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# New Mexico Register

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

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# New Mexico Register

Volume XXVII, Issue 16

August 31, 2016

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## Notices of Rulemaking and Proposed Rules

### CULTURAL AFFAIRS, DEPARTMENT OF STATE LIBRARY DIVISION

#### NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Cultural Affairs, State Library Division, gives notice of its intention to repeal and replace 4.5.7 NMAC **Requirements Governing Conduct of and Use by Patrons at the New Mexico State Library.**

A public hearing will be held on **Monday, October 3, 2016** beginning at **10:00 AM** in the Pinon Room, located in the State Library at 1209 Camino Carlos Rey, Santa Fe. The purpose of the hearing is to give interested individuals an opportunity to give oral comments on the proposed rule.

Copies of the proposed rule may be obtained from the Public Services Bureau at the State Library main reference desk, 1209 Camino Carlos Rey, Santa Fe, NM 87507. Copies of the proposed rule may also be obtained from the State Library's website at <http://www.nmstatelibrary.org/> or by calling the reference desk (505) 476-9702.

Initial comments and response comments shall be filed in writing with the State Library Public Services Bureau at 1209 Camino Carlos Rey, Santa Fe, NM 87507 or by hand delivery to the main reference desk, or by email message to [reference@state.nm.us](mailto:reference@state.nm.us).

Any person with a disability requiring special assistance in order to read the proposed rule or to participate in the hearing should contact the Public Services Bureau at (505) 476-9702 by September 26, 2016.

### ENGINEER, OFFICE OF THE STATE

#### NOTICE OF PUBLIC HEARING ON PROPOSED RULES AND REGULATIONS

OFFICE OF THE STATE  
ENGINEER  
P.O. BOX 25102  
SANTA FE, NEW MEXICO 87504-  
5102  
505-827-6120  
[www.ose.state.nm.us](http://www.ose.state.nm.us)

The State Engineer has released Proposed Rules and Regulations Governing Well Driller Licensing, Well Drilling and Construction Requirements (19.27.4 NMAC Well Driller Licensing; Construction, Repair, and Plugging of Wells). The proposed rules and regulations will repeal and replace existing sections 1-39 of 19.27.4 NMAC Well Driller Licensing; Construction, Repair and Plugging of Wells. The proposed rules and regulations are updated and developed to address deficiencies, remove reference to gender specific pronouns, to clarify existing regulations, and to address regulatory discrepancies.

The Proposed Rules and Regulations Governing Well Driller Licensing, Well Drilling and Construction Requirements (19.27.4 NMAC Well Driller Licensing; Construction, Repair, and Plugging of Wells) contain the following Sections: (1) Issuing Agency, (2) Scope, (3) Statutory Authority, (4) Duration, (5) Effective Date, (6) Objective, (7) Definitions, (8) Well Driller's License Required, (12) Well Driller Requirements, (15) Well Driller's License Application and Review, (16) Well Driller's License Amendment, (19) Well Driller's License Expiration, (20) Well Driller's License Renewal, (21) Reprimands, Suspension or Revocation of Well Driller's License, (22) Well Driller's License Reinstatement after Revocation, (25) Application for

Registration as a Drill Rig Supervisor, (26) Application Review and Registration Requirements for Drill Rig Supervisor, (27) Renewal of Drill Rig Supervisor Registration, (29) Well Drilling - General Requirements, (30) Well Drilling - Non-Artesian (Unconfined) Well Requirements, (31) Well Drilling - Artesian (Confined) Well Requirements, (33) Well Drilling Requirements for Deep Wells in Non-potable Aquifers, (36) Requirements for Mine Drill Holes that Penetrate a Water-bearing Stratum, (37) Request for Variance, (38) Liberal Construction, and (39) Severability.

The proposed rules and regulations are available at the Office of the State Engineer (OSE) in Santa Fe, Albuquerque, Las Cruces, Roswell, Deming, Aztec, and Cimarron. The proposed rules and regulations are also posted on the Office of the State Engineer website and may be accessed at:

- (a) <http://www.ose.state.nm.us/STST/wdRules.php>.
- (b) Click the link under Proposed.

To request that a copy of the proposed rules and regulations be sent to you in the mail, please contact John Dupuis at 505-827-6120 or email [john.dupuis@state.nm.us](mailto:john.dupuis@state.nm.us).

A public hearing will be held regarding the above described proposed rules and regulations at the New Mexico State Capitol Building (Roundhouse), 411 South Capitol St, Santa Fe, NM 87501, September 20, 2016, beginning at 10:00 a.m. Any person who is or may be affected by these proposed rules and regulations may appear and testify. Written comments may be submitted at the public hearing. If you are an individual with a disability who is in need of special assistance or accommodation to attend or participate in the hearing, please contact John Dupuis at 505-827-6120. The Office of the State Engineer

requests ten days advance notice to provide any special accommodation.

**LIVESTOCK BOARD**

**NOTICE OF PUBLIC RULES HEARING AND REGULAR BOARD MEETING**

NOTICE IS HEREBY GIVEN that the New Mexico Livestock Board will conduct a public hearing on amendments to 21.30.6 NMAC, Section 11 on Thursday, September 15, 2016 at the Albuquerque Hispano Chamber of Commerce, 1309 Fourth Street SW, Albuquerque, New Mexico, 87102 at 9:00 a.m. The Board will consider changes regarding Bovine Trichomoniasis and discuss other matters of general business.

Copies of the agenda and proposed changes to **21.30.6.11 NMAC** may be found at the NMLB website at: <http://www.nmlbonline.com> or by contacting Mr. William W. Bunce, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161.

Written comments on the proposed changes will be accepted until the close of business on September 16, 2016.

Interested individuals may provide comment at the public hearing or submit written comments regarding the proposed rule amendment to 21.30.6.11 NMAC "REGULATORY ACTION" to Mr. William W. Bunce, Executive Director, New Mexico Livestock Board, 300 San Mateo NE, Suite 1000, Albuquerque, New Mexico 87108 or [William.Bunce@state.nm.us](mailto:William.Bunce@state.nm.us), fax 505-841-6160. Written comments may also be submitted at the NMLB Website at <http://www.nmlbonline.com>. Written comments in any of the above formats must be received by close of business on September 16, 2016.

If you are an individual with a disability who is in need of a reader,

amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the New Mexico Livestock Board at (505)841-6161 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the New Mexico Livestock Board at (505)841-6161 if a summary or other type of accessible format is needed.

**PUBLIC EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on October, 3, 2016 from 10:00 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the proposed amendment to 6.29.5.11 and 6.29.5.12 NMAC (IDENTIFICATION OF ENGLISH LANGUAGE LEARNER AND EXIT CRITERIA FOR ENGLISH LANGUAGE LEARNER STATUS).

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

Copies of the proposed rule may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained

from David Scott at (505) 827-6641.

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

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

**PUBLIC RULE HEARING AND REGULAR BOARD AND COMMITTEE MEETING**

**LEGAL NOTICE**

The New Mexico Board of Podiatry will hold a Rule Hearing on Friday, December 2, 2016. Following the Rule Hearing the New Mexico Podiatry Board will convene a regular meeting. The meetings will be held at the Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, New Mexico. The purpose of the rule hearing is to consider adoption of proposed amendments, to the following Board Rules and Regulations in 16.21.1 General Provisions, 16.21.2 Fees, 16.21.3 License by Exam, 16.21.4 License by Reciprocity, 16.21.5 Temporary License and Emergency License, 16.21.8 Continuing Education, 16.21.9 Management of Pain with Controlled Substances, 16.21.10 Lapse of License and Reinstatement, 16.21.11 Disciplinary Proceedings, 16.21.12 Management of Medical Records.

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4622 or copies of the proposed rules are available on the Podiatry website: [www.RLD.state.nm.us](http://www.RLD.state.nm.us). In order for the Board members to review the comments in their meeting packets



prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than November 10, 2016. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

## STATE LAND OFFICE

### NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO STATE LAND OFFICE RULE 19.2.100 NMAC

The New Mexico State Land Office ("SLO") will hold a public hearing on Thursday, October 6, 2016, at 9:00 a.m., and continuing thereafter as necessary, in Morgan Hall, Room 101, 310 Old Santa Fe Trail, Santa Fe, New Mexico. Any change to the location or time will be posted with a final agenda on the SLO webpage (<http://www.nmstatelands.org>) at least 72 hours prior to the date and time specified above.

The purpose of the hearing is to consider proposed amendments to 19.2.100 NMAC to add a section, pursuant to NMSA 1978, Section 19-10-6, allowing oil wells on SLO leases to be temporarily shut in due to a severe reduction in the price of oil. Adoption of the proposed amendments would be based on a determination by the commissioner of public lands that the beneficiaries of state trust lands will be better served if oil wells on SLO leases are allowed to be temporarily shut in rather than

produced at a low price.

The proposed rule change is available on the SLO website (<http://nmstatelands.org>) and at the SLO building located at 310 Old Santa Fe Trail, Santa Fe, New Mexico. To request a hard copy, contact Stephanie LeMaster at (505) 827-5761 or [slemaster@slo.state.nm.us](mailto:slemaster@slo.state.nm.us).

Written comments may be submitted by mail to: Stephanie LeMaster, New Mexico State Land Office, Attention: Rulemaking Comments, P.O. Box 1148, Santa Fe, New Mexico 87504-1148, or by email to [slemaster@slo.state.nm.us](mailto:slemaster@slo.state.nm.us). Written comments will be accepted until noon on September 30, 2016.

If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Selena Romero by September 16, 2016 at (505) 827-5790 or [sromero@slo.state.nm.us](mailto:sromero@slo.state.nm.us).

## WATER QUALITY CONTROL COMMISSION

### NOTICE OF PUBLIC HEARING TO CONSIDER RULEMAKING RULES FOR THE COMMISSION - 20.1.6 NMAC

The New Mexico Water Quality Control Commission (Commission) will hold a public hearing beginning at 9:00 a.m. on Tuesday, October 11, 2016, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should check the Commission website: <http://www.env.nm.gov/wqcc> prior to the hearing. The purpose of the hearing is to consider proposed Rulemaking Rules for the Commission, to be designated as 20.1.6 NMAC (Rules). The New Mexico Environment Department (NMED) is the proponent

of the proposed Rules.

The Rules would codify the current WQCC Rulemaking Guidelines, with a number of additions, modifications, and formatting changes. Please note that formatting and minor technical changes in the regulations other than those proposed by NMED may be proposed at the hearing. In addition, the Commission may make other changes as necessary in response to public comments and evidence presented at the hearing.

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505.

The hearing will be conducted in accordance with the WQCC Rulemaking Guidelines, the Water Quality Act, NMSA 1978, Section 74-6-6, and other applicable procedures.

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

Pursuant to the WQCC Rulemaking Guidelines, persons wishing to present technical testimony must file with the Board a written notice of intent to do so on or before 5:00 p.m. on September 21, 2016. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;

- include a copy of the direct testimony of each technical witness in narrative form;

- include the text of any recommended modifications to the proposed regulatory change; and

- list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rule language being proposed.

