. Payment shall be made in accordance with the instructions on special payment procedures. Such payment can only be utilized with the separate oil and gas royalty reporting in the new ONGARD system.

(a) Option 1: automated clearinghouse (ACH) deposit.

(b)

Option 2: fedwire transfer.

(c) Option 3: check drawn on any New Mexico financial institution. Payment shall be made in the manner prescribed by the provisions of this rule.

(d) Option 4: check drawn on any domestic non-New Mexico financial institution. Payment shall be made in the manner prescribed by the provisions of this rule.

(e) "Financial institution" means any state- or nationally-chartered federally-insured financial institution.

(5) Irrespective of whether a lessee pays royalties pursuant to Paragraph (1), (2) or (3) of this Subsection, all royalty information shall be reported on forms prescribed by the lessor and shall be submitted on or before the twenty-fifth day of the second month following the month for which royalties are due. The lessee shall indicate in the space provided if payment accompanies the report or if payment is made by separate check, fedwire or ACH transfer.

B. Effective date: The provisions of 19.2.100.57 NMAC shall be used to calculate, report and remit royalties for oil and gas produced on or after January 1, 1990.

[19.2.100.57 NMAC - Rp, 19.2.100.57 NMAC, 06/30/2016]

19.2.100.58 OCD REPORTS: The producer or lessee of producing state lands shall file in the New Mexico state land office, Santa Fe, New Mexico, at the time of filing with the New Mexico oil conservation division (OCD), reports labeled C-101 through C-105.

[19.2.100.58 NMAC - Rp, 19.2.100.58 NMAC, 06/30/2016]

19.2.100.59 WAIVER OF DEVELOPMENT IN POTASH OR OTHER MINERAL AREAS: Application for waiver of compliance with exploratory drilling development or production requirements of a lease, or to extend the term thereof, where exploration and development operations of the oil and gas lease are inconsistent with the exploration and development operations of a state mineral lease, and where waste will occur, must be made in writing and accompanied by a filing and approval fee as set forth in the schedule of fees. Such applications must be filed in the state land office at least thirty days before expiration date of the oil and gas lease. No waivers or extension shall be granted by the commissioner for more than five years. Ordinarily, waivers will be granted by the commissioner only as to the legal subdivisions upon which the conflict exists.

[19.2.100.59 NMAC - Rp, 19.2.100.59 NMAC, 06/30/2016]

19.2.100.60 WATER WELLS:

A. Water wells drilled on all state oil and gas leases for temporary use on the lease and for purposes directly connected with operations shall be in compliance with the provisions of Sections 72-12-1 through 72-12-21 NMSA 1978, as amended, with the regulations of the state engineer, and with 19.2.12 NMAC.

B. Within thirty days after completion of said well, the lessee shall furnish in writing to the commissioner a report containing the following information:

(1) location of well; and

(2) depth, log and casing record production data.

[19.2.100.60 NMAC - Rp, 19.2.100.60 NMAC, 06/30/2016]

19.2.100.61 SALT WATER DISPOSAL: Lessees are expected to comply with all lawful rules of the New Mexico oil conservation division pertaining to prevention of waste, which includes disposal of produced salt water or brine. If state lands are needed for a salt water disposal operation, then application for a salt water disposal easement site shall be made to the "oil and gas division" or application for a business lease shall be made to the "land surface division" of the state land office, depending upon whether underground or surface disposal, respectively, is desired. Ordinarily, water produced on lease may be disposed of on lease without the commissioner's permission if the disposal operation otherwise meets the approval of the oil conservation division and is otherwise reasonable and accepted practice in the industry.

[19.2.100.61 NMAC - Rp, 19.2.100.61 NMAC, 06/30/2016]

[Applications for a salt water disposal easement or a business lease shall be made to the commercial division of the state land office.]

19.2.100.62 ROYALTY PURCHASE - PREFERENCE RIGHT: Requests made by petroleum refineries within the state to the commissioner to purchase state royalty oil as a preference right under the provisions of Sections 19-10-64 through 19-10-70 NMSA 1978 shall be accompanied by an order or ruling of the New Mexico oil conservation division determining that the applicant is qualified and otherwise entitled to such preference. Requests to purchase state royalty oil on a bid basis may be made directly to the commissioner in letter form. In either case, the applicant must identify the wells from which he desires to purchase the royalty oil.

[19.2.100.62 NMAC - Rp, 19.2.100.62 NMAC, 06/30/2016]

19.2.100.63 RESERVATION OF RIGHT TO PURCHASE PRODUCTION: The state reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the oil and gas that may be produced from the lands embraced in all leases issued on or after June 11, 1973.

[19.2.100.63 NMAC - Rp, 19.2.100.63 NMAC, 06/30/2016]

19.2.100.64 APPEALS FROM DECISION OF THE COMMISSIONER: Any party aggrieved by any ruling or decision of the commissioner affecting such party's interest in any oil and gas lease may appeal to the appropriate district court within sixty days after such ruling or decision is rendered pursuant to Section 19-10-23 NMSA 1978.

[19.2.100.64 NMAC - Rp, 19.2.100.64 NMAC, 06/30/2016]

19.2.100.65 [RESERVED]

[19.2.100.65 NMAC - Rn, SLO Rule 1, Section 1.067, 12/13/2002; Repealed, 06/30/2016]

19.2.100.66 SURFACE OPERATIONS ON STATE OIL AND GAS LEASES:

A. Purpose and application of 19.2.100.66 NMAC: The purpose of 19.2.100.66 NMAC is to establish minimum procedures for protecting the surface affected by operation and development activities on state oil and gas leases. 19.2.100.66 NMAC applies to all operations conducted after its effective date on state oil and gas leases, the surface of which is held in trust by the commissioner of public lands.

B. Operation Requirements:

(1) Surface trash and debris: All operators shall remove all surface trash and debris caused by their operations from the lease and shall keep such premises free and clear of such trash and debris. As used in

19.2.100.66 NMAC, "surface trash and debris" means all nonoperational and nonessential equipment resulting from the drilling and producing operation of oil and gas leases and includes, but is not limited to, garbage, rubbish, junk or scrap.

(2) Pits:

(a)

Pits shall not be located in, or hazardously near, water drainages. Pits shall be constructed to prevent contamination of the surface and the subsurface by seepage or flowage; including, if necessary, lining with impermeable materials as provided by rules and regulations of the oil conservation division. Under no circumstances shall pits be used for disposal, dumping or storage of off-lease fluids. Subject to all applicable state and federal laws, and if the operator agrees to accept all liability therefore; garbage, junk, waste or other inorganic debris may be disposed of in the caliche or burn pit located on the side of the reserve pit when the reserve pit is reclaimed.

(b)

All pits shall be fenced. The type of fence used must be specific to the class of livestock in the area. Fencing shall remain in place for the life of the pit and be maintained to keep livestock out. All fences shall be braced or constructed in such a manner as to keep wires tight with no sagging between posts. State land office personnel will inspect and, if necessary, notify operators or lessees of necessary repairs or requirements for maintaining the required condition of all fences associated with leases. Fencing shall comply with all other state and federal requirements.

(c)

If a pit is lined, the liner shall be installed and maintained to prevent ingestion by livestock and wildlife.

(d)

Drilling fluids and drill cuttings shall be disposed of in a manner to prevent contamination to the surface. Rules of the oil conservation division which relate to the disposal of drilling fluids and drill cuttings shall be complied with.

(3) Site Development:

(a)

All access roads shall be built, maintained and reclaimed in accordance with 19.2.20 NMAC.

(b)

All trees and wood over three inches in diameter removed for site preparation shall be disposed of on site as determined by the state land office.

(c)

Where required by the federal Clean Water Act, other applicable federal or state law, or regulations promulgated pursuant thereto, production and storage tanks shall be surrounded with an earthen berm in compliance with such applicable law and regulations. In addition, such a berm may be required by the state land office if a particular tank has a history of repeated leaks.

(4) Spills:

(a)

All new spills shall be treated and cleaned up immediately. All surface affected by such spills and leaks shall be reclaimed. Reclamation of the area involved shall be implemented in consultation with the state land office.

(b)

All spills shall be reported in accordance with the regulations of the oil conservation division.

(5) Pipelines:

If practicable, lines placed on top of the surface shall be placed to take advantage of existing roads or alongside other lines already on top of the ground. If regular maintenance and inspection by vehicle is necessary, and a permanent road required, the road shall be constructed and maintained in accordance with 19.2.20 NMAC. All other traffic shall be kept to a minimum.

C. Closeout and operation plan:

(1) A reclamation or operation plan may be submitted to the state land office for review. If approved, the plan shall substitute for the reclamation and operation requirements of 19.2.100.66 NMAC and 19.2.100.67 NMAC.

(2) The plan shall consist of reclamation and operation specifics for compliance with the regulations concerning reclamation and operations, with an additional section that sets out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, spills, leaks, cleanup and revegetation.

D. Review and inspection:

(1) State land office personnel or oil conservation division personnel may, from time to time, recommend actions necessary to comply with reasonable use of the surface and prudent operator standards.

(2) These recommendations shall be made either to state land office administrators or the commissioner's office, or to the lessee directly.

E. Exemptions and appeal procedure:

(1) The commissioner, or his qualified designated representative, may grant an exemption to any or all of the requirements of this rule when a lessee provides a state land office approved reclamation or operation plan, or demonstrates that compliance would be impracticable or has occurred naturally. Any such exemption granted shall be in writing addressed to the lessee or operator requesting the exemption.

(2)

Any lessee or operator aggrieved or adversely affected by a determination or interpretation of the state land office under 19.2.100.66 NMAC may, within sixty days of the receipt of such determination or interpretation, request a hearing before the commissioner of public lands. Within thirty days after receiving such a request, the commissioner shall convene a hearing at which the lessee or operator and the commissioner's staff may present evidence. Within fifteen days of the hearing, the commissioner shall enter his decision on the matter. Any decision of the commissioner may be appealed pursuant to Section 19-10-23 NMSA 1978.

[19.2.100.66 NMAC - Rp, 19.2.100.66 NMAC, 06/30/2016]

19.2.100.67 SURFACE RECLAMATION ON STATE OIL AND GAS LEASES:

A. Purpose and application of 19.2.100.67 NMAC:

(1) The purpose of 19.2.100.67 NMAC is to establish minimum procedures to follow in reclaiming surface disturbances resulting from development and production on state oil and gas leases, the surface of which is held in trust by the commissioner of public lands.

(2) 19.2.100.67 NMAC applies to areas disturbed by operations conducted under all existing and future leases. However, current lessees will not be held responsible for reclaiming areas disturbed under a lease which has previously expired or been terminated and for which the current lessee is not a successor-in-interest. Also, a prudent operator standard will be applied to the reclamation of other conditions existing on the effective date of this rule. In this regard, lessees are expected to comply with all requirements concerning removal of debris and improvements; however, specific requirements relating to ripping and reseeding will be developed by consultation and planning between the lessee and the state land office, using

accepted industry standards such as those established by the bureau of land management.

B. Definitions, as used in 19.2.100.67 NMAC:

(1) "temporary abandonment" occurs if a well is no longer usable for beneficial purposes; has been continuously inactive for more than one year; and has been approved for temporary abandonment by the oil conservation division.

(2) "permanent abandonment" occurs if a well is no longer usable for beneficial purposes; has been continuously inactive for more than one year; and has not been approved for temporary abandonment by the oil conservation division.

C. Reclamation requirements:

(1) Surface sites and off-lease storage areas:

(a) Surface sites and off-lease storage areas, upon temporary or permanent abandonment, shall be cleared of junk and debris and, if necessary, be bermed or water-barred in order to stabilize the site and prevent erosion. Within one year of permanent abandonment, the sites and areas shall be ripped through to the underlying material and reseeded.

(b) Where available, topsoil removed from surface sites shall be stored for use in future reclamation of the site. Pads, within one year of permanent abandonment, shall have all caliche ripped through to the underlying material, any remaining stored topsoil replaced and the site reseeded.

(2) Roads: Roads shall be left in place only if authorized by the state land office. If any road is not needed, then, within one year of permanent abandonment, it shall be ripped, reseeded, bermed (closed) at the entrance, and water bars shall be constructed as directed or approved by the state land office. 19.2.20 NMAC shall be followed for specifics relating to road construction, maintenance and reclamation.

(3) Spills and leaks: Within one year of permanent abandonment, all surface affected by spills and leaks shall be reclaimed. Reclamation of the area involved shall be implemented in consultation with the state land office.

(4) Pits (operating/drilling and other):

(a) All pits, within one year of permanent abandonment or within a reasonable time of nonuse, shall be dried and leveled to restore as much of the original contour as is practical to minimize erosion. The pits shall be reseeded as required by this Section.

(b) All lining materials (plastics or otherwise) shall be removed from the surrounding area, cut off and permanently buried below the surface or removed from the area.

(5) Pipelines:

(a) Buried pipelines may be left in place and the surface ripped, water-barred and reseeded according to the specifics of the site.

(b) Within one year of permanent abandonment, surface lines shall be removed and the surface reclaimed as specified in Subparagraph (a) of Paragraph (5) of Subsection C of 19.2.100.67 NMAC.

(6) Debris: All oil and gas lease related surface trash and debris shall be removed upon temporary or permanent abandonment or disposed of in the manner permitted in 19.2.100.66 NMAC. As used in 19.2.100.67 NMAC, "surface trash and debris" means all nonoperational and nonessential equipment resulting from the drilling and producing operation of oil and gas leases and includes, but is not limited to, garbage, rubbish, junk or scrap.

(7) Revegetation:

(a) For all reseeding required by this Section, the state land office will approve seeding rates and seed mixtures, or approve site-specific recommendations. When possible, the state land office will recommend such approved rates and mixtures, but will not require seed varieties in its mixtures which are not in common use in the area.

(b) All required reseeding shall be planned and completed with a goal of revegetation consistent with local natural vegetation density. After a failed attempt to revegetate an area, a second reseeding may be required by the state land office, but in no event shall such second reseeding be required more than two years after the initial one.

(8) Lessee's Improvements: The lessee or operator shall remove all improvements placed or erected on the premises within sixty days after the expiration or termination of an oil and gas lease. Any improvements remaining at the end of such sixty-day period shall be deemed abandoned for the purposes of Sections 19-7-14 and 19-10-28 NMSA 1978 and no payments shall be due for such remaining improvements pursuant to those Sections.

