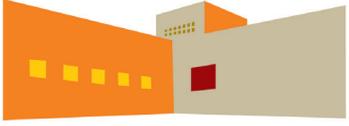


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New Mexico Register

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

Volume XXVII - Issue 13 - July 15, 2016

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New Mexico Register

Volume XXVII, Issue 13

July 15, 2016

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Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department (CYFD), Early Childhood Services (ECS), will hold a formal public hearing on August 15, 2016, at 10:30 a.m. in Apodaca Hall located at 1120 Paseo de Peralta, Santa Fe, New Mexico, to receive public comments regarding changes to the following regulations: 8.8.3 NMAC Children, Youth and Families General Provisions Governing Background Checks and Employment History Verification; 8.15.2 NMAC Child Care Assistance Requirements for Child Care Assistance Programs for Clients and Child Care Providers; 8.16.2 NMAC Child Care Licensing Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs; and 8.17.2 NMAC Non-Licensed Child Care Requirements Governing Registration of Non-Licensed Family Child Care Homes.

The proposed regulation changes may be obtained at www.newmexicokids.org or by calling 505-827-7499 or 1-800-832-1321. Interested persons may testify at the hearing or submit written comments no later than 12:00 p.m. on August 15, 2016. Written comments will be provided the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Reagan Smetak, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-9978. For questions regarding the proposed regulation changes, please call 505-827-7499 or 1-800-832-1321.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please call 505-

827-7499 or 1-800-832-1321. ECS requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NOTICIA DE AUDICION PÚBLICA

El Departamento de Niños, Jóvenes y Familias (CYFD por sus siglas en Inglés), Servicios de Niñez Temprana (ECS por sus siglas en Inglés), tendrá una audición formal para el público el día 15 de agosto del 2016, a las 10:30 de la mañana en el salón Apodaca, localizado en 1120 Paseo de Peralta, Santa Fe, New México, para recibir comentarios públicos con respecto a cambios propuestos a las regulaciones NMAC 8.8.3 Provisiones Generales que Gobiernan Antecedentes Penales y Verificación de Historial de Empleo, 8.15.2 NMAC Requerimientos para el Programa de Asistencia para Cuidado Infantil para Clientes y Proveedores (as) de Cuidado Infantil; 8.16.2 NMAC Licencias de Cuidado Infantil para centros, Programas de Cuidado des pes de la Escuela, Programas de Cuidado Infantil en Casas y cualquier otro Programa de Cuidado y Educación Temprana y NMAC 8.17.2 de Sin-Licencias para Guarderías Administración de Registro de Sin-Licencias Casas de Familia Guardería.

Los cambios propuestos de la regulación pueden ser obtenidos en www.newmexicokids.org o por llamar 505-827-7499 o 1-800-832-1321. Las personas interesadas pueden testificar en la audición o someter comentarios escritos hasta las 12:00 de la tarde el día 15 de agosto del 2016. Los comentarios escritos serán proporcionados la misma consideración como testimonio oral en la audición. Los comentarios escritos deben ser dirigidos a: Reagan Smetak,, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax #: 505-827-9978. Preguntas con respecto a los cambios propuestos de regulación, por favor llame 505-827-

7499 o 1-800-832-1321.

Si usted es una persona con incapacidades y usted requiere esta información en un formato alternativo o requiere alojamientos especiales para tomar parte en la audición pública, por favor llame 505-827-7499 o 1-800-832-1321. CYFD requiere aviso de las peticiones por lo menos 10 días de preaviso para proporcionar formatos solicitados alternativos y alojamientos especiales.

PUBLIC SAFETY, DEPARTMENT OF

NOTICE OF PUBLIC RULES HEARING

The New Mexico Law Enforcement Academy Board will hold a public rules hearing to receive public testimony and comments regarding proposed changes to the following rules: 10.29.1 NMAC, GENERAL PROVISIONS; 10.29.6 NMAC, CERTIFICATION BY WAIVER; 10.29.7 NMAC, IN-SERVICE TRAINING REQUIREMENTS and 10.29.9 NMAC, POLICE OFFICER. The hearing will be held on Tuesday, August 23rd at 10:00 a.m. at the NM Law Enforcement Academy, classroom #5, located at 4491 Cerrillos Road Santa Fe, NM 87507.

A copy of the proposed rule changes can be obtained from:

Layla Reyes
New Mexico Law Enforcement Academy
4491 Cerrillos Road
Santa Fe, New Mexico 87507
505-827-9252
layla.reyes@state.nm.us

The proposed rule changes may also be reviewed between 8:00 a.m. and 5:00 p.m. at the New Mexico Law Enforcement Academy at 4491 Cerrillos Road Santa Fe, NM 87507 by contacting Layla Reyes at 505-827-9252. Copies of the proposed rule

changes may also be obtained from the Board's website: (www.nmlea.dps.state.nm.us/index.php/lea-board/).

Please submit any written comments regarding the proposed rules to the attention of Layla Reyes at the above address or via e-mail no later than 5:00 p.m. on Friday, August 19th. Persons wishing to present written comments at the hearing are asked to provide five (5) copies of any comments or proposed changes for the hearing officer and board staff. In addition, persons may present their comments orally at the hearing.

Notice: Any person presenting testimony who is representing a client, employer or group may be required to register as a lobbyist through the Secretary of State's Office. Please contact the SOS office for more information.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Layla Reyes by telephone at (505) 827-9252. The NM Law Enforcement Academy requests at least ten (10) days advance notice to provide requested special accommodations.

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 amended rules pertaining to grievance procedures, to be codified in the New Mexico Administrative Code (NMAC) at Section 13.10.17 (**GRIEVANCE PROCEDURES**).

The text of the proposed new rule is located on the OSI website at <http://www.osi.state.nm.us/>, under the "Legal" tab and also in the "Communications" section, under "Statutes and Rulemaking." It is incorporated by reference into this Notice of Proposed Rulemaking (NOPR).

The Affordable Care Act reorganized, amended and added to the provisions of part A of Title XXVII of the Public Health Service Act (42 U.S.C. 300gg *et seq.*), relating to group health plans and health insurance issuers in the group and individual markets pertaining to external review processes. On November 18, 2015, the U.S. Departments of Health and Human Services, Labor and the Treasury issued final regulations implementing these requirements, known collectively as the Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act (Pub. L. 111-152, enacted on March 30, 2010), and referred to as the Affordable Care Act (ACA). See also, the internal claims and appeal process at 45 C. F. R. Section 147.136(b) and the implementing regulation for state standards for external review at 45 C. F. R. Section 147.136(c) effective January 19, 2016.

Statutory authority for promulgation of this rule is found at Sections 59A-46-8 through 59A-46-11, 59A-57-1 through 59A-57-5, 59A-16-20, 59A-16-21, 59A-16-22, 59A-2-8, 59A-2-9, 59A-15-16, 59A-19-14, 59A-57-1, *et seq.* (The Patient Protection Act), 59A-1-16 and 59A-1-1, *et seq.* NMSA 1978.

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 oral comments or file any written proposals or comments according to the criteria and schedule set forth as follows: Oral comments will be accepted at the public hearing from any interested

persons; Written statements, proposals or comments may be submitted for the record and are due no later than **4:00 p.m. on Monday August 15, 2016**. (c) Any responsive proposals or comments should be filed **no later than 4:00 p.m. on Monday August 22, 2016**.

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. 16-00027-RULE-LH

The Superintendent will hold a public comment hearing beginning at **10:00 a.m. on Monday August 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 is the designated hearing examiner for this case.

Any person with a disability requiring special assistance in order to participate in the hearing should contact **Lois Caroline Pedro, at 505-476-0305** at least 48 hours prior to the commencement of the hearing. The Superintendent will consider all oral comments and will review all timely submitted written comments and responses.

The record in this rulemaking shall close at **4:00 p.m. on Monday, August 22, 2016**, at which time no further oral or written communication concerning this rulemaking will be entertained or considered by the Superintendent. 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 1st day of July, 2016.

JOHN G. FRANCHINI,
Superintendent of Insurance

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

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Adopted Rules

Effective Date and Validity of Rule Filings

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

ENVIRONMENTAL IMPROVEMENT BOARD

The Environmental Improvement Board approved, at its 05/13/2016 hearing, to repeal its rule 7.18.2 NMAC, Public Swimming Pools, Spas, and Baths: General Provisions, and replace it with 7.18.2 NMAC, Public Aquatic Venues: Fees, effective 8/01/2016.

The Environmental Improvement Board approved, at its 05/13/2016 hearing, to repeal its rule 7.18.3 NMAC, Public Swimming Pools, Spas, and Baths: Design and Construction, effective 08/01/2016.

The Environmental Improvement Board approved, at its 05/13/2016 hearing, to repeal its rule 7.18.4 NMAC, Public Swimming Pools, Spas, and Baths: Maintenance and Operation Requirements, effective 08/01/2016.

The Environmental Improvement Board approved, at its 05/13/2016 hearing, to repeal its rule 7.18.5 NMAC, Public Swimming Pools, Spas, and Baths: Fees, effective 08/01/2016.

ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 7 HEALTH
CHAPTER 18 AQUATIC
VENUES
PART 1 PUBLIC
AQUATIC VENUES: GENERAL
PROVISIONS

7.18.1.1 ISSUING
AGENCY: New Mexico Environmental Improvement Board.
 [7.18.1.1 NMAC - N, 8/1/16]

7.18.1.2 SCOPE: Owners and operators of public aquatic venues or other public bathing attractions.
 [7.18.1.2 NMAC - N, 8/1/16]

7.18.1.3 STATUTORY AUTHORITY: Sections 74-1-1 through 74-1-16 NMSA 1978.
 [7.18.1.3 NMAC - N, 8/1/16]

7.18.1.4 DURATION: Permanent.
 [7.18.1.4 NMAC - N, 8/1/16]

7.18.1.5 EFFECTIVE DATE: August 1, 2016, unless a later date is cited at the end of a section.
 [7.18.1.5 NMAC - N, 8/1/16]

7.18.1.6 OBJECTIVE: To protect public health and safety by establishing standards and provisions for the regulation of public aquatic venues and other public bathing attractions.
 [7.18.1.6 NMAC - N, 8/1/16]

7.18.1.7 DEFINITIONS: [RESERVED]

7.18.1.8 ENFORCEMENT AUTHORITY:
A. Private aquatic venues shall not be subject to the provisions of this regulation or 7.18.2 NMAC, Aquatic Venues: Fees.
B. Authorized department representatives shall be responsible for the enforcement of this rule.
 [7.18.1.8 NMAC - Rp, 7.18.2.9 NMAC, 8/1/16]

7.18.1.9 ADOPTION OF MODEL AQUATIC HEALTH CODE: Except as otherwise provided, the United States department of health and human services center for disease control and prevention Model Aquatic

Health Code, 1st Edition is hereby incorporated by reference.
 [7.18.1.9 NMAC - N, 8/1/16]

7.18.1.10 ADOPTION BY REFERENCE: Outside standards, listings, and publications referenced in this rule are part of this rule.
 [7.18.1.10 NMAC - Rp, 7.18.2.8 NMAC, 8/1/16]

7.18.1.11 MODIFICATIONS, ADDITIONS, AND OMISSIONS: Except as otherwise provided, the following modifications, exceptions and omissions are made to the Model Aquatic Health Code, 1st Edition.

A. Modifications to Aquatic Code definitions. The following terms defined in the Model Aquatic Health Code, 1st Edition have the meanings set forth herein, in lieu of the meanings set forth in the Model Aquatic Health Code, 1st Edition:

(1) "Aquatic venue" means any artificially constructed structure that is expressly designated or used with the knowledge or consent of the owner or operator for swimming, water recreation, or bathing for the use of any segment of the public. Such structures do not necessarily contain standing water, so water exposure may occur via contact, ingestion, or aerosolization. The term "aquatic venue" includes all class A, class B, class C, and class D aquatic venues and spas. This term does not include residential housing or lodging facilities having five or fewer living units. Plumbing fixtures associated with a specific living unit, hot springs, and fill-and-draw tubs are also excluded. The term "aquatic venue" includes, but is not limited to, public pools and spas owned or operated by:

(a)

travelers' accommodations including hotels, motels, inns, lodging and bed

and breakfast facilities, hostels and recreational vehicle parks;

(b) residential housing or lodging facilities having six or more living units;

(c) apartments or apartment complexes, condominiums and mobile home parks;

(d) recreation parks;

(e) colleges or universities;

(f) schools and group homes;

(g) organizational camps;

(h) clubs;

(i) associations;

(j) business establishments for their patrons or employees;

(k) private persons with pools that are open to the public;

(l) recreation districts; or

(m) cities, municipalities, counties, the state of New Mexico or other political subdivisions.

(2)

“Interactive water play aquatic venue” means any indoor or outdoor installation that includes sprayed, jetted or other water sources contacting bathers and not incorporating standing or captured water as part of the bather activity area. Only those intended for public use and recreation shall be regulated. These aquatic venues are also known as splash pads, spray pads, wet decks.

B. Additions to the Aquatic Code definitions.

The following terms not defined in the Model Aquatic Health Code 1st Edition have the meanings set forth herein:

(1)

Abbreviations.

(a)

“CC” means combined chlorine.

(b)

“DPD” means diethyl-p-phenylene

diamine.

(2)

“Approved” means accepted in writing by the department.

(3)

“Class A aquatic venue” means any public aquatic venue including, but not limited to, general admission pools, aquatic centers, recreation parks, schools, colleges and universities, organizational camps, daycare facilities, clubs, recreation districts, city, municipal, county and state pools and pools operated by other political subdivisions as defined by law. Class A aquatic venues shall not include pools located at boarding schools, colleges and universities exclusively associated with specific living units but would not be open to the entire boarding school, college or university population or the general public.

(4)

“Class B aquatic venue” means any public aquatic venue, located at, and operated to serve a facility having six or more living or guest units at:

(a)

travelers’ accommodations, including hotels, motels, inns, lodging, campgrounds, bed and breakfast facilities;

(b)

apartments, condominiums, retirement homes, assisted-living facilities, mobile home parks;

(c)

class A exclusions for boarding schools, colleges, and universities, and group homes;

(d)

businesses that employ 10 or more people and own a swimming pool or spa that is for the exclusive use of employees and their guests; or

(e)

homeowners associations, if the pool is for the exclusive use of the association members and their guests only and no memberships are sold to outside persons.

(5)

“Class C aquatic venue” means a public aquatic venue that is designed specifically as a bathing attraction or for sporting or recreational purposes and may include, but is not limited to, special features such as:

(a)

wave pools;

(b)

diving pools;

(c)

splash pools;

(d)

zero depth pools;

(e)

waterslides;

(f)

vortex pools;

(g)

interactive play attractions;

(h)

watercourse rides;

(i)

activity pools;

(j)

portable pools;

(k)

spray pads;

(l)

lazy rivers; or

(m)

wading pools.