Notices of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on September 21, 2016 and should reference the name of the regulation, the date of the hearing, and docket number WQCC 16-03(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of Boards and Commissions  
Office of the Water Quality Control Commission  
Harold Runnels Building  
P.O. Box 5469  
Santa Fe, NM 87502

Any person who wishes to do so may offer non-technical public comment at the hearing, or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference docket number WQCC 16-03(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator by August 31, 2016, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

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

### WATER QUALITY CONTROL COMMISSION

#### AVISO DE AUDIENCIA PUBLICA PARA CONSIDERAR REGLAMENTACION NORMAS DE LA COMISIÓN - 20.1.6 NMAC

La Comisión de Control de Calidad del Agua de Nuevo México (Comisión) llevará a cabo una audiencia pública que comienza a las 9:00 am el Martes 11 de Octubre de, 2016, y de ahí en adelante como sea necesario en el edificio del capitolio del estado de Nuevo México, de habitaciones 307, 490 Old Santa Fe Trail, Santa Fe, Nuevo México. La ubicación de la audiencia puede cambiar antes de la fecha de la audiencia, y los interesados en asistir deben consultar la página web de la Comisión: <http://www.env.nm.gov/wqcc> antes de la audiencia. El propósito de la audiencia es considerar Reglas reglamentación propuesta por la Comisión, para ser designado como 20.1.6 NMAC (Reglas). El Departamento de Medio Ambiente de Nuevo México (NMED) es el autor de las normas propuestas.

Las reglas serían codificar las actuales directrices de Reglamentación de WQCC, con una serie de adiciones, modificaciones y cambios de formato. Tenga en cuenta que el formato y los cambios técnicos menores en los reglamentos distintos de los propuestos por NMED pueden ser propuestas en la audiencia. Además, la Comisión podrá hacer otros cambios que sean necesarios en respuesta a los comentarios del público y las pruebas presentadas en la audiencia.

Las modificaciones propuestas pueden ser revisados durante el horario regular en la Oficina de Audiencias

del NMED situado en el Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505.

La audiencia se llevará a cabo de conformidad con las Directrices de WQCC reglamentación, la Ley de Calidad del Agua, NMSA 1978, Sección 74-6-6, y otros procedimientos aplicables.

Todas las personas interesadas se les dará oportunidad razonable en la audiencia para presentar pruebas pertinentes, datos, opiniones y argumentos, oralmente o por escrito, a presentar pruebas, y para interrogar a los testigos. Cualquier persona que desee presentar una declaración escrita de carácter no técnico para el registro en lugar de testimonio oral debe presentar dicha declaración antes del cierre de la audiencia.

De conformidad con las Directrices de Reglamentación de WQCC, las personas que deseen presentar testimonio técnico deberá presentar a la Junta una notificación por escrito de la intención de hacerlo antes de las 5:00 p.m. 21 de Septiembre de 2016. La notificación de intención deberá:

- Identificar a la persona o entidad a quien el testigo (s) dará testimonio;

- Identificar cada testigo técnico que la persona tiene la intención de presentar y exponer las capacidades del testigo, incluyendo una descripción de su educación y el trabajo de fondo;

- Incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;

- Incluir el texto de las modificaciones recomendadas para el cambio regulatorio propuesto; y

- Lista y conectar todas las exposiciones previstas para ser ofrecido por esa persona en la audiencia, incluyendo cualquier propuesta se propone motivación de la adopción del lenguaje de reglas.



Las notificaciones de intención para la audiencia deben ser recibidas en la Oficina de Audiencias no más tarde de las 5:00 pm el 21 de septiembre de 2016, y deben hacer referencia al nombre de la regulación, la fecha de la audiencia, y el número de expediente WQCC 16-03 (R) . Las notificaciones de intención de presentar testimonio técnico deben enviarse a:

Pam Castaneda, Administrator of  
Boards and Commissions  
Office of the Water Quality Control  
Commission  
Harold Runnels Building  
P.O. Box 5469  
Santa Fe, NM 87502

Cualquier persona que desee hacerlo puede ofrecer comentarios del público no técnico en la audiencia, o enviar una declaración no técnica por escrito en lugar de testimonio oral en o antes de la audiencia. Los comentarios por escrito en relación con las revisiones propuestas pueden dirigirse a la Sra Pam Castañeda, Administrador de Juntas y Comisiones, a la dirección anterior, y deben hacer referencia al número de expediente WQCC 16-03 (R).

Las personas que necesiten asistencia, un intérprete o ayuda auxiliar para participar en este proceso, por favor, póngase en contacto con Pam Castañeda, administrador WQCC el 31 de Agosto de 2016, en el apartado de correos Box 5469, 1190 St. Francis Drive, Santa Fe, Nuevo México, 87502, teléfono (505) 827-2425 o [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us) de correo electrónico. (Los usuarios de TDD o TTY deben tener acceso al número mediante la Red de Relevo de Nuevo México, 1-800-659-1779 (voz); los usuarios de TTY: 1-800-659-8331).

La Comisión podrá tomar una decisión sobre el cambio regulador propuesto en la conclusión de la audiencia, o puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

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## End of Notices of Rulemaking and Proposed Rules

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

#### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.100 NMAC, Sections 5, 7, and 17, effective 9/10/2016.

#### 20.11.100.5 EFFECTIVE DATE:

[~~A.~~] December 1, 1995, unless a later date is cited at the end of a section. If no EPA-confirmed violation (two exceedances) of the federal ambient carbon monoxide standards has occurred within Bernalillo county, the vehicle inspection frequency shall be biennial.

[~~B.~~—Beginning January 1 of the first year following the federally effective date for the 2011-revised ozone standard, or January 1, 2013, whichever is earlier, all 1998- and newer diesel motor vehicles must pass an on-board diagnostic test pursuant to Paragraph (2) of Subsection E of 20.11.100.17 NMAC.]

[8/25/92. . . 12/1/95; 20.11.100.5 NMAC - Rn, 20 NMAC 11.100.I.5, & A, 10/1/02; A, 9/1/04; A, 1/1/12; A, 9/10/2016]

#### 20.11.100.7 DEFINITIONS:

In addition to the definitions in 20.11.100.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.100 NMAC shall govern.

**A. “Air care inspection station”** means a private business authorized by a certificate in accordance with 20.11.100.21 NMAC to inspect motor vehicles and issue certificates of inspection. It also means stations established by the city of Albuquerque and Bernalillo county,

or other governmental entities, for testing government owned or leased motor vehicles.

**B. “Air care inspector”** means an individual authorized by a certificate issued by the program to perform inspections of motor vehicles and who has met the requirements of 20.11.100.26 NMAC.

**C. “Air care station”** means an *air care* inspection station, or a fleet *air care* station.

**D. “Audit”** means an assessment by VPMD, either as a physical on-site visit or an off-site review of data collected electronically, designed to determine whether *air care* inspectors and *air care* stations are correctly performing all tests and other functions required by the VPMD program. Physical on-site audits shall be of two types: overt and covert.

**E. “Biennial”** means every other year.

**F. “Chassis”** means the complete motor vehicle, including standard factory equipment, but excluding the body and cab.

**G. “City”** means the city of Albuquerque, a New Mexico municipal corporation.

**H. “Clean piping”** means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent “pass” for a vehicle’s tailpipe emissions test by entering into the emissions analyzer unique information identifying the vehicle being tested, but then performing the tailpipe test on a different vehicle, which bypasses actual testing of the first vehicle.

**I. “Clean scanning”** means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent “pass” for a vehicle’s emissions test by entering into the emissions analyzer unique information identifying the vehicle

being tested, but then performing the emissions test on a different vehicle ,which bypasses actual testing of the first vehicle.

**J. “County”** means the county of Bernalillo, a political subdivision of the state of New Mexico.

**K. “Covert audit”** means a quality assurance site visit by an anonymous agent delegated by VPMD to drive a vehicle into the selected station and asked to have the vehicle tested. The vehicle may be set up by VPMD in a tampered or failed condition. Covert audits are required by EPA to ensure that air care stations and air care inspectors are performing the emissions test correctly.

**L. “Covert surveillance”** means a quality assurance audit by observation done from an off-site location near the *air care* station, often using binoculars to monitor the actions of an *air care* inspector performing emissions testing.

**M. “Dealer”** means any person who sells or solicits or advertises the sale of new or used motor vehicles subject to registration in the state of New Mexico and as further defined in the Motor Vehicle Code Chapter 66, NMSA 1978.

**N. “Distributor”** means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer.

**O. “Division” or “VPMD”** means the vehicle pollution management division of the city environmental health department, which provides the staff for the Albuquerque-Bernalillo county vehicle pollution management program.

**P. “Driver”** means every person who drives or is in actual physical control of a motor vehicle upon a highway or upon

property used for inspections.

**Q. “Emissions analyzer”** means a device for measuring the concentration of certain exhaust gases emitted by a motor vehicle.

**R. “Emissions inspection system” or “EIS”** means the equipment and software for conducting the official emissions inspection.

**S. “Essential parts”** means all integral and body parts of a vehicle of a type required to be registered under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model type or mode of operation.

**T. “Exhaust emissions”** means CO, HC and all other substances emitted through a motor vehicle’s exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices, if any.

**U. “Exhaust emissions control device”** means equipment designed by the manufacturer of the vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification designed by the manufacturer of the motor vehicle that causes a reduction of pollutants emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering with other exhaust emissions control devices.

**V. “Fast idle condition or unloaded 2,500 rpm”** means an exhaust emissions inspection conducted with the engine of the vehicle running under an accelerated condition as required by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*.

**W. “Field audit gas”** means a gas mixture with known concentrations of CO<sub>2</sub>, CO, and HC that is used by the program to check the accuracy of exhaust gas analyzers used by authorized inspection stations.

**X. “Fleet”** means a group of vehicles under the common ownership or control of a commercial or governmental entity.

**Y. “Fleet air care station”** means any person, business, government entity, firm, partnership or corporation that provides for the construction, equipping, maintaining, staffing, managing and operation of authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to 20.11.100 NMAC, and not offering inspection services to its employees or the general public.

**Z. “Fuel”** means any material that is burned by the engine of a vehicle in order to propel the vehicle.

**AA. “Gas cap test”** means the determination of the ability of the gas cap(s) to retain pressure.

**BB. “Gross vehicle weight”** means the weight of a vehicle without load, plus the weight of any load thereon.

**CC. “Government vehicle”** means a motor vehicle exempt from the payment of a registration fee and owned or leased by any federal, state, local, or other governmental entity.

**DD. “Headquarters”** means the main office of the vehicle pollution management program.

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

**FF. “Idle mode test”** means an unloaded exhaust emissions test conducted only at the idle condition.

**GG. “Inspection or re-inspection or test”** means the mandatory vehicular anti-tampering and emissions inspection conducted both visually and with equipment or chemical sensing devices as required by 20.11.100 NMAC.