D. Release upon permanent abandonment and grant of access: Upon state land office approval and release, a lessee's reclamation responsibilities are terminated. The state land office shall issue a reclamation permit for access to complete reclamation after expiration or termination of an oil and gas lease. The reclamation permit shall be a standard form developed after consultation with interested industry groups.

E. Closeout and operation plan:

(1) A reclamation or operation plan may be submitted to the state land office for review. If approved, the plan shall substitute for the reclamation and operation requirements of this Section and 19.2.100.66 NMAC.

(2) The plan shall consist of reclamation and operation specifics for compliance with the regulations concerning reclamation and operations, with an additional section that sets out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, spills, leaks, cleanup and reseeding.

F. Exemptions and appeal procedure:

(1) The commissioner, or his qualified designated representative, may grant an exemption to any or all of the requirements of 19.2.100.67 NMAC when a lessee provides a state land office approved reclamation or operation plan, or demonstrates that compliance would be impracticable or has occurred naturally. Any such exemption granted shall be in writing addressed to the lessee or operator requesting the exemption.

(2) Any lessee or operator aggrieved or adversely affected by a determination or interpretation of the state land office under 19.2.100.67 NMAC may, within sixty days of the receipt of such determination or interpretation, request a hearing before the commissioner of public lands. Within thirty days after receiving such a request, the commissioner shall convene a hearing at which the lessee or operator and the commissioner's staff may present evidence. Within fifteen days of the hearing, the commissioner shall enter his decision on the matter. Any decision of the commissioner may be appealed pursuant to Section 19-10-23 NMSA

1978.

G. Temporary provision - phase-in: Lessees or operators of leases which contain conditions existing on the effective date of 19.2.100.67 NMAC, otherwise requiring immediate reclamation under 19.2.100.67 NMAC, shall have five years to complete reclamation of such conditions if they demonstrate steady progress toward such completion pursuant to an approved reclamation plan or the requirements of 19.2.100.67 NMAC.

[19.2.100.67 NMAC - Rp, 19.2.100.67 NMAC, 06/30/2016]

19.2.100.68 AMENDMENT OF LEASE TO LOWER ROYALTY RATE FOR OIL WELLS UNDER CERTAIN CONDITIONS:

A. Purpose - eligibility: The records owner of an oil and gas lease issued by the commissioner of public lands whose lease is maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations, may apply to the commissioner for an amendment to the lease for the purpose of changing the royalty rate on oil produced from a specified oil well. Any well that produces on a lease basis or as a communitized or unitized property is eligible for the lower rate. Multiple wells from the same lease, communitization or unit may be submitted for approval under one application. Communitized or unit wells must qualify individually for the lower royalty rate.

B. Application, requirements, and information to be furnished. An application for a change in royalty rate shall be on a form prescribed by the commissioner and shall be accompanied by the application fee as set forth in the schedule of fees. For each oil well, the application shall:

(1) show that the oil well has produced oil attributable to a communitization, unit or lease premises, and:

(a) if the production is from formations shallower than 5,000 feet, has produced less than an average of three barrels of oil per day during the preceding twelve months and has not averaged over five barrels per day for any month during the preceding twelve months; or

(b) if the production is from formations 5,000 feet deep or deeper, has produced less than an average of six barrels of oil per day during the preceding 12 months and has not averaged over 10 barrels of oil per day for any month during the preceding twelve months; and

(2) include a statement that to the best of the applicant's knowledge and experience the well is not capable of sustained production limits specified in Paragraph (1) of this Subsection.

(3) provide data and describe efforts to:

(a) negotiate lower rates paid to other royalty owners and overriding royalty owners in the oil well; and

(b) minimize the costs of operating the well; and

(4) include any other fact which may justify a lower royalty rate.

C. Commissioners approval. Upon receipt of an application, the commissioner shall review the information submitted as well as other, independent information obtained by the commissioner and shall agree to amend the lease to a lower royalty rate for oil produced from the oil well if, in his sole discretion, he finds that:

(1) the operator has taken reasonable steps to minimize his costs of operating the oil well;

(2) the oil well will likely be plugged and abandoned in the near future, with a resulting loss of reserves, if operating costs are not reduced further;

(3) the oil well will produce for a longer period, and the amount of oil produced will ultimately be larger, if the royalty rate is lowered; and

(4) a lower royalty rate will actually maximize revenue to the trust beneficiaries.

D. Applicable royalty rate, effective date. The lower royalty rate agreed to under this Section shall be equal to five percent and, except as provided in Subsection G of this Section, shall be valid for a period of three years, after which time the record owner of the oil and gas lease may submit a written request for an extension which, if approved pursuant to Subsection C of this Section, shall be valid for an additional three year term.

E. Accounting and reporting of oil royalties. Production, royalties and taxes for oil produced from any well for which a lower royalty rate has been granted under this Section shall be reported separately from other oil wells, under the PUN-lease business rules of the oil and gas royalty filer's kit utilized by the oil and natural gas administration and revenue database (ONGARD) system.

F. Form of application. Applications for a lower royalty rate under this Section shall be submitted on a form provided by the commissioner.

G. Termination of lower rate. The effective period for a lower royalty rate, approved pursuant to this Section, shall terminate and the royalty rate specified in the lease shall be applicable if the commissioner determines, in his sole discretion, that the oil production has significantly increased through well workover, recompletion or other means, so that the well would no longer qualify on an annual basis for a lower royalty rate.

[19.2.100.68 NMAC - Rp, 19.2.100.68 NMAC, 06/30/2016]

19.2.100.69 PAYMENT OF STATE ROYALTIES:

A. Objective and application:

(1) This Section shall apply to oil and condensate ("oil kind") and natural gas and natural gas products ("gas kind") produced and saved from state oil and gas leases and marketed or utilized in any manner.

(2) In order to ensure that all royalties have been paid, to properly account for all revenues, to promote uniformity of accounting and reporting, to provide for the most efficient management of state oil and gas leases and to comply with the intent and letter of New Mexico law, it is the policy of the state land office that royalties owed under state oil and gas leases be paid monthly on all production deemed to be produced from each state lease during that month.

(a) Gas kind:

(i) Payment on entitlement basis. For leases included in mixed agreements or in units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries, gas kind royalties shall be paid monthly on the production allocated to each lease under the unit or communitization agreement on the entitlement basis.

(ii) Payment on takes basis. For individual producing leases or state leases within one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries, gas kind royalties shall be paid monthly on all production deemed to be produced from the lease on a takes basis.

(b) Oil kind: royalties on oil production are based on each working interest owner's proportionate share of production from the

lease, unit or communitization agreement. As a result, no problem exists with regard to the current process for paying such royalties.

(3) As stated above, the purpose of this Section is to ensure that all royalties due under state oil and gas leases are paid and accounted for in a timely manner. Nothing herein relieves any lessee of record, operator, working interest owner or other person of any legal obligation to pay royalties. The commissioner of public lands reserves the right to seek payment of any deficient royalties from any such person.

(4) Effective Date. This policy will become effective six months after the effective date of this Section (the "effective date").

B. Gas deemed to be produced from state leases within mixed agreements or units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries:

(1) For gas deemed to be produced from state leases in mixed agreements or in units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries, gas kind royalties must be paid on each working interest owner's entitled share of the produced volume from the agreement. If the working interest owner did not take any gas from the agreement, the value of the entitled share of production for royalty purposes shall be the benchmark entitlement value.

(2) Lessees in a unit or communitized tracts may contractually agree to assign reporting and payment responsibility among themselves in any manner which insures that entitled royalty volumes allocable to state leases are reported and paid each month.

C. Gas deemed to be produced from individual leases and one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries:

(1) For leases producing on an individual basis or on one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries, royalties are due on all of the natural gas and natural gas products deemed to be produced. Unless notice has been given to the state land office under the following paragraph, royalties will be paid by each working interest owner on the amount of natural gas and natural gas products actually taken and sold by such owner. Any notices of volume variances shall be sent to the property operator of the lease.

(2) Upon written notification to the state land office by the property operator that all interest owners in the property have elected to pay gas kind royalties on an entitlements basis, notice of volume variances will be sent to those working interest owners who are entitled to the production, as shown by state land office records. If a working interest owner does not sell all of the production to which he or she is entitled, then royalty payments on such untaken but entitled share are to be paid on the benchmark entitlement value. Failure to remit royalties based on benchmark entitlement value will result in assessments being issued and interest charges being assessed for the underpaid amount.

D. Adjustments of prior periods:

(1) Adjustments of prior period reports for under-reported or over-reported volumes made necessary by the promulgation of this Section shall be completed within eighteen months from the effective date. Adjustments must be reported by specific time period for each affected property. The state land office may grant specific remitters an extension of this deadline for good cause.

(2) In making adjustments under this subsection, a remitter shall report the difference between the take and the entitlement basis volumes or vice-versa on a production month basis for each affected property.

(a) For convenience, a remitter may group volume differences on a calendar year basis, at the mid-point of the year, and apply a product valuation to the volume difference which is representative of the weighted average product values for that year. Such volume differences for the past will be reported as detail line entries into the ONGARD system in the PUN-lease format, etc., on the appropriate forms adopted and made available by the commissioner in accordance with Section 19.2.100.70 NMAC.

(b) In the alternative, a remitter may make a one-time cumulative adjustment for all past periods for each affected property by providing to the state land office a valuation proposal which estimates a fair average value of gas under-reported or over-reported for the period during which the imbalance occurred for the affected properties. Upon approval of such valuation proposal, or upon agreement of the remitter and the state land office to utilize different values, the remitter may make adjustments on the basis of such valuations.

(3) Irrespective of any applicable statute of limitations, credits for previously over-reported natural gas volumes may be taken if:

(a) the adjustment is caused by the promulgation of this section by the state land office;

(b) the adjustment is made within the time period specified in Paragraph 1 of this Subsection; and,

(c) the credit is taken for subsequent royalties owed on the same production unit number (property) for which the volumes were over reported or any other property with the same trust beneficiary as the affected property.

E. Definitions:

(1) "average value received" means the value required by law to be used for the calculation of royalties.

(2) "benchmark entitlement value" means:

(a) An amount equal to the average value received by the working interest owner for production from: the unit or communitized area; or state leases within one hundred percent state units or communitized areas where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC; or, individual state leases where entitlements are elected Paragraph (2) of Subsection C of 19.2.100.69 NMAC, in which the working interest owner's production is located during the production month, so long as the working interest owner took at least fifty percent of its entitled share of production for their unprocessed or processed gas. In the event that this Subparagraph (a) is not applicable, then the benchmark entitlement value shall be:

(b) In the event that the working interest owner sold less than fifty percent of its entitled share, or sold no gas from: the unit or communitized area; or, state leases within one hundred percent state units or communitized areas where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC; or, individual state leases where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC, the value of the untaken but entitled share shall equal the average value received by the working interest owner for like quality gas produced in the same producing basin in that production month for their unprocessed or processed gas. In the event that Subparagraphs (a) or (b) do not

apply, then the benchmark entitlement value shall be:

(c) In the event that the working interest owner does not take any like quality gas in the same producing basin during a production month, the benchmark entitlement value shall be a valid index price, less a location differential, multiplied by the total mmbtu's produced at the field for unprocessed gas or similar index prices, less a location differential, multiplied by the mmbtu's produced applicable to the residue gas portion, plus a valid index price for natural gas liquids, less an estimated processing deduction for the portion of the processed gas converted to equivalent mmbtu value, and less a location differential, multiplied by the mmbtu's produced applicable to such natural gas liquids portion.

(3) "Like quality gas" means gas produced from the same pool, as defined by the New Mexico oil conservation division from time to time.

(4) "Location differential" shall be equal to the costs incurred by the working interest owner to move gas from the field to the index point in the most recent month of production.

(5) "Valid index price" means:

(a) in the case of natural gas, an average of two or more price indices for interstate pipelines transporting natural gas from producing regions that are located entirely or partially within New Mexico, based on acceptable survey techniques, appearing in a publication recognized in the oil and gas industry as a reputable source of such price information (e.g., *Inside FERC, Gas Daily, Natural Gas Weekly*).

(b) in the case of natural gas liquids, the price for individual products produced from natural gas (e.g. ethane, propane, butanes (iso- and normal), natural gasoline, etc.) based on acceptable survey techniques, appearing in a publication recognized in the oil and gas industry as a reputable source of such price information (e.g., Oil Price Information Service).

[19.2.100.69 NMAC - Rp, 19.2.100.69 NMAC, 06/30/2016]

[The effective date of 19.2.100.69 NMAC is December 30, 1995.]

19.2.100.70 REPORTING AND ROYALTY RENDITION FORMS: When oil and gas royalties are or should be remitted, as described in 19.2.100.57 NMAC, the remitting person or company shall submit to the state land office a remittance document and royalty reporting form adopted and made available by the commissioner in accordance with the instructions for completing the remittance document and royalty reporting form.

[19.2.100.70 NMAC - Rp, 19.2.100.70 NMAC, 06/30/2016]

19.2.100.71 [RESERVED]

[19.2.100.71 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

19.2.100.72 [RESERVED]

[19.2.100.72 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

19.2.100.73 [RESERVED]

[19.2.100.73 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

19.2.100.74 [RESERVED]

[19.2.100.74 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

19.2.100.75 [RESERVED]

[19.2.100.75 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

19.2.100.76 [RESERVED]

[19.2.100.76 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

19.2.100.77 [RESERVED]

[19.2.100.77 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

19.2.100.78 [RESERVED]

[19.2.100.78 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 06/30/2016]

HISTORY of 19.2.100 NMAC:

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

CPL 69-5, Rules and Regulations Concerning the Sale, Lease, and Other Disposition of State Trust Lands, filed 9/2/69.

CPL 71-2, filed 12/16/71.

CPL 77-1, filed 1/7/77.

Rule 1, Relating to Oil and Gas Leases, filed 3/11/81.

SLO Rule 1, Relating to Oil and Gas Leases, filed 1/20/84.

SLO Rule 1, Relating to Oil and Gas Leases, filed 6/24/85.

History of Repealed Material: 19.2.100 NMAC, Relating to Oil and Gas Leases, re-numbered 12/13/2002; repealed 06/30/2016.

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.2 NMAC, Sections 5, 7, 16, 17 and 53, effective 6/30/2016. In 19.2.2.7 NMAC, Subsections A through S and Subsections U through W, were not published, as there were no changes.

19.2.2.5 EFFECTIVE DATE: March 14, 2001, unless a later date is cited at the end of a section.

[19.2.2.5 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.7 DEFINITIONS: As used in 19.2.2 NMAC, the following terms have the meaning set forth in this section unless otherwise indicated in the text of this rule.