(6)

“Class D aquatic venue” means any public aquatic venue used for physical therapy or rehabilitation including, but not limited to, post-operative strength training, assistance of buoyancy of water, and other one-on-one training.

(7)

“Club” means a facility constructed to provide entertainment, athletic or physical conditioning for its members, guests, invitees, occasional users, patrons, or clientele. It includes, but is not limited to, racquetball clubs, country clubs, golf clubs, health spas, fitness, sports and wellness facilities or aerobics instruction facilities.

(8)

“Combined chlorine (CC)” means that portion of the total residual chlorine that is combined with ammonia or nitrogen compounds and will not react chemically with undesirable or pathogenic organisms.

(9)

“Department” means the New Mexico environment department.

(10)

“Department representative” means the secretary of the environment department or his/her designees.

(11) “Engineer” means any individual currently registered and in good standing under the “New Mexico Engineering and Surveying Practice Act.”

(12) “New construction” means the activity of building or installing a public aquatic venue, and its component parts, where no such structure has previously existed or where previously existing aquatic venue structures have been removed.

(13) “Non-substantial alteration” means the alteration, modification, or renovation of an aquatic venue (for outdoor or indoor aquatic facilities) where the total cost of the work does not exceed fifty percent of the replacement cost of the aquatic venue.

(14) “Person” means:
(a) any person, individual, any public or private firm, partnership, corporation, company, society, association, and every managing body, officer, agent or employee thereof; or

(b) the state, local government, or any agency, institution or political subdivision thereof, including any governing or managing body.

(15) “Private aquatic venue” means:

(a) any pool or spa owned by no more than four individuals, either jointly, individually or through association, incorporation or otherwise, for the exclusive use of the occupants thereof and their guests or invitees; or

(b) an aquatic venue owned by a business employing fewer than 10 persons if the aquatic venue is for the exclusive use of employees and their guests.

(16) “Service animal” means a guide dog, signal dog, or other animal trained to do work or perform tasks for the benefit of an individual with a disability including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, or providing minimal protection

or rescue work, such as pulling a wheelchair or fetching dropped items. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals.

(17) “Variance” means written permission from the department to use an alternative measure of compliance with any provision in the aquatic venue rules, except those specifically prohibited in the rule. The alternative measure shall provide public health and safety protection that is equal to or greater than the protections provided in this rule.

C. Omissions to the Aquatic Code. The following provisions of the Model Aquatic Health Code, 1st Edition are omitted:

- (1) Subpart 4.1.4: Compliance Certificate;
- (2) Section 4.1.5.3: Permit Issuance;
- (3) Section 4.7.3.2.7.1: Feeders for pH Adjustment – Provided;
- (4) Section 4.7.3.2.8.1.1: Automated Controllers – Installed;
- (5) Subpart 5.2.2: Exemptions;
- (6) Section 5.6.7.4: Water Replenishment;
- (7) Section 5.7.5.2: Manual Disinfectant Feed System; and
- (8) Section 6.3.2.1(4): List of aquatic facilities requiring qualified lifeguards. [7.18.1.11 NMAC - N, 8/1/16]

7.18.1.12 CONSTRUCTION PERMITS:

A. No person shall construct or substantially alter a public aquatic venue, or part thereof, or convert a private aquatic venue into a public aquatic venue without first:

- (1) submitting a construction permit application that shall include plans, specifications, supporting material, and other information required by the department;
- (2) receiving a construction permit; and
- (3) paying all

applicable fees.

B. No person shall deviate from the approved plans and specifications during the construction or alteration of public aquatic venues described in this rule without first receiving prior written approval from the department.

C. Construction permits will be issued only to the owner or authorized agent of the owner.

D. A construction permit may be issued only when the facility owner or agent has provided sufficient information for the department to determine that the aquatic venue will:

- (1) operate continuously in a clean and sanitary manner;
- (2) not constitute a hazard to public health and safety; and
- (3) provide health and safety protection equal to or greater than that required by the aquatic venue rules.

E. Persons submitting plans and specifications for a proposed public aquatic venue that demonstrate a new technology or alternative mode of operation not contemplated in these rules shall apply for a variance.

F. The department shall issue a construction permit, issue a construction permit with conditions, or deny the construction permit application. The department may revoke a construction permit under 7.18.1.19 NMAC or suspend a construction permit if the department determines that the provisions of the aquatic venue rules are not met.

G. The department shall notify the applicant in writing that the application is complete or incomplete within 30 days of receipt of the application.

H. Once the department determines that the application is complete, for class B aquatic venues, the department shall have up to 30 working days to issue the permit, issue the permit with conditions, or deny the permit application. For class A, C, and

D aquatic venues, the department shall have up to 90 working days to issue the permit, issue the permit with conditions, or deny the permit application. All construction permit denials shall be in writing stating the reason the permit was denied. The applicant for a permit that has been denied may request an administrative hearing. The request for a hearing shall be made in writing to the department within 15 calendar days after notice of the department's decision has been received by the applicant. Hearings on permit denials shall be held in accordance with 7.18.1.21 NMAC and 20.1.5 NMAC.

I. Private aquatic venues that are converted into public aquatic venues or public aquatic venues that were previously operating without a permit shall be subject to the aquatic venue rules including, but not limited to, the requirement to obtain a construction permit.

J. Non-substantial alterations do not require a construction permit; however an aquatic facility owner planning a non-substantial alteration shall contact the department to review proposed changes prior to starting the non-substantial alteration.
[7.18.1.12 NMAC - Rp, 7.18.2.10 NMAC, 8/1/16]

7.18.1.13 PLANS AND SPECIFICATIONS:

A. Nothing in the swimming pool rules shall prevent the department from requiring the correction of errors in plans and specifications after those plans have been approved or the specifications accepted. The department may also revoke any construction permits or approvals that are issued in error, or obtained based upon material misrepresentations or erroneous information provided by the applicant.

B. The department may also issue a stop work order whenever construction work deviates from approved plans and specifications without prior written approval from the department, violates any permit condition, or is in violation of this or any other

law or regulation. The department shall provide written notice of the stop work order to the person performing the work or causing the work to be performed, and the person receiving such notice shall cease and desist from performing, or causing the performance of, the work until authorized in writing by the department to proceed.

[7.18.1.13 NMAC - Rp, 7.18.2.11 NMAC, 8/1/16]

7.18.1.14 OPERATING PERMITS:

A. No person shall operate an aquatic venue without an operating permit from the department.

Each aquatic venue in an aquatic facility shall be permitted separately.

B. Operating permits shall be issued for a period of 12 consecutive months and are non-transferrable between facilities or persons.

C. No person shall operate an aquatic venue without:

- (1) receiving a construction permit from the department, if applicable;
- (2) obtaining an approved final construction inspection, if applicable;
- (3) initially applying for a permit to operate such aquatic venue;
- (4) successful completion of a department inspection;
- (5) receiving a permit from the department; and
- (6) paying all applicable fees.

D. The permit shall remain the property of the department and shall be removed by the department representative when a permit is suspended or revoked.

E. Operating permits for all public aquatic venues shall expire on the last day of the anniversary month of the date of original issue.

F. Any public aquatic venue that has been closed or not operated for a period of 30 days or more shall be granted permission to re-open only after completion of a

department re-opening inspection that demonstrates compliance with applicable aquatic venue rules.

G. The designated qualified operator shall request a re-opening inspection for an aquatic venue that has been closed for a period of 30 days or more, at least two weeks prior to the desired re-opening date. The department may require the qualified operator to be present for this inspection.

H. Operating permits are non-transferable between facilities or persons.

[7.18.1.14 NMAC - Rp, 7.18.2.12 NMAC, 8/1/16]

7.18.1.15 INSPECTION

FREQUENCY: The department shall inspect each public aquatic venue at least annually and shall make as many re-inspections as necessary for enforcement of the aquatic venue rules.

[7.18.1.15 NMAC - Rp, 7.18.2.14 NMAC, 8/1/16]

7.18.1.16 SERVICE OF NOTICE:

A. Notice shall be deemed to be properly served when the original or a true copy of the inspection report form or other written notice has been delivered personally to the permit holder, the permit holder's agent, or a qualified operator; or when such notice has been sent by registered or certified mail to the last known address of the permit holder or qualified operator on file with the department.

B. A copy of such notice shall be filed in the department's records.

[7.18.1.16 NMAC - Rp, 7.18.2.15 NMAC, 8/1/16]

7.18.1.17 TEMPORARY SUSPENSION OF PERMITS:

A. The department may suspend a permit at any time when it determines that there is a violation that may affect public health or safety.

B. Whenever a permit holder or operator has failed to comply with any of the requirements

of this rule, the permit holder or operator shall be notified in writing.

C. The notice shall:

(1) identify and reference the conditions that violate the aquatic venue rules;

(2) specify the time period within which such condition shall be brought into compliance, if any;

(3) state that failure to comply with any notice issued pursuant to the aquatic venue rules may result in immediate permit suspension; and

(4) advise that the permit shall be suspended if the permit holder or operator is still out of compliance at the end of five working days following the deadline for compliance, unless a request for a hearing is delivered to the department by the permit holder within the five-day period.

D. Immediate suspension: notwithstanding other provisions of this regulation, whenever a department representative finds a condition in a public aquatic venue's operation that constitutes an immediate hazard to public health, welfare, or safety, the department representative may, without prior warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition. The department's notice shall state that the permit is immediately suspended and all swimming or bathing of any kind is to be immediately discontinued.

E. All persons receiving a permit suspension notice shall immediately comply with the notice's terms.

F. For immediate suspensions, suspensions upheld after a hearing, and where no request for a hearing has been received, the department shall post a sign stating that the aquatic venue is closed.

G. The department may also require a written compliance plan.

[7.18.1.17 NMAC - Rp, 7.18.2.16 NMAC, 8/1/16]

7.18.1.18 REINSTATEMENT OF SUSPENDED PERMITS:

A. Any person whose permit has been suspended may make application for reinstatement of the permit in writing to the department. Within five working days following receipt of such a request, a department representative shall inspect the aquatic venue or premises or both. If the applicant is in compliance with the requirements of the aquatic venue rules and other applicable laws, regulations, and ordinances, the permit shall be reinstated.

B. The department may require a qualified operator or aquatic venue employee to attend additional training courses in aquatic venue sanitation and safety.
[7.18.1.18 NMAC - Rp, 7.18.2.18 NMAC, 8/1/16]

7.18.1.19 REVOCATION OF PERMIT:

A. A permit may be revoked when:

(1) it appears that a violation may affect public health or safety;

(2) any conditions of a permit are violated;

(3) there are willful or repeated violations of any of the requirements in the aquatic venue rules;

(4) the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact; or

(5) the owner or the owner's agent interferes with the department's performance of its duties.

B. Prior to such revocation, the department shall provide an opportunity for a hearing. A department representative shall notify the permit holder in writing stating the reason the permit is subject to revocation and advising that the permit shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the permit holder within the five-day period.

C. Owners and operators of public aquatic venues who fail to comply with the

provisions of a suspension notice or open their facility to the public without an approved permit will be subject to the penalties described in 7.18.1.56 NMAC.

[7.18.1.19 NMAC - Rp, 7.18.2.19 NMAC, 8/1/16]

7.18.1.20 OTHER REMEDIES: [RESERVED]

7.18.1.21 HEARINGS:

A. Hearings provided for in the aquatic venue rules shall be held within 15 working days of a petitioner's delivery of a hearing request to the department.

B. Hearings provided for in this regulation shall be conducted in accordance with 20.1.5 NMAC.

[7.18.1.21 NMAC - Rp, 7.18.2.22 NMAC, 8/1/16]

7.18.1.22 VARIANCE:

A. The department may grant a variance from the design and construction or operation and maintenance provisions of the aquatic venue rules through written permission for the use of alternative measures that will provide public health and safety protection that is equal to or greater than the protections provided in the aquatic venue rules. No variances shall be granted for procedural requirements, such as submitting construction or operating permit applications, including paying fees, obtaining construction or operating permits, operator certifications, or requesting a hearing.

B. Specific variance requests shall be made by the owner or the owner's designated agent. Designated agents shall provide written documentation signed by the owner that they are representing the owner regarding the specific variance application. All variance applications shall be signed by the owner and upon change of ownership or transfer of property, the new owner or their designated agent must re-apply for the variance.

C. It is the applicant's responsibility to provide all necessary

information to support the request for a variance.

D. Any person applying for a variance from any provision of the aquatic venue rules shall do so by filing a written application with the department.

Applications shall:

(1) be made on forms obtained from the department;

(2) remit applicable fee by check or money order made payable to the "water recreation facilities fund;"

(3) state the applicant's name and mailing address;

(4) state the date of the application;

(5) state the provision or provisions of this regulation for which the variance is sought;

(6) state in detail the extent to which the applicant wishes to vary from the provision or provisions;

(7) state the period of time for which the variance is sought;

(8) state why the applicant believes the variance is justified;

(9) be accompanied by any relevant documents or material which the applicant believes would support the application for a variance; and

(10) contain other relevant information the department may request.

E. Within 20 working days following receipt of a completed variance application, the department shall grant the variance, grant the variance subject to conditions, or deny the variance. The action taken by the department shall be by written order, a copy of which shall be sent to the applicant. The order shall:

(1) state the applicant's name and address;

(2) state the date the order is made;

(3) describe the location of the public aquatic venue; and

(4) state the department's decision and its reasons.

F. If a variance is granted, the order will state the effective period of time and any conditions that apply.

G. All variances shall be reviewed at the time of the annual operating permit inspection to determine whether all variance conditions have been met. If conditions of the variance have not been met, an operating permit shall not be issued.

H. Petitioners who are dissatisfied with the department's decision may request a hearing from the department secretary.

(1) The request shall be made in writing to the department secretary within 15 calendar days after notice of the department's decision has been received by the petitioner.

(2) Unless a request has been received within the 15 calendar day period, the department's decision shall be final.

(3) If a request has been received within the 15 calendar day period, the department secretary or his/her designated representative shall hold a hearing within 15 working days after the receipt of the request.

I. The department shall notify the petitioner by certified mail of the date, time and place of the hearing.

J. In the hearing, the burden of proof shall be upon the petitioner.

[7.18.1.22 NMAC - Rp, 7.18.2.23 NMAC, 8/1/16]

7.18.1.23 VOIDING OF VARIANCES:

A. An approved variance shall be void one year after the date of approval if the permitted activities granted thereby have not been utilized. If the department voids a variance for any reason, the department will serve written notice on the permit holder.