**HH. “Low emissions tune-up”** means adjustments and repairs that can reduce motor vehicle

emissions, including but not limited to the following procedures:

(1) checking and setting to manufacturer’s specifications, the idle mixture, idle speed, ignition timing and dwell;

(2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of pollution control devices;

(3) checking and replacement of air breathing filters and positive crankcase ventilation valve as necessary;

(4) replacement of spark plugs, points, and wires; and

(5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust emissions control devices and systems, inspecting the operation of the emissions control system according to the motor vehicle manufacturer’s specified procedures, including hose routing and on-board diagnostics, new vehicle warranty and repair or replacement as necessary.

**II. “Manufacturer”** means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the laws of the state of New Mexico.

**JJ. “Manufacturer’s certificate of origin” or “MCO”** means a certification, on a form supplied by or approved by the MVD, signed by the manufacturer, stating that the new vehicle described therein has been transferred to the New Mexico dealer or distributor named therein or to a dealer duly licensed or recognized as a dealer or distributor in another state, territory or possession of the United States, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. Every MCO contains a space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as a dealer or distributor in another state, territory or possession of the United States. The certificate also contains a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or

other standard identification number provided by the manufacturer of the vehicle, if the information exists.

**KK. "Model year"** means the year of manufacture of the vehicle based on the annual production period of the vehicle as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then the model year means the calendar year of manufacture.

**LL. "Motor vehicle"** means any vehicle that:

(1) is propelled by a spark [or compression] ignition, internal combustion engine;

(2) has four or more wheels in contact with the ground;

(3) is subject to registration with the MVD to an owner of record who is domiciled within Bernalillo county, or is a government vehicle which is assigned to a governmental unit within Bernalillo county;

(4) has a GVW greater than 1,000 and less than 10,001 pounds;

(5) is for use upon public roads and highways;

(6) is a 1975 model year or newer; and

(7) is a vehicle not otherwise exempted by 20.11.100 NMAC.

**MM. "New motor vehicle"** is a vehicle that has undergone a transfer of ownership and is being registered for the first time to any person, but does not include the sale to another licensed motor vehicle dealer for the purpose of resale as a new vehicle.

**NN. "Operator"** means driver, as defined in 20.11.100 NMAC.

**OO. "Overt audit"** means an on-site quality assurance assessment of the performance of an *air care* station or an *air care* inspector, conducted by VPMD personnel. An overt audit may also be an assessment of an *air care* station's emissions analyzer to ensure that the

equipment is maintained appropriately and operating correctly.

**PP. "Owner"** means a person who holds the legal title of the motor vehicle or, if the vehicle is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then "owner" means the conditional vendee, lessee or mortgagor.

**QQ. "Pass fail criteria"** means the standards established by 20.11.100 NMAC that specify the maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

**RR. "Person"** means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or legal representative, agent or assign.

**SS. "Pretesting"** means the determination by an *air care* station or inspector, of the "pass" or "fail" status of a vehicle and providing the information to the vehicle owner prior to performing the required complete emissions test.

**TT. "Program" or "VPMD program"** means the Albuquerque - Bernalillo county vehicle pollution management program.

**UU. "Program manager"** means a classified city employee selected in accordance with provisions of the joint powers agreement between the city and the county to perform for the joint air quality control board the duties required to enforce and administer the provisions of 20.11.100 NMAC, or the program manager's designee.

**VV. "Reconstructed vehicle"** means a vehicle that was assembled or constructed largely from of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, was materially

altered by the removal of essential parts, new or used, derived from other vehicles or makes of vehicles.

**WW. "Registration and re-registration"** means both original registration and renewal of motor vehicle registration as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

**XX. "Standard gases"** means NIST certified emissions samples of gases maintained as primary standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

**YY. "Truck"** means every motor vehicle designed, used or maintained primarily for the transportation of property. In addition, all vehicles with a GVW greater than 6,000 pounds shall be considered a truck.

**ZZ. "Vehicle information database" or "VID"** means a database consisting of data collected from each official inspection as specified in the EIS.

**AAA. "VIR"** means vehicle inspection report, a program-certified document (VIR) signed by a certified *air care* inspector or other program authorized official stating that the vehicle described therein is either in compliance (pass), not in compliance (fail), or has an approved time extension in order to achieve compliance through additional repairs or adjustments (time-limit extension).

**BBB. "Visible emissions"** means any fume, smoke, particulate matter, vapor or gas, or combination thereof, excluding water vapor or steam.

**CCC.** [Reserved]

**DDD.** [Reserved]

**EEE. "Working gases"** means program-approved span gases maintained by an authorized *air care* inspection station to perform periodic calibration of approved exhaust gas analyzers.

**FFF. Abbreviations and symbols**

(1) A/F means air/fuel.

(2) ASE means the national institute for



automotive service excellence.  
 (3) CO means carbon monoxide.  
 (4) CO<sub>2</sub> means carbon dioxide.  
 (5) DTC means diagnostic trouble code.  
 (6) EHD means the environmental health department.  
 (7) EIS means the emissions inspection system.  
 (8) EPA means the environmental protection agency.  
 (9) GVW means gross vehicle weight.  
 (10) HC means hydrocarbon.  
 (11) HP means horsepower.  
 (12) LNG means liquefied natural gas.  
 (13) LPG means liquefied petroleum gas.  
 (14) MPH means miles per hour.  
 (15) MCO means manufacturer's certificate of origin.  
 (16) MVD means the motor vehicle division of the New Mexico taxation and revenue department.  
 (17) NDIR means non-dispersive infrared.  
 (18) NIST means national institute of standards and technology.  
 (19) OBDII means a vehicle's on-board diagnostics second generation.  
 (20) % means percent.  
 (21) PCV means positive crankcase ventilation.  
 (22) ppm means parts per million by volume.  
 (23) VID means the vehicle information database.  
 (24) VIN means vehicle identification number.  
 [10/12/82; . . . 5/20/88, 11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.7 NMAC - Rn, 20 NMAC 11.100.I.7, 10/1/02; A, 5/1/04; A, 9/1/04; A, 1/1/12; A, 9/10/2016]

**20.11.100.17 VEHICLE INSPECTION CRITERIA:** Failure to pass any one of the applicable criteria specified below in Subsections A, B, C, D and E of 20.11.100.17 NMAC, entitled *exhaust emissions, anti-tampering, visible emissions, gas cap, and on-board diagnostics* respectively, shall constitute noncompliance with 20.11.100 NMAC and a fail VIR shall be issued.

**A. Exhaust emissions:** Every motor vehicle that is determined to emit quantities (rates) of CO and HC greater than those listed in Table I appropriate to model year and weight classification listed shall be *failed*. Every motor vehicle with emissions rates equal to or lower than the applicable amounts shall be *passed* under subsection A of 20.11.100.17 NMAC.

\*\*\*\*

**Continued On The Following Page**

TABLE I

## Maximum Allowable Exhaust Emissions

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2,500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1975 - 1978	0 to 6,000	C/T	500	5.0	500	5.0
1979 - 1980	0 to 6,000	C/T	400	4.0	400	4.0
1981 - 1985	0 to 6,000	C/T	220	1.2	220	1.2
1986 - 1990	0 to 6,000	C/T	200	1.2	200	1.2
1991 - 1995	0 to 6,000	C/T	180	1.2	180	1.2
1975 - 1978	6,001 to 8,000	LT	600	6.0	600	6.0
1979 - 1980	6,001 to 8,000	LT	600	4.5	600	4.5
1981 - 1982	6,001 to 8,500	LT	400	2.7	400	3.0
1983 - 1988	6,001 to 8,500	LT	300	1.2	300	3.0
1989 - 1995	6,001 to 8,500	LT	220	1.2	220	1.2
1975 - 1980	8,001 to 10,000	MT	650	6.5	650	6.5
1981 - 1990	8,501 to 10,000	MT	400	4.0	400	3.0
1991 - 1995	8,501 to 10,000	MT	220	2.0	220	2.0

**B. Anti-tampering:**

(1) All motor vehicles subject to 20.11.100 NMAC shall be inspected for the presence of a catalytic converter(s) that is properly connected.

(2) Any vehicle with required features or components removed or rendered inoperative shall be *failed*. If no tampering with required components or systems is evident, this portion of the inspection shall be *passed*.

(3) Vehicles that have had the original engine removed and replaced with a newer or inherently cleaner technology engine (including the emissions control devices required in association with that engine) may be eligible for a waiver of compliance with portions of Subsection B of 20.11.100.17 NMAC. The program manager shall determine if a vehicle has been retrofitted with an engine that is not adaptable to the emissions control requirements for the vehicle chassis model year. When the program manager makes the determination, the program manager may waive the requirements for replacement of emissions control equipment. There shall be no waiver for the installation of a catalytic converter unless the program manager determines installation would create a safety hazard.

**C. Visible emissions (smoke):** All motor vehicles subject to inspection must pass an inspection for

visible emissions. The *air care* inspector shall watch the tailpipe during the idle portion of the emissions test and during the high-speed portion of the emissions test (using a mirror if necessary). If the inspector observes *any* smoke (not steam) during any part of the inspection, the visible portion of the emissions test shall be a *fail*.

**D. Gas cap (pressurized):** All 1975-2005 model year vehicles subject to inspection must pass a pressurized gas cap test to check the integrity of the gas cap seal designed to minimize fuel vapor loss or hydrocarbon emissions. Any vehicle with a gas cap that does not hold pressure consistent with the design standard for the vehicle shall be *failed*.

**E. On-board diagnostics (OBDII):**  
~~[(+)]~~ All 1996 and newer gasoline motor vehicles must pass an on-board diagnostics test specified by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*. Any vehicle with an illuminated malfunction indicator lamp (MIL) or a set diagnostic trouble code (DTC) shall be *failed*. Any 1996 and newer model year vehicles that have been determined by the program manager to be OBDII incompatible shall be tested using the two-speed idle test with maximum allowable exhaust standards of 100 ppm hydrocarbons and 1.0 % carbon monoxide.

~~[(2)]~~ all 1998 and newer diesel motor vehicles must pass an on-board diagnostic test beginning January 1 of the first year following the federally effective date for the 2011 revised ozone standard, or January 1, 2013, whichever is earlier.  
 [5/20/88. . . 11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.17 NMAC - Rn, 20 NMAC 11.100. II.6, 10/1/02; A, 5/1/04; 20.11.100.17 NMAC - Rn & A, 20.11.100.14 NMAC, 1/1/12; A, 9/10/2016]

**ATTORNEY GENERAL,  
OFFICE OF THE**

**This is an amendment to 12.2.14.1 NMAC, Sections 3, 6 through 11, effective 8/31/2016.**

**12.2.14.3 STATUTORY AUTHORITY:** The New Mexico Unfair Practices Act, [NMSA 1978, Section 57-12-13] 57-12-13 NMSA 1978. [12.2.14.3 NMAC - N, 4/1/2014; A, 8/31/2016]

**12.2.14.6 OBJECTIVE:**  
**A.** The purpose of this rule is to:

- (1) deter the misrepresentation of the age or condition of [a motor vehicle in motor vehicle sale transactions;
- (2) protect retail buyers from unfair and deceptive practices involving the misrepresentation of the age or condition of a motor vehicle in motor vehicle sale transactions through uniform disclosure of material information concerning the age or condition of a motor vehicle. NMSA 1978, Section 57-12-2(D)(14); and
- (3) provide to sellers clear legal standards as to what constitutes “to the best of seller’s knowledge” when selling motor vehicles to retail buyers. NMSA 1978, Section 57-12-6(B).