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T. "Schedule of fees" means a list of fees that must be paid [~~to NMSLO~~] for performance of certain administrative functions [~~identified in this rule. The schedule of fees is subject to change without notice and is available from NMSLO upon request~~]. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

***

[19.2.2.7 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.16 SEALED BIDS: If the commissioner decides to conduct the public auction by sealed bid, this section shall govern the bidding process.

A. Bidders shall submit their bid to the commissioner in a sealed envelope pursuant to the instructions provided in the notice of sale. The sealed envelope shall include a completed mineral lease application, which shall be in a form prescribed by the commissioner; and payment of the non-refundable application fee [~~of one hundred dollars in accordance with the notice of sale~~] as set forth in the schedule of fees. Bidders shall offer and set out the amount of their bid on the mineral lease application.

B. Bids shall be received up to the hour set in the notice of sale, and all bids will be opened at the appointed hour.

C. The bidder offering the highest bonus shall be deemed the highest bidder.

D. Subject to 19.2.2.13 NMAC and 19.2.2.22 NMAC, the commissioner shall enter into a mineral lease with the highest bidder pursuant to 19.2.2.23 NMAC.

[19.2.2.16 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.17 ORAL BIDS: If the commissioner decides to conduct the public auction by oral bid, this section shall govern the bidding process.

A. Bidders shall register with NMSLO and obtain an identification number pursuant to the instructions in the notice of sale.

B. Bidders shall make their bids orally at the time and place specified in the notice of sale.

C. The bidder offering the highest bonus shall be deemed the highest bidder. Provided, however, that before close of business on the day of the auction, the highest bidder must submit a completed mineral lease application to the commissioner and pay the non-refundable application fee [~~of one hundred dollars in accordance with the notice of sale~~] as set forth in the schedule of fees.

D. Subject to 19.2.2.13 NMAC and 19.2.2.22 NMAC, the commissioner shall enter into a mineral lease with the highest bidder pursuant to 19.2.2.23 NMAC.

[19.2.2.17 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.53 LESSEE'S OBLIGATIONS DURING SUSPENSION OF MINERAL LEASE: All lease obligations, including the obligation to pay rent and royalties, shall be suspended during the period the mineral lease is suspended. Provided, however, that the lessee shall pay [~~a non-refundable fee of sixty dollars per acre for each year of suspension~~] the annual rental required in Section 19-8-19.1 NMSA 1978 for each year of suspension. Suspension of a mineral lease shall not operate to relieve the lessee from its obligations under the New Mexico Mining Act.

[19.2.2.53 NMAC - N, 03/14/2001; A, 06/30/2016]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.3 NMAC, Sections 5, 7, 9, 15, 18 and 21, effective 6/30/2016. In 19.2.3.15 NMAC, Subsections A through F and Subsections H through K, were not published, as there were no changes.

19.2.3.5 EFFECTIVE DATE: March 1, 1984, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].

[12/31/99; 19.2.3.5 NMAC - Rn, 19 NMAC 3. SLO 3.5, 09/30/02; A, 06/30/16]

19.2.3.7 DEFINITIONS: [~~**RESERVED**~~] "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/99; 19.2.3.7 NMAC - Rn, 19 NMAC 3. SLO 3.7, 09/30/02; A, 06/30/16]

19.2.3.9 APPLICATIONS: Each application for lease shall be made with ink or with typewriter, in duplicate, upon forms to be prescribed and furnished by the commissioner, which application shall be acknowledged, shall be accompanied by an application fee [~~of thirty dollars ($30.00)~~] as set forth in the schedule of fees, and shall be accompanied by the first (1st) year's rental. In addition, it shall be accompanied by an appraisal, under oath, of the lands and minerals made by some disinterested party upon forms furnished by the New Mexico state land office.

[12/31/99; 19.2.3.9 NMAC - Rn, 19 NMAC 3. SLO 3.9, 09/30/02; A, 06/30/16]

19.2.3.15 SPECIAL AREA REQUIREMENTS: The following requirements, applicable only to the area hereinafter named, shall be in addition to, and not in exclusion of, any other rule.

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G. The minimum rental charge for leases will be ten cents ($.10) per acre, payable annually in advance, but the minimum rental shall be no less than one hundred dollars ($100.00) in any event. [~~A thirty dollar ($30.00) application fee~~] An application fee as set forth in the schedule of fees will be charged in addition thereto for each application.

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[12/31/99; 19.2.3.15 NMAC - Rn, 19 NMAC 3. SLO 3.15, 09/30/02; A, 06/30/16]

19.2.3.18 ASSIGNMENT AND RELINQUISHMENT: No assignment of a lease or any portion thereof will be made except with the approval of the commissioner upon such terms and conditions as he may require. All assignments shall be upon forms prescribed and furnished by the commissioner, which shall recite, among other things, the consideration received for the assignment. In the event a lessee desires to transfer a portion of the lease, he may do so with the approval of the commissioner by relinquishing that portion to the commissioner in order that a new and separate lease may be issued to the third (3rd) party. Any lease in good standing may, with the approval of the commissioner and the payment of a fee [~~of thirty dollars ($30.00)~~] as set forth in the schedule of fees, be relinquished to the state of New Mexico.

[12/31/99; 19.2.3.18 NMAC - Rn, 19 NMAC 3. SLO 3.18, 09/30/02; A, 06/30/16]

19.2.3.21 [~~FEES:~~ ~~The following fees may be charged:~~

~~**A.** For filing application to lease: $30.00~~

~~**B.** For filing each set of lease assignments: $30.00~~

~~**C.** For filing miscellaneous instruments, including power of attorney, probate, and other court papers affecting title. Per instrument: $10.00~~

~~**D.** For copies of records, plats, maps, and certificates as true copies: cost~~

~~**E.** For blank forms approved by the New Mexico state land office: no charge~~

~~**F.** For Section 19-8-19 NMSA 1978 Stipulation:~~

~~**(1)** Application fee: $20.00~~

~~**(2)** Filing and recording fee: $10.00~~]

[RESERVED]

[12/31/99; 19.2.3.21 NMAC - Rn, 19 NMAC 3. SLO 3.21, , 09/30/02; Repealed, 06/30/16]

LAND OFFICE, STATE

This is an amendment to 19.2.4 NMAC, Sections 5, 7, 9, 15 and 18, effective 6/30/2016.

19.2.4.5 EFFECTIVE DATE: January 20, 1984, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].
[12/31/99; 19.2.4.5 NMAC - Rn, 19 NMAC 3. SLO 4.5, 09/30/02; A, 06/30/16]

19.2.4.7 DEFINITIONS: [~~**RESERVED**~~] "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[12/31/99; 19.2.4.7 NMAC - Rn, 19 NMAC 3. SLO 4.7, 09/30/02; A, 06/30/16]

19.2.4.9 APPLICATIONS: Each application for lease shall be made with ink, or with typewriter, in duplicate, upon forms to be prescribed and furnished by the commissioner. The application shall be acknowledged, shall be accompanied by [~~an application fee of thirty dollars ($30.00) (nonrefundable)~~] the fee as set forth in the schedule of fees (nonrefundable), and shall be accompanied by the first (1st) year's rental as prescribed by 19.2.4.12 NMAC. In addition, the application shall be accompanied by an appraisal of the land and minerals made under oath by some disinterested party familiar with the land upon forms prescribed and furnished by the New Mexico state land office.
[12/31/99; 19.2.4.9 NMAC - Rn, 19 NMAC 3. SLO 4.9, 09/30/02; A, 06/30/16]

19.2.4.15 ASSIGNMENT AND RELINQUISHMENT: No lease may be assigned or relinquished without the written approval of the commissioner upon such terms and conditions as he may require and the payment of [~~a fee of thirty dollars ($30.00)~~] the fee as set forth in the schedule of fees. All assignments shall be upon forms prescribed by the commissioner and shall recite, among other things, the consideration received for the assignment.
[12/31/99; 19.2.4.9 NMAC - Rn, 19 NMAC 3. SLO 4.9, 09/30/02; A, 06/30/16]

19.2.4.18 [~~FEES:~~ ~~The following fees may be charged:~~
~~**A.** For filing application to lease: $30.00~~
~~**B.** For filing each set of lease assignments: $30.00~~
~~**C.** For filing miscellaneous instruments, including power of attorney, probate, and other court papers affecting title: Per instrument: $10.00~~
~~**D.** For copies of records, plats, maps and certificates as true copies: cost~~
~~**E.** For blank forms approved by the New Mexico state land office: no charge~~
~~**F.** For Section 19-8-19 NMSA 1978 Stipulation:~~
~~**(1)** Application fee: $20.00~~
~~**(2)** Filing and recording fee: $10.00~~]
[RESERVED]
[12/31/99; 19.2.4.18 NMAC - Rn, 19 NMAC 3. SLO 4.18, 09/30/02; Repealed, 06/30/16]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.5 NMAC, Sections 5, 7 and 9, effective 6/30/2016. In 19.2.5.9 NMAC, Subsections B and D through H were not published, as there were no changes.

19.2.5.5 EFFECTIVE DATE: May 14, 1999, unless a later date is cited at the end of a section.
[5/14/99; 19.2.5.5 NMAC - Rn, 19 NMAC 3. SLO 5.5, 09/30/02; A, 06/30/16]

19.2.5.7 DEFINITIONS: [~~**RESERVED**~~] "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[5/14/99; 19.2.5.7 NMAC - Rn, 19 NMAC 3. SLO 5.7, 09/30/02; A, 06/30/16]

19.2.5.9 LEASES:
A. Application to lease.
(1) Applications for lease shall be submitted in duplicate upon forms prescribed by the commissioner and shall contain the following:
(a) a nonrefundable application fee in the amount set forth in the schedule of fees;
(b) a legal description of the location of the lands to be leased;
(c) an approximation of the amount of material to be removed during the term of the lease;
(d) the necessary surety;
(e) the required rental payment as set forth in the rent schedule [~~of fees~~];
(f) a signed and completed environmental questionnaire; and
(g) a plat (prepared by the applicant or designated agents) which is drawn to scale showing the location of the area of the pit site or the area to be mined, if requested by the commissioner.
(2) When the estimated amount of material to be removed is in excess of forty thousand (40,000) cubic yards, or upon the discretion of the commissioner, such lease may be issued by competitive bid upon the following procedure:
(a) Advertisement. The commissioner shall advertise the sale through publication in a newspaper of general circulation in the area where the material is located, on the same day, once a week, for two (2) consecutive weeks.
(b) Notice. The notice of the sale by competitive bid shall also be posted in a conspicuous place at the state land office.

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C. Lease rental. An annual rental rate for leases shall be set according to the rent schedule [~~of fees~~] for each forty (40) acre tract or subdivision under lease, or any portion thereof.

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[5/14/99; 19.2.5.9 NMAC - Rn, 19 NMAC 3. SLO 5.9, 09/30/02; A, 06/30/16]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.6 NMAC, Sections

5, 7, 9, 19, 23, 24 and 26, effective 6/30/2016. In 19.2.6.7 NMAC, Subsections A through E were not published, as there were no changes. In 19.2.6.26 NMAC, numbered Paragraphs 1 through 24 and signature provisions were not published, as there were no changes.

19.2.6.5 EFFECTIVE DATE: August 23, 1989, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].
[12/31/99; 19.2.6.5 NMAC - Rn, 19 NMAC 3. SLO 6.5, 09/30/02; A, 06/30/16]

19.2.6.7 DEFINITIONS: As used in 19.2.6 NMAC and state coal leases:

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F. "Schedule of fees" - means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[12/31/99; 19.2.6.7 NMAC - Rn, 19 NMAC 3. SLO 6.7, 09/30/02; A, 06/30/16]

19.2.6.9 APPLICATIONS: Applications for coal leases shall be made in ink or typewritten, in duplicate, upon forms to be prescribed by the commissioner. The application shall be acknowledged and shall be accompanied by a minimum initial charge of five hundred dollars ($500.00) or the first (1st) year rental, whichever is greater, plus a nonrefundable application fee [~~of one hundred dollars ($100.00)~~] as set forth in the schedule of fees.
[12/31/99; 19.2.6.9 NMAC - Rn, 19 NMAC 3. SLO 6.9, 09/30/02; A, 06/30/16]

19.2.6.19 ASSIGNMENTS: Any lease in good standing may, with the written approval of the commissioner, upon such terms and conditions as he may require, and payment of [~~a one hundred dollar ($100.00) fee~~] the fee as set forth in the schedule of fees, be assigned or sublet to third (3rd) persons; provided, however, no assignment of an undivided interest nor any assignment or sublease of less than a legal subdivision shall be recognized or approved. Provided further, however, the record owner of any coal lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner; but nothing herein shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof. All assignments shall be formally executed by the proper parties upon forms prescribed and furnished by the commissioner and shall recite, among other things, the consideration received for the assignment. Assignments shall be filed in triplicate in the New Mexico state land office in Santa Fe. The original copy of each assignment will be recorded and filed as a public record in the New Mexico state land office and one (1) copy will be returned to the person entitled to the same. Ordinarily, leases shall be transferred or assigned in the names of no more than two (2) persons or legal entities as provided in 19.2.6.13 NMAC.
[12/31/99; 19.2.6.19 NMAC - Rn, 19 NMAC 3. SLO 6.19, 09/30/02; A, 06/30/16]

19.2.6.23 [~~FEES:~~ ~~The following fees shall be charged:~~
~~**A.** For filing an application to lease: $100.00~~
~~**B.** For filing each set of lease assignments or subleases: $100.00~~
~~**C.** For filing miscellaneous instruments, including power of attorney, probate, and other court papers affecting title: Per instrument: $10.00~~
~~**D.** For copies of records, plats, maps and certificates as true copies: cost~~
~~**E.** For blank forms approved by the New Mexico state land office: no charge~~] **[RESERVED]**
[12/31/99; 19.2.6.23 NMAC - Rn, 19 NMAC 3. SLO 6.23, 09/30/02; Repealed, 06/30/16]

19.2.6.24 LEASES ISSUED PRIOR TO JULY 1, 1989: The owner of any coal lease issued prior to July 1, 1989, and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations may, upon the expiration thereof, obtain a new lease for the leased lands, without having to submit a competitive bid, by filing an application therefor with the commissioner and paying the [~~appropriate~~] application fee as set forth in the schedule of fees. The form of the new lease shall be as prescribed in 19.2.6.26 NMAC.
[12/31/99; 19.2.6.24 NMAC - Rn, 19 NMAC 3. SLO 6.24, 09/30/02; A, 06/30/16]

19.2.6.26 FORM OF LEASE: Coal leases shall be of the following form and shall contain the following provisions:

(SAMPLE ONLY)

NEW MEXICO STATE LAND OFFICE

COAL MINING LEASE

APPLICATION NO. _____
LEASE NO. _____

THIS AGREEMENT, dated this_____ day of _____ _____, _____, made and entered into between the STATE OF NEW MEXICO, acting by and through the undersigned, its COMMISSIONER OF PUBLIC LANDS, hereinafter called the "lessor", and_____ _____, hereinafter called the "lessee".
WITNESSETH:

WHEREAS, lessee has filed in the New Mexico State Land Office an application for a coal lease for the purpose of exploring for, mining, developing, and producing coal upon the lands hereinafter described, and has tendered _____ ___ ($_____), for the first annual rental payment, together with [~~one hundred dollars ($100.00) application fee~~] the application fee as set forth in the schedule of fees, and _____ ($_____), for a bonus;

NOW THEREFORE, in consideration of the above tender, receipt of which is acknowledged, and the COVENANTS herein, lessor hereby grants, and leases to lessee, exclusively, for the sole and only purpose of exploring for, mining, developing, producing, and removing coal in, upon or under the following described lands in _____ County, New Mexico:

together with the right to use so much of

the surface as is reasonably necessary to explore for, mine, develop, produce, and remove the coal.