B. The department may void a variance if conditions of the variance have not been met, or if subsequent events show that the variance has created or may create

conditions hazardous to the public health, safety, or welfare.

C. An approved variance shall be void if it is utilized in a way that violates the terms and conditions of the variance. Voiding a variance is in addition to, and not instead of, other remedies available to the department at any time for violation of the aquatic venue rules.

D. All variances shall become void upon change of ownership. Upon change of ownership, the new owner shall re-apply for a variance.

E. Any person who has been granted a variance shall sign a department approved indemnification and release of liability statement form. Variances shall not be valid unless and until the department receives a completed and signed indemnification and release of liability statement form back from the applicant.

[7.18.1.23 NMAC - Rp, 7.18.2.24 NMAC, 8/1/16]

7.18.1.24 RIGHT OF ENTRY:

A. Upon presentation of credentials, department representatives may enter any premises where a public aquatic venue is located or where records required by the aquatic venue rules are located during the aquatic venue's operating hours.

B. When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where an aquatic venue is located;

(2) have a right of entry on any premises where any records required by the aquatic venue rules or by permit condition are kept;

(3) have access to and copy any records that the aquatic venue rules or a permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the aquatic venue rules or any permit or variance

condition; and

(5) obtain any sample(s) required to determine compliance with the aquatic venue rules or any permit or variance condition.

[7.18.1.24 NMAC - Rp, 7.18.2.25 NMAC, 8/1/16]

7.18.1.25 LIFEGUARDS:

When swim teams and swimming exercise classes are the only users of an aquatic facility, in lieu of a qualified lifeguard the owner or designated agent may allow substitution of a swim coach attendant, who is certified by the *American red cross* or an equivalent organization in first aid and cardiopulmonary resuscitation (CPR) and is trained to deal with safety hazards. Both the owner of the public aquatic venue and the sponsoring organization furnishing the swim coach shall be responsible for assuring proper credentials, training and bather controls are maintained in accordance with these requirements. [7.18.1.25 NMAC - N, 8/1/16]

7.18.1.26 POOL WATER QUALITY:

A. Testing equipment:
(1) All public aquatic venues shall have fully functional water quality testing devices for measuring the pH, free and combined chlorine concentration, or bromine, (or concentration of other approved disinfectant), and cyanuric acid if stabilized chlorine is used.

(2) Water quality testing devices shall use environmental protection agency (EPA) approved methods.

(3) Water quality testing devices for measuring free and total chlorine or bromine shall use *diethyl-P-phenylene diamine* (DPD) as the reagent.

(4) Feeders for pH adjustments and automated controllers shall be required on all aquatic venues within two years of the effective date of these regulations.

(5) All aquatic venues using a manual disinfectant feed system that does not have an

automated controller shall be tested before the venue opens for the day and every four hours while open to the public.

B. The total available bromine in aquatic venues shall not exceed 8ppm.

C. Cyanuric acid shall not be used in indoor aquatic facilities.

D. Swim-up bars are considered an increased risk aquatic venue and shall install a secondary disinfection system.

[7.18.1.26 NMAC - N, 8/1/16]

7.18.1.27 TEMPORARY SPECIAL USE AQUATIC

VENUES: Owners of aquatic venues that are used for public events at sports fields, county fairs, portable pools and similar special uses shall be reviewed by the department on an individual case basis. The department may require special conditions as part of approval of such pools to assure health and safety.

[7.18.1.27 NMAC - N, 8/1/16]

7.18.1.28 - 7.18.1.50 [RESERVED]

7.18.1.51 CONSTRUCTION:

This part shall be liberally construed to carry out its purpose.

[7.18.1.51 NMAC - Rp, 7.18.2.51 NMAC, 8/1/16]

7.18.1.52 SEVERABILITY:

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

[7.18.1.52 NMAC - Rp, 7.18.2.52 NMAC, 8/1/16]

7.18.2.53 REFERENCES IN OTHER REGULATIONS:

Any reference to the aquatic venue regulations or to any prior version of the aquatic venue regulations in any other rule shall be construed as a reference to this rule. References to the "aquatic venue rules" in this part refer to all provisions contained in 7.18.1 through 7.18.2 NMAC.

[7.18.1.53 NMAC - Rp, 7.18.2.53

NMAC, 8/1/16]

7.18.1.54 SAVINGS

CLAUSE: Repeal or supersession of prior versions of this part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.1.54 NMAC - Rp, 7.18.2.54 NMAC, 8/1/16]

7.18.1.55 COMPLIANCE WITH OTHER REGULATIONS:

Compliance with the aquatic venue rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[7.18.1.55 NMAC - Rp, 7.18.2.55 NMAC, 8/1/16]

7.18.1.56 PENALTY: Any person who violates any provision of this rule shall be subject to the penalty provisions in Section 74-1-10 NMSA 1978 of the Environmental Improvement Act, in addition to any other penalties provided for in the aquatic venue rules.

[7.18.1.56 NMAC - Rp, 7.18.2.56 NMAC, 8/1/16]

7.18.1.57 LIMITATION

OF DEFENSE: The existence of a valid permit for the installation, modification or operation of an aquatic venue shall not constitute a defense to a violation of any section of this rule, except the requirement for obtaining a permit.

[7.18.1.57 NMAC - Rp, 7.18.2.57 NMAC, 8/1/16]

HISTORY OF 7.18.1 NMAC:

History of Repealed Material:
[RESERVED]

Other History:

7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 6/12/2008), repealed and replaced by 7.18.1 NMAC, Public Aquatic Venues: General Provisions, effective 8/1/2016. Portions of 7.18.4 NMAC may be referenced in 7.18.1 NMAC.

**ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 7 HEALTH
CHAPTER 18 AQUATIC
VENUES
PART 2 PUBLIC
AQUATIC VENUES: FEES**

7.18.2.1 ISSUING

AGENCY: New Mexico Environmental Improvement Board.
[7.18.2.1 NMAC - Rp, 7.18.2.1 NMAC, 8/1/16]

7.18.2.2 SCOPE: Owners and operators of public aquatic venues and other public bathing attractions.
[7.18.2.2 NMAC - Rp, 7.18.2.2 NMAC, 8/1/16]

7.18.2.3 STATUTORY

AUTHORITY: Sections 74-1-1 through 74-1-16 NMSA 1978.
[7.18.2.3 NMAC - Rp, 7.18.2.3 NMAC, 8/1/16]

7.18.2.4 DURATION:

Permanent.
[7.18.2.4 NMAC - Rp, 7.18.2.4 NMAC, 8/1/16]

7.18.2.5 EFFECTIVE

DATE: August 1, 2016, unless a later date is cited at the end of a section.
[7.18.2.5 NMAC - Rp, 7.18.2.5 NMAC, 8/1/16]

7.18.2.6 OBJECTIVE: To establish fees for the administration of rules and standards regarding the inspection, enforcement, training, review of plans, and other appropriate program components for public aquatic venues and other public bathing attractions as specified in 7.18.1 NMAC, Public Aquatic Venues: General Provisions.
[7.18.2.6 NMAC - Rp, 7.18.2.6 NMAC, 8/1/16]

7.18.2.7 DEFINITIONS:
[RESERVED] [See 7.18.1 NMAC for Definitions.]

7.18.2.8 ADOPTION BY REFERENCE: Outside standards, listings, and publications referenced

in this rule are part of this rule.
[7.18.2.8 NMAC - Rp, 7.18.5.8 NMAC, 8/1/16]

7.18.2.9 ENFORCEMENT AUTHORITY:

A. Private aquatic venues shall not be subject to the provisions of this rule or to 7.18.1 NMAC.

B. Department representatives shall be responsible for the enforcement of this rule.
[7.18.2.9 NMAC - Rp, 7.18.5.9 NMAC, 8/1/16]

7.18.2.10 CONSTRUCTION PERMIT FEES:

A. Permit fees for new construction, remodeling, or renovation issued pursuant to Section 7.18.1.12 NMAC, Construction Permits, shall be the following:

(1) for a class A, class B, class C, or class D aquatic venue, or for a spa, the fee shall be \$150.00;

(2) for multiple class A, class B, class C or class D aquatic venues or spas located in the same aquatic facility, the fee shall be \$150.00 for each aquatic venue;

B. All applicable fees shall be paid at the time the construction permit application is submitted to the department.

C. All fees shall be remitted to the department by check or money order made payable to the "water recreation facilities fund" or "New Mexico environment department (NMED)."

D. Any check returned for non-payment for any reason shall result in cancellation of the construction permit.

E. All fees are non-refundable.
[7.18.2.10 NMAC - Rp, 7.18.5.10 NMAC, 8/1/16]

7.18.2.11 OPERATING PERMIT FEES:

A. Operating permit fees issued pursuant to 7.18.1.14 NMAC, Operating Permits, shall be the following:

(1) for all class A aquatic venues, the fee shall be \$150.00 per year;

(2) for class B aquatic venues, the shall be:

(a) up to 600 square feet of aquatic venue surface area, \$100.00 per year;

(b) from 601 square feet to 1000 square feet of aquatic venue surface area, \$125.00 per year;

(c) from 1001 square feet of aquatic venue surface area and greater, \$150.00 per year;

(3) for all class C aquatic venues, the fee shall be \$150.00 per year.

(4) for all class D aquatic venues, the fee shall be \$150.00 per year.

(5) for all public spas, the fee shall be \$150.00 per year.

B. Payment of fees.

(1) An operating permit fee shall be assessed for each separate aquatic venue at a facility or site.

(2) Fees are payable in the month that the permit is to be issued. Operating permits will not be issued until the department receives all appropriate fees.

(3) All fees shall be remitted to the department by check or money order made payable to the "water recreation facilities fund" or "New Mexico environment department (NMED)."

(4) Non-payment of all appropriate fees, including the return of any check for non-payment for any reason, shall result in cancellation of the operating permit.

(5) All fees are non-refundable.
[7.18.2.11 NMAC - Rp, 7.18.2.11 NMAC, 8/1/16]

7.18.2.12 RE-INSPECTION PENALTY: If a site inspection results in the issuance of a written notice of non-approval or suspension, the department may assess a re-inspection penalty of \$50.00 to re-inspect each

public aquatic venue in the aquatic facility. For each additional re-inspection required, an additional \$50 will be added to the re-inspection penalty for each aquatic venue, up to \$250 per aquatic venue per year. The re-inspection fee shall be remitted to the department prior to a subsequent re-inspection being conducted. Re-inspection penalties shall not be charged for aquatic venues that have been closed for 30 days or more and require a re-opening inspection. [7.18.2.12 NMAC - Rp, 7.18.5.12 NMAC, 8/1/16]

7.18.2.13 VARIANCE FEE: If a variance is requested pursuant to 7.18.2.22 NMAC, Variance, an application fee of \$50.00 shall be remitted by the applicant at the time the variance application is submitted to the department. The fee is non-refundable. [7.18.2.13 NMAC - Rp, 7.18.5.13 NMAC, 8/1/16]

7.18.2.14 RIGHT OF ENTRY:

A. Upon presentation of credentials, department representatives may enter any premises where a public aquatic venue is located or where records required by the aquatic venue rules are located during the aquatic venue's operating hours.

B. When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a public aquatic venue is located;

(2) have a right of entry on any premises where any records required by the aquatic venue rules or by permit condition are kept;

(3) have access to and copy any records that the aquatic venue rules or a permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the aquatic venue rules or any permit condition; and

(5) obtain any sample(s) required to determine compliance with the aquatic venue rules or any permit condition. [7.18.2.14 NMAC - Rp, 7.18.5.14 NMAC, 8/1/16]

7.18.2.15 to 7.18.2.50 [RESERVED]

7.18.2.51 CONSTRUCTION: This part shall be liberally construed to carry out its purpose. [7.18.2.51 NMAC - Rp, 7.18.5.51 NMAC, 8/1/16]

7.18.2.52 SEVERABILITY: If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected. [7.18.2.52 NMAC - Rp, 7.18.5.52 NMAC, 8/1/16]

7.18.2.53 REFERENCES IN OTHER REGULATIONS: Any reference to the aquatic venue regulations or any prior version of the aquatic venue regulations in any other rule shall be construed as a reference to this rule. References to the "aquatic venue rules" in this part refer to all provisions contained in 7.18.1 through 7.18.2 NMAC. [7.18.2.53 NMAC - Rp, 7.18.5.53 NMAC, 8/1/16]

7.18.2.54 SAVINGS CLAUSE: Repeal or supersession of prior versions of this part or the aquatic venue rules shall not affect any administrative or judicial action initiated under those prior versions. [7.18.2.54 NMAC - Rp, 7.18.5.54 NMAC, 8/1/16]

7.18.2.55 COMPLIANCE WITH OTHER REGULATIONS: Compliance with the aquatic venue rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations. [7.18.2.55 NMAC - Rp, 7.18.5.55 NMAC, 8/1/16]

7.18.2.56 PENALTY: Any

person who violates any provision of this rule shall be subject to the penalty provisions in Section 74-1-10 NMSA 1978 of the Environmental Improvement Act, in addition to any other penalties provided for in the aquatic venue rules. [7.18.2.56 NMAC - Rp, 7.18.5.56 NMAC, 8/1/16]

7.18.2.57 LIMITATION OF DEFENSE: The existence of a valid permit for the installation, modification or operation of an aquatic venue shall not constitute a defense to a violation of any section of this regulation, except the requirement for obtaining a permit. [7.18.2.57 NMAC - Rp, 7.18.5.57 NMAC, 8/1/16]

HISTORY OF 7.18.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives: HSSD 72-2, Swimming Pool Regulations Governing the Sanitary Design, Equipment, Construction and Operation, filed 9/27/72. EIB 74-2, Regulations Governing Public Baths and Public and Semi-Public Swimming Pools, filed 7/15/74. EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths, filed 3/25/76.

History of Repealed Material: 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) repealed 03/30/05. 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 2/09/05) Repealed 07/30/08. 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 12-2-13) Repealed effective 10-1-2015. 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 6/12/2008), repealed and replaced by 7.18.1 NMAC, Public Aquatic Venues: General Provisions, effective 8/1/2016.

Other History:

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths (filed 3/25/76) was reformatted, renumbered and replaced by 7 NMAC 18.1, Public Swimming Pools and Public Baths, effective 11/30/1995. Portions of 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995), was replaced by 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions, effective 03/30/05. 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 2/09/05), was replaced by 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions effective 07/30/08. 7.18.5 NMAC, Public Swimming Pools, Spas and Baths: Fees (filed 6/12/2008), repealed and replaced by 7.18.2 NMAC, Public Aquatic Venues: Fees, effective 8/1/2016.