**B.** The attorney general’s office has long been concerned about unfair and deceptive practices involving the sale of motor vehicles to retail buyers. The attorney general’s consumer protection division receives numerous written complaints and telephone calls alleging failure by sellers to (1) disclose material information concerning the age or condition of motor vehicles or (2) provide the mandatory affidavit. Sellers of motor vehicles have continually complained to the attorney general’s office about the ambiguity of the affidavit requirement and over the years have been subject to litigation by retail buyers concerning the interpretation of “to the best of the seller’s

knowledge”:  
~~C.~~ This rule interprets and clarifies unfair and deceptive trade practices involving the sale of motor vehicles as provided under the Unfair Practices Act. The attorney general has concluded that this rule is in the best interest of the health, safety and general welfare of the citizens of New Mexico. The purpose of this rule is to:

- (1) deter misrepresentation of the age or condition of used motor vehicles in retail motor vehicle sale transactions;
- (2) protect retail buyers in motor vehicle sale transactions through uniform disclosure of material information concerning the age or condition of used motor vehicles; Subsection A of Section 57-12-6 NMSA 1978;
- (3) provide sellers clear legal standards as to what constitutes “to the best of seller’s knowledge” when selling used motor vehicles to retail buyers; Paragraph (2) of Subsection B of Section 57-12-6 NMSA 1978;
- (4) establish standards for used motor vehicle damage inspections; and
- (5) establish standards for disclosure of used motor vehicle alteration or damage inspection results to motor vehicle buyers.

**B.** This rule is not intended to restrict or limit claims to Section 57-12-6 NMSA 1978 that may be alleged under other provisions of the Unfair Practices Act, Section 57-12-1 *et seq* NMSA 1978.

**C.** The alteration or damage inspection and disclosure standards in this rule for used motor vehicles are not intended to negate or limit obligations of sellers to disclose damage to new motor vehicles. See *Hale v. Basin Motor Co.*, 110 N.M. 314 (N.M. 1990).

**D.** Nothing in this rule is intended to increase, decrease or otherwise in any way affect the rights or responsibilities of motor vehicle manufacturers or sellers under federal motor vehicle safety laws or regulations, or under New Mexico

or other state products liability laws, principles or case law.

**E.** The attorney general has concluded that this rule is in the best interest of the health, safety and general welfare of the citizens of New Mexico.

[12.2.14.6 NMAC - N, 4/1/2014; A, 8/31/2016]

**12.2.14.7 DEFINITIONS:**

**A.** [“Alteration” shall mean:

(1) the act or procedure of changing, modifying or repairing a motor vehicle’s cab, chassis or body;

(2) the condition resulting from changing, modifying or repairing a motor vehicle’s cab, chassis or body; or

(3) the modification to a motor vehicle’s cab, chassis, or body; the alteration may, but need not necessarily, be the result of wreck damage. Goods are altered if, as measured against the reasonable expectations of the consumer, the characteristics or value of the motor vehicle are affected in a meaningful way by the changes, modifications or repairs. See Hale v. Basin Motor Co., 110 N.M. 314, 317-318 (N.M. 1990).

**B.** “Body” shall mean the external structure of the motor vehicle, exclusive of the cab and chassis.

**C.** “Cab” shall mean the compartment of a motor vehicle where the driver and passengers sit.

**D.** “Calculation of cost for alteration or repair” shall mean calculating the cost of repair based upon industry accepted reverse-engineering protocols and original equipment manufacturer “OEM” replacement parts.

**E.** “Chassis” shall mean frame and working parts of the motor vehicle, including standard factory equipment.

**F.** “Flat rate manual cost” shall mean the estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry of auto repair.

**G.** “Inspection” shall mean inspection of the motor vehicle

for any type of alteration or repair not consistent with I-CAR repair standards or equivalent industry standards for alteration or repair. Inspections shall be conducted with reasonable care.

**H.** “Inspection report” shall mean the inspection report provided for in 12.2.14.11 NMAC of this rule or equivalent form. The inspection form shall include:

(1) the name of the seller and contact information;

(2) a description of the vehicle, including year, make, model, stock number and vehicle identification number;

(3) the vehicle condition report required by 12.2.14.9 NMAC of this rule;

(4) the odometer reading of the motor vehicle;

(5) a statement of the calculation and total cost for alteration or repair;

(6) a statement as to whether or not the alteration or repair causes safety issues;

(7) a statement as to whether or not the motor vehicle has frame damage;

(8) the identification and contact information of the qualified person who performed the inspection;

(9) the inspection date and the calculation and total cost for the motor vehicle inspection.

**I.** “Motor vehicle” shall mean every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails. This includes, but is not limited to, automobiles, trucks of all varieties, motor cycles, recreational vehicles, reconstructed motor vehicles, specially constructed motor vehicles, and road tractors, all of which may be for personal, household, or commercial use.

**J.** “Qualified person” shall mean either:

(1) a person who is ASE, I-CAR level II or

qualified by any other equivalent industry recognized certification program, and has adequate experience with performing vehicle repairs in the areas of:

(a) painting and refinishing;

(b) structural and non-structural analysis and repair;

(c) mechanical and electrical components analysis and repair of motor vehicle cab, chassis, and body;

(d) inspection of vehicles for previous alteration or repair; or

(2) a person who possesses equivalent or similar knowledge, skills and experience as defined in this subsection.

**K.** “Repair or repairing” shall mean to restore or attempt to restore to I-CAR standards or equivalent industry standards a motor vehicle’s cab, chassis, or body whether or not the damage resulted from a collision.

**L.** “Sales price” shall mean the actual stated price on the contract before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit of disability insurance, or any other charges incidental to the sale.

**M.** “Seller” shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates which include either:

(1) any person who sells, solicits or advertises the sale of new or used motor vehicles to retail buyers and who is licensed pursuant to the Motor Vehicle Code, NMSA 1978, Section 66-4-1(A); or

(2) any person who sells four or more motor vehicles to retail buyers in a calendar year whether licensed to do so or not pursuant to NMSA 1978, Section 66-4-1(A).

**N.** “Seller’s knowledge” shall mean “to the best of the seller’s knowledge” pursuant to

NMSA 1978, Section 57-12-6(B)(2)- and does not necessarily mean actual knowledge, but shall mean knowledge that a prudent person would have if the person had exercised reasonable care or diligence. One who intentionally remains ignorant is chargeable in law with knowledge. See *Stevenson v. Louis Dreyfus Corp.*, 112 N.M. 97, 100 (N.M. 1991).

**O.** "Unibody" shall mean a motor vehicle construction technique in which the body is integrated into a single unit with the chassis rather than having a separate body-on-frame. "Alteration" shall mean damage to, repair or modification of a motor vehicle's cab, chassis, or body which materially diminishes the value of the motor vehicle; the alteration may but need not necessarily be the result of wreck damage; goods are altered if, as measured against reasonable expectations of a consumer, the characteristics or value of a motor vehicle are diminished in a meaningful way. See *Hale v. Basin Motor Co.*, 110 N.M. 314 (1990).

**B.** "Body" shall mean the external structure of the motor vehicle, exclusive of the cab and chassis.

**C.** "Cab" shall mean the compartment of a motor vehicle where the driver and passengers sit.

**D.** "Chassis" shall mean the frame, structural components of the motor vehicle and suspension.

**E.** "Flat rate manual cost" shall mean estimated cost of repair as indicated by a nationally recognized manual commonly used in the industry.

**F.** "Good faith estimate of cost" for alteration or repair shall mean a good faith estimate of the flat rate manual cost of prior alteration or repair discovered in the used motor vehicle alteration or damage inspection contemplated by this rule, and disclosed in substantially the manner shown in the model inspection report which accompanies this rule, but "good faith estimate of cost" shall not be interpreted as a warranty as to

actual cost which is unknown to the seller, nor is "good faith estimate of cost" intended to be a substitute for disclosure of actual cost if known to the seller.

**G.** "Inspection" or "reasonable inspection" shall mean an investigation of the age and condition of a motor vehicle for evidence of prior alteration or prior repair due to alteration or wreck damage. Inspections shall be consistent with 12.2.14.10 NMAC.

**H.** "Inspection report" shall mean the inspection report provided for in 12.2.14.10 NMAC, or equivalent form, including the model inspection report form which accompanies this rule.

**I.** "Qualified person" shall mean a person who is qualified by an industry recognized program or who possesses the requisite knowledge, skill or experience to perform the used motor vehicle inspection required by this rule and by the accompanying model inspection report form, in order to find evidence of:

- (1) painting and refinishing;
- (2) structural and non-structural damage repair;
- (3) repair of motor vehicle, cab, chassis and body; or
- (4) previous alteration.

**J.** "Repair or repairing" shall mean to restore or attempt to restore a motor vehicle's cab, chassis, or body to industry standards.

**K.** "Retail buyer" or "buyer" shall mean a person who is not in the business of buying and selling motor vehicles and who buys or agrees to buy a motor vehicle from a retail seller.

**L.** "Retail seller" or "seller" shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates who is licensed pursuant to Section 66-4-1 NMSA 1978 or who regularly and principally engages in the business of selling motor vehicles

to retail buyers for profit, but does not include selling motor vehicles:

(1) to a lessee pursuant to a purchase option under a motor vehicle lease agreement;

(2) to other motor vehicle dealers licensed with the New Mexico motor taxation and revenue department-motor vehicle division pursuant to Subsection A of Section 66-4-1 NMSA 1978; or

(3) to persons, other than retail buyers, licensed or regulated by another state or jurisdiction.

**M.** "Sales price" shall mean the actual stated price on the contract before the deduction of the value of any trade-in and shall not include such charges as taxes, registration fees, extended warranties, service contracts, credit of disability insurance, or any other charges incidental to the sale.

**N.** "Unibody" shall mean a motor vehicle construction technique in which the body is integrated into a single unit with the chassis rather than having a separate body-on-frame.

**O.** "Used" motor vehicle shall mean a used motor vehicle as defined in 12.2.4.7 NMAC. [12.2.14.7 NMAC - N, 4/1/2014; A, 8/31/2016]

**12.2.14.8 AFFIDAVIT REQUIRED:** [It is an unfair or deceptive trade practice for a seller of a motor vehicle to fail to provide the purchaser with an affidavit at the time of sale if it has been determined that the alterations or repairs to any part of the motor vehicle for which the fixed flat rate manual costs in the aggregate amounts to or exceeds six percent or of the sale price of the vehicle. The affidavit must:

**A.** describe the vehicle; and

**B.** state, to the best of the seller's knowledge, what specific alterations or repairs have been done to the motor vehicle, including whether the motor vehicle title should have been branded salvage or has been branded salvaged.] **A.** A seller of a motor vehicle shall furnish



at the time of sale of a motor vehicle an affidavit that states to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage, except where not required. Subsections B and C of Section 57-12-6 NMSA 1978.