TO HAVE AND TO HOLD the said lands and privileges granted hereunder for a primary term of five (5) years.

IN CONSIDERATION OF THE PREMISES, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

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[12/31/99; 19.2.6.26 NMAC - Rn, 19 NMAC 3. SLO 6.26, 09/30/02; A, 06/30/16]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.7 NMAC, Sections 5, 7, 10, 24, 30, 32, 34, 42 and 44, effective 6/30/2016. In 19.2.7.7 NMAC, Subsections A through I were not published, as there were no changes.

19.2.7.5 EFFECTIVE DATE: January 20, 1984, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].
[12/31/99; 19.2.7.5 NMAC - Rn, 19 NMAC 3. SLO 7.5, 09/30/02; A, 06/30/16]

19.2.7.7 DEFINITIONS: The following terms as used in this rule shall have the meaning here indicated, unless otherwise clearly stated in the text:

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J. "Schedule of fees" - A list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[12/31/99; 19.2.7.7 NMAC - Rn, 19 NMAC 3. SLO 7.7, 09/30/02; A, 06/30/16]

19.2.7.10 FORMAL REQUIREMENTS FOR APPLICATIONS:

A. Each application for lease shall be made with ink, or with typewriter using a record ribbon, in duplicate, upon forms to be prescribed by the commissioner, which application shall be acknowledged before an officer authorized to administer oaths, shall be accompanied by [~~an application fee of thirty dollars ($30.00)~~] the application fee as set forth in the schedule of fees, which fee shall not be refunded, and shall be accompanied by the amount of the first (1st) year's rental and bonus offered, if any such bonus is offered, together with an appraisal of the value of the land for geothermal lease purposes made under oath by some disinterested party who is familiar therewith.

B. A separate check or other remittance covering the fee, rentals and bonus, if any, shall be submitted with each separate application to which applicable; however, the commissioner may waive this requirement when extreme hardship to the applicant would otherwise result.
[12/31/99; 19.2.7.10 NMAC - Rn, 19 NMAC 3. SLO 7.10, 09/30/02; A, 06/30/16]

19.2.7.24 ORAL BIDS - PROCEDURE: In the event sale is by public auction, the successful bidder will be required to pay the filing fee as set forth in the schedule of fees, the first (1st) year's rental and bonus offered on or before close of business on the date of sale.
[12/31/99; 19.2.7.24 NMAC - Rn, 19 NMAC 3. SLO 7.24, 09/30/02; A, 06/30/16]

19.2.7.30 FORMS AND FEE: All assignments shall be upon forms prescribed and furnished by the commissioner which shall recite, among other things, the consideration paid for the assignment. The fee for filing shall be [~~thirty dollars ($30.00) for each assignment~~] as set forth in the schedule of fees.
[12/31/99; 19.2.7.30 NMAC - Rn, 19 NMAC 3. SLO 7.30, 09/30/02; A, 06/30/16]

19.2.7.32 EFFECT OF COMMISSIONER'S APPROVAL - MISCELLANEOUS INSTRUMENTS: Upon approval of the commissioner, the assignor shall be relieved from all obligations owing to the state of New Mexico with respect to the lands embraced in the assignment, and the state shall likewise be relieved from all obligations to the assignor as to the said lands, and the assignee shall succeed to all the rights and privileges of the assignor and assumes all of the duties and obligations of the assignor as to the said lands; provided, however, any record owner of any lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any agreements with respect to the development or operation of the leasehold premises. It shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner, but nothing contained in these rules shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments, the commissioner shall not be a necessary party. All such contracts, agreements and other instruments may be filed either in the office of the commissioner or recorded in the office of the county clerk wherein the lands are situated, and the filing and recording thereof shall constitute notice to the world of the existence and the contents thereof, except as to the commissioner. The fee for filing such miscellaneous instruments with the commissioner shall be [~~ten dollars ($10.00) per instrument~~] as set forth in the schedule of fees.
[12/31/99; 19.2.7.32 NMAC - Rn, 19 NMAC 3. SLO 7.32, 09/30/02; A, 06/30/16]

19.2.7.34 ASSIGNMENTS TO BE RECORDED IN NEW MEXICO STATE LAND OFFICE: Assignments must be accompanied by the filing fee as set forth in the schedule of fees and filed with the commissioner within one hundred (100) days after having been signed by the assignor as shown upon the face of the instrument and not from the date of acknowledgment. Those presented after expiration of that time shall not be approved unless it can be shown to the satisfaction of the commissioner that extreme hardship will result to one (1) or more of the parties and that no prejudice to the rights of the state of New Mexico will occur. An additional fee [~~of seventy-five dollars ($75.00)~~] as set forth in the schedule of fees will be charged for each such assignment (or each group of assignments, if the same basic facts are involved) to cover expense of investigation and records search.
[12/31/99; 19.2.7.34 NMAC - Rn, 19 NMAC 3. SLO 7.34, 09/30/02; A, 06/30/16]

19.2.7.42 COLLATERAL ASSIGNMENTS OF LEASES: Collateral assignments of leases shall be filed in duplicate upon forms provided by the commissioner together with [~~a filing fee of ten dollars ($10.00)~~] the filing fee as set forth in the schedule of fees.
[12/31/99; 19.2.7.42 NMAC - Rn, 19 NMAC 3. SLO 7.42, 09/30/02; A, 06/30/16]

19.2.7.44 [~~FEES:~~ The following fees may be charged:

~~A.~~ ~~For filing application to lease: $30.00~~

~~B.~~ ~~For filing each assignment to lease: $30.00~~

~~C.~~ ~~For filing miscellaneous instruments, including power of attorney, probate, and other court papers affecting title: Per instrument: $10.00~~

~~D.~~ ~~For copies of records, plats, maps and certificates as true copies: cost~~

~~E.~~ ~~For blank forms approved by the New Mexico state land office: no charge~~

~~F.~~ ~~For filing and approval of co-operative agreements: $25.00~~

~~G.~~ ~~For approval of relinquishment: $30.00~~]

[RESERVED]

[12/31/99; 19.2.7.44 NMAC - Rn, 19 NMAC 3. SLO 7.44, 09/30/02; Repealed, 06/30/16]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.8 NMAC, Sections 5, 7, 9, 13, 14, 15, 16, 19, and 22, effective 6/30/2016. In 19.2.8.7 NMAC, Subsections A through J were not published, as there were no changes. In 19.2.8.9 NMAC, Subsections A, C, and F through I were not published, as there were no changes. In 19.2.8.16 NMAC, Subsections A and D through F were not published, as there were no changes. In 19.2.8.19 NMAC, Subsections A and C through E were not published, as there were no changes.

19.2.8.5 EFFECTIVE DATE: June 29, 1996, unless a later date is cited at the end of a section.
[6/29/96; 19.2.8.5 NMAC - Rn, 19 NMAC 3 SLO 8.5, 09/30/02; A, 06/30/16]

19.2.8.7 DEFINITIONS: The following terms as used in this rule shall have the meaning indicated unless otherwise clearly stated in the text:

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K. "Schedule of fees" - A list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[~~K.~~] L. "Simultaneous applications" - Two or more valid agricultural lease applications that apply to lease the same land and that are received at the state land office on the same regular work day.

[~~L.~~] M. "State trust land" - Land depicted as within the care, custody and control of the commissioner of public lands by the state land office master title tract books.

[~~M.~~] N. "Unauthorized improvements" - Improvements other than authorized improvements placed, made or developed on state trust lands.
[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.7 NMAC - Rn, 19 NMAC 3 SLO 8.7, 09/30/02; A, 04/15/10; A, 06/30/16]

19.2.8.9 APPLICATIONS TO LEASE:

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B. Application requirements for open acreage. In addition to the requirements set forth in Subsection A above, agricultural lease applications for open acreage shall be accompanied by:

(1) the lease application filing fee as set forth in the schedule of fees;

(2) the deposit of a sum equal to the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees, or if fewer than twelve (12) months remain in the period between the date of lease application and the following September 30th, the deposit of an amount equal to the first year's offered rental reduced on a pro rata basis by month; and,

(3) the deposit of a sum equal to the appraised value of the authorized improvements on the land applied for or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

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D. Application requirements for renewal. In addition to the requirements set forth in Subsection A above, agricultural lease applications for a new lease on lands held by the applicant under an existing lease shall:

(1) be accompanied by the lease application filing fee as set forth in the schedule of fees;

(2) be accompanied by the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees; and

(3) be filed with the commissioner on or before August 1st of the year in which the existing lease is to expire; the failure to submit the application on or before August 1st shall result in the forfeiture of the lessee's right to obtain the lease by matching the highest annual rental offered by other applicants to lease the same land.

E. Application requirements for competitive bids. In addition to the requirements set forth in Subsection A above, agricultural lease applications to lease lands leased to another under an existing lease shall be made for the entire acreage under lease. Such applications shall be made on or before September 1st in the year in which the existing lease is to expire, and shall be accompanied by:

(1) the lease application filing fee as set forth in the schedule of fees;

(2) the deposit of a sum equal to the first year's offered rental which shall in no case be less than the minimum rent in the schedule of fees; and

(3) the deposit by money order, cashier's check or certified check of a sum equal to the appraised value of the authorized improvements on the land applied for, or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

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[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.9 NMAC - Rn, 19 NMAC 3 SLO 8.9, 09/30/02; A, 04/15/10; A, 06/30/16]

19.2.8.13 RELINQUISHMENT:

A. With the prior written consent of the commissioner, the release of all outstanding collateral assignments, and the payment to the commissioner of the relinquishment filing fee as set forth

in the schedule of fees, any lessee may relinquish to the state a lease that is not in default and the lease shall be cancelled.

(1) The relinquishment filing fee shall be waived if the relinquishment is at the request of the commissioner.

(2) Relinquishments shall be made on forms and in the manner prescribed by the commissioner.

B. A relinquishment without the written consent of the commissioner shall be null and void.

[3/11/81, 1/20/84, 9/30/85, 12/1/92; 19.2.8.13 NMAC - Rn, 19 NMAC 3 SLO 8.13, 09/30/02; A, 06/30/16]

19.2.8.14 ASSIGNMENTS:

A. With the written consent of the commissioner and the payment to the commissioner of the assignment filing fee as set forth in the schedule of fees, a lessee may assign the lease or the lease rights to any part of the land held thereunder for the remainder of the lease term, provided the lease is not in default and any outstanding collateral lease assignments have either been released or the prospective lease assignee has agreed in writing to assume or take the lease subject to the rights of the collateral assignees. Lease assignments shall be made under oath, upon forms prescribed by the commissioner and shall be accompanied by the lease assignment filing fee.

B. Upon the commissioner's approval in writing of the lease assignment, the assignment form shall become the leasing instrument.

C. An assignment without the written consent of the commissioner shall be null and void.

D. The assignment of an agricultural lease does not assign the appurtenant water rights. The transfer of water rights to an assignee requires the use of the transfer of ownership form provided by the office of the state engineer.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.14 NMAC - Rn, 19 NMAC 3 SLO 8.14, 09/30/02; A, 04/15/10; A, 06/30/16]

19.2.8.15 COLLATERAL ASSIGNMENTS:

A. With the prior written consent of the commissioner and the payment to the commissioner of the collateral assignment [~~filing~~] fee as set forth in the schedule of fees, a lessee may assign as collateral security a lease that is not in default; provided, however, that the collateral assignment of more than one (1) lease to secure the same indebtedness shall be made by separate assigning instruments. The collateral assignment of a lease shall not prevent its cancellation by the commissioner.

B. Collateral assignments shall be made upon forms prescribed by the commissioner and shall be accompanied by the collateral assignment [~~filing~~] fee as set forth in the schedule of fees.

C. The foreclosure of collateral assignments shall be accomplished in the manner provided by law for the foreclosure of chattel mortgages. Upon the filing with the commissioner of documentation proving the bona fide foreclosure and purchase of the lease and the cure of any lease defaults, completed assignment forms, and the required [~~filing~~] fee, the lease shall be assigned to the purchaser at the foreclosure sale, if such purchaser is otherwise qualified to lease state trust lands.

D. The release of collateral assignments shall be accomplished by the collateral assignee's executing and filing with the commissioner a release upon a form prescribed by the commissioner and accompanied by the release of collateral assignment [~~filing~~] fee as set forth in the schedule of fees.

(1) The failure of a collateral assignee to execute and file with the commissioner the release of a collateral assignment upon the satisfaction of the debt secured by the assignment shall subject the assignee to the risk of criminal penalties and civil liabilities as provided by law.

(2) The personal representative in the probate of a deceased collateral assignee's estate may release collateral assignments by executing and filing with the commissioner the release and certified copies of such other documents as the commissioner may require.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.15 NMAC - Rn, 19 NMAC 3 SLO 8.15, 09/30/02; A, 06/30/16]

19.2.8.16 TRANSFER OF LEASE UPON LESSEE'S DEATH:

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B. The personal representative of the estate, subject to the normal approval processes of the commissioner, may assign the lease by:

(1) filing with the commissioner certified copies of the death certificate and letters testamentary;

(2) executing the necessary assignment forms;

(3) paying to the commissioner the lease assignment filing fee as set forth in the schedule of fees; and

(4) filing with the commissioner such other documents as the commissioner may require.