GAME AND FISH, DEPARTMENT OF

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 30 WILDLIFE ADMINISTRATION PART 15 WILDLIFE CONSERVATION VOLUNTEERS

19.30.15.1. ISSUING

AGENCY: New Mexico Department of Game and Fish.
[19.30.15.1 NMAC - N, 07-15-2016]

19.30.15.2. SCOPE: Providing for the use of volunteers by the New Mexico Department of Game and Fish.
[19.30.15.2 NMAC - N, 07-15-2016]

19.30.15.3. STATUTORY

AUTHORITY: Section 17-1-14B NMSA 1978, provides that the New Mexico state game commission has the authority to establish rules and regulations for volunteer service as it may deem necessary to carry out the department's statutory requirements and other acts pertaining to the department's programs.
[19.30.15.3 NMAC - N, 07-15-2016]

19.30.15.4. DURATION:

Permanent.
[19.30.15.4 NMAC - N, 07-15-2016]

19.30.15.5. EFFECTIVE

DATE: July 15, 2016, unless a later date is cited at the end of a section.
[19.30.15.5 NMAC - N, 07-15-2016]

19.30.15.6. OBJECTIVE:

Establish rule to implement a process for New Mexico department of game and fish to use volunteers to help support and promote its programs.
[19.30.15.6 NMAC - N, 07-15-2016]

19.30.15.7. DEFINITIONS:

A. "Commission"
means the state game commission.

B. "Department"
means the New Mexico department of game and fish.

C. "Director" means
the director of the New Mexico department of game and fish.

D. "Motorized equipment" means any machine that uses or is activated by a motor, engine, or other power source. This includes, but is not limited to, chainsaws, power drills, generators, motor boats, off highway vehicles, dirt bikes, snowmobiles, lawn mowers, and leaf blowers.

E. "Public employee"
as defined in 1.6.5 NMAC, means individuals as defined in, Section 41-4-3 (F) NMSA 1978 of the Tort Claims Act.

F. "Registered volunteer" means an individual that has been officially placed into one or more of the department's volunteer positions after successfully completing all application, training and certification requirements.

G. "Special-use vehicles" means state vehicles designated as such by the director or designee, including but not limited to buses, tractors, boats, trailers, snow cats, vehicles of special design or construction that effectively limits their use for a particular purpose, and all other vehicles that are not passenger vehicles.

H. "State vehicle" as defined in 1.5.3 NMAC, means an

automobile, van, sport-utility truck, pickup truck, or other vehicle with a declared gross vehicle weight of less than 10,000 pounds that is used by a state agency to transport passengers or property.
[19.30.15.7 NMAC - N, 07-15-2016]

19.30.15.8. WILDLIFE CONSERVATION VOLUNTEERS:

A. The New Mexico department of game and fish may develop a program to recruit, train, equip and accept the services of the registered volunteers that help support the programs administered by the department.

B. Registered volunteers shall comply with all the department's rules, policies and directives as prescribed by the director.

C. A registered volunteer shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and state employee benefits.

D. A registered volunteer traveling under the authorization and direction of the New Mexico department of game and fish may receive per diem and mileage at a rate defined by the Per Diem and Mileage Act, 10-8-1 through 10-8-8 NMSA 1978 and the Travel and Per Diem Rule, 2.42.2 NMAC and reimbursement of expenses associated with the volunteers service for items such as supplies and equipment for the department's programs. Reimbursement is allowed provided that: the expense is directly related to and facilitates the implementation of the department's program(s), the incurring of the expense has been pre-approved by department staff, and the department does not authorize reimbursements in excess of the value of services rendered to the department by the registered volunteer. Per diem, mileage and reimbursements are subject to the availability of funds, the review and pre-approval by the department, must adhere to all aspects

of the Per Diem and Mileage Act, 10-8-1 through 10-8-8 NMSA 1978 and the Travel and Per Diem Rule, 2.42.2 NMAC, and all department rules, policies and procedures governing such expenses and reimbursements.

E. A registered volunteer may be authorized to use state vehicles in the performance of department assigned duties, subject to those rules, policies and directives governing the use of state vehicles by department employees. A registered volunteer that operates a state vehicle under the terms of this section shall be treated for the purposes of insurability and tort claims liability as a public employee of the state as described in the Tort Claims Act, 41-4-1 through 41-4-30 NMSA 1978 and the General Governmental Administration Risk Management Certificate of Coverage Rule, 1.6.5 NMAC.

F. A registered volunteer may be authorized to use state computers and related technology in the performance of department-assigned duties. Registered volunteers are subject to those rules, policies and directives governing the use of state computers and associated technology. Use of department computers and associated technology must be reviewed and pre-approved by the department and registered volunteers must adhere to all aspects of the Information Technology Internet, Intranet, Email, and Digital Network Usage Rule 1.12.10 NMAC, the Information Technology Enterprise Architecture Rule, 1.12.11 NMAC, and the department's information technology use policy, GP-015.

G. A registered volunteer may be authorized to use special-use vehicles and motorized equipment in the performance of department-assigned duties, subject to the department's rules, policies and directives as prescribed by the director.
[19.30.15.8 NMAC - N, 07-15-2016]

19.30.15.9. GENERAL REQUIREMENTS:

A. Background checks: Applicants must consent to and pass

a formal background investigation as prescribed by the director to be eligible for consideration for placement into a registered volunteer position with the department.

B. Training and certifications: Applicants must successfully complete all training and certification requirements for each position they have applied for prior to the performance of the positions duties.
[19.30.15.9 NMAC - N, 07-15-2016]

19.30.15.10. REVIEW AND REPORTING:

A. The department shall provide to the commission an annual accounting of the wildlife conservation volunteers program.

B. The wildlife conservation volunteers program shall be included in the annual independent audit of the department and must adhere to the Audit Act, 12-6-12 NMSA 1978.
[19.30.15.10 NMAC - N, 07-15-2016]

HISTORY OF 19.30.15 NMAC:
[RESERVED]

HEALTH, DEPARTMENT OF

The Department of Health approved, at its 6/17/2016 hearing, to repeal its rule 7.32.7 NMAC, Authorization to Administer Opioid Antagonists (filed 8/30/2001) and replace it with 7.32.7 NMAC, Overdose Prevention and Education Program Authorization for Opioid Antagonists, effective 7/15/2016.

HEALTH, DEPARTMENT OF

**TITLE 7 HEALTH
CHAPTER 32 ALCOHOL AND
DRUG ABUSE
PART 7 OVERDOSE
PREVENTION AND EDUCATION
PROGRAM AUTHORIZATION
FOR OPIOID ANTAGONISTS**

7.32.7.1 ISSUING AGENCY: Department of Health; Public Health Division; Infectious Disease Prevention and Control Bureau.
[7.32.7.1 NMAC - Rp, 7.32.7.1 NMAC, 7/15/2016]

7.32.7.2 SCOPE: This rule applies to all New Mexico department of health registered overdose prevention and education programs that obtain, prescribe, dispense, distribute, or administer an opioid antagonist.
[7.32.7.2 NMAC - Rp 7.32.7.2 NMAC, 7/15/2016]

7.32.7.3 STATUTORY AUTHORITY: The statutory authority for adopting these rules is found in Subsection E of Section 9-7-6 NMSA 1978 (Department of Health Act) and Subsection J of Section 24-23-1 NMSA 1978 which requires the secretary of health to "promulgate rules relating to overdose prevention and education programs."
[7.32.7.3 NMAC - Rp 7.32.7.3 NMAC, 7/15/2016]

7.32.7.4 DURATION: Permanent.
[7.32.7.4 NMAC - Rp, 7.32.7.4 NMAC, 7/15/2016]

7.32.7.5 EFFECTIVE DATE: July 15, 2016, unless a later date is cited at the end of a section.
[7.32.7.5 NMAC - Rp, 7.32.7.5 NMAC, 7/15/2016]

7.32.7.6 OBJECTIVE: The objective of these regulations is to reduce mortality due to opioid overdose by increasing the administration, distribution, prescription and dispensation of opioid antagonists to individuals who are at risk of opioid overdose and to individuals, such as family members, friends or other persons, who may be in a position to assist individuals who are experiencing an overdose. These regulations shall set standards for the establishment of standing orders to obtain, store, distribute and administer an opioid antagonist; the

establishment of overdose prevention and education programs and standards for them to register, obtain, store, and distribute naloxone; the establishment of standards for overdose prevention curricula, training and the certification of individuals to store and distribute opioid antagonists for the overdose prevention and education programs. [7.32.7.6 NMAC - Rp, 7.32.7.6 NMAC, 7/15/2016]

7.32.7.7 DEFINITIONS:

A. "Administration of opioid antagonist" means the direct application of an opioid antagonist to the body of an individual by injection, inhalation, ingestion or any other means.

B. "Department" means the New Mexico department of health.

C. "Dispense" means to evaluate and implement a prescription for an opioid antagonist, including the preparation and the delivery of a drug or device to a patient or patient's agent;

D. "Distribute" means to deliver an opioid antagonist drug or opioid antagonist device by means other than by administering or dispensing;

E. "Enrollment form" means the form approved by the department to register an individual as a trained targeted responder.

F. "Licensed prescriber" means any individual who is authorized by law to prescribe an opioid antagonist in the state.

G. "Medication log" means the form used to track the storage and distribution of the opioid antagonist.

H. "Opioid" means any substance containing or derived from opium including, but not limited to morphine and heroin, and any morphine-like synthetic narcotic that produces the same effects as substances derived from the opium poppy.

I. "Opioid antagonist" means a drug approved by the federal food and drug administration that, when administered, negates or neutralizes in

whole or in part the pharmacological effects of an opioid in the body.

"Opioid antagonist" shall be limited to naloxone or other like medications that are indicated for use in reversing an opioid overdose and are approved by the department for such purpose.

J. "Overdose prevention and education program (OPE)" means any community-based organization, law enforcement agency, detention facility or school that has registered with the department in accordance with department rules and uses an approved department curriculum to teach overdose prevention and opioid antagonist administration.

K. "Overdose response educator" means any staff or volunteer who is registered with an *overdose prevention and education program* who are trained and certified by the department in the *overdose response education curriculum*.

L. "Overdose response educator curriculum" means a department approved curriculum to train and certify overdose response educators, which must be repeated every two years.

M. "Possess" means to have physical control or custody of an opioid antagonist.

N. "Record of use form" means the department designated report for the use or loss of an opioid antagonist, the response to a suspected opioid overdose or the re-issuance of an opioid antagonist to a trained targeted responder.

O. "Standing order" means a licensed prescriber's instruction or prescribed procedure that is either patient specific or non-patient specific that can be exercised by other persons until changed or canceled by a licensed prescriber.

P. "Storage" means possession of an opioid antagonist with the intent to dispense or distribute it.

Q. "Trained targeted responder" means a person who is trained by overdose response educators to possess and administer an opioid antagonist to a person who is experiencing an opioid overdose,

and has completed the *trained targeted responder curriculum*.

R. "Trained targeted responder curriculum" means a department approved curriculum for trained targeted responders. [7.32.7.7 NMAC - Rp, 7.32.7.7 NMAC, 7/15/2016]

7.32.7.8 REQUIREMENTS FOR OVERDOSE PREVENTION AND EDUCATION PROGRAMS, OVERDOSE RESPONSE EDUCATORS AND TRAINED TARGETED RESPONDERS:

A. Overdose prevention and education program requirements: An *overdose prevention and education program*

is a program which facilitates the distribution of opioid antagonists and provides education related to overdoses, overdose prevention and the administration of opioid antagonists. An *overdose prevention and education program* shall:

(1) register with the department using the form approved by the department which shall include at a minimum:

(a) date of registration;

(b) *overdose prevention and education program* name; and

(c) name, address, e-mail and telephone number of *overdose prevention and education program* contact;

(2) identify who will be overdose response educators;

(3) train or verify overdose response educators have successfully completed and maintained a current certification in the *overdose response educator curriculum*;

(4) enroll trained targeted responders using the enrollment form;

(5) train or verify trained targeted responders have completed the trained targeted responder curriculum;

(6) identify and maintain a secure location for the storage of the opioid antagonists

designated for distribution in accordance with these regulations;

(7) label the opioid antagonist in accordance with these regulations;

(8) utilize the record of use form to report all known uses or losses of an opioid antagonist, responses to a suspected opioid overdose, or the re-issuance of an opioid antagonist to a trained targeted responder;

(9) maintain personal protective equipment and response equipment at training locations;

(10) provide trained targeted responders with necessary response equipment; and

(11) be prepared for scheduled and unscheduled site visits by the department where the department may review the maintenance of enrollment forms, record of use forms, medication logs and any other information required to be maintained pursuant to these rules.

B. Overdoes response educators shall:

(1) successfully complete the *overdose response educator curriculum* and maintain this certification;

(2) comply with the terms of a standing order issued by a licensed prescriber, which may include possession of opioid antagonists and distribution of the opioid antagonist to trained targeted responders;

(3) teach trained targeted responders the *trained targeted responder curriculum*; and

(4) complete medication log, enrollment forms and record of use forms for trained targeted responders.

C. Trained targeted responders:

(1) are trained in the *trained targeted responder curriculum*; and

(2) shall report all known responses to suspected opioid overdoses to an *overdose prevention and education program* using the record of use form.
[7.32.7.8 NMAC - Rp, 7.32.7.9 & 10

NMAC, 7/15/2016]

7.32.7.9 REQUIREMENTS FOR DISTRIBUTION OF OPIOID ANTAGONIST:

A. The New Mexico department of health public health division pharmacy warehouse can distribute the opioid antagonist to any registered *overdose prevention and education program*.

B. Standing orders from a department licensed prescriber for the distribution of an opioid antagonist shall include at a minimum:

(1) authorization to maintain supplies of opioid antagonists for the purposes of distributing them as part of the department's overdose prevention efforts;

(2) authorization for overdose response educators to possess and distribute the opioid antagonist to trained targeted responders;

(3) instructions for overdose response educators to educate and advise clients of overdose prevention methods, recognizing an overdose, and potential contraindications and precautions.

C. Medication log, enrollment forms and record of use forms shall be utilized by an *overdose prevention and education program* in order to document the distribution and administration of opioid antagonists.
[7.32.7.9 NMAC - Rp, 7.32.7.10 NMAC, 7/15/2016]

7.32.7.10 REQUIREMENTS FOR STORAGE OF THE OPIOID ANTAGONIST:

A. Any opioid antagonist designated for distribution by an *overdose prevention and education program* must be stored in a secure designated location.

(1) The location must be locked with entry limited to overdose response educators and other individuals as designated by the *overdose prevention and education program*.