**B.** When a seller in good faith:

- (1) conducts a motor vehicle inspection in compliance with 12.2.14.10 NMAC;
- (2) completes an inspection report pursuant to 12.2.14.11 NMAC;
- (3) provides the inspection report to the buyer; and
- (4) maintains the inspection report in seller's records for four years, the seller may be deemed to have complied with Section 57-12-6 NMSA 1978.

**C.** When a seller determines that an affidavit is required pursuant to Subsection B of Section 57-12-6 NMSA 1978, the seller shall attach a report which substantially complies with 12.2.14.11 NMAC to the affidavit to disclose the prior alteration or repair.

**D.** When unsafe alterations or repairs are identified or discovered by an inspector during the inspection, the unsafe alterations or repairs shall be disclosed in the inspection report provided for in 12.2.14.11 NMAC, and a copy of the inspection report shall be provided to the buyer.

**E.** A seller shall not represent to the buyer that the absence of any information or condition of the motor vehicle on a carfax, autocheck or other motor vehicle history report is proof that the motor vehicle has never been altered or repaired.

**F.** When a seller determines that an affidavit is required pursuant to Subsection B of Section 57-12-6 NMSA 1978, a copy of the affidavit shall also be maintained by the seller for four years.

**G.** Nothing in this regulation shall limit the obligation of a seller of a motor vehicle to make required disclosures pursuant to Section 57-12-6 NMSA 1978.

of alteration or chassis repair due to wreck damage discovered by or previously known to the seller. [12.2.14.8 NMAC - N, 4/1/2014; A, 8/31/2016]

**12.2.14.9 [UNFAIR AND DECEPTIVE TRADE PRACTICE:]**

It is an unfair or deceptive trade practice for a seller of a motor vehicle to:

- A.** fail to obtain a reasonable inspection of the motor vehicle performed by a qualified person, prior to offering the motor vehicle for retail sale, in order to comply with the affidavit requirements of the Unfair Practices Act NMSA, 1978, Section 57-12-6 (B);
- B.** fail to obtain an inspection report;
- C.** fail to provide to the retail buyer, prior to the sale, with a copy of the inspection report and any other reports obtained by the seller in connection to the inspection of the motor vehicle;
- D.** omit any information required to be disclosed on the inspection report;
- E.** state that the absence of any indication of an accident on a carfax, autocheck or other vehicle history report is proof that the vehicle has never been altered or repaired;
- F.** fail to disclose in writing the specific alteration(s) or repair(s) performed to the motor vehicle if the alteration(s) or repair(s) to any part of the motor vehicle amounts to six percent or more of the sales price of the motor vehicle, based on the flat rate manual costs in the aggregate;
- G.** fail to disclose in writing, if to the best of the seller's knowledge, the motor vehicle title should have been branded salvage or has been branded salvaged, if the motor vehicle is defined by law as salvaged pursuant to NMSA 1978, Section 66-1-4.16(C) or 18.19.3.50 NMAC through 18.19.3.52 NMAC;
- H.** fail to include the itemized cost for the inspection on the sales agreement as required by this

rule;

**I.** charge the retail buyer for the inspection an amount above the actual amount paid by the seller for the inspection; or

**J.** fail to retain a copy of any and all motor vehicle reports and inspection reports for three years after the sale of the motor vehicle.]

**[RESERVED]**

[12.2.14.9 NMAC - N, 4/1/2014; Repealed, 8/31/2016]

**12.2.14.10 REASONABLE INSPECTION:**

[The following motor vehicle inspection shall be deemed reasonable pursuant to NMSA 1978, Section 57-12-6(B):

**A.** obtaining publically available reports on the age or condition of the motor vehicle such as the national motor vehicle title information system report, carfax, or auto check;

**B.** inspecting the motor vehicle for evidence of repainting such as:

(1) differences in paint color or texture;

(2) mismatched sizes of metallic sparkle in the paint;

(3) embedded dirt or deep scratches in the top coat of the paint; and

(4) uneven paint thickness;

**C.** inspecting the motor vehicle body and cab for evidence of any repair or alteration, with the inspection involving only minimal disassembly, for:

(1) uneven gaps between sheet metal panels;

(2) differences between the headlamps;

(3) paint overspray on moldings and trim;

(4) paint tape edges in the jams;

(5) paint chipped off of bolt heads;

(6) paint missing around bolt heads or bolts not centered in the bolt hole;

(7) hammer damage;

(8) holes-

drilled and plugged in jams or shell of the motor vehicle;

\_\_\_\_\_ (9) \_\_\_\_\_ damage inside the trunk or under the spare tire; and

\_\_\_\_\_ (10) \_\_\_\_\_ signs of corrosion or lack of corrosion protection;

\_\_\_\_\_ **D.** \_\_\_\_\_ inspecting the motor vehicle chassis for evidence of such things as:

\_\_\_\_\_ (1) \_\_\_\_\_ pinched weld flange underneath the motor vehicle;

\_\_\_\_\_ (2) \_\_\_\_\_ weld sites;

\_\_\_\_\_ (3) \_\_\_\_\_ signs of repair to unibody structural parts;

\_\_\_\_\_ (4) \_\_\_\_\_ signs of buckles or non-OEM welding repair to unibody structural parts;

\_\_\_\_\_ (5) \_\_\_\_\_ signs of corrosion or lack of corrosion protection;

\_\_\_\_\_ (6) \_\_\_\_\_ any other alteration or repair that may have been performed to the chassis; and

\_\_\_\_\_ (7) \_\_\_\_\_ odometer alteration or repair;

\_\_\_\_\_ **E.** \_\_\_\_\_ inspecting the motor vehicle's caulking and seam sealer for differences and inconsistencies;

\_\_\_\_\_ **F.** \_\_\_\_\_ inspecting the motor vehicle's identification number tags;

\_\_\_\_\_ **G.** \_\_\_\_\_ inspecting the motor vehicle parts for labels that say "R-DOT";

\_\_\_\_\_ **H.** \_\_\_\_\_ inspecting the motor vehicle for any type of repairs not consistent with I-CAR repair standards or equivalent;

\_\_\_\_\_ **I.** \_\_\_\_\_ based upon any information or evidence obtained during the vehicle inspection performed pursuant to Subsections A-H of this section, perform any additional inquiry or inspection into the motor vehicle's age or condition appropriate to assure compliance with this rule.] The following motor vehicle inspection shall be conducted by qualified persons and shall be deemed reasonable pursuant to Subsection B of Section 57-12-6 NMSA 1978 by:

\_\_\_\_\_ **A.** \_\_\_\_\_ inspecting the motor vehicle for evidence of repainting such as:

\_\_\_\_\_ (1) \_\_\_\_\_ differences

in paint color or texture;

\_\_\_\_\_ (2) \_\_\_\_\_ mismatched sizes of metallic sparkle in the paint;

\_\_\_\_\_ (3) \_\_\_\_\_ embedded dirt or deep scratches in the top coat of the paint; and

\_\_\_\_\_ (4) \_\_\_\_\_ uneven paint thickness;

\_\_\_\_\_ **B.** \_\_\_\_\_ inspecting the motor vehicle for evidence of any repair or alteration, with the inspection involving only minimal disassembly, for:

\_\_\_\_\_ (1) \_\_\_\_\_ uneven

gaps between sheet metal panels;

\_\_\_\_\_ (2) \_\_\_\_\_ differences

between the headlamps;

\_\_\_\_\_ (3) \_\_\_\_\_ paint

overspray on moldings and trim;

\_\_\_\_\_ (4) \_\_\_\_\_ paint tape

edges in the jams;

\_\_\_\_\_ (5) \_\_\_\_\_ hammer

damage;

\_\_\_\_\_ (6) \_\_\_\_\_ replaced

body panels due to impact;

\_\_\_\_\_ (7) \_\_\_\_\_ holes

drilled and plugged in jams or shell of the motor vehicle;

\_\_\_\_\_ (8) \_\_\_\_\_ damage

inside the trunk or under the spare

tire; and

\_\_\_\_\_ (9) \_\_\_\_\_ signs

of corrosion or lack of corrosion

protection;

\_\_\_\_\_ **C.** \_\_\_\_\_ inspecting the motor vehicle chassis for evidence of such things as:

\_\_\_\_\_ (1) \_\_\_\_\_ pinched

weld flange underneath the motor

vehicle;

\_\_\_\_\_ (2) \_\_\_\_\_ weld sites;

\_\_\_\_\_ (3) \_\_\_\_\_ signs of

repair to unibody structural parts;

\_\_\_\_\_ (4) \_\_\_\_\_ signs of

buckles or non-original equipment

manufacturer ("OEM") welding repair

to unibody structural parts;

\_\_\_\_\_ (5) \_\_\_\_\_ signs

of corrosion, or lack of corrosion

protection; and

\_\_\_\_\_ (6) \_\_\_\_\_ other non-

OEM alteration or repair that may

have been performed to the chassis;

\_\_\_\_\_ **D.** \_\_\_\_\_ inspecting the motor

vehicle's caulking and seam sealer for

differences and inconsistencies;

\_\_\_\_\_ **E.** \_\_\_\_\_ inspecting the motor

vehicle's identification number tags;

\_\_\_\_\_ **F.** \_\_\_\_\_ inspecting the motor vehicle parts for labels that say replacement department of transportation "(R-DOT)";

\_\_\_\_\_ **G.** \_\_\_\_\_ inspecting the motor vehicle for alterations or repairs not consistent with repair industry standards; and

\_\_\_\_\_ **H.** \_\_\_\_\_ performing reasonable additional inspection or inquiry into the age and condition of the motor vehicle when reasonably necessary to assure compliance with this rule.