C. Except for leases executed by two (2) or more lessees designated as joint tenants with the right of survivorship, in the absence of probate, the lease interest of a deceased lessee shall be transferred on the records of the state land office during the term of the lease only by filing with the commissioner a certified copy of the certificate of death, the affidavits of the legal heirs as to their claims and the absence of conflicting claims, and such other documentation as the commissioner may require together with the miscellaneous instruments filing fee as set forth in the schedule of fees.

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[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.16 NMAC - Rn, 19 NMAC 3 SLO 8.16, 09/30/02; A, 06/30/16]

19.2.8.19 CONVERSION:

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B. Applications to convert shall be made under oath on forms prescribed by the commissioner and accompanied by:

(1) the conversion application filing fee as set forth in the schedule of fees; and

(2) a reclamation plan to be implemented in the event the commissioner determines the conversion has been unsuccessful and the converted land should revert to its prior use.

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[3/11/81, 4/28/82, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.19 NMAC - Rn, 19 NMAC 3 SLO 8.19, 09/30/02; A, 06/30/16]

19.2.8.22 [~~SCHEDULE OF FEES FOR STATE LAND OFFICE RULE RELATING TO AGRICULTURAL LEASES:~~

~~A.~~ ~~Each of the following documents shall be accompanied by the~~

~~appropriate fee as indicated below in order to be accepted for filing. Filing fees are service charges to cover the costs associated with handling the documents and no refunds thereof shall be made. Upon the commissioner's determination that a fee amount set forth below does not cover the costs associated with providing the filing service, the commissioner may change the fee amount without notice of rule amendment or compliance with the rule making procedures established by state land office rule.~~

~~**(1)** Lease application: $50.00~~

~~**(2)** Relinquishment: $50.00~~

~~**(3)** Lease assignment: $50.00~~

~~**(4)** Collateral assignment: $70.00~~

~~**(5)** Release of collateral assignment: $50.00~~

~~**(6)** Miscellaneous instruments, e.g., to effect lease transfer on death of lessee: $10.00~~

~~**(7)** Application to make improvements: $30.00~~

~~**(8)** Application to convert land from one permitted use to another: $50.00~~

~~**B.** Copies of records, plats, maps and other public information on file with the state land office and their certification as true copies may be obtained at cost.~~

~~**C.** Minimum annual rental for any land leased under an agricultural lease: $50.00]~~

[RESERVED]

[19.2.8.22 NMAC - Rn, 19.2.8.21 NMAC, 04/15/10; Repealed, 06/30/16]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.9 NMAC, Sections 5 and 7, effective 6/30/2016. In 19.2.9.7 NMAC, Subsections A through P and R through W were not published, as there were no changes.

19.2.9.5 EFFECTIVE DATE: May 15, 2001, unless a later date is cited at the end of a section.

[19.2.9.5 NMAC - N, 05/15/2001; A, 06/30/2016]

19.2.9.7 DEFINITIONS: As used in 19.2.9 NMAC, the following terms have the meaning set forth in this section. A business lease may add detail to a definition to accommodate lease specific issues.

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Q. "Schedule of fees" means [~~a list of administrative fees which is issued and revised by the commissioner from time to time~~] a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

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[19.2.9.7 NMAC - N, 05/15/2001; A, 06/30/2016]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.10 NMAC, Sections 7, 13, 24, and 29, effective 6/30/2016. In 19.2.10.7 NMAC, Subsections A through E and Subsections J through L were not published, as there were no changes.

19.2.10.7 DEFINITIONS:

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[~~F. "Fee schedule"~~ ~~means a schedule adopted by the commissioner showing fees and costs that must be paid for performance of certain administrative functions identified in this Part 10. A fee schedule is subject to change from time to time without notice, and is available upon request. All fees, unless otherwise specified in this Part 10, shall be non-refundable.~~]

[~~G.~~] F. "Field inspection" means an on-site inspection of a right of way or easement, made by authorized state land office personnel, which, if required under the price schedule or otherwise appropriate, may include specialized services such as market analysis or a determination of fair market value.

[~~H.~~] G. "Price schedule" means a schedule, adopted by the commissioner pursuant to this Part 10, showing the consideration due for the acquisition of an easement or right of way, which schedule shall be reviewed periodically by the commissioner and revised by him, when he deems it necessary, to reflect changes in the fair market value of easements and rights of way. A price schedule may incorporate varying considerations to account for the different uses, sizes, and locations, of easements and rights of way. The adoption of a price schedule and any revision thereof shall be preceded by reasonable public notice and the opportunity for public comment. Public notice shall consist of publication on the state land office website, and such other means as the commissioner may determine are appropriate, including but not limited to direct notification by mailing or electronic means to known interested parties. The time permitted for public comment shall be determined by the commissioner in his discretion.

[~~I.~~] H. "Purchase contract lands" means trust lands being purchased under a contract.

I. "Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

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[19.2.10.7 NMAC - Rp, 19.2.10.7 NMAC, 06/30/04; A, 06/30/16]

19.2.10.13 APPLICATION FORM: Written application for any grant of an easement or right of way shall be made upon forms prescribed and furnished by the commissioner. Such application shall be made under oath, and contain the following:

A. the application fee [~~set out in the then current fee schedule~~] as set forth in the schedule of fees;

B. the field inspection fee [~~set out in the then current fee schedule~~] as set forth in the schedule of fees, which fee may, in the discretion of the commissioner, be waived where the applicant is a governmental body which is prohibited by law from paying fees; and,

C. a legal description of the trust lands to be burdened by the proposed easement or right of way, together with a survey plat as provided under Subsection A of 19.2.10.12 NMAC; provided, however, that the requirement to submit a survey plat in accordance with Subsection A of 19.2.10.12 NMAC may be waived, in the discretion of the commissioner, upon a showing of good cause or undue hardship; all requests for waivers, setting forth the basis of the request, must be submitted in writing to

the commissioner; in the event a waiver is granted, the applicant shall comply with the requirements set forth in Subsection B of 19.2.10.12 NMAC.
[19.2.10.13 NMAC - Rp, 19.2.10.13 NMAC, 06/30/04; A, 06/30/16]

19.2.10.24 ASSIGNMENT - RELINQUISHMENT: An easement or right of way may be assigned to third parties or relinquished to the state with the prior written approval of the commissioner and upon such terms and conditions as he may prescribe, and payment of the fee [~~set out in the then current fee schedule~~] as set forth in the schedule of fees. The commissioner may waive the relinquishment fee when relinquishment is to accommodate a request or demand of the commissioner.
[19.2.10.24 NMAC - Rp, 19.2.10.23 NMAC, 06/30/04; A, 06/30/16]

19.2.10.29 EASEMENTS OR RIGHTS OF WAY OVER PURCHASE CONTRACT LANDS:

A. The commissioner may, on the basis of the state's legal title and subject to the terms and conditions of the applicable purchase contract, approve and record easements and rights of way over, upon, through or across purchase contract lands on the following terms and conditions:

(1) submission of an application by the easement or right of way applicant on the form prescribed by the commissioner accompanied by an original or certified copy of the easement or right of way executed between the applicant and the purchase contract holder;

(2) payment of the administrative fee [~~set out in the then current fee schedule~~] as set forth in the schedule of fees for the approval and recording of the easement or right of way; and,

(3) submission of a legal description of the property to be burdened by the easement or right of way, together with a survey plat as provided in 19.2.10.12 NMAC.

B. The commissioner shall reject any application and initiate necessary legal proceedings to prevent the construction of any easement or right of way or the use of any easement or right of way that will diminish or impair the state's legal title to the purchase contract lands.
[19.2.10.29 NMAC - Rp, 19.2.10.28 NMAC, 06/30/04; A, 06/30/16]

LAND OFFICE, STATE

Explanatory paragraph: This is an amendment to 19.2.11 NMAC, Sections 5, 7, 10, and 14, effective 6/30/2016. In 19.2.11.10 NMAC, Subsections B through E were not published, as there were no changes.

19.2.11.5 EFFECTIVE DATE: January 20, 1984, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].
[12/31/99; 19.2.11.5 NMAC - Rn, 19 NMAC 3. SLO 11.5, 09/30/02; A, 06/30/16]

19.2.11.7 DEFINITIONS: [~~**RESERVED**~~] "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[12/31/99; 19.2.11.7 NMAC - Rn, 19 NMAC 3. SLO 11.7, 09/30/02; A, 06/30/16]

19.2.11.10 APPLICATION: Each application for a salt water disposal easement shall be made in ink or typewritten upon forms prescribed and furnished by the commissioner, under oath, and accompanied by the following:

A. a filing fee [~~of thirty dollars ($30.00)~~] as set forth in the schedule of fees;

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[12/31/99; 19.2.11.10 NMAC - Rn, 19 NMAC 3. SLO 11.10, 09/30/02; A, 06/30/16]

19.2.11.14 ASSIGNMENT - RELINQUISHMENT - CANCELLATION: A disposal site easement may, with the prior written approval of the commissioner, upon such terms and conditions as he may require, and payment of [~~a thirty dollar ($30.00) fee~~] the fee as set forth in the schedule of fees, be assigned to third (3rd) parties or relinquished to the state and the commissioner may cancel such easement for breach or violation of the terms and conditions thereof after thirty (30) days registered notice is given as required by law.
[12/31/99; 19.2.11.14 NMAC - Rn, 19 NMAC 3. SLO 11.14, 09/30/02; A, 06/30/16]

LAND OFFICE, STATE

This is an amendment to 19.2.12 NMAC, Sections 5, 7, 9, and 10, effective 6/30/2016.

19.2.12.5 EFFECTIVE DATE: January 20, 1984, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].
[12/31/99; 19.2.12.5 NMAC - Rn, 19 NMAC 2. SLO 12.5, 09/30/02; A, 06/30/16]

19.2.12.7 DEFINITIONS: **[~~RESERVED~~]** "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[12/31/99; 19.2.12.7 NMAC - Rn, 19 NMAC 2. SLO 12.7, 09/30/02; A, 06/30/16]

19.2.12.9 APPLICATION FOR CONSENT FEE: Application for the commissioner's consent to the appropriation or use of water shall be made upon a form furnished by the commissioner and shall be accompanied by [~~a filing fee of thirty dollars ($30.00)~~] the filing fee as set forth in the schedule of fees. Thereafter, the commissioner shall enter into negotiations with each applicant on an individual basis to arrive at mutually satisfactory terms for the appropriation or use of water from state trust lands.
[12/31/99; 19.2.12.9 NMAC - Rn, 19 NMAC 2. SLO 12.9, 09/30/02; A, 06/30/16]

19.2.12.10 ASSIGNMENTS OF CONSENT - APPLICATION - FEE: The commissioner's consent to the appropriation or use of water from state trust lands may be assigned with the commissioner's prior approval subject to the terms and conditions of the consent. [~~Application fee for approval of an assignment is thirty dollars ($30.00)~~] The application fee for approval of an assignment is as set forth in the schedule of fees.
[12/31/99; 19.2.12.10 NMAC - Rn, 19 NMAC 2. SLO 2.10, 09/30/02; A, 06/30/16]

LAND OFFICE, STATE

This is an amendment to 19.2.13 NMAC, Sections 5, 7, 11, and 12, effective 6/30/2016.

19.2.13.5 EFFECTIVE DATE: January 20, 1984, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].
[12/31/99; 19.2.13.5 NMAC - Rn, 19 NMAC 2. SLO 13.5, 09/30/02; A, 06/30/16]

19.2.13.7 DEFINITIONS: [~~**RESERVED**~~] "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[12/31/99; 19.2.13.7 NMAC - Rn, 19 NMAC 2. SLO 13.7, 09/30/02; A, 06/30/16]

19.2.13.11 APPLICATION TO PURCHASE TIMBER: Each application to purchase timber on state trust land must be accompanied by [~~an application fee of thirty dollars ($30.00)~~] the application fee as set forth in the schedule of fees and a five hundred dollar ($500.00) deposit, unless a different deposit sum is required to cover the expenses of appraisal, advertising and sale. The advertisement will specify time, date and place of public sale, together with the description of the lands containing timber to be sold.
[12/31/99; 19.2.13.11 NMAC - Rn, 19 NMAC 2. SLO 13.11, 09/30/02; A, 06/30/16]

19.2.13.12 BIDDERS MUST BE QUALIFIED: [~~In order to be qualified as a bidder at a public sale of state-owned timber, a person must have complied with and met all conditions and requirements prescribed in the notice of sale, and must have deposited with the commissioner, or his agent conducting the sale, the sum of five hundred thirty dollars ($530.00) unless otherwise provided, in cash or certified check, prior to the opening of the sale. If the applicant or any other qualified bidder is not the successful bidder, his deposit and the application fee of thirty dollars ($30.00) will be refunded. If the cost of sale exceeds the five hundred dollar ($500.00) deposit, or whatever sum specified in the notice of sale, the successful bidder shall pay the difference before receiving his timber contract. If the costs of sale are less than the initial deposit, the successful bidder will be refunded or credited the difference at his option.~~] In order to be qualified as a bidder at a public sale of state-owned timber, a person must have complied with and met all conditions and requirements prescribed in the notice of sale, which shall include filing an application to purchase and payment of the application fee in accordance with 19.2.13.11 NMAC, and must have deposited with the commissioner, or his agent conducting the sale, an amount as set forth in the notice of sale, in cash or certified check, prior to the opening of the sale. If the applicant or any other qualified bidder is not the successful bidder, his deposit will be refunded. If the cost of sale exceeds the deposit, the successful bidder shall pay the difference before receiving his timber contract. If the costs of sale are less than the initial deposit, the successful bidder will be refunded or credited the difference at his option.
[12/31/99; 19.2.13.12 NMAC - Rn, 19 NMAC 2. SLO 13.12, 09/30/02; A, 06/30/16]

LAND OFFICE, STATE

This is an amendment to 19.2.14 NMAC, Sections 5, 7, 9, and 12, effective 6/30/2016. In 19.2.14.9 NMAC, Subsections C and D were not published, as there were no changes.