(2)

A medication log of the opioid antagonist must be maintained, and include the following information, at minimum:

(a) lot numbers of the opioid antagonist;

(b) expiration dates of the opioid antagonist;

(c) date, quantity of opioid antagonist doses and the name of the individual who is removing the opioid antagonist from the secured location for distribution;

(d) date, quantity of opioid antagonist doses and the name of the individual who is returning doses of the opioid antagonist to the secured location if they have not been distributed; and

(e) for doses of the opioid antagonist distributed, the medication log must also include the name and date of birth of the trained targeted responder, the date of distribution, lot number of each opioid antagonist dose and the expiration date of each opioid antagonist dose.

B. Any registered *overdose prevention and education program*, may make an opioid antagonist available for use in response to a possible overdose incident. The opioid antagonist designated for use at an *overdose prevention and education program* for a possible overdose response shall be stored in a secure but accessible location.

[7.32.7.10 NMAC - Rp, 7.32.7.10 NMAC, 7/15/2016]

7.32.7.11 LABELING OF THE OPIOID ANTAGONIST:

A. The *overdose prevention and education program* shall label the opioid antagonist prior to it leaving the designated secure storage location which shall include:

(1) the name and address of the *overdose prevention and education program* distributing the opioid antagonist; and

(2) the text "use as directed."

B. At the time of

distribution of an opioid antagonist to a trained targeted responder, the overdose response educator shall complete the following information on the label:

- (1) name of the trained targeted responder;
- (2) date of distribution of the opioid antagonist; and

C. At the time of distribution of an opioid antagonist to a trained targeted responder, the overdose response educator will provide directions for use of the opioid antagonist.
[7.32.7.11 NMAC - N, 7/15/2016]

7.32.7.12 MINIMUM REQUIREMENTS FOR ENROLLMENT AND RECORD OF USE FORMS:

A. The enrollment form shall include at a minimum:

- (1) name of the *overdose prevention and education program*;
- (2) department designated code of the trained targeted responder; and
- (3) the quantity of the opioid antagonist distributed.

B. The record of use form shall contain at a minimum:

- (1) the name of the *overdose prevention and education program* recording the report;
- (2) the department designated code of the reporting trained targeted responder;
- (3) the quantity of the opioid antagonist administered, lost, or expired;
- (4) the date or approximate date of the overdose incident, if there is one being reported;
- (5) the disposition of the person who was administered the opioid antagonist; and
- (6) the quantity of the opioid antagonist distributed.

[7.32.7.12 NMAC-N, 7/15/2016]

7.32.7.13 APPLICABILITY

OF REGULATIONS: In the event an approved opioid antagonist is classified as an “over the counter” (OTC) medication the following portions of these regulations shall no longer be applicable: 7.32.7.9, 7.32.7.10, 7.32.7.11 NMAC. Department protocols will remain in effect.
[7.32.7.13 NMAC-N, 7/15/2016]

History of 7.32.7 NMAC:

Pre - NMAC History: None.

History of Repealed Material:

7.32.7 NMAC, Authorization to Administer Opioid Antagonists, filed 6/1/2001.
7.32.7 NMAC, Authorization to Administer Opioid Antagonists, filed 8/30/2001 - Repealed effective 7/15/2016. Part name changed to Overdose Prevention and Education Program Authorization for Opioid Antagonists.

PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS, BOARD OF LICENSURE FOR

This is an amendment to 12.8.2 NMAC, Sections 1, 6, 7, 9-14, 16 & 17, effective 7/24/2016.

12.8.2.1 ISSUING

AGENCY: New Mexico Board of Licensure for Professional Engineers and Professional Surveyors, [400+ Office Court Drive, Suite 903] 2550 Cerrillos Road, Santa Fe, NM 87507, telephone: [no. (505) 827-7561] (505) 476-4565, website: www.sblpes.state.nm.us.

[12.8.2.1 NMAC - Rp, 12.8.2.1 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.6 OBJECTIVE:

The objective of part 2 is to define the types of surveying, and to establish a minimum [requirements] standard of professional competency and performance to govern the performance of surveying and other

survey-related services by licensed professional surveyors in New Mexico. It is the responsibility of the licensee to meet or exceed the minimum standards contained herein and to apply the technical knowledge and skill that would be applied by other qualified licensees performing the same task in the same area at the same time.

[12.8.2.6 NMAC - Rp, 12.8.2.6 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.7 DEFINITIONS:

A. Professional competency and performance. A surveyor shall provide competent representation to the client, their employer and the public interest. Competent surveying practice requires the knowledge, skill, thoroughness, and preparation reasonably necessary for the engagement including the assessment of which his/her skills, knowledge and experience befits the needs of the client and to advise or otherwise direct or decline the work based on that assessment of their personal and professional competency.

B. Types of Surveying.

(1) **Boundary surveying** is the determination, description, portraying, measuring or monumentation of the boundaries of a tract of land [~~Other types of surveying, except as indicated, are not boundary surveying.~~] and reflecting the relationship of the boundaries of the surveyed property (i.e. contiguity, gaps, or overlaps) with its adjoiners, where ascertainable from record documents or from field evidence gathered during the process of conducting the survey of the property being surveyed. If the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels shall be identified.

(2)

Improvement location reporting is the preparation of a report which complies with all of the requirements and limitations of an improvement location report as set forth in 12.8.2.10 NMAC, and which is issued to a title, abstract or escrow company

or a lending institution for their exclusive use in determining such things as insurability or value of a tract of land.

(3)

Topographic surveying is the measurement and portrayal of the configuration of the ground [and/or] or the location and description of objects thereon. It can include the plotting and description of property boundary monuments and property lines on a topographic map [provided]. Unless a boundary survey is being conducted simultaneously, only existing monuments found at the time of the survey are shown, and no boundary monuments are set; and the following words are prominently shown on the topographic map: THIS IS NOT A BOUNDARY SURVEY OR A RIGHT-OF-WAY SURVEY. APPARENT PROPERTY CORNERS, RIGHT-OF-WAY LINES, OR PROPERTY LINES AS SHOWN ARE DERIVED FROM RECORD SURVEY PLATS, RIGHT-OF-WAY MAPS, OR DEEDS REFERENCED HEREON AND ARE NOT GUARANTEED OR TO BE RELIED ON FOR THE ESTABLISHMENT OF PROPERTY LINES.

[a] —

only existing monuments found at the time of the survey are shown, and no boundary monuments are set;

[b] —

the following words are prominently shown on the topographic map: THIS IS NOT A BOUNDARY SURVEY, APPARENT PROPERTY CORNERS AND PROPERTY LINES ARE SHOWN FOR INFORMATION ONLY. BOUNDARY DATA SHOWN IS FROM PREVIOUS SURVEY REFERENCED HEREON.]

(4) **Easement**

surveying is the description, portrayal, or monumentation of easement(s) only.

(5) [Right

of way] **Right-of-way surveying** is [the] boundary surveying of [right of way for acquisition or for locating existing right of way] existing right-of-way lines, which may include the boundary survey of adjoining property lines, for locating existing or

proposed right-of-way.

(6)

Condominium surveying - when performing or preparing a survey that falls under the Condominium Act (Article 7B), the survey requirements (Article 47-7B-9 or subsequent amendments) of said act shall be the standards to which the survey shall be held.

(7)

Preparation of legal descriptions - the preparation of legal descriptions is a form of surveying and, other than the citing of a lot or parcel for reference or identification purposes of a duly recorded plat, must be performed by a licensed professional surveyor.

(8) **An**

ALTA/ [ACSM] NSPS survey is a boundary survey. Therefore, a plat of survey must be recorded. [only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The filed survey can be a separate plat and need not include all the detail of the ALTA/ACSM Survey but only the improvements affecting the boundary] The filed survey can be a separate plat and need not include all the detail of the ALTA/NSPS survey but only the improvements affecting the boundary are required to be shown. (See Subsection J of 12.8.2.9 NMAC).

(9) **Control**

surveying [is the establishment of horizontal and vertical controls which will be the basis for all geospatial data used for design including construction staking surveys, surveys to layout horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods, construction surveys of engineering and architectural public works projects] is the establishment of horizontal or vertical controls which will be the basis for future phases of a project including, but not limited to: extraction of geospatial

data, engineering design projects, construction staking, surveys to layout horizontal and vertical alignments, topographic surveys using field methods, collection of topographic and planimetric data using photogrammetric methods and construction surveys of engineering or architectural public works projects.

(10)

Unclassified surveying is surveying not defined above.

[B:] **C. Dimensions** means the direction, expressed either as a bearing or an azimuth, and the length of a survey line.

[C:] **D. Easement** means a right that the public, a person or an entity holds in the land of another.

[D:] **E. Monument** means an object intended to mark a property boundary or a point of reference.

[E:] **F. Surveyor** means a professional surveyor licensed under the Engineering and Surveying Practice Act.

[F:] **G. Tract or lot** means a parcel of land in separate ownership [or], where a unique parcel identification number(s) has been or will be assigned by the county in which the tract or lot is situated. It can also be a leasehold [or] set off for separate ownership or a leasehold for other uses.

[G:] **H. Supplemental surveying work** means surveying work performed in order to densify, augment and enhance previously performed surveying work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system.

[H:] **I. GPS** is global positioning system, a.k.a. GNSS.

[I:] **J. Classes of surveys.**(1) **Urban**

means a survey within or adjoining a municipality or a survey, regardless of location, of land zoned for or intended for use for multifamily, commercial or industrial purposes.

(2) **Suburban**

means a survey, which is not an Urban survey, of land zoned for or intended

for use for residential purposes.

(3) Rural

means a survey, which is neither an Urban nor Suburban survey.

[(4)] K. Positional

error means the error inherent in setting or measuring from a monument and is added to the error expressed as a ratio for a closed traverse.

L. Positional

accuracy is an assessment of the closeness of the location of spatial objects in relation to their true positions geospatially.

M. GNSS is global navigational satellite system, a.k.a. GPS or global positioning by satellites.

N. Geospatial is the relative position of features on, above, or below the earth's surface defined by a localized or globalized system.

O. OPUS is the online positioning user service as provided by the national geodetic survey, national oceanic atmospheric administration, United States (U.S.) government.

P. Digital geospatial data is data in addition to, or as an alternative to, written or drawn media containing geospatially referenced electronic or computerized data, including land information systems (LIS) and geographic information systems (GIS). It includes data such as produced by optical and digital photographic comparison, scanners, lidar or radar, laser, infrared or ultrasonic measuring and UAV/UAS/airborne sensors.

[12.8.2.7 NMAC - Rp, 12.8.2.7 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.9 BOUNDARY

SURVEYING: When performing a boundary survey, the surveyor shall be responsible for accomplishing all of the following.

A. Obtain copies of relevant documents necessary to perform the survey. [and, when available, a copy of the title search for the tract being surveyed.]

B. Review [a#] recorded plats and [a#] plats known to and available to the surveyor that are

germane to the tract being surveyed.

C. Make a site visit and inspect the subject property and look for evidence of existing monuments and for evidence of possession and usage.

D. Determine the relative location on the ground of all found existing monuments which pertain to the survey using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC.

E. Tag found monuments which are accepted by the surveyor and pertain to the boundary being surveyed with a metal tag, bearing the surveyor's license number, attached to the monument with a metal wire or strap; monuments set by a government agency which are clearly identified by their markings need not be tagged.

F. Set new monuments in conformance with 12.8.2.17 NMAC at all corners of the tract being surveyed using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC, unless a permanent monument already exists.

G. Follow the rules and procedures, except for the accuracy and monumentation standards, in the [~~manual of instructions for the survey of the public lands of the United States~~ *manual of surveying instructions available at www.blm.gov/az/cadastral/manual/manindex.htm*] applicable *manual of surveying instructions* for the survey of the public lands of the U.S., prepared by the United States bureau of land management, if the tract being surveyed pertains to the United States survey of public lands in any way including the following:

(1) is a section or an aliquot part of a section;

(2) is a small holding claim, private claim, land grant, mining claim or any other tract described in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*);

(3) has a boundary which is a boundary of a tract described in Subsection G of 12.8.2.9 NMAC, paragraphs (1) or (2)

above;

(4) prior surveys and physical evidence within and adjacent to the section being surveyed should be carefully considered as evidence of original corner locations.

H. Never move, remove nor obscure an existing monument unless it is first properly referenced and all dimensions necessary to preserve its location are reported on a recorded plat.

I. Updating a prior survey - If an existing survey is updated for any reason, the surveyor shall comply with the minimum standards in effect at the time of the update unless the update is only to correct a minor scrivener's error. If the update is solely to bring the survey into compliance with the minimum standards and the location of the boundary has not changed, remonumentation is not required unless the original monumentation was not in compliance with the minimum standards in effect at the time the original survey was performed.

J. Prepare a plat of the survey, unless the survey is only the re-monumentation of corners of a tract, shown on a recorded plat, where some of the existing corners of the tract are recovered, whose measured dimensions on the ground are reasonably close to the record dimensions. A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The plat may contain as many sheets as required, which meet the size and material requirements of the state statute and shall contain at least the following:

(1) the name, address and registration number of the surveyor responsible for the survey;

(2) a certificate followed by the dated signature and seal of the surveyor responsible for the survey stating that the surveyor conducted an actual survey on the

ground and is responsible for the survey and that the survey and plat meet the minimum standards for surveying in New Mexico; only one surveyor's signature and seal shall appear on a plat; and the following model certification is considered to be an example of the minimum that the surveyor should certify to:

I, _____ (surveyor's name) _____, New Mexico Professional Surveyor No. (surveyors' license number), do hereby certify that this Boundary Survey Plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Surveying in New Mexico; and that it is true and correct to the best of my knowledge and belief. I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this instrument is a Boundary Survey Plat of an existing tract or tracts.

(Surveyor's Name) _____
PS No. _____

Date _____;

(3) a title which shall include the county in which the survey is located and at least the following:

(a) the lot, block or tract number and subdivision or district name if the survey is within a subdivision or conservancy district;

(b) the city, grant, small holding, mining or private claim, or similar area in which the survey is located;

(c) if neither subparagraph (a) nor (b) applies, then the section(s), township(s) and range(s) in which the survey is located; if the survey is not within a section, then the projected section(s) shall be stated and designated as such if required by the county clerk;

(4) a north arrow, equivalent scale and graphic scale for each sheet of the main drawing;

(5)

a description of all monuments found or set, [~~including the size and material and all pertinent information stamped or printed on any cap or tag~~] which shall include identifying characteristics such as the material, shape and all pertinent information stamped or printed on any cap or tag and the diameter (or the equivalent if other than round) when possible; a found monument which the surveyor has rejected as a true property corner shall be designated as such;

(6) the basis of bearings used in the survey which shall be based upon: [~~a procedure such as a solar observation or geodetic control stations or a line shown on a prior recorded document and defined on the ground by existing monuments; the use of assumed bearings is prohibited~~]

(a) New Mexico (NM) state plane coordinates with specifics to elevation, vertical datum, horizontal datum, zone, mapping angle, ground to grid factor used if using a modified ground system;

(b) a specific line between two points either found or re-established set points as shown on an existing filed plat;

(c) measured and published geodetic control values based upon an online position user service (OPUS) solution or geodetic control stations;

(d) a longitudinal line is acceptable based off GPS observation or other means for determining the longitude of a basis of bearings as long as the longitudinal value is published on the survey with the method used in determining the longitude; "GPS North" or similar notations without explanation as described above is unacceptable; "assumed bearings" are prohibited.