[12.2.14.9 NMAC - N, 4/1/2014; A, 8/31/2016]

**12.2.14.11 PREVIOUS WRECK DAMAGE OR ALTERATION INSPECTION REPORT: [The following information is an example of what should be contained within an inspection report form:**

\_\_\_\_\_ **A.** \_\_\_\_\_ seller's name;

\_\_\_\_\_ **B.** \_\_\_\_\_ dealer license number;

\_\_\_\_\_ **C.** \_\_\_\_\_ address, including city, state, and zip code;

\_\_\_\_\_ **D.** \_\_\_\_\_ the year, make, model, and stock number of the motor vehicle;

\_\_\_\_\_ **E.** \_\_\_\_\_ the motor vehicle identification number;

\_\_\_\_\_ **F.** \_\_\_\_\_ the exterior and interior color of the motor vehicle;

\_\_\_\_\_ **G.** \_\_\_\_\_ an odometer reading of the motor vehicle, including actual miles, and not actual miles;

\_\_\_\_\_ **H.** \_\_\_\_\_ a calculation of the total cost for alteration or repair;

\_\_\_\_\_ **I.** \_\_\_\_\_ a "yes" and "no" check box should be used to indicate any inspection revealed safety issues; if "yes" is checked, then the inspection report shall identify the safety issues with particularity;

\_\_\_\_\_ **J.** \_\_\_\_\_ a "yes" and "no" check box should be used to indicate any inspection revealed frame damage; if "yes" is checked, then the inspection report shall identify the frame damage with particularity;

\_\_\_\_\_ **K.** \_\_\_\_\_ the remainder of the inspection report form should be captioned "AGE AND CONDITION OF MOTOR VEHICLE"

CERTIFICATION”;

\_\_\_\_\_ **L.** \_\_\_\_\_ for the following paragraphs and subparagraphs of this subsection, a “yes” and “no” check box should be checked for each item which is applicable; if “yes” is checked, then the report shall identify the alteration or repair with particularity and where on the vehicle the alteration or repair is located:

\_\_\_\_\_ **(1)** \_\_\_\_\_ inspection of the motor vehicle for evidence of repainting;

\_\_\_\_\_ **(a)** \_\_\_\_\_ differences in paint color or texture;

\_\_\_\_\_ **(b)** \_\_\_\_\_ mismatched sizes of metallic sparkle in the paint;

\_\_\_\_\_ **(c)** \_\_\_\_\_ embedded dirt or deep scratches in the top coat of the paint;

\_\_\_\_\_ **(d)** \_\_\_\_\_ uneven paint thickness;

\_\_\_\_\_ **(2)** \_\_\_\_\_ inspection of the motor vehicle body and cab;

\_\_\_\_\_ **(a)** \_\_\_\_\_ uneven gaps between sheet metal panels;

\_\_\_\_\_ **(b)** \_\_\_\_\_ differences between the headlamps;

\_\_\_\_\_ **(c)** \_\_\_\_\_ paint overspray on moldings and trim;

\_\_\_\_\_ **(d)** \_\_\_\_\_ paint tape edges in the jams;

\_\_\_\_\_ **(e)** \_\_\_\_\_ paint chipped off of bolt heads;

\_\_\_\_\_ **(f)** \_\_\_\_\_ paint missing around bolt heads or bolts not centered in the bolt hole;

\_\_\_\_\_ **(g)** \_\_\_\_\_ hammer damage;

\_\_\_\_\_ **(h)** \_\_\_\_\_ holes drilled and plugged in jams or shell of the motor vehicle;

\_\_\_\_\_ **(i)** \_\_\_\_\_ damage inside the trunk or under the spare tire;

\_\_\_\_\_ **(j)** \_\_\_\_\_ signs of corrosion or lack of corrosion protection;

\_\_\_\_\_ **(3)** \_\_\_\_\_ inspection of the motor vehicle chassis;

\_\_\_\_\_ **(a)** \_\_\_\_\_ pinched weld flange underneath the motor vehicle;

\_\_\_\_\_ **(b)** \_\_\_\_\_ weld sites;

\_\_\_\_\_ **(c)** \_\_\_\_\_

signs of repair to unibody structural parts;

\_\_\_\_\_ **(d)** \_\_\_\_\_

signs of buckles or non-OEM-welding repair to the unibody-structural parts;

\_\_\_\_\_ **(e)** \_\_\_\_\_

signs of corrosion or lack of corrosion protection;

\_\_\_\_\_ **(f)** \_\_\_\_\_

signs of any other alteration or repair having been performed to the chassis;

\_\_\_\_\_ **(g)** \_\_\_\_\_

odometer alteration or repair;

\_\_\_\_\_ **(4)** \_\_\_\_\_ signs of differences and inconsistencies with the motor vehicle’s caulking and seam sealer;

\_\_\_\_\_ **(5)** \_\_\_\_\_ signs of tampering with motor vehicle’s identification tags;

\_\_\_\_\_ **(6)** \_\_\_\_\_ signs of motor vehicle parts labeled “R-DOT”;

\_\_\_\_\_ **(7)** \_\_\_\_\_ signs of any type of repairs not consistent with I-CAR collision repair standards or equivalent;

\_\_\_\_\_ **M.** \_\_\_\_\_ date of inspection;

\_\_\_\_\_ **N.** \_\_\_\_\_ calculation and total cost for inspection;

\_\_\_\_\_ **O.** \_\_\_\_\_ the name of the business or individual who conducted the inspection;

\_\_\_\_\_ **P.** \_\_\_\_\_ the name, and address of the business or individual who conducted the inspection, including city, state, and zip code;

\_\_\_\_\_ **Q.** \_\_\_\_\_ the telephone number of the business or individual who conducted the inspection;

\_\_\_\_\_ **R.** \_\_\_\_\_ the printed or typed name of the technician who conducted the inspection; and

\_\_\_\_\_ **S.** \_\_\_\_\_ the signature of the technician who conducted the inspection.] The seller’s inspection report shall be in substantially the form which accompanies this rule and shall include the following information:

\_\_\_\_\_ **A.** \_\_\_\_\_ seller’s name;

\_\_\_\_\_ **B.** \_\_\_\_\_ address, including city, state, and zip code;

\_\_\_\_\_ **C.** \_\_\_\_\_ the year, make and model of the motor vehicle;

\_\_\_\_\_ **D.** \_\_\_\_\_ the motor vehicle identification number;

\_\_\_\_\_ **E.** \_\_\_\_\_ the exterior color of

the motor vehicle;

\_\_\_\_\_ **F.** \_\_\_\_\_ an odometer reading of the motor vehicle;

\_\_\_\_\_ **G.** \_\_\_\_\_ a “yes” and “no” check box to indicate any discovered safety issues revealed by the inspection; if “yes” is checked, the inspection report shall identify such issues with particularity;

\_\_\_\_\_ **H.** \_\_\_\_\_ a “yes” and “no” check box to indicate any discovered chassis or structural damage revealed by the inspection; if “yes” is checked, the inspection report shall identify such damage with particularity;

\_\_\_\_\_ **I.** \_\_\_\_\_ a “yes” and “no” check box to indicate any discovered non industry-standard repair revealed by the inspection; if “yes” is checked, the inspection report shall identify such repair with particularity;

\_\_\_\_\_ **J.** \_\_\_\_\_ a “yes” and “no” check box to indicate any discovered unrepaired damage revealed by the inspection; if “yes” is checked, the inspection report shall identify such damage with particularity;

\_\_\_\_\_ **K.** \_\_\_\_\_ whether a good faith estimate of the cost of prior alteration or damage repair discovered on inspection exceeds six percent of the estimated sales price of the motor vehicle;

\_\_\_\_\_ **L.** \_\_\_\_\_ date of inspection;

\_\_\_\_\_ **M.** \_\_\_\_\_ cost for the inspection;

\_\_\_\_\_ **N.** \_\_\_\_\_ contact information for the business/individual who performed the inspection, including city, state, and zip code and telephone number;

\_\_\_\_\_ **O.** \_\_\_\_\_ the printed or typed name of the qualified person who performed the inspection;

\_\_\_\_\_ **P.** \_\_\_\_\_ the signature of the qualified person who conducted the inspection; and

\_\_\_\_\_ **Q.** \_\_\_\_\_ a statement to the effect that “prior damage/repair inspection is based on good faith observation, minimal disassembly and without use of computerized measuring system(s),” that the inspection report is not a warranty, and containing a citation to this rule, 12.2.14.1 NMAC;

\_\_\_\_\_ **R.** \_\_\_\_\_ the seller’s inspection report may also include:

(1) a statement whether the motor vehicle was placed on a lift to inspect the chassis as part of the inspection;

(2) a statement whether a paint mil thickness gauge was used to measure paint thickness as part of the inspection; or

(3) reasonable additional detail about the condition of the chassis, body panels and paint of the motor vehicle which was revealed by the inspection and is believed by the inspector to be useful to a buyer.

[12.2.14.11 NMAC - N, 4/1/2014; A, 8/31/2016]

**12.2.14.12 DISCLOSURE IN LIEU OF INSPECTION FOR HIGH MILEAGE/AGED MOTOR VEHICLES:**

In lieu of the used motor vehicle damage inspection contemplated by 12.2.14.9 NMAC and the used motor vehicle damage inspection report contemplated by 12.2.14.11 NMAC, the seller of a motor vehicle which either: is 10 or more years old based on its model year or has more than 125,000 odometer miles, may provide the buyer of such a motor vehicle with a conspicuous written disclosure on a separate form containing a statement to the effect that "because of age in excess of 10 years or mileage in excess of 125,000 this motor vehicle has not received a used motor vehicle damage inspection pursuant to 12.2.14.1 NMAC, et seq., and buyer may obtain an independent inspection of the motor vehicle at buyer's own expense before purchase, if buyer so chooses." Seller of a motor vehicle subject to this section is nonetheless obligated to make required disclosures pursuant to Section 57-12-6 NMSA 1978. Should the seller of such a high mileage/aged vehicle nevertheless choose to obtain a damage inspection and report on such a motor vehicle, the seller shall provide the inspection report and any applicable affidavit to the buyer as with any other used motor vehicle.

[12.2.14.12 NMAC - N, 8/31/2016]

**12.2.14.13 SEVERABILITY:** If any part of this rule is held

invalid, the remainder of the rule and applications thereof shall remain unaffected.

[12.2.14.13 NMAC - N, 4/1/2014; 12.2.14.13 NMAC - Rn, 12.2.14.12 NMAC, 8/31/2016]

**12.2.14.14 USED MOTOR VEHICLE ALTERATION OR DAMAGE INSPECTION FORM:**

Seller Name and Contact Information:

\_\_\_\_\_

Year \_\_\_\_\_ Make \_\_\_\_\_  
Model \_\_\_\_\_

Color \_\_\_\_\_

VIN \_\_\_\_\_ Odometer \_\_\_\_\_

\_\_\_\_\_

None

Noted Yes Describe, if yes

**DISCOVERED SAFETY ISSUES**

\_\_\_\_\_

**CHASSIS OR STRUCTURAL DAMAGE**

\_\_\_\_\_

**NON INDUSTRY-STANDARD REPAIR**

\_\_\_\_\_

**UNREPAIRED DAMAGE**

\_\_\_\_\_

**CHASSIS INSPECTION**

None

Noted Yes Location - Details, if yes

**Frame/Unibody Repair/Welds**

\_\_\_\_\_

**Frame Machine Pinch Marks**

\_\_\_\_\_

**Other**

\_\_\_\_\_

**BODY PANEL INSPECTION**

None

Noted Yes Location - Details, if yes

**Replaced Body Panels**

\_\_\_\_\_

**Damaged/Repaired Body Panels**

\_\_\_\_\_

**Uneven Body Panel Gaps**

\_\_\_\_\_

**Other**

\_\_\_\_\_

**PAINT INSPECTION**

None

Noted Yes Location - Details, if yes

**Difference in Paint Color/Texture**

\_\_\_\_\_

**Uneven Paint Thickness**

\_\_\_\_\_

**Aftermarket Overspray/Mask-lines**

\_\_\_\_\_

**Other**

\_\_\_\_\_

Was motor vehicle placed on a lift to inspect chassis? Yes No

Was a paint mil thickness gauge used to measure paint thickness? Yes No

Good faith estimate whether discovered prior alteration/damage/repair cost exceeds six percent of sales

\_\_\_\_\_

\_\_\_\_\_

**Other Inspection Comments (Note: discovered damage, alterations or repairs not otherwise disclosed on this form.)**

price: Yes No

Cost of Inspection: \$

Date of Inspection:

Inspector Name:

Inspector Contact Information:

\_\_\_\_\_



Inspector Signature: \_\_\_\_\_

**PRIOR ALTERATION/DAMAGE/REPAIR INSPECTION IS BASED ON GOOD FAITH OBSERVATION, MINIMAL DISASSEMBLY AND WITHOUT USE OF COMPUTERIZED MEASURING SYSTEM(S). See NMAC 12.2.14.1, et seq., (NOT A WARRANTY).**

[12.2.14.14 NMAC - N, 8/31/2016]

**EDUCATIONAL RETIREMENT BOARD**

This is an amendment to 2.82.9 NMAC, Section 8, effective 08-31-2016.