19.2.14.5 EFFECTIVE DATE: September 5, 1985, unless a later date is cited at the end of a section [~~or paragraph. Reformatted in NMAC format effective December 31, 1999~~].
[12/31/99; 19.2.14.5 NMAC - Rn, 19 NMAC 3. SLO 14.5, 09/30/02; A, 06/30/16]

19.2.14.7 DEFINITIONS: **[~~RESERVED~~]** "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.
[12/31/99; 19.2.14.7 NMAC - Rn, 19 NMAC 3. SLO 14.7, 09/30/02; A, 06/30/16]

19.2.14.9 APPLICATION FEES - COST - REQUIREMENTS: Applications to purchase state trust lands shall be:

A. Made under oath, in ink, or typewritten upon forms prescribed and furnished by the commissioner.

B. Accompanied by [~~a thirty-dollar ($30.00) fee and a deposit of five hundred dollars ($500.00) against the expense of advertising and sale~~] the application fee as set forth in the schedule of fees and a deposit against the expense of advertising and sale as set forth in the schedule of fees. The successful bidder shall pay the total cost of advertising, appraising, and sale, and will be billed for any cost in excess of the deposit. The deposit of unsuccessful bidders will be refunded.

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[12/31/99; 19.2.14.9 NMAC - Rn, 19 NMAC 3. SLO 14.9, 09/30/02; A, 06/30/16]

19.2.14.12 QUALIFICATION OF BIDDERS: In order to qualify as a bidder, the prospective bidder shall deposit with the commissioner:

A. **[**~~The sum of five hundred thirty dollars ($530.00) to cover cost of sale, unless a larger or lesser sum is otherwise provided in the notice of sale~~] A deposit to cover the cost of sale, as set forth in the notice of sale.

B. Ten percent of the appraised value of the lands.

C. The appraised value of the improvements, a waiver of payment of such amount signed by the owner of the improvements, or a bond sufficient to cover the appraised value if an appeal is to be taken, unless the prospective bidder is the owner of the improvements.
[[12/31/99; 19.2.14.12 NMAC - Rn, 19 NMAC 3. SLO 14.12, 09/30/02; A, 06/30/16]

LAND OFFICE, STATE

This is an amendment to 19.2.15 NMAC, Sections 7 and 15, effective 6/30/2016. In 19.2.15.7 NMAC, Subsections A through H were not published, as there were no changes.

19.2.15.7 DEFINITIONS:

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I. "**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be

published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[I.] J. "Scheduling order" means an order issued by the hearing officer that sets the date, time and place of the contest; establishes the order and timing of all pre-hearing matters, such as discovery and briefing; may establish whether procedures in addition to those provided for in this Part 15 shall be provided; and may provide for such other related matters as the hearing officer deems necessary. Under appropriate circumstances, the scheduling order may be amended by the hearing officer within a reasonable time after issuance.

[J.] K. "Show cause order" means an order issued by the commissioner, pursuant to Section 19-7-8 NMSA 1978 or otherwise as may be permitted, directing a party or parties to show cause, if any, why a particular agency action should not be taken or made final. The show cause order will state the place and time of the contest hearing. A show cause order is an agency determination.

[K.] L. "Trust lands or resources" means those lands, their natural products or water rights, and other assets derived from them, which are under the care, custody, and control of the commissioner.

[19.2.15.7 NMAC - N, 06/30/04; A, 06/30/16]

19.2.15.15 COSTS AND FEES:

A. Each participant in a contest proceeding, excluding the commissioner, shall be required, upon their first filing, to pay a non-refundable filing and processing fee [~~of fifty dollars ($50.00)~~] as set forth in the schedule of fees.

[~~**B.** Contest participants requiring copies from the commissioner shall be required to pay a copy fee in the amount then set out in the applicable policy or other written statement governing such costs.~~]

[C.] B. At the earliest practicable date, the hearing officer shall obtain from each participant in the contest an estimate of time needed to present their part of the proceeding. Based on such estimates, the hearing officer will determine the cost of prducing a record of the proceedings, and, if applicable, the fee or salary for the hearing officer's time to conduct the proceeding. At any time prior to or following the hearing, the hearing officer may determine that additional costs are necessary if it becomes evident that more time has been, or will be required to conclude the proceeding. Each party except the state land office will be required to pay, as a deposit, the amount of all costs assessed by the hearing officer in order to attend the proceeding and to have their arguments and evidence considered.

(1) A party who prevails upon all issues shall be entitled to the return of their full deposit. If they prevail in part, their deposit shall be returned in proportion to the number of claims, counterclaims, and cross claims upon which they prevailed.

(2) The deposit amount remaining after a return of funds to the prevailing party, or parties, shall be first applied to all applicable costs, with the balance of each deposit returned to each losing party in proportion to the number of claims, counterclaims or cross claims upon which they did not prevail.

(3) The determination of the proportions set out in paragraphs one (1) and two (2) above shall be discretionary with the hearing officer.

[D.] C. The hearing officer may, upon a satisfactory showing of inability to pay on the record, permit that party to proceed with reduced or no costs, and absorb those unpaid costs, to the extent not covered by a retained deposit, as an administrative expense.

[E.] D. Each party shall bear their own costs and fees in bringing or defending a contest.

[19.2.15.15 NMAC - N, 06/30/04; A, 06/30/16]

LAND OFFICE, STATE

This is an amendment to 19.2.17 NMAC, Sections 5 and 7, effective 6/30/2016. In 19.2.17.7 NMAC, Subsections A through C and Subsections E through G were not published, as there were no changes.

19.2.17.5 EFFECTIVE DATE: September 14, 2000, unless a later date is cited at the end of a section.

[19.2.17.5 NMAC - N, 09/14/2000; A, 06/30/2016]

19.2.17.7 DEFINITIONS:

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D. "Schedule of fees" means [~~the list of fees that must be paid to the commissioner for performance of certain administrative functions identified in this part. The schedule of fees is subject to change without notice and is available upon request~~] a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

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[19.2.17.7 NMAC - N, 09/14/2000; A, 06/30/2016]

LAND OFFICE, STATE

This is an amendment to 19.2.21 NMAC, Sections 7 and 9, effective 6/30/2016. In 19.2.21.7 NMAC, Subsections A through P and Subsections R through W were not published, as there were no changes.

19.2.21.7 DEFINITIONS: The following terms are used in this part as defined below:

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Q. "schedule of fees" means [~~a written schedule of administrative fees established by the commissioner and available to the public, which the commissioner in his discretion may change from time-to-time~~] a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable;

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[19.2.21.7 NMAC - Rp, 19.2.21.7 NMAC, 06/29/12; A, 06/30/16]

19.2.21.9 EXCHANGE PROPOSALS AND PROCEDURES:

A. A proposed exchange may be initiated either by an applicant or by the commissioner.

B. Exchange procedure initiated by applicant:

(1) A party interested in exchanging non-trust land may initiate an exchange procedure by filing with the commissioner an initial application to exchange land on a form prescribed by the commissioner, accompanied by a non-refundable

application [~~and advertising fee set by the commissioner in a schedule of fees~~] fee as set forth in the schedule of fees. The initial application shall include the identity and address of the applicant; a legal description of the non-trust lands proposed to be exchanged; the estimated market value of the non-trust lands; the current uses of the non-trust lands; ownership of the non-trust lands; a description of any known environmental or cultural properties issues related to the non-trust lands; a legal description of the trust lands that the applicant seeks to acquire; an estimate of the value of such trust lands; a deposit in an amount determined by the commissioner as sufficient to pay the costs of appraisal of the trust lands and non-trust lands (unless the commissioner has agreed to accept an appraisal or appraisals previously performed or to be performed at the applicant's expense); and such other information as the commissioner may request in writing. The commissioner shall advise the relevant beneficiary institution(s) through written correspondence that an exchange application was received.

(2) Following submission of an initial application, the commissioner will make a determination as to whether further investigation of the suggested exchange is warranted and shall so inform the exchange applicant. If the commissioner determines that the suggested exchange does not offer sufficient potential benefit to the trust, the application will be rejected and the exchange process will terminate.

C. Exchange procedure initiated by the commissioner. The commissioner may make his own preliminary determination that an exchange of certain trust lands would result in a financial benefit to the trust. In that case, the commissioner may initiate an exchange process by publishing a request for exchange proposals in accordance with 19.2.21.10 NMAC, below.

[19.2.21.9 NMAC - Rp, 19.2.21.9 NMAC, 06/29/12; A, 06/30/16]

LAND OFFICE, STATE

This is an amendment to 19.2.22 NMAC, Sections 7 and 19, effective 6/30/2016. In 19.2.22.7 NMAC, Subsections A through Y and Subsections AA through JJ were not published, as there were no changes. In 19.2.22.19 NMAC, Subsections A, B and D were not published, as there were no changes.

19.2.22.7 DEFINITIONS: As used in 19.2.22 NMAC, the following terms have the meaning set forth in this section. A planning and development lease may add detail to a definition to accommodate lease specific issues.

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Z. "Schedule of fees" means [~~a list of administrative fees which is published on the state land office website and revised by the commissioner from time to time~~] a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

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[19.2.22.7 NMAC - Rp, 19.2.22.7 NMAC, 11/30/12; A, 06/30/16]

19.2.22.19 ACQUISITION OF RIGHTS-OF-WAY BY LESSEE FOR DEDICATION TO A GOVERNMENTAL ENTITY: Trust lands within a planning and development lease may, from time to time, be purchased by a lessee for dedication to a governmental entity as rights-of-way pursuant to the following:

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C. Pricing of the easement. Rights-of-way acquired by a lessee on behalf of a governmental entity and simultaneously dedicated to the governmental entity will, at the sole discretion of the commissioner, be priced either on a per rod basis pursuant to the commissioner's standard [~~fee~~] price schedule, or at the per acre value as extrapolated from BV without adjustment for NA or SVA. In determining the proper pricing for the right-of-way, the commissioner shall consider the immediate and certain economic impacts to adjacent trust lands, if any, that may reasonably result from the right-of-way and associated infrastructure.

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[19.2.22.19 NMAC - N, 11/30/12; A, 06/30/16]

WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.3 NMAC, Sections 3, 6, 8, 9, and 11, the addition of new Sections 12 and 15, the renumbering of Sections 12 and 13, and part name change, effective on June 30, 2016.

PART 3 PAYMENT OF CLAIMS, POST-ACCIDENT DRUG AND ALCOHOL TESTING, AND CONDUCT OF PARTIES

11.4.3.3 STATUTORY AUTHORITY: Section 52-5-4 NMSA 1978 (Repl. Pamp. 1991), as amended, authorizes the director of the WCA to adopt reasonable rules and regulations for effecting the purposes of the act. Sections 52-5-20 to 52-5-22 NMSA 1978 (Repl. Pamp. 1991), as amended, contain certain payment deadlines and requirements for reporting by insurer. Section 52-1-28.1 NMSA 1978 (Repl. Pamp. 1991), specifically directs the WCA to create regulations on unfair claims processing practices and bad faith. Section 52-1-12.1 NMSA 1978 (2016) directs the director to promulgate rules governing post-accident drug and alcohol testing.

[6/1/96; 11.4.3.3 NMAC - Rn, 11 NMAC 4.3.3, 11/30/04; A, 6/30/16]

11.4.3.6 OBJECTIVE: This rule is intended to regulate the manner of payment of workers' compensation claims, to provide for post-accident drug and alcohol testing, and to clarify the parties' mutual obligations of prompt payment, cooperation and information reporting.

[6/1/96; 11.4.3.6 NMAC - Rn, 11 NMAC 4.3.6, 11/30/04; A, 6/30/16]

11.4.3.8 PAYMENT OF CLAIMS:

A. If an accidental injury or occupational disease occurs to a worker during the course of employment and results in lost time to the worker of more than seven [~~(7)~~] cumulative days [~~lost time to a worker,~~] the employer shall file an E1.2 report with the WCA, and shall concurrently [~~furnish~~] provide a copy to the worker.

B. [~~It is employer's obligation to insure that the worker receives the initial payment of indemnity benefits on a compensable claim within fourteen (14) days of the date of filing of the E1.2.~~] The employer shall pay the worker the first installment of

compensation benefits on a compensable claim no later than 14 days of the date of filing of the E1.2 report with the WCA.

C. If a claim is denied, the employer shall, upon the request of the worker, provide a written statement of the basis for the denial.

D. Compromise payments by the employer shall not be construed as an admission of liability by any person or party.

[5/2/87, 5/26/87, 5/29/91, 6/1/96; 11.4.3.8 NMAC - Rn, 11 NMAC 4.3.8, 11/30/04; A, 6/30/16]

11.4.3.9 LATE PAYMENT OF CLAIMS:

A. The WCA shall determine the timeliness of initial payments to workers.

B. Upon request of the WCA, an employer shall provide documentation to verify the timeliness of initial payments.

C. If an employer is identified by the WCA as having made initial payments on an untimely basis, the WCA may require the employer to implement a plan to prevent future late payments, and may require the employer to furnish proof of compliance with the plan.

[~~C. Any allegation of late payment of a claim, or a pattern of late payment of claims, may be investigated and penalized by the WCA pursuant to the procedures in Part Five (5) of these rules.~~]

[1/24/91, 6/1/96; 11.4.3.9 NMAC - Rn, 11 NMAC 4.3.9, 11/30/04; A, 6/30/16]

11.4.3.11 MILEAGE BENEFITS:

A. Employer shall pay worker's mileage, transportation, meal and commercial lodging expenses for travel to HCPs pursuant to this rule. Payment shall be made only to the injured worker and within [~~thirty (30)~~] 30 days of the employer's receipt of an original itemized receipt that complies with the requirements of this rule:

(1) [~~forty cents (.40) per mile~~] for travel to HCPs of [~~fifteen (15)~~] 15 miles or more, one [~~(1)~~] way, from the worker's residence or place of employment, depending upon the point of origin of travel, mileage shall be reimbursed at the mileage reimbursement rate set by the New Mexico Department of Finance and Administration regulations in effect on the date of travel;

(2) actual reimbursement for the cost of a ticket on a common carrier, if applicable;

(3) actual reimbursement up to [~~fifteen dollars ($15.00)~~] $15.00 for any one meal [~~wherein reimbursement is allowed for an initial one hundred and fifty (150) miles of travel and an additional meal is allowed for each additional one hundred and fifty (150) miles of travel~~] with up to three [~~(3)~~] meals total and [~~thirty dollars ($30.00)~~] $30.00 total reimbursed for a [~~twenty-four (24)~~] 24 hour period; and,

(4) actual reimbursement up [~~to eighty-five dollars ($85.00)~~] $85.00 for the cost of overnight commercial lodging in the event of required travel of at least [~~one hundred and fifty (150)~~] 150 miles one [~~(1)~~] way from worker's residence or place of employment, depending upon the point of origin of travel.