(7) [~~a description of all documents used to determine the boundaries and to prepare the plat of survey; the recording information shall be stated; if the document is not of record, all information used from the document shall be shown on the plat~~]

a description of pertinent documents, including filing information as applicable, used to determine the boundaries and to prepare the plat of survey; if a particular document is not of record, this fact shall be so stated and all information used from the document shall be shown on the plat; if significant discrepancies exist between the documents used to determine the boundaries, the surveyor shall disclose the same and shall disclose which document was ultimately relied upon to determine the boundaries;

(8) the boundary being surveyed including the dimensions as measured on the ground and the record dimensions unless the two are equivalent in which case it shall be so stated; all dimensions which pertain to the determination of the tract boundaries, and a tie to a suitable, permanent, existing monument;

(9) all dimensions which pertain to the restoration of a lost or obliterated corner or the subdividing of a section under Subsection G of 12.8.2.9 NMAC;

(10) the location and description of any evidence of a boundary or line of occupation including such things as a fence, building, [~~hedge~~] wall or the remains thereof which is on a boundary or close enough to a boundary to be confused with the boundary;

(11) the location and description of all easements known or disclosed to the surveyor which cross, adjoin or serve a surveyed tract together with the recording data for the document that created the easement and the location and description of any visible structures which encroach upon said easement;

(12) the radius, central angle, length and chord dimensions for all curves;

(13) the lot number, tract number, other designation or the apparent owner of all adjoining tracts with the recording data of the last recorded plat;

(14) [reserved] the relationship of the boundaries of the surveyed property (i.e. contiguity, gaps, or overlaps) with its adjoiners, where ascertainable from record documents and from field evidence gathered during the process of conducting the survey of the property being surveyed; if the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels shall be identified;

(15) the location and description of any evidence of use by a nonowner of the surveyed tract including such things as a road, trail, path, pipeline or utility which crosses a boundary of the tract;

(16) a letter or number providing a unique designation of each surveyed tract on a plat with more than one tract;

(17) [reserved] ~~(18)~~ access easement; if the surveyed tract is not contiguous to a public right-of-way, any access easement of record which is known to the surveyor shall be described on the plat and its location shall be determined; if no easement is known to the surveyor, a note prominently shown shall disclose that fact;

~~(19)~~ (18) the area of each surveyed tract.

K. Record the plat prepared under Subsection J of 12.8.2.9 NMAC with the county clerk of the county or counties in which the survey is located. A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The plat shall be recorded within sixty days of completion. A plat which requires the approval of a government agency is complete upon final approval. Any other plat is complete when the surveyor signs or seals it.

[12.8.2.9 NMAC - Rp, 12.8.2.9 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.10 IMPROVEMENT LOCATION REPORT:

A. Improvement location reporting is the preparation of an improvement location report which is a narrative report, which may be accompanied by a sketch, and which is issued only to a title, abstract or escrow company or a lending institution for their exclusive use; ~~[in determining such things as insurability or value of a tract of land]~~ it shall not be represented by the surveyor as being a property boundary survey.

B. If the report contains a sketch, the sketch shall contain the following words which are printed as large and as prominently as any other words upon the sketch: "This report is not for use by a property owner for any purpose. This is not a boundary survey and may not be sufficient for the survey exception from an owner's title policy. It may or may not reveal encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate boundary survey."

[12.8.2.10 NMAC - Rp, 12.8.2.10 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.11 TOPOGRAPHIC SURVEYING:

On topographic surveys with contour lines, the vertical accuracy of ~~[90%]~~ ninety percent of the points tested shall be within one half of the contour interval, unless otherwise stated on the survey. Every topographic map shall comply with 12.8.2.14 and 12.8.2.16 NMAC.

[12.8.2.11 NMAC - Rp, 12.8.2.11 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.12 EASEMENT SURVEYING:

A. When performing easement surveying, the surveyor shall use procedures in any field measurements which achieve the minimum accuracy standards in 12.8.2.16 NMAC.

B. If the easement does not run parallel to a boundary of the tract in which it is located, then the surveyor shall prepare a plat which shows the dimensions of the easement and conforms with Paragraphs (1),

(2), (3), (4), (5) and (6) of Subsection J of 12.8.2.9 NMAC, and complies with one of the following:

(1) shows ties to record monuments at the beginning and ending of the easement and at least at every mile along the easement; or

(2) shows the coordinates of the beginning, ending and all angle points in accordance with the New Mexico coordinate system and shows the grid bearing and ground distance between said points; or

(3) shows ties to existing corners of a subdivision in which the easement is located.

C. These field procedures and subsequent plat preparation or legal description must be conducted under the responsible charge of a professional surveyor.

D. Unless the easement runs parallel to the boundary of the tract, ties from points on the easement to lot corners shall be shown for every tract the easement is affecting so that when a subsequent survey is being prepared on the tract, the location can be defined based upon the ties.

[12.8.2.12 NMAC - Rp, 12.8.2.12 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.13 RIGHT OF WAY SURVEYING:

When performing right of way surveying, the surveyor shall do all of the following.

A. Obtain a copy of the last recorded deed for the tract(s) affected by the existing or contemplated right of way and obtain copies of all existing right of way maps and conveyance documents available.

B. Obtain a copy of all available, relevant recorded plats and all plats and maps known to be available to the surveyor for the tract(s) affected by the existing or contemplated right of way.

C. Make a diligent search on the ground, including the use of a metal detector, for all existing monuments, which pertain to the property boundaries intersecting the public highway right of way corridor being surveyed.

D. Determine the relative location on the ground of all found existing monuments, which pertain to the survey using procedures [which] to achieve the minimum accuracy standards in 12.8.2.16 NMAC.

E. ~~[Tag all found and accepted monuments, which pertain to the survey, with a metal tag, bearing the surveyor's registration number, attached to the monument with a metal wire or strap.]~~ **[RESERVED]**

F. Set new monuments conforming to 12.8.2.17 NMAC on the right of way limit lines at all changes in direction and at all points where property lines intersect, using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC, unless a permanent monument exists; when monumenting existing right of way limit lines, monuments at intersecting property lines need not be set.

G. Follow the rules and procedures, except for the accuracy and monumentation standards, in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*) prepared by the United States bureau of land management, if the tract being surveyed pertains to the United States survey of public lands in any way including the following:

- (1) is a section or an aliquot part of a section;
- (2) is a small holding claim, private claim, land grant, mining claim or any other tract described in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*);
- (3) has a boundary which is a boundary of a tract described in Subsection G of 12.8.2.13 NMAC, paragraphs (1) or (2) above.

H. Whenever a tract of land is to be severed by right of way acquisition, the surveyor shall locate property lines that intersect the right of way limits. The surveyor shall use all available documents, field data, including parol evidence and land title

information to determine the length, location and bearing of the severed property line relative to the right of way limits. This includes surveying as many additional parcel boundaries as necessary which connect to the property lines intersecting the right of way in order to accurately locate the property lines affected by the contemplated right of way.

I. **[RESERVED]**

J. Prepare a plat of survey, containing as many sheets as required, and which contains at least the following:

- (1) the name, address, and registration number of the surveyor responsible for the survey;
- (2) a certificate followed by the signature and seal of the surveyor responsible for the survey and stating that the survey and plat meet the minimum standards for surveying in New Mexico;
- (3) a title which shall include at least the following:
 - (a) the project number;
 - (b) the project's control number (PCN) of the project (if applicable);
- (4) the section(s), township(s), range(s), grant or reservation, municipality, and county(s) in which the project is located;
- (5) a north arrow, equivalent scale, graphic scale, date of the fieldwork and a location/vicinity map showing where the project is located;
- (6) a description of all monuments found or set; a found monument, which the surveyor rejected as a property corner, shall be designated as such;
- (7) the basis of bearing used ~~[in the survey which shall be a procedure such as solar observation or a line shown on a plat and defined on the ground by existing monuments]~~ shall comply with the requirement Paragraph (6) of Subsection J of 12.8.2.9 NMAC;
- (8) a description of all documents used to

determine the boundary of any tract surveyed and to prepare the plat of survey; the recording information shall be stated; if the document is not of record, all information used from the document shall be shown on the plat;

(9) the pertinent boundaries of the tract abutting the right of way being surveyed including the dimensions as measured on the ground and the record dimensions unless the two are equivalent;

(10) the location and description of any evidence of a boundary line ~~[or occupation including such things as a fence, building hedge, wall or the remains thereof which is on a boundary or close enough to a boundary to be confused with the boundary]~~ shall comply with Paragraph (10) of Subsection J of 12.8.2.9 NMAC;

(11) all dimensions which pertain to the restoration of a lost corner or the subdivision of a section under Subsection G of 12.8.2.13 NMAC;

(12) the location of permanent improvements lying in close proximity to the new right of way limit line and which may be affected by the contemplated acquisition of land for public use;

(13) the radius, central angle, length and the chord bearing and dimension for all curves;

(14) the lot number, tract number, other designation or the apparent owner of all adjoining tracts with the recording data of the last recorded plat;

(15) the name of the owner of the parcel from which right of way is being acquired;

(16) the location and description of all easements known or disclosed to the surveyor which cross, or adjoin the right of way;

(17) a letter/number or combined letter and number designation of each parcel acquired for right of way.

K. Record the plat prepared under Subsection J of

12.8.2.13 NMAC with the county clerk of the county or counties in which the project is located. The plat shall be recorded within sixty days of completion. The plat is considered complete when the surveyor signs and seals it. For the New Mexico department of transportation (NMDOT) right of way surveys, the plat(s) may carry multiple surveyor certifications, if necessary, in order to reflect specific areas of individual responsibility when the scope, duration, or complexity of a NMDOT right of way project so requires. Certifications of all other right of way surveys shall carry a single signature and seal of the surveyor responsible for the survey.

[12.8.2.13 NMAC - Rp, 12.8.2.13 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.14 CONTROL SURVEYING REPORTING:

Whenever a professional surveyor undertakes control surveying as defined in 12.8.2.7 NMAC, where the coordinates and elevations of the control points established by the survey will be relied upon by professionals other than the original surveyor for future phases of the work, the licensee shall prepare a control survey report [which] and shall provide the report to the prime client and to any other person who makes a written submittal. Alternatively, if the entire report is contained on the face of the work product no other reporting is required. The report will contain the following information as appropriate to work being performed.

A. A listing of the final adjusted coordinates and elevations for all points within the control network along with a complete description of all monuments established or recovered.

B. A complete description of the horizontal and vertical datum used including the basis of bearings. [(GPS, plat etc.) if the coordinate system is not based on a published datum]

C. A complete description of the state plane [and/or] or UTM zone used including all

pertinent metadata, if appropriate.

D. Units used for coordinates and elevations.

E. Description of monument(s) used to constrain the control network including the reference coordinates and elevations used for said monument(s).

F. If the final adjusted coordinates are based on a modified (ground datum) state plane coordinate system or a low-distortion local coordinate system (ground referenced) derived from geospatial positions, a complete description of the method(s) used to generate the modified coordinates shall be included in the report.

G. A brief description detailing the field methods and equipment used to conduct the control survey.

H. The date when the control monuments were set, the date when the control monuments were positionally observed, and the date of the final network adjustment.

I. [The geospatial positional accuracy shall be reported pursuant to the accuracy classifications contained within Subsection C of 12.8.2.16 NMAC. The surveyor shall report both the geospatial positional accuracy and the estimated network accuracy as defined in Subsection C of 12.8.2.16 NMAC and will report the geospatial positional accuracy separately for horizontal and vertical components] Nothing in this section dictates the spatial accuracy that will be required by any specific project. It will be the responsibility of the individual licensee to determine the appropriate level of accuracy for each project. However, the licensee shall report the spatial accuracy in both the horizontal and vertical components.

J. A certificate followed by the dated signature and seal of the surveyor responsible for the control survey stating that the surveyor conducted an actual survey on the ground and is responsible for the survey. [along with a statement of accuracy pursuant to the accuracy standards contained within 12.8.2.16 NMAC] The following model

certification is considered to be an example of the minimum that the surveyor should certify to:

I, (surveyor's name), New Mexico Professional Surveyor No. (surveyor's license number), do hereby certify that this Control Survey Report was prepared by me or under my direct supervision based on an actual survey on the ground as described herein; that I am responsible for this survey; and that the survey and report meets the minimum standards for surveying in New Mexico.

[12.8.2.14 NMAC - N, 5/01/2007; A, 7/24/2016]

12.8.2.16 ACCURACY:

A. Topographic map accuracy standards.

(1) [Horizontal accuracy--For maps compiled at scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured at the compiled scale. For maps compiled at scales of 1:20,000 or smaller, not more than 10 percent of the points tested shall be in error by more than 1/50 inch, measured at the compiled scale. These limits of accuracy shall apply in all cases to positions of well-defined points only. Well-defined points are those that are easily visible or recoverable on the ground, such as the following: monuments or markers, such as benchmarks, property boundary monuments; intersections of roads, railroads, etc.; corners of large buildings or structures (or center points of small buildings). In general what is well defined will be determined by what is plottable on the scale of the map within 1/100 inch. Thus while the intersection of two roads or property lines meeting at right angles would come within a sensible interpretation, identification of the intersection of such lines meeting at an acute angle would obviously not be practicable within 1/100 inch. Similarly, features not identifiable upon the ground within close limits are not to be considered as test points within the limits quoted, even though their positions may be

sealed closely upon the map. This class would include timberlines, soil boundaries, etc.

(2) Vertical accuracy - As applied to contour maps on all publication scales, shall be such that not more than 10 percent of the elevations tested shall be in error more than one-half the contour interval.

(3) Accuracy test guidelines - When testing a topographic map for compliance with Paragraphs (1) and (2) of Subsection A of 12.8.2.16 NMAC, a minimum of 20 check points evenly distributed throughout the topographic map shall be tested. Horizontal accuracy shall be tested by comparing the planimetric coordinates of the well-defined points in the mapping with coordinates of the same points from an independent source of higher accuracy. Vertical accuracy shall be tested by comparing the elevations in the mapping with elevations of the same points as determined from an independent source of higher accuracy.] The required horizontal and vertical accuracy of a topographic map produced by field procedures or photogrammetric methods shall be determined on a project by project basis and shall meet the accuracy standards set forth in the current American society for photogrammetry and remote sensing (ASPRS) positional accuracy standards for digital geospatial data. accuracy testing and reporting shall be pursuant to the current 'ASPRS positional accuracy standards for digital geospatial data'. Accuracy testing and reporting shall be pursuant to the current 'ASPRS positional accuracy standards for digital geospatial data' as well.