**2.82.9.8 EMPLOYER REPORTS:**

**A.** Instructions for the preparation and handling of employer reports and monthly remittances by the local administrative units shall be outlined in detail once each year and electronically transmitted to each local administrative unit by the director.

**B.** Employer reports shall encompass all local administrative unit employees including those employees whom the local administrative unit has identified as excluded from coverage. ~~[except that an employer may omit student employees and resident physicians.]~~

**C.** Monthly contributions from employees and local administrative units shall be electronically transmitted no later than the 15<sup>th</sup> day of the month following the month for which contributions are withheld.

**(1)** Employer reports and contributions shall be electronically transmitted or postmarked no later than the 15<sup>th</sup> of the following month. The director may enter into an agreement with a local administrative unit for an extension of this deadline for the employer report. No such extension is available for submission of the contributions.

**(2)** When the 15<sup>th</sup> of the month falls on a weekend or holiday, the report and contributions are due on the next workday.

**(3)** Local administrative units shall be assessed late charges for not submitting reports or contributions in accordance with the above schedule. A charge of fifty dollars (\$50) per day shall be assessed for untimely reports. Upon a written showing of good cause, the director may waive charges to the local administrative unit for untimely reports. No such waiver of charges is available for late contributions. The charges for late contributions will be calculated at a rate equal to the state treasurer's overnight investment program rate plus one percent.

The rate will be applied daily and cumulatively for the period of time from the 15<sup>th</sup> to the date of postmark. The late charge shall be the greater amount calculated by applying the foregoing rate or ten dollars (\$10). The director shall report any and all such assessments and waivers to the board.

**D.** The director shall prepare forms for all regular reports, or make available other means for such regular reports from the local administrative units as may be required in the administration of the Educational Retirement Act. [6-30-99; 2.82.9.8 NMAC - Rn & A, 2 NMAC 82.9.8, 10-31-2002; A, 07-29-2016; A, 08-31-2016]

**ENVIRONMENTAL IMPROVEMENT BOARD**

The Environmental Improvement Board approved, at its 8/12/2016 hearing, to repeal its rule 20.2.37 NMAC, Petroleum Processing Facilities (filed 10/16/2002) effective 9/12/2016.

**PUBLIC REGULATION COMMISSION**

**This is an amendment to 18.7.1 NMAC, Section 6, effective 8-30-16**

**18.7.1.6 OBJECTIVE:**  
The purpose of this rule is to set forth rules governing permit application processes, vehicle inspections, and proof of financial responsibility for transportation network companies in New Mexico. This rule relates directly to the safety of vehicles to be used in providing transportation services under the Transportation Network Company Services Act (TNCSA) [~~and is adopted on an emergency basis pursuant to Section 8-8-4 NMSA 1978 to preserve the public peace, health, safety or general welfare.~~].  
[18.7.1.6 NMAC - Rp, 18.7.1.6 NMAC, 8-15-2016; A, 8-31-16]

**REGULATION AND LICENSING DEPARTMENT LANDSCAPE ARCHITECTS BOARD**

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.1 NMAC, Landscape Architects - General Provisions (filed 9/5/2002) and replace it with 16.44.1 NMAC, Landscape Architects - General Provisions, effective September 30, 2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.2 NMAC, Educational and Examination Requirements for Licensure or Certification, (filed 9/5/2002) and replace it with 16.44.2 NMAC, Educational and Examination Requirements for Licensure or Certification, effective 9/30/2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.3 NMAC, Registration for Licensure or Certification, (filed 9/5/2002) and replace it with 16.44.3 NMAC, Registration for Licensure or Certification, effective 9/30/2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.4 NMAC, License or Certificate Expiration and



Renewal, (filed 9/5/2002) and replace it with 16.44.4 NMAC, License or Certificate Expiration and Renewal, effective 9/30/2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.5 NMAC, Continuing Professional Education Requirements, (filed 9/5/2002) and replace it with 16.44.5 NMAC, Continuing Professional Education Requirements, effective 9/30/2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.6 NMAC, Inactive Status and Reinstatement, (filed 9/5/2002) and replace it with 16.44.6 NMAC, Inactive Status and Reinstatement, effective 9/30/2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.7 NMAC, Code of Professional Conduct, (filed 9/5/2002) and replace it with 16.44.7 NMAC, Code of Professional Conduct, effective 9/30/2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule 16.44.8 NMAC, Fees, (filed 9/5/2002) and replace it with 16.44.8 NMAC, Fees, effective 9/30/2016.

The Landscape Architects Board approved, at its 4/29/2016 hearing, to repeal its rule Complaints, and replaced it with 16.44.9 NMAC, (filed 9/5/2002) and replace it with Complaints, and replaced it with 16.44.9 NMAC, effective 9/30/2016.

**REGULATION AND LICENSING DEPARTMENT  
LANDSCAPE ARCHITECTS BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 44 LANDSCAPE ARCHITECTS  
PART 1 GENERAL PROVISIONS**

**16.44.1.1 ISSUING AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504. [16.44.1.1 NMAC - Rp, 16.44.1.1 NMAC, 9-30-16]

**16.44.1.2 SCOPE:** This part applies to the board, licensees, certificate holders, applicants and the general public. [16.44.1.2 NMAC - Rp, 16.44.1.2 NMAC, 9-30-16]

**16.44.1.3 STATUTORY AUTHORITY:** This part is adopted pursuant to Landscape Architects Act, Sections 61-24B-1, 61-24B-3, 61-24B-6, 61-24B-7, 61-24B-10 NMSA 1978. [16.44.1.3 NMAC - Rp, 16.44.1.3 NMAC, 9-30-16]

**16.44.1.4 DURATION:** Permanent. [16.44.1.4 NMAC - Rp, 16.44.1.4 NMAC, 9-30-16]

**16.44.1.5 EFFECTIVE DATE:** September 30, 2016, unless a later date is cited at the end of a section. [16.44.1.5 NMAC - Rp, 16.44.1.5 NMAC, 9-30-16]

**16.44.1.6 OBJECTIVE:** The objective of 16.44.1 NMAC is to set forth the provisions which apply to all persons affected or regulated by the Landscape Architects Act, and to establish definitions, board meeting dates, and election of officers. [16.44.1.6 NMAC - Rp, 16.44.1.6 NMAC, 9-30-16]

**16.44.1.7 DEFINITIONS:** As used in these regulations, the following words and phrases have the following meanings unless the context or intent clearly indicates a different meaning.

**A. "Accredited"** means accreditation by the landscape architectural accreditation board (LAAB) or a recognized equivalent accrediting agency.

**B. "Act"** means the Landscape Architects Act, Sections

61-24B-1 through 61-24B-17 NMSA 1978.

**C. "Administrator"** "board administrator" or "program manager" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulation or as required to carry out the provisions of the act.

**D. "Applicant"** means a person who has completed all educational requirements for licensure or certification and has filed an initial application with the board.

**E. "Board"** means the New Mexico board of landscape architects.

**F. "Board regulation"** or "regulation" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation. "Rule" means board regulation.

**G. "Candidate"** means a person who has filed with the board a completed form for licensure or certification that is complete in all particulars and appears on the face to satisfy all minimum educational, supervision, payment and other requirements except examination requirements as required by the act and these regulations and is eligible to take the L.A.R.E.

**H. "Certificate holder"** or "certification" means an individual certified under the Landscape Architects Act as a landscape architect in training.

**I. "CLARB"** means the council of landscape architect registration boards or its successor.

**J. "CLARB certification"** means certification by CLARB that a landscape architect has met the minimum standards of education, examination, experience and professional conduct established by the council and is thereby recommended for licensure in all member jurisdictions.

**K. "CLARB council record"** means the verified documentation of an individual's education, experience, examination, licensure and professional conduct compiled by CLARB.

**L. “Client”** means a person or corporate entity that is the recipient of landscape architectural services.

**M. “Consultant”** means a licensed landscape architect who provides professional advice or opinion to a licensee and who has no professional relationship with the client, has no authority over the project or has no responsibility for the services performed for the client.

**N. “Continuing professional education”** (CPE) means a board requirement of continuing education, instruction or participation as a condition of renewal of licensure.

**O. “Custodian”** means board administrator.

**P. “Electronic transmission”** means the sending of information through the internet or by telephone facsimile (FAX) or e-mail.

**Q. “Filed with the board”** means actual receipt during normal business hours at the board office in Santa Fe, New Mexico.

**R. “General administration of a construction contract”** means the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship and the periodic observation of construction to facilitate consistency with the general intent of the construction documents.

**S. “Good cause”** means the inability to comply because of illness, undue hardship, or extenuating circumstances that are not willful and are beyond the control of the person asserting good cause. Those asserting good cause shall have the burden to demonstrate good cause.

**T. “Inactive status”** means a procedure of the board to affirm that a licensee is not engaged in active practice.

**U. “Initial application”** means the initial application for licensure or certification filed with the board by an applicant not previously or currently licensed in a jurisdiction.

**V. “Joint practice committee”** (JPC) means a

committee statutorily comprised of two architects, two landscape architects and two engineers or land surveyors and a public member.

**W. “Landscape architect”** or “registered landscape architect” (RLA) means an individual registered under the Landscape Architects Act to practice landscape architecture.

**X. “Landscape architect in training”** (LAIT) means an individual certified under the Landscape Architects Act who is actively pursuing completion of the requirements for licensure pursuant to that act, under direct supervision of a registered landscape architect.

**Y. “Landscape architect registration examination”** (L.A.R.E.) means the national examination promulgated by CLARB.

**Z. “Landscape architecture”** means the art, profession or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts to protect the health, safety and welfare of the public. Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering or land surveying as defined in Sections 61-15-2, 61-23-2.1 and 61-23.27.9 NMSA 1978.

**AA. “Licensed”** means licensed, registered or any other term when such terms identify a person whose professional behavior is subject to regulation by the board.

**BB. “Licensee in good standing”** means a licensee who is not the subject of a pending investigation, adjudicatory proceeding, or petition on appeal or review, or whose license is not restricted, suspended, or revoked in New Mexico or any other state or licensing jurisdiction.

**CC. “Licensee”** means a person licensed pursuant to the provisions of the act and board regulations.

**DD. “NCARB”** means the national council of architectural

registration boards.