B. The employer in its sole discretion may make payments under this section in advance. If worker accepts an advance payment and fails to appear for the scheduled HCP or IME appointment for which an advance has been issued, the employer/insurer may deduct the amount of the advance from the present indemnity benefits.

[5/26/87...6/1/96; 11.4.3.11 NMAC - A/E, 11/15/04; 11.4.3.11 NMAC - Rn, 11 NMAC 4.3.11, 11/30/04; A/E, 2/19/10; A, 12/31/12; A, 6/30/16]

11.4.3.12 POST-ACCIDENT DRUG AND ALCOHOL TESTING

A. GENERAL PROVISIONS

(1) This section establishes regulations for post-accident drug and alcohol testing pursuant to Section 52-1-12.1 NMSA 1978.

(2) These rules are not intended to supersede other laws and are only intended to establish post-accident testing protocols and cut off levels as required by Section 52-1-12.1 NMSA 1978. Nothing in these rules shall prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law.

(3) If the worker requires emergency medical attention, medical treatment shall not be delayed to collect a drug or alcohol sample, provided that sample collection may occur in conjunction with the provision of medical treatment.

(4) A party may call a health care provider, toxicologist or similar forensic specialist as an expert witness to assist the workers' compensation judge in determining the degree to which intoxication or influence contributed to the worker's injury or death.

B. DEFINITIONS

(1) "Actual knowledge" means direct observation, by a supervisor or manager of the employer, of the consumption or use of drugs, alcohol or combination thereof, or of the clear physical symptoms or manifestations of intoxication or influence of the worker, or worker's admission to consumption or use of drugs or alcohol made to a supervisor or manager.

(2) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

(3) "Confirmatory test" or "confirmatory drug test" means a second analytical procedure performed on the original sample used to identify and quantify the presence of a specific drug or drug metabolite.

(4) "Constructive knowledge" means that a supervisor or manager of the employer, by exercise of reasonable diligence, should have had actual knowledge that the injured worker was impaired on the date of the workplace accident.

(5) "Drug" means any chemical agent that affects living processes and has the potential to impair those processes, including, but not limited to, substances listed under the New Mexico Controlled Substances Act. "Drug or controlled substance" does not include medications prescribed to a worker by the worker's licensed health care provider and taken in accordance with directions of the prescribing health care provider or dispensing pharmacy, unless such medication is combined with alcohol or a non-prescribed drug or controlled substance to cause intoxication or influence.

(6) "Initial test" or "initial drug test" means a screening test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

(7) "Implement" or "implemented" means that the employer has put into effect and enforces a written policy on drug and alcohol use in the workplace.

(8) "Intoxication" or "influence" means a temporary state or condition of impaired physical, mental or cognitive function by means of alcohol, a drug, a controlled substance, or a combination of two or more substances at the time of injury or death.

(9) "Refusal to submit" means a worker who, by words

or actions, refuses to submit to a drug or alcohol test, fails to appear for a test, fails to complete a test, fails to cooperate with collection of a sample, or otherwise intentionally conceals him or herself or makes him or herself unavailable to test.

(10) "Testing facility" as referenced in Section 52-1-12.1(F) means a testing facility selected by the employer to test a sample.

C. MINIMUM REQUIREMENTS FOR EMPLOYERS' DRUG AND ALCOHOL POLICIES

(1) To comply with the provisions of Section 52-1-12.1(H), the employer's written drug and alcohol policy shall:

(a) declare a drug and alcohol free workplace;

(b) advise workers of the types of testing they may be required to submit to and the circumstances under which workers may be tested for alcohol or drugs;

(c) advise workers that workers' compensation benefits may be reduced if their intoxication or influence contributes to a work place injury;

(d) advise workers that refusal to submit to or an intentional delay of post-accident testing may result in a complete denial of benefits pursuant to Section 52-1-12.1(E) NMSA 1978.

(e) advise workers that they may request a second test of the original sample within 12 months of the original drug and alcohol test at the worker's expense.

(2) Notice of the policy may be given to workers through any of the following methods: posting the policy in a conspicuous place, including the policy in an employee policy handbook, having the worker sign an acknowledgement form that is placed in the worker's personnel file, a wallet card, a flyer inserted semi-annually with pay checks, or any other method employer reasonably believes will be successful in alerting the worker.

D. TESTING AND CUT OFF LEVELS

(1) Test samples, whether urine, breath or blood, shall only be collected by facilities, medical providers, or health care providers certified to collect such samples, provided that nothing prohibits an employer from relying on testing performed by law enforcement pursuant to the New Mexico Implied Consent Act.

(2) Sample collection, testing, and storage methods shall substantially comply with generally accepted standards in the medical or scientific community, which may include standards established by the federal Department of Transportation, the New Mexico Department of Transportation, the federal Substance Abuse and Mental Health Administration, or the New Mexico State Personnel Office.

(3) Post-accident alcohol testing shall be conducted as soon as practicable after the accident. Any post-accident alcohol test conducted more than 8 hours after the accident shall not be relied upon to reduce benefits under Section 52-1-12.1, unless the worker intentionally caused the delay in the testing.

(4) Post-accident drug testing shall be conducted as soon as practicable after the accident. Any post-accident drug test conducted more than 32 hours after the accident shall not be relied upon to reduce benefits under Section 52-1-12.1, unless the worker intentionally caused the delay in the testing.

(5) A worker who requests a second test of an original sample shall be responsible for any costs associated with the testing of that sample. The worker shall provide timely written notice of the worker's request for a second test to the laboratory or custodian of the sample and to the employer.

(6) Provisions set forth in Section 52-1-12.1(F) requiring storage of samples shall only apply to testing facilities selected by the employer and shall not apply to hospitals or facilities providing emergency medical care to the worker.

(7) Cut off concentration levels for intoxication or influence

(a) An otherwise valid post-accident alcohol test creates a rebuttable presumption of intoxication or influence under Section 52-1-12.1 if the test results show a blood or breath alcohol concentration of .04 or above.

(b) An otherwise valid post-accident drug test creates a rebuttable presumption of intoxication or influence under Section 52-1-12.1 if initial and confirmatory testing performed by the testing facility show concentration levels at or above the cut off concentration levels set forth herein.

(c) Initial test cut off concentrations

(i) Marijuana metabolites: 50 (ng/mL)

(ii) Cocaine metabolites: 150 (ng/mL)

(iii) Opiate metabolites (Codeine/Morphine): 2,000 (ng/mL)

(iv) 6-Acetylmorphine: 10 (ng/mL)

(v) Phencyclidine (PCP): 25 (ng/mL)

(vi) Amphetamines (AMP/MAMP): 500 (ng/mL)

(vii) Methylenedioxymethamphetemine (MDMA): 500 (ng/mL)

(d) Confirmatory test cut off concentrations

(i) Marijuana metabolite (Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA)) 15 (ng/mL)

(ii) Cocaine metabolite (Benzoylecgonine): 100 (ng/mL)

(iii) Opiate metabolites: 2,000 (ng/mL)

(iv) 6-Acetylmorphine: 10 (ng/mL)

(v) Phencyclidine (PCP): 25 (ng/mL)

(vi) Amphetamines / Methamphetamine: 250 (ng/mL) (to be reported as positive for methamphetamine, the sample must also contain amphetamine at a concentration equal to or greater than 100 ng/ML)

(vii) Methylenedioxymethamphetamine (MDMA), Methenedioxyamphetamine (MDA), or Methylenedioxyethylamphetamine (MDEA): 250 (ng/ML)

(e) For any other drug not specifically enumerated in these rules, a cut off level established by any other nationally recognized authority may be relied upon.

(8) The employer shall provide a copy of the test results to the worker if relied upon to reduce benefits or upon worker's request.

[5/26/87, 6/20/89, 1/24/91, 6/1/96; 11.4.3.12 NMAC - Rn& A, 11 NMAC 4.3.12, 11/30/04; A, 10/1/15; 11.4.3.12 - N, 6/30/16]

[~~11.4.3.12~~] 11.4.3.13 CONDUCT OF PARTIES:

A. Worker's duties:

(1) Worker shall answer reasonable requests from the employer regarding work status.

(2) When a worker is receiving disability benefits, worker shall report to employer, within [~~fifteen (15)~~] 15 days, any return to work, any written medical release to return to work provided to worker, and any physical limitations imposed by a physician and provided to worker in writing.

(3) Worker shall, upon request, give employer the names, addresses, relationship and degree of dependency of all dependents, and may be required to make a verified statement regarding these matters.

(4) Worker may be required to sign the authorization form approved by the WCA to release medical information as a condition of receipt of workers' compensation benefits.

B. Employer's duties:

(1) Upon receipt of a medical release to return to work employer shall notify worker about any required procedures for application for a pre-injury job or modified work.

(2) The employer shall not require the worker to sign any medical release form, other than the WCA approved worker's authorization for use and disclosure of health records, as a condition of receipt of workers' compensation benefits. If a health care provider refuses to accept the WCA approved worker's authorization for use and disclosure of health records, the worker may be required to execute the health care provider's requested release.

(3) The employer shall sign any notice of accident form on the date submitted by the worker.

(4) The employer shall report every accident to their insurer or, in the case of a self-insured employer or member of a self-insurance group, their claims administrator, whether or not the employer considers the claim to be valid, within 72 hours of the earlier of:

(a) actual knowledge of the accident by the employer; or

(b) presentation of a notice of accident form to the employer.

(5) An insured employer is prohibited from making any payment of statutory workers' compensation benefits directly to a worker, the dependents of a worker, or to a [~~service provider~~] health care provider on behalf of a worker, except when the employer is a self-insurer, or member of a group self-insurance program, certified by the director. Payments of statutory benefits by a certified self-insurer or a member of a certified group self-insurance program must be made by the authorized claims administrator for the self-insurance program. This prohibition does not preclude any employer from paying a worker his or her full wage or salary pursuant to a wage continuation program, or from paying wages or salary to a worker for limited or light duty employment.

(6) Employers who are subject to the Act but uninsured at the time of a compensable accident shall pay statutory workers' compensation benefits directly to a worker or eligible dependent, or HCP upon request. Any uninsured employer paying a claim under this subsection shall inform the director in writing within [~~10~~] ten days of the initial payment, and shall provide the employer's business location, the total number of employees, and the worker's name, address, and benefit status. The director may impose upon the employer any conditions regarding the manner of payment of benefits as may reasonably be required to protect the interests of the worker and insure compliance with the act.

[~~C. A violation of this section may result in the imposition of criminal, administrative and judicial sanctions.~~]

[11.4.3.13 NMAC - Rn & A, 11.4.3.12 NMAC, 6/30/16]

[~~11.4.3.13~~] 11.4.3.14 CONDUCT OF ATTORNEYS AND REPRESENTATIVES APPEARING BEFORE THE WCA:

A. An attorney or other representative of a party may not engage in or advocate meritless claims or defenses when appearing before the WCA.

B. An attorney or other representative of a party shall be courteous and professional and shall be punctual for mediations and hearings.

C. Attorneys and other representatives of a party shall be attired in an appropriate manner, suitable to a court proceeding.

D. The director may sanction any attorney or representative who engages in the conduct proscribed by [~~Subsection A of 11.4.3.13 NMAC above~~] Subsections A, B and C of this Section or who violates any provision of the Act or these rules. In cases of repeated violations, or a single act of an egregious nature, and upon a written finding that the attorney or representative's behavior is not likely to be controlled by imposition of a fine, the director's sanctions may include suspension, termination or limitation of the right to practice before the WCA.

[~~C.~~] E. The director's imposition of a sanction against an attorney or representative shall be governed by the procedures in 11.4.5 NMAC.

[11.4.3.14 NMAC - Rn & A, 11.4.3.13 NMAC, 6/30/16]

11.4.3.15 ENFORCEMENT: Any violation of these rules may be investigated and penalized pursuant to the procedures in 11.4.5 NMAC.

[11.4.3.15 - N, 6/30/16]

END OF ADOPTED RULES

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Other Material Related To Administrative Law

WORKERS' COMPENSATION ADMINISTRATION

RESPONSE TO PUBLIC COMMENT ON PROPOSED RULEMAKING

Proposed changes to Parts 3 of the Workers' Compensation Administration ("WCA") Rules were released for public comment on March 21, 2016. The initial public comment period was from March 21, 2016 through April 20, 2016. In addition to written comments, the WCA accepted oral comment at a public hearing on April 8, 2016.

Based on public comment received to proposed rules released on March 21, 2016, the WCA revised its proposed amendments to Part 3 and extended the public comment period. The revised proposed changes were released for public comment on May 3, 2016. Public comment on revised rule proposals closed on June 2, 2016.

The undersigned appreciates all of those who took the time to submit comments regarding the proposed amendments.

PART 3

COMMENTS were received in response to proposed changes to NMAC 11.4.3.8 and 11.4.3.9, which govern timeliness of initial payments to injured workers. One commenter suggested stylistic edits to 11.4.3.8, which the commenter believed would add clarity to the provisions. Another commenter inquired whether amendments proposed to 11.4.3.9(B) could be revised to require an insurer to also provide documentation to verify timeliness of initial payments upon request of an injured worker.

RESPONSE to comments received on Sections 11.4.3.8 and 11.4.3.9: Stylistic changes to 11.4.3.8 were well received and have been incorporated into the revised proposals and will be released for extended public comment. The changes proposed to 11.4.3.9 were intended to clarify the WCA's ability to investigate and enforce the timeliness of initial first payments to injured workers. Injured workers already have other means to obtain information about the timeliness payments, including requesting copies of the E1 or E6 filed with the Administration in accordance with NMSA 1978, § 52-5-21, or requesting documentation from the employer/insurer.

COMMENTS were received in response to proposed changes to NMAC 11.4.3.11(A) (3). The commenter thought the changes would cause confusion and led to scenarios where workers seek reimbursement for three meals from a four hour long trip. The commenter felt the current rule, while wordy, avoided such specious practices.

RESPONSE to comments received on Section 11.4.3.11(A) (3). The changes were proposed because the current rule is too restrictive in that a worker traveling from Santa Fe to Albuquerque for a day long IME would not be entitled to meal reimbursement. When the ordinary meaning of "meal" in the revised ruled is applied, workers should only be eligible for up to three meals in a 24 hour period – i.e., breakfast, lunch, or dinner – subject to a maximum of $30.00.

COMMENTS were received in response to proposed changes to NMAC 11.4.3.12, which contains new provisions governing post-accident drug and alcohol testing and cut off levels, as well as minimum requirements for drug and alcohol free work place policies established by employers. These regulations were proposed in accordance with 2016 legislative amendments to NMSA 1978, § 52-1-12.1.