(2)
[RESERVED]

(3)
[RESERVED]

(4)
Accuracy reporting - If testing by an independent source of higher accuracy has not or cannot be followed, the final topographic map shall contain the following statement: "This map has been produced

according to procedures that have been demonstrated to produce data that meets or exceeds the *minimum standards* for a topographic map compiled at a scale of (insert map scale here) with a contour interval of (insert contour interval here)." If testing by an independent source of higher accuracy has been conducted pursuant to the guidelines contained herein, the final topographic map shall contain the following statement: "This map has been tested from an independent source of higher accuracy and meets the *Minimum Standards* for a topographic map compiled at a scale of (insert map scale here) with a contour interval of (insert contour interval here)."

(5) Alteration of original mapping (scale): When the presentation scale of a map is other than that of the compilation scale, that fact shall be stated in the legend. "This map is an enlargement of a 1:2,400 map" or "This map is a reduction of a 1"=200' map."

B. Boundary surveying, easement surveying and right-of-way surveying accuracy standards. The surveyor shall determine the class of a survey using the definitions in Paragraphs (1) through (3) of Subsection I of 12.8.2.7 NMAC, and achieve the accuracy specified for the class of survey. It is the responsibility of the surveyor to select the appropriate procedures and equipment to obtain the accuracy required by the minimum field accuracy standards below for boundary surveying, easement surveying and right-of-way surveying:

Continued on the Following Page

	<u>Urban</u>	<u>Suburban</u>	<u>Rural</u>
Unadjusted closure (Traverse)	1 part in 15,000	1 part in 10,000	1 part in 7,500
Positional [Error] <u>accuracy</u>	[0.05] <u>0.10</u> ft.	0.10 ft.	0.25 ft.
Location of improvements	0.15 ft.	0.25 ft.	1.0 ft.

C. ~~[Geospatial positional accuracy standards for control surveys. The geospatial positional accuracy for control surveys shall be as follows:~~

~~————— (1) ——— horizontal control networks using GPS relative positioning techniques – the horizontal positional accuracy shall be reported in terms of relative positioning accuracy according to the order classifications contained within the geometric geodetic accuracy standards and specifications for using GPS relative positioning techniques, version 5.0 dated August 1, 1989, federal geodetic control committee;~~

~~————— (2) ——— horizontal control networks using conventional field traversing techniques – the horizontal positional accuracy shall be reported in terms of distance accuracy according to the order classifications contained within the standards and specifications for geodetic control networks dated September, 1984, federal geodetic control committee;~~

~~————— (3) ——— vertical control networks – the vertical positional accuracy shall be reported in terms of elevation difference accuracy according to the order classifications contained within the standards and specifications for geodetic control networks dated September, 1984, federal geodetic control committee;~~

~~————— (4) ——— the estimated network accuracy is a statement disclosing the order (and class, if appropriate) of the published monument or monuments used to constrain the final network adjustment and is intended to inform the end-user of how well the data may fit with an established geodetic datum]~~

[RESERVED]

[12.8.2.16 NMAC - Rp, 12.8.2.15 NMAC, 5/01/2007; A, 7/24/2016]

12.8.2.17 MONUMENTS:

A. Except as prescribed in Subsections B and C of 12.8.2.16 NMAC, monuments set by the surveyor shall be ferrous metal, at least one-half inch in diameter ~~(or the equivalent if other than round)~~ and at least [~~sixteen~~] 16 inches long. They shall bear a metal or plastic cap stamped with the surveyor's [~~registration~~] license number.

B. Corners which fall upon a hard surface shall be monumented with a chiseled cross or a nail in a disk or tag bearing the surveyor's registration number.

C. When a corner is located at a place where it is not practical to set a monument or a monument at the corner is likely to be destroyed, at least one reference monument shall be set and dimensioned on the plat such that the location of the corner can be reestablished.

D. Monuments for the exterior corners of a subdivision shall be set by the surveyor who certified the plat of the subdivision prior to recordation of the subdivision plat. It is the responsibility of the subdivider to ensure that interior corners of a subdivision are set within [~~thirty~~] 30 days of completion of the construction of infrastructure improvements but within one [~~(+)~~] year after recordation of the subdivision plat. The board of licensure may elect to extend the time period upon the showing of good cause. The surveyor certifying the subdivision plat shall be responsible for notifying the subdivider by either including a statement regarding this responsibility in the executed contract for services or by letter sent certified mail, return receipt requested. The requirements of this section are met if any surveyor stakes the interior corners of the subdivision. If the subdivision is developed in phases,

the interior corners of each phase may be staked by separate surveyors, provided the above stated time limits are met or extended by decision of the board of licensure. Under this section, it is the responsibility of each surveyor who stakes the interior corners of a subdivision to record an affidavit with the county clerk. Said affidavit shall be signed and sealed by the surveyor and shall contain at least the following: subdivision name as shown on the recorded plat, all recording information, name of subdivider, type of monuments set and, if the surveyor is staking a phase of the subdivision, the limits of responsibility. If the surveyor is required to record a plat of survey under the requirements of Subsection J of 12.8.2.9 NMAC, the affidavit may be included on said plat.

E. A surveyor shall perpetuate monuments established by the public land survey system which the surveyor finds in need of rehabilitation or replacement. A description of the monument as found and as restored or referenced and all available dimensions to other monuments shall be reported on a recorded plat. Said plat may be a boundary survey plat. If circumstances do not require a boundary survey plat, a plat depicting only the rehabilitated or replaced monuments will satisfy the requirements of this section.

F. For monuments which pertain to the survey, a surveyor shall perpetuate those monuments which the surveyor finds in need of rehabilitation or replacement. A description of the monument as found and as restored or referenced and all available dimensions to other monuments shall be reported on a recorded plat.
[12.8.2.17 NMAC - Rp, 12.8.2.16 NMAC, 5/01/2007; A, 7/24/2016]

PUBLIC RECORDS, COMMISSION OF

The State Commission of Public Records approved, at its 6/21/2016 hearing, to repeal rule 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems (filed 6/14/2005), effective 7/15/2016.

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.13.4 NMAC, Sections 7 and 13, effective 7/15/2016.

1.13.4.7 DEFINITIONS:

A. “Archives” means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

B. “Attachments” are electronic file(s) sent along with an electronic message.

C. “Disposition” means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. “Electronic message” includes, but is not limited to, a text message, social media and e-mail that is created and delivered in an electronic format.

E. “Native format” means the file format that a software application uses to create or save files.

F. “Non-record” means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in

pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and informational files.

[F:] G. “Social media” means forms of electronic communication through which users create online communities to share information, ideas, messages and other content (e.g., twitter, facebook, instagram, pinterest, linkedin, etc.).

[G:] H. “Transitory” means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

[1.13.4.7 NMAC - Rp, 1.13.4.7 NMAC, 3/31/2015; A, 11/30/2015; A, 7/15/2016]

1.13.4.13 FILING ELECTRONIC MESSAGES:

[Electronic messages classified as public records shall be filed either in a manual, paper-based system, or stored electronically.] Procedures for filing electronic messages will vary based on the agency’s needs and the particular hardware and software in use.

A. The department of information technology may provide an agency with a centrally managed enterprise electronic messaging system. However, the department of information technology’s system is not designed to be a records management system. Agencies using a department of information technology system must instruct all public officials using the system how to copy public records from their electronic messaging account to a records management system.

B. Electronic messages sent or received from a computer outside a state electronic messaging system that is classified as a public

record, shall be transferred to an agency’s records management system for proper retention and disposition.

C. Non-records are not required to be retained by an agency and regular deletion should be included in an agency’s procedure for management of electronic messages.

D. Electronic systems used to manage electronic messages shall ensure that messages and attachments classified as public records are maintained in their native format until their final disposition and can be accessed, retrieved and read.

~~[(1) — electronic messages and attachments classified as public records can be accessed, retrieved and read;~~

~~(2) — metadata for electronic messages sent or received are captured and preserved; and~~

~~(3) — electronic messages are retained in a usable format for their required retention period as specified in the FRRDS.~~

~~**E.** Manual filing systems require that electronic messages and attachments be printed. Once an electronic message has been printed, the electronic message and attachment may be deleted from the system. The printed copy shall be the official record and shall include at a minimum the name(s) of the sender, all recipients and the date the message was sent.]~~

[1.13.4.13 NMAC - Rp, 1.13.4.12 NMAC, 3/31/2015; A, 11/30/2015; A, 7/15/2016]

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.21.2 NMAC, Sections 231 & 910 and adding Section 938, effective 07/15/2016.

1.21.2.231 LEAVE RECORDS:

A. Category:
Employee services - personnel management

B. Description:
Employee leave records and related

records.

C. Retention: destroy [one-year] three years from close of fiscal year in which created [1.21.2.231 NMAC - N, 10/01/2015; A, 07/15/2016]

1.21.2.910 SURVEILLANCE - CORRECTIONAL INSTITUTIONS:

A. Category: Public safety services - correctional institutions

B. Description: Records related to surveillance including, but not limited to, radio, telephone and cameras.

C. Retention: destroy two years from date file closed [1.21.2.910 NMAC - N, 10/01/2015; A, 07/15/2016]

1.21.2.938 SURVEILLANCE - LAW ENFORCEMENT:

A. Category: Public safety services - law enforcement

B. Description: Records related to surveillance not identified in other classifications.

C. Retention: destroy two years from date file closed [1.21.2.938 NMAC - N, 07/15/2016]

RACING COMMISSION

Explanatory paragraph: This is an emergency amendment to 15.2.1 NMAC, Section 9, effective June 28, 2016, adopted by the New Mexico Racing Commission at their meeting on June 23, 2016. In 15.2.1.9 NMAC, Subsection A, Paragraphs (1), (2), (4) through (10) of Subsection B and Subsection C were not published as there were no changes.

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

B. PROCEEDINGS BEFORE THE STEWARDS:

(3) Summary

suspension.

(a) If [H] the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards may summarily suspend the license pending a hearing.

(b) A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third day after the license was summarily suspended. The licensee may waive their right to a hearing on the summary suspension within the three-day limit.

(c) The stewards shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

(d) If a positive test arises in a trial race, the horse is eligible for entry into a race for which the trial was conducted unless that positive test requires the horse to be placed on the steward's list pursuant to Subsection D of 15.2.6.9 NMAC. The purse for both the trial and the race for which the trial was conducted will be held until the case has been adjudicated.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 03/15/2001; A, 03/31/2003; A, 05/30/2003; A, 06/15/2004; A, 06/30/2009; A, 09/15/2009; A, 12/1/2010; A, 05/01/2013; A, 01/01/2014; A, 03/16/2015; A, 05/01/2015; A, 09/16/15; A, 03/15/2016; A/E, 06/28/16]

RACING COMMISSION

Explanatory paragraph: This is an emergency amendment to 15.2.3 NMAC, Section 8, effective June 28, 2016, adopted by the New Mexico Racing Commission at their meeting on June 23, 2016. In 15.2.3.8 NMAC,

Subsection A, Paragraphs (1) through (8) of Subsection B, Subsections C through M, Paragraphs (1) through (8) of Subsection N and Subsection O through P were not published as there were no changes.

15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

~~[A. FLAT RACING OFFICIALS GENERAL PROVISIONS:]~~

B. Stewards.

(9) Stewards' list.

(a) The stewards shall maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that endangers the health or safety of other participants in racing.

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse.

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing.

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of said horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification [and/or] or ownership has been established.

(e) A horse that has been placed on the steward's list for a positive test pursuant to Subsection D of 15.2.6.9 NMAC may only be removed if the criteria set forth in that Subsection are

met or in the event of a split sample result which does not confirm the official laboratory's original finding of a positive test.

N. Official veterinarian. The official veterinarian shall:

(9) place horses on the bleeder list and remove horses from the bleeder list; ~~and~~

(10) place horses on the veterinarian's list that have been treated for a therapeutic purpose for any medication pursuant to Paragraph (9) of Subsection D of 15.2.6.9 NMAC and remove horses from the veterinarian's list when the criteria for removal pursuant to that subsection have been met; and

(11) be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of racing the horse to so act.

[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 04/13/2001; A, 11/15/2001; A, 08/30/2007; A, 06/15/2009; A, 06/30/2009; A, 12/01/2010; A, 05/01/2015; A/E, 06/28/2016]

RACING COMMISSION

Explanatory paragraph: This is an emergency amendment to 15.2.4 NMAC, Section 8, effective June 28, 2016, adopted by the New Mexico Racing Commission at their meeting on June 23, 2016. In 15.2.4.8 NMAC, Subsections B through G were not published as there were no changes.

15.2.4.8 CLAIMING RACES:

~~[A. CLAIMING RACES:]~~

A. GENERAL PROVISIONS:

(1) A person entering a horse in a claiming race

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

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

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

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

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

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

(3) The stewards may set aside and order recession of a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the claim committed a prohibited action, as specified in Subsection E of 15.2.4 NMAC with respect to the making of the claim, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of these rules regarding claiming

races. Should the stewards order a recession of a claim, they may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate.

(4) The successful claimant of a horse that tests positive for a substance that requires the horse to be placed on the steward's list pursuant to Subsection D of 15.2.6.9 NMAC shall be notified at the time the horse is placed on the steward's list. Once notified, the successful claimant has 72 hours in which to request the stewards to void the claim. If the claim is voided the stewards may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate. If the claim is not voided, all applicable time requirements and procedures pursuant to Subsection D of 15.2.6.9 NMAC shall follow the horse.

[15.2.4.8 NMAC - Rp, 15 NMAC 2.4.8, 03/15/2001; A, 10/31/2006; A, 06/15/2009; A, 06/30/2009; A, 01/01/2013; A, 06/01/2016; A/E, 06/28/16]

RACING COMMISSION

Explanatory paragraph: This is an emergency amendment to 15.2.6 NMAC, Section 9, effective June 28, 2016, adopted by the New Mexico Racing Commission at their meeting on June 23, 2016. In 15.2.6.9 NMAC, Subsections A and B, Subsections E through G, Subsections I and J, and the re-lettering of Subsections M through P were not published as there were no changes.