**EE. “Practical experience”** means experience that demonstrates an essential understanding of the practice of landscape architecture pursuant to the act. Practical experience shall begin after graduation from a degree program as set forth in the act.

**FF. “Professional relationship”** means a mutually agreed-upon relationship between a landscape architect and a client for the purpose of the client(s) obtaining the landscape architect’s professional services.

**GG. “Professional services”** means all actions of the landscape architect in the context of professional relationship with the client.

**HH. “Registrant,”** “registered” or “registration” means an individual registered under the Landscape Architects Act as a landscape architect.

**II. “Related field”** means a field having an impact on or affecting the field of landscape architecture including, but not limited to, such fields as architecture or engineering.

**JJ. “Renewal cycle/period”** means the time during which a licensee or certificate holder renews his/her license.

**KK. “Sponsor”** means an individual, organization, association, institution or other entity that provides education activity for the purpose of fulfilling the continuing education requirements.

**LL. “Supervisee”** means any person who functions under the authority of a registered landscape architect to provide landscape architectural services as provided in the act or board regulations.

**MM. “Supervisor”** means a registered landscape architect who agrees to provide adequate supervision over a student, applicant, employee or staff or other non-licensed person and who remains ultimately responsible for the professional conduct of the non-licensed person and the welfare of the

client.

[16.44.1.7 NMAC - Rp, 16.44.1.7 NMAC, 9-30-16]

**16.44.1.8 BOARD MEMBERSHIP:**

**A.** Board members: The board of landscape architects consists of five members appointed by the governor who are residents of New Mexico and serve for three-year staggered terms. The landscape architect members shall have been registered as landscape architects for at least five years.

**B.** The members shall be appointed as follows:

**(1)** Three shall be professional members who are registered under the Landscape Architects Act as landscape architects. The governor shall appoint the professional members from a list of names nominated by the New Mexico chapter of the American society of landscape architects (ASLA).

**(2)** Two members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of landscape architecture.

**C.** Expiration dates: Each member shall hold office until the expiration of his or her appointed term or until a successor is duly appointed. When the term of each member ends, the governor shall appoint the member's successor for a term of three years. Any vacancy occurring in the board membership other than by expiration of term shall be filled by the governor by appointment for the un-expired term of the member. The governor may remove any board member for misconduct, incompetence, or neglect of duty.

[16.44.1.8 NMAC - Rp, 16.44.1.8 NMAC, 9-30-16]

**16.44.1.9 BOARD OPERATIONS:**

**A.** Elections. At its annual meeting in July, the board shall elect a chair, vice chair, and secretary-treasurer.

**B.** All board officers

shall exercise authority subject to the act, board regulations, and specific directions of the board. Duties of the board chair, vice chair, and secretary-treasurer are as follows:

**(1)** The board chair shall preside at board meetings and adjudicatory hearings unless another presiding officer is named by the board.

**(2)** At the direction of the board, the board chair shall respond to inquiries and correspondence, execute orders of the board in any pending adjudicatory proceeding unless a hearing officer is appointed, sign decisions of the board unless the board designates another member to sign, appoint board members to formal committees, and provide direction to the board administrator on routine matters to facilitate the efficient operation of board functions between meetings.

**(3)** The vice chair shall preside at board meetings and adjudicatory hearings in the absence of the chair. If the office of chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.

**(4)** The secretary-treasurer shall preside at board meetings and adjudicatory proceedings in the absence of the chair and vice chair.

**C.** Vacancy. If the office of board chair becomes vacant, the board shall elect a chair at the next meeting or any subsequent meeting. If the office of vice chair or secretary-treasurer becomes vacant, the board may hold elections as it deems necessary and advisable.

**D.** Duties of the board administrator. The board administrator shall at all times perform assigned duties subject to the act, the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978, board rules and regulations, and the specific direction of the board. The board administrator shall perform duties as specified in these rules and regulations, shall supervise other personnel, and shall ensure the responsiveness and efficiency of the functions of the

board.

**E.** Board office. The board office is located in Santa Fe, New Mexico.

**F.** Board meetings. The board shall conduct meetings in accordance with New Mexico Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978.

**(1)** The board shall hold an annual meeting in July and shall hold other meetings as it deems necessary and advisable.

**(2)** The board shall conduct its meetings in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, revised, when necessary and advisable. The board administrator shall prepare the meeting agenda in accordance with the New Mexico Open Meetings Act and board resolution. The board may change the order of agenda items during its meeting. The board shall transact official business only at a legally constituted meeting with a quorum present. The board is not bound in any way by any opinion, statement, or action of any board member(s), the board administrator, or other staff except when the action is pursuant to a lawful instruction or direction of the board. Except for proceedings to adopt, amend, or repeal regulations governed by Section 61-1-29 NMSA 1978, the board, in its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not cause delay or disruption of the board's meeting. Except for conferences for the purpose of settlement or simplification of the issues, no person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person. Pursuant to Subsection C of Section 10-15-1 NMSA 1978,

a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person.

(3) Any board member who cannot be impartial in the determination of any matter before the board and cannot judge a particular matter or controversy fairly on the basis of its own merits shall not participate in any board deliberation or vote on the matter. Any board member with a personal, social, family, financial, business, or pecuniary interest in a matter shall voluntarily recuse himself or herself and shall not participate in a hearing, consideration, deliberation, or vote on the matter, except as provided by law. Board members shall not disclose to any non-member the content of any executive session discussion or deliberation, or any other confidential matters that may be the subject of an executive session or attorney client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure. Nothing herein shall preclude the board from including in executive session discussions or confidential committee meetings the board administrator or other persons the board deems necessary to assist the board in carrying out the functions of the board.

(4) License and certificate roster. The board will maintain a current roster of persons holding licenses and certificates in the state of New Mexico. Copies may be made available at a charge determined by the board.

[16.44.1.9 NMAC - Rp, 16.44.1.9 NMAC, 9-30-16]

**16.44.1.10 BOARD RECORDS:**

A. Public records shall be available for inspection in accordance with the provisions of the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

B. The custodian shall charge for copying 8 ½" by 11" paper (16.44.8.8 NMAC). The custodian may charge an additional fee for copying undersize or oversize documents or papers. The board shall not be required to create any document or compile data for an individual or private entity. Consistent with the Inspection of Public Records Act and taking into account the available staff, space, and the needs of other legitimate public business, the custodian may determine the reasonable time, place, and conditions for access to public records. Public records shall not be removed from the board office except by board members, board staff, or agents of the board for official public business.

[16.44.1.10 NMAC - Rp, 16.44.1.10 NMAC, 9-30-16]

**16.44.1.11 SEAL:**

A. The official seal of the board shall be as follows: an embossed circular seal two inches in diameter, consisting of two concentric circles. The annular space between the two circles shall contain the seal of the state of New Mexico.

B. The board may also authorize a seal/stamp for use by registered landscape architects. Said seal/stamp will bear the registrant's name and registration number and the legend "registered landscape architect state of New Mexico." All plans, specifications, and reports issued by a registrant shall have the registrant's signature placed across the seal/stamp.

[16.44.1.11 NMAC - Rp, 16.44.1.11 NMAC, 9-30-16]

**16.44.1.12 ADVERTISEMENT:** In accordance with the joint practice committee of the state of New Mexico, the following procedure shall apply to advertising:

A. When individuals representing other disciplines, professions, or skills are listed they must be identified by the particular skill area.

B. When advertising in a discipline area there must be a

New Mexico registrant in that field who can legally bind by contract the company, corporation or business.

C. If only registrants within the profession or discipline are being listed, no special identification is required.

[16.44.1.12 NMAC - Rp, 16.44.1.12 NMAC, 9-30-16]

**16.44.1.13 DESIGN**

**COMPETITION:** A landscape architect licensed in another jurisdiction must be licensed in New Mexico before participating, partaking, or bidding in any design competition in New Mexico.

[16.44.1.13 NMAC - Rp, 16.44.1.13 NMAC, 9-30-16]

**16.44.1.14 BOARD**

**REGULATION:** Board regulations may be adopted, amended, repealed, or superseded by rule making proceedings pursuant to applicable provisions of the act, the Uniform Licensing Act, and the State Rules Act.

[16.44.1.14 NMAC - Rp, 16.44.1.14 NMAC, 9-30-16]

**HISTORY OF 16.44.1 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations filed 11-27-85; LAB 85-1, Rules and Regulations filed 12-02-85; LAB 89-1, Rules and Regulations filed 05-05-89; Rule 1 NMBLA, General Provisions filed 07-08-92; Rule 3 NMBLA, Board Administration filed 07-08-92; Rule 2, Organization, filed 7-8-92.

**History of Repealed Material:** 16.44.1 NMAC, Landscape Architects - General Provisions, filed 09-05-02 - Repealed effective 9-30-16.



**REGULATION AND  
LICENSING DEPARTMENT**  
LANDSCAPE ARCHITECTS  
BOARD

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING**  
**CHAPTER 44 LANDSCAPE  
ARCHITECTS**  
**PART 2 EDUCATIONAL  
AND EXAMINATION  
REQUIREMENTS FOR  
LICENSURE OR  
CERTIFICATION**

**16.44.2.1 ISSUING**

**AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.  
[16.44.2.1 NMAC - Rp, 16.44.2.1 NMAC, 9-30-2016]

**16.44.2.2 SCOPE:** The provisions of 16.44.2 NMAC apply to applicants for licensure and certification.

[16.44.2.2 NMAC - Rp, 16.44.2.2 NMAC, 9-30-2016]

**16.44.2.3 STATUTORY**

**AUTHORITY:** This part is adopted pursuant to Landscape and Architects Act, Sections 61-24B-8, 61-24B-11, 61-24B-12, 61-24B-16 NMSA 1978.  
[16.44.2.3 NMAC - Rp, 16.44.2.3 NMAC, 9-30-2016]

**16.44.2.4 DURATION:**

Permanent.

[16.44.2.4 NMAC - Rp, 16.44.2.4 NMAC, 9-30-2016]

**16.44.2.5 EFFECTIVE**

**DATE:** September 30, 2016, unless a later date is cited at the end of a section.

[16.44.2.5 NMAC - Rp, 16.44.2.5 NMAC, 9-30-2016]

**16.44.2.6 OBJECTIVE:**

This part establishes the minimum educational and examination requirements for applicants applying for licensure or certification.

[16.44.2.6 NMAC - Rp, 16.44.2.6 NMAC, 9-30-2016]

**16.44.2.7 DEFINITIONS:**

(Refer to Part 1)

**16.44.2.8 EDUCATIONAL REQUIREMENTS:**

**A.** Qualifications for registration as a landscape architect. A person desiring to become registered as a landscape architect shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant:

(1) has graduated from an accredited program in landscape architecture at a school, college or university and has a minimum of two years of practical experience after graduation and acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect; or

(2) has graduated from a non-accredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of four years of practical experience after graduation and acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect; or

(3) has graduated from a program in a field related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of five years of practical experience after graduation and acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect; or

(4) has a minimum of ten years of practical experience in landscape architectural work that is acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect, provided that:

(a)

each satisfactorily completed year of study in an accredited program of landscape