COMMENTS were received from one commenter who suggested edits to the general provision proposed at 11.4.3.12(A) (3). This commenter felt the proposed language might conflict with other laws that set standards on how employers may impose testing requirements on a mandatory, random or reasonable suspicion basis. This commenter also questioned whether the factual issues surrounding the collected test sample, such as the timing and circumstances surrounding the sample collection, are better left to the assigned workers' compensation judge.

RESPONSE to comments received on Section 11.4.3.12(A) (3): Upon further consideration, the proposed regulation is unnecessary. Section 11.4.3.12(A)(2) of the general provisions section makes clear that the rules in Section 11.4.3.12 are limited to establishing post-accident testing protocols in the context of reducing workers' compensation benefits arising out an injury in the course and scope of employment. Nothing in the rules adopted is intended to interfere with or supplant employers' rights to test their workers, as permitted by other laws. The fact that an employer may ask an injured worker to submit to post-accident drug or alcohol testing is established by NMSA 1978, § 52-1-12.1. Issues regarding the timeliness and reasonableness of an employer's request for an injured worker to submit to post-accident drug or alcohol testing can be addressed by a workers' compensation judge by evaluating relevance and timing of the employer's request, and whether an unreasonable request to submit to testing constitutes bad faith or unfair claims practice.

Several COMMENTS were received regarding proposed definitions under section 11.4.3.12(B). One commenter suggested that the definition of "drug" at 11.4.3.12(B) (5) be amended to add "but not limited to" between "including" and "substances." This commenter suggested the added language because synthetic drug components are constantly evolving. Another commenter suggested that the definition of "drug" in the rule copy the language of Section 52-1-12.1(A) and include language clarifying what "drug" and "controlled substance" do not include. This commenter also suggested that the definition of "actual knowledge" by revised to cover "use of drugs, alcohol or a combination thereof". Another commenter inquired how the new law and rules would apply to an injured worker taking medical cannabis for their work place injury.

As to the definition of "actual knowledge" at 11.4.3.12(B) (1), one commenter thought "a supervisor or manager" should be replaced with "a person acting in a supervisory or management capacity". This commenter thought the definition should also include knowledge obtained from the results of a random drug test. On the definition of "constructive knowledge" at 11.4.3.12(B) (4), one commenter inquired whether a worker's benefits could be reduced if the employer had constructive knowledge under this definition.

Comment was also received suggesting that the definition of "testing facility" at 11.4.3.12(B) (10) was somewhat

confusing because collection sites and testing sites are often not the same facility. This commenter thought the definition of "testing facility" should only relate to testing facilities.

Several commented that using the term "impairment" in definitions at 11.4.3.12(A)(6) and 11.4.3.12(B)(8) and throughout the rule, rather than using the statutory terms of "intoxication" or "influence," would cause confusion. These commenters felt that the statutory terms should be used for consistency and clarity.

RESPONSE to comments received on section 11.4.3.12(B): Based on comments submitted on the definition of "testing facility," the definition will be amended to strike the words "to collect or." Because substances that cause impairment continuously evolve, the suggestion to add "but not limited to" to the definition of drug was considered. Rule 11.4.3.12(B)(5), defining "drug," is amended to: "means any chemical agent that affects living processes and has the potential to impair those processes, including but not limited to substances listed under the New Mexico Controlled Substances Act." The definition of drug is also amended to include the remaining statutory language, as follows: "Drug or Controlled Substance" does not include "medications prescribed to a worker by the worker's licensed health care provider and taken in accordance with directions of the prescribing health care provider or dispensing pharmacy, unless such medication is combined with alcohol or a non-prescribed drug or controlled substance to cause intoxication or influence." Similarly, the definition "impairment" will be replaced with "intoxication" or "influence" as those are the terms used and defined by statute. Finally, the definition of actual knowledge is amended as proposed.

The statutory definition of "drug" and "controlled substance" can include medical cannabis when the presence of medical cannabis in a worker's system causes "intoxication" or "influence" that contributes to a work place accident. Unlike other medications prescribed by a physician and dispensed by a pharmacy, medical cannabis is not prescribed in certain quantities, at certain dosages, or at certain intervals. Rather, a medical cannabis patient is certified to participate in the Department of Health program, authorized to purchase up to a certain amount within a calendar quarter (8 ounces), and then the patient self-administers the cannabis purchased from a licensed dispensary. Medical cannabis, like alcohol, has the potential to impair a worker's function in the work place and intoxication or influence caused by medical cannabis can be relied upon to reduce the injured worker's benefits under the statutory amendments to Section 52-1-12.1.

Section 52-1-12.1(G) provides that a worker's indemnity benefits may not be reduced where the employer had actual or constructive knowledge of the worker's intoxication or influence and a reasonable opportunity to address the situation prior to the workplace accident. The definition of "actual knowledge" will be adopted as proposed. Whether the results of a random alcohol or drug test taken, which may not be known to an employer until days after the testing, rises to actual knowledge of intoxication or influence on a the day of an accident is a question of fact and encompassed within the current definition of actual knowledge. The definition of constructive knowledge was proposed to give some guidance on the meaning of constructive knowledge as referenced in statute.

COMMENTS were also received from one commenter who suggested numerous stylistic revisions to 11.4.3.12(C), which provides minimum requirements for drug and alcohol free work place policies established by employers. In addition to stylist changes, this commenter proposed that section 11.4.3.12(C) (1) (b) be revised to require workers to submit to drug and alcohol testing if a work place injury requires medical treatment beyond first aid. This commenter also proposed that the following paragraph (e) be added: "advises workers that they may request a second test of the original sample within twelve (12) months of the original drug and alcohol test at the worker's expense."

RESPONSE to comments received on section 11.4.3.12(C): Requiring workers' to submit to post accident drug and alcohol testing may not be cost effective for all reported accidents, for example repetitive motion injuries. Whether an employer wishes to incur the expense of testing an injured worker, and the cost of storing that sample for 12 months, should be the employer's decision. The suggestion to add a new subparagraph (e) was well received and will be proposed for further public comment.

Multiple COMMENTS were received on 11.4.3.12(D), which proposes alcohol and drug testing and cut off levels. Several commenters inquired how the cut off levels were derived, with one commenter specifically questioning how the cut off levels were developed when no studies show impairment at the noted cut off levels. One commenter expressed concern that the cut off levels may cast too wide a net and may not have a relation to impairment at the time of accident, especially where certain metabolites like marijuana and cocaine stay in the body for long periods of time. A commenter inquired whether the regulations would include provisions for employers to provide for substance abuse treatment for injured workers. Another commenter thought suggesting any cut off level was inconsistent with legislative objectives to encourage zero tolerance policies for drugs and alcohol in the workplace.

One commenter pointed out that 11.4.3.12(D) (7) (a) provided a cut off level for blood alcohol concentrations but not breath alcohol concentrations. This commenter noted the regulation would require a corporate wide change, because their company currently only collects breath alcohol samples. The commenter wondered if breath alcohol concentration collection samples would also be permitted under the rule.

One commenter expressed concern that the regulations do not specify which lab will conduct the testing. This commenter also expressed concern that 11.4.3.12(A) (5) would allow a health care provider to testify on impairment. This commenter questioned whether a general health care provider has the qualifications to render opinions on impairment and noted that only toxicologists are authorized to give an opinion on impairment under New Mexico Department of Transportation regulations. Another commenter thought it was a good idea to give the parties the option to call a toxicologist as an expert but expressed concern the option may drive up discovery costs and delay trial.

Many commented that 11.4.3.12(D) (7) (f) should be stricken as confusing and inconsistent with statutory intent expressed in NMSA 1978, Section 52-1-12.1. Commenters on this point included the sponsor of the legislation. Many commented that statutory language – "the director shall adopt rules regarding tests, testing, and cutoff levels for intoxication or influence" – anticipated the WCA would establish cut off levels creating a presumption (or *prima facie* evidence) of

intoxication or influence. One commenter explained that the legislature intended that once intoxication or influence is established by a test conducted pursuant to statutory requirements, the employer becomes entitled to a reduction in benefits depending on the degree of contribution. Another commenter stated that a presumption of intoxication or influence is "established when threshold concentrations of alcohol, drugs, or combination of two or more substances are met through valid testing."

RESPONSE to comments on 11.4.3.12(D): Failure to include "breath alcohol concentrations" in 11.4.3.12(D) (7) (a) was a drafting oversight; amendments to NMSA 1978, Section 52-1-12.1 clearly contemplated testing could include urine, breath, or blood. 11.4.3.12(D) (7) (a) will be amended to permit tests showing "blood or breath alcohol concentrations".

The proposed regulations intentionally do not specify which lab is to perform testing of the split sample collected from the injured worker. By not identifying a specific laboratory for testing samples, public and private employers will have the flexibility to identify testing facilities that comply with the standard requirements for testing facilities but that also meet the employer's needs and budget.

Similar flexibility was built into provisions that permit parties to rely on testimony of an expert witness, including a health care provider or a toxicologist. In some cases, the test results may be so high or intoxication or influence so obvious that the employer could establish the degree of intoxication or influence without relying on an expert. In some instances, a health care provider, such as an emergency room physician or nurse, could testify as to the worker's impaired state at the time of treatment and/or sample collection. In other close cases, the parties may need to rely on a toxicologist to establish intoxication or influence at the time of accident or the degree to which the intoxication or influence contributed to the accident. Although discovery costs may certainly increase in claims involving intoxication or influence from alcohol or drugs, both parties should not be denied the opportunity to establish their claim or defense because of a gap in the rules.

While some employers provide substance abuse treatment programs or employee assistance programs ("EAPs") to their employees, requiring employers to do so post-accident is beyond the scope of the Workers' Compensation Act and the WCA's rule making authority. Nothing in the proposed rules prohibits any employer from offering or continuing to offer EAPs to their employees.

The cut off levels set forth in 11.4.3.12(D) (7) were taken from Federal Department of Transportation regulations codified at 49 CFR Part 40. Federal DOT cut off levels are nationally recognized and have been adopted by the New Mexico Department of Transportation ("DOT") and the New Mexico State Personnel Office. Under Federal DOT and NM DOT regulations, an employee who tests at or above the referenced cut off level is mandated to be immediately removed from their position.

The regulations initially proposed no presumption of intoxication or influence, because neither Federal nor NM DOT regulations discuss a correlation between impairment and a drug or alcohol test result at or above the cut off level. However, the Federal Department of Transportation regulations requiring immediate removal of the employee from the work place is evidence that an employee who tests at or above the alcohol or drug cut off level is impaired, or at a minimum unsafe to be in the workplace. When a test is conducted in accordance with regulations and the injured worker tests at or above the concentration cut off level, it creates a reasonable presumption that the worker was subject to intoxication or influence at the time of work place accident. That presumption can be rebutted with other evidence, including testimony from a toxicologist or other witnesses. Ultimately, whether the employer establishes the worker's intoxication or influence contributed to the work place accident, and the degree to which it contributed, if any, will depend on all of the facts presented to the workers' compensation judge.

Based on comments received, the WCA proposes to strike its original paragraph 11.4.3.12(D) (7) (f). Paragraph (D)(7) (a) is now proposed as follows: "An otherwise valid post-accident alcohol test creates a rebuttable presumption of intoxication or influence under Section 52-1-12.1 if the test results show a blood or breath alcohol concentration of 0.04 or above." Paragraph (D)(7)(b) is now proposed as follows: "An otherwise valid post-accident drug test creates a rebuttable presumption of intoxication or influence under Section 52-1-12.1 if initial or confirmatory testing performed by the testing facility show concentration levels at or above the cut off concentrations levels set forth herein."

In addition to the specific comments noted above, additional comments proposed stylistic and editorial suggestions to Sections 11.4.3.3 (Statutory Authority), 11.4.3.6 (Objective), 11.4.3.8 (Payment of Claims), 11.4.3.9 (Late Payment of Claims), and 11.4.3.10 (Insurer's Reporting Duty to Employer). Comments not included in the revised proposed rule amendments were not considered for adoption.

SUPPLEMENTAL COMMENTS were submitted after revised amendments to 11.4.3.12(D) (7) were released for public comment. One commenter stated the revised rules were fully consistent with the plain language and intent of SB 214. The commenter supports establishing a presumption of intoxication or influence when a test exceeds the established cut off level and considers such an approach to be consistent with the statutory framework. The commenter also believes that the revised rule will prompt judicial economy and reduce unnecessary litigation costs for workers and employers. Another commenter thought an eight hour window to collect an alcohol sample was too restrictive and proposed a 24 hour window.

RESPONSE to supplemental comment on revised amendments to 11.4.3.12(D) (7): Similar to cut off levels, the outer boundaries for time frames to collect alcohol and drug samples (8 hours and 32 hours, respectively) were taken from regulations of the Federal Safety Motor Carrier Administration, a division of the Federal DOT, and from regulations of the NM DOT. These regulations require testing be performed within maximum time frames after an accident involving a motor vehicle. The rule will be adopted as revised.

SUPPLEMENTAL COMMENT was received in response to changes proposed at 11.4.3.14(B) and (C). The commenter thought the rules were unclear as everyone's perception of professionalism and appropriate dress are different. The commenter also thought enforcing 11.4.3.14(C) would be challenging in the absence of an established dress code.

RESPONSE to comment received on 11.4.3.14(B) and (C): Attorneys and

representatives or parties appearing for mediations, scheduling conferences, or hearings are expected to behave professionally toward each other and the court. They are also expected to be presentable when appearing before the WCA. If an attorney or representative would not dress or behave in a certain way when appearing before the district court or any other court, they similarly should not dress or behave in those inappropriate ways when appearing before the WCA. The rules will be adopted as proposed.

Publication in the New Mexico Register

These rules will be adopted pursuant to NMSA 1978, §52-5-4 and §52-1-12.1. The final rules contain the proposed amendments published and opened for public comment, which was extended to June 2, 2016 following revisions after the initial public comment period.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

DARIN A. CHILDERS
WCA DIRECTOR

BY: _____/s/_____
Rachel A. Bayless
WCA General Counsel
June 10, 2016

END OF OTHER MATERIAL RELATED TO ADMINISTRATIVE LAW

2016 New Mexico Register

Submittal Deadlines and Publication Dates
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Issue 5	March 1	March 15
Issue 6	March 16	March 31
Issue 7	April 1	April 15
Issue 8	April 18	April 30
Issue 9	May 2	May 13
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