15.2.6.9 MEDICATIONS AND PROHIBITED

SUBSTANCES: The "uniform classification guidelines for foreign substances and recommended penalties and model rule", December 2015, version 11.00 and "association of racing commissioners international inc controlled therapeutic medication

schedule for horses”, version 2.2 revised April 2015 (furosemide has been modified in the “association of racing commissioners international inc controlled therapeutic medication schedule, refer to Subsection E of 15.2.6.9 NMAC for current rule) as issued by the association of racing commissioners international, are incorporated by reference. Upon a finding of a violation of any medication and prohibited substances rule, which includes the possession of contraband as listed in 15.2.6.9 NMAC, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures as determined by the New Mexico racing commission.

C. PENALTY RECOMMENDATIONS:

<p>(1) Category A penalties will be assessed for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations are as follows:</p>
<p>LICENSED TRAINER:</p>
<p>1st offense:</p>
<p>A minimum one-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum three-year suspension. A minimum fine of \$10,000 or ten percent of total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$25,000 or twenty-five percent of total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.</p>
<p>2nd LIFETIME offense in any jurisdiction:</p>
<p>A minimum three-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period. A minimum fine of \$25,000 or twenty-five percent of total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$50,000 or fifty percent of total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.</p>
<p>3rd LIFETIME offense in any jurisdiction:</p>
<p>A minimum five-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period. A minimum fine of \$50,000 or fifty percent of total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$100,000 or one hundred percent of the purse (greater of the two), and may be referred to the commission for any further action deemed necessary by the commission.</p>
<p>LICENSED OWNER:</p>
<p>1st offense:</p>
<p>Disqualification <u>and</u> loss of purse. [and horse shall be placed on the veterinarian’s list for 90 days and must pass a commission-approved examination before becoming eligible to be entered.]]</p>

2nd LIFETIME offense in stable [(365-day period)] in any jurisdiction:
Disqualification and loss of purse. [and horse shall be placed on the veterinarian's list for 120 days and must pass a commission-approved examination before becoming eligible to be entered.]
3rd LIFETIME offense in stable [(365-day period)] in any jurisdiction:
Disqualification, loss of purse, \$50,000 fine, [and horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered.] and referral to the commission with a recommendation of a suspension for a minimum of 90 days.
(2) Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma/serum sample in accordance with Paragraphs (3) and (4) of Subsection P of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:
LICENSED TRAINER:
1st offense:
A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.
2nd LIFETIME offense (365-day period) in any jurisdiction:
A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.
3rd LIFETIME offense (365-day period) in any jurisdiction:
A 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.
LICENSED OWNER:
1st offense:
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
2nd LIFETIME offense in stable (365-day period) in any jurisdiction:
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
3rd LIFETIME offense in stable (365-day period) in any jurisdiction:
Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine* and horse shall be placed on the veterinarian's list for 45 days and must pass a commission-approved examination before becoming eligible to be entered.
(3) Category C penalties will be assessed for violations due to the presence of a drug carrying a category C penalty and overages for NSAID's, the presence of more than one NSAID in a plasma or serum sample in accordance with Subparagraph (f) of Paragraph (4) of 15.2.6.9 P NMAC and furosemide (all concentrations are for measurements in serum or plasma). Recommended penalties for category C violations are as follows:
LICENSED TRAINER:
1st offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum of a written warning to maximum fine of \$500:
phenylbutazone (2.1-5.0 mcg/ml)
flunixin (21-100 ng/ml)
ketoprofen (11-50 ng/ml)
furosemide (>101 ng/ml)
no detectable furosemide concentration when identified as administered.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum of a written warning to maximum fine of \$750:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11-50 ng/ml)

furosemide (>101 ng/ml)

no detectable furosemide concentration when identified as administered.

3rd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$500 to a maximum fine of \$1,000:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11-50 ng/ml)

furosemide (>101 ng/ml)

no detectable furosemide concentration when identified as administered.

LICENSED OWNER:

1st offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11-50 ng/ml)

furosemide (>101 ng/ml)

no detectable furosemide concentration when identified as administered.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11-50 ng/ml)

furosemide (>101 ng/ml)

no detectable furosemide concentration when identified as administered.

3rd offense (365-day period) in any jurisdiction in the following levels, the penalty is disqualification, loss of purse and horse must pass a commission-approved examination before being eligible to run:

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11-50 ng/ml)

furosemide (>101 ng/ml)

no detectable furosemide concentration when identified as administered.

LICENSED TRAINER:

1st offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$1,000:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$1,500 and 15 day suspension:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

3rd offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$2,500 and a 30 day suspension:

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations.

LICENSED OWNER:

1st offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run:

phenylbutazone (5.1 mcg/ml or greater)
 flunixin (101 ng/ml or greater)
 ketoprofen (51 ng/ml or greater)
 penalty class C violations.

2nd offense (365-day period) in any jurisdiction in the following levels, the penalty is disqualification, loss of purse and if same horse, that horse shall be placed on veterinarian's list for 45 days and must pass a commission-approved examination before being eligible to run:

phenylbutazone (5.1 mcg/ml or greater)
 flunixin (101 ng/ml or greater)
 ketoprofen (51 ng/ml or greater)
 penalty class C violations.

3rd offense (365-day period) in any jurisdiction in the following levels the penalty is disqualification, loss of purse, minimum \$5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass a commission-approved examination before being eligible to run:

phenylbutazone (5.1 mcg/ml or greater)
 flunixin (101 ng/ml or greater)
 ketoprofen (51 ng/ml or greater)
 penalty class C violations.

(4) Any violation subsequent to a third violation will carry the same terms as imposed for a third violation. Penalties will run consecutively for a trainer or owner.

(5) If the trainer has not had more than one violation involving a drug that carries a category C penalty within the previous two years, the stewards are encouraged to issue a warning in lieu of a fine provided the reported level in phenylbutazone is below 3.0 micrograms per milliliter.

(6) After a two-year period, if a licensee has had no further violations involving a drug that carries a category C penalty, any penalty due to an overage in the 2.0-5.0 micrograms per milliliter range for phenylbutazone will be expunged from the licensee's record for penalty purposes.

**Continued on the Following
Page**

D. MEDICATION**RESTRICTIONS:**

(1) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.

(2) Drugs or medications in horses are permissible, provided: the drug or medication is listed by the association of racing commissioners international's drug testing standards and practices program; the maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

(4) There is no permissible concentration of clenbuterol that is allowed to appear in any official sample.

(5) Any horse that is the subject of a positive test report from the official laboratory for a drug in one of the following categories shall be placed immediately on the steward's list:

(a) any drug categorized by the association of racing commissioner's international "uniform classification

guidelines for foreign substance and recommended penalties and model rule" incorporated by reference under 15.2.6.9 NMAC as a penalty class A substance;

(b) any prohibited anabolic androgenic steroid or any anabolic androgenic steroid in excess of the permitted concentrations listed in Subsection H of 15.2.6.9 NMAC;

(c) clenbuterol or other beta-agonist drugs with significant anabolic effects that are not currently penalty class A drugs;

(d) other drugs designed to promote growth or muscle including, but not limited to, growth hormones, somatotropins, insulin growth factors and gene modifying agents;

(e) colbalt in excess of the allowable concentration specified pursuant to Subsection N of 15.2.6.9 NMAC.

(6) Horses placed on the steward's list for a positive test for any of the substances listed in Paragraph (5) of Subsection D above shall remain on the steward's list for 60 days. The first day shall be considered the day following the date of the signed report from the official laboratory.

(7) In order to be removed from the steward's list and prior to entry, the following conditions shall be met:

(a) a minimum of 60 days must have elapsed;

(b) the horse must be presented to the test barn on or after day 60 for the official veterinarian to obtain blood and urine samples;

(c) the collected samples must test negative for any substance identified in Paragraph (5) of Subsection D above;

(d) the cost of the testing, including applicable shipping costs, shall be borne by the licensed owner and must be paid in full at the time of shipment.

(8) If a split

sample obtained under Subsection D of 15.2.6.10 NMAC does not confirm the original finding of the official laboratory of a positive test, the horse shall be removed from the steward's list.

(9) A practicing veterinarian that is licensed by the commission may prescribe a drug identified by Paragraph (5) of Subsection D above under the following conditions:

(a) the diagnosis justifying the prescribed drug, the dosage, the expected duration of treatment, the name of the horse and the name of the trainer must be submitted to the official veterinarian on a form prescribed by the commission;

(b) only FDA label-approved drugs for use in the horse may be prescribed;

(c) the horse shall be placed on the veterinarian's list for a period of time not less than 30 days after the last administration of the drug as prescribed;

(d) the horse must be presented to the test barn once eligible to be removed from the list for the official veterinarian to obtain blood and urine samples;

(e) the collected samples must test negative for the prescribed substance and any other substance identified in Paragraph (5) of Subsection D above;

(f) the cost of testing, including applicable shipping costs shall be borne by the licensed owner and must be paid in full at the time of shipment;

(g) horses placed on the veterinarian's list for the therapeutic use of any substance identified in Paragraph (5) of Subsection D above will be subject to out of competition sampling pursuant to Subsection K of 15.2.6.9 NMAC to ensure that the concentration of drug found is within the range expected for the recognized therapeutic dose of the drug.

H. ANDROGENIC-ANABOLIC STEROIDS:

~~[(6) — Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian’s list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administrated AAS, the horse is eligible to be removed from the list.]~~

K. OUT OF COMPETITION TESTING:

(1) A horse may be subject to out of competition testing without advance notice if the horse is:

(a) on the grounds of a racetrack or training center under the jurisdiction of the commission;

(b) under the care or control of a trainer or owner licensed by the commission; or

(c) any horse whose papers are filed in the racing office; or

(d) has been nominated to a stakes race.

(2) This rule applies to prohibited substances, practices and procedures [are] as follows:

(a) ~~[class I, class II and class III] penalty class A~~ drugs as listed with the ~~[New Mexico racing commission] association of racing commissioners international “uniform classification guidelines for foreign substances and recommended penalties and model rule” and incorporated by reference under 15.2.6.9 NMAC;~~

(b) blood doping agents including, but not limited to, erythropoietin (EP), darbepoetin, oxyglobin, hempure, aranasep or any substance that abnormally enhances the oxygenation of body tissues; [and]

(c) gene doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia.

(d) clenbuterol present in a sample in a horse not previously placed on the veterinarian’s list pursuant to Paragraph (9) of Subsection D of 15.2.6.9 NMAC; and

(e) androgenic-anabolic steroids present in a sample in a horse not previously placed on the veterinarian’s list pursuant to Paragraph (9) of Subsection D of 15.2.6.9 NMAC.

(3) ~~[The permitted quantitative test level of clenbuterol for out of competition horses shall be administered in such dosage amount that the official test sample shall not exceed 300 picograms per milliliter of serum or plasma.]~~ The penalty for a positive test resulting from an out of competition sample will be determined by the penalty class of the drug listed in the association of racing commissioners international “uniform classification guidelines for foreign substances and recommended penalties and model rule” and incorporated by reference under 15.2.6.9 NMAC. Positive tests for substances identified under Paragraph (5) of Subsection D of 15.2.6.9 NMAC will be placed on the steward’s list as per the conditions set forth in that subsection.

(4) Horses to be tested may be selected at random, with probable cause or as determined by the commission or an agent of the commission.

(5) The commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time take a urine, blood or hair sample from a horse for this purpose.

(6) Split samples shall be collected in accordance with Subsection B of 15.2.6.10 NMAC and shall be secured and made available for further testing

in accordance with Subsection D of 15.2.6.10 NMAC.

(7) All horses selected for testing must be presented to the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, at the time designated, unless the trainer or owner provides verification of an extenuating circumstance that makes it impossible. Penalties for violations of this subsection include:

(a) any horse not presented for testing upon notification absent extenuating circumstances will be placed immediately on the steward’s list for a minimum of 60 days and shall be subject to all the requirements set forth in Paragraph (7) of Subsection D of 15.2.6.9 NMAC; and

(b) the licensed trainer of a horse not presented for testing absent extenuating circumstances shall be 180 days.

(8) Any licensee who does not comply with the rule or the commission veterinarian for a sample may be subject to disciplinary action.

(9) Cooperation with the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, includes:

(a) assisting in the immediate location and identification of the horse selected for out of competition testing; and

(b) assisting the veterinarian in properly procuring the samples.

(10) Out of competition samples will be sent to the official laboratory of the commission, or another laboratory as designated by the commission, with reports made in accordance with the provisions of the medication rules and the penalty provisions therefore.

~~[L. — OUT OF COMPETITION PENALTY RECOMMENDATIONS:~~

~~(1) The penalty for any horse not presented~~

for testing upon notification is a maximum suspension of 120 days:

~~(2)~~ The penalty for the trainer of a horse not presented for testing upon notification is a maximum suspension of 180 days:

~~(3)~~ The penalty for any horse with a positive test is a maximum suspension of 120 days and the horse's papers will be removed from the racing office:

~~(4)~~ The penalty for the trainer of a horse with a positive test is a maximum \$1,500 fine and a maximum suspension of 180 days:

~~M.]~~ **L. CONTRABAND:**

~~N.]~~ **M.**

**ENVIRONMENTAL
CONTAMINANTS AND
SUBSTANCES OF HUMAN USE:**

~~O.]~~ **N. SUSPENSION OF
AUTHORIZED MEDICATION:**

~~P.]~~ **O. NON-
STEROIDAL ANTI-
INFLAMMATORY DRUGS
(NSAIDs):** The use of NSAIDs shall be governed by the following conditions:

[15.2.6.9 NMAC - Rp, 15 NMAC
2.6.9, 04/13/2001; A, 08/30/2001;
A, 07/15/2002; A, 08/15/2002;
A, 09/29/2006; A, 10/31/2006;
A, 08/30/2007; A, 01/31/2008;
A, 03/01/2009; A, 06/15/2009;
A, 06/30/2009; A, 09/15/2009;
A, 12/15/2009; A, 03/16/2010;
A, 07/05/2010; A, 09/01/2010;
A, 12/01/2010; A, 11/01/2011;
A, 02/15/2012; A, 04/30/2012;
A, 07/31/2012; A, 12/14/2012;
A, 05/01/2013; A/E, 05/02/2013;
A, 09/30/2013; A, 04/01/2014;
A, 05/16/2014; A, 08/15/2014;
A, 09/15/2014; A, 03/16/2015;

A, 09/16/15; A, 03/15/2016; A,
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End of Adopted Rules

2016 New Mexico Register

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Issue 9	May 2	May 13
Issue 10	May 16	May 31
Issue 11	June 1	June 15
Issue 12	June 16	June 30
Issue 13	July 1	July 15
Issue 14	July 18	July 29
Issue 15	August 1	August 15
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Issue 17	September 1	September 15
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Issue 20	October 17	October 31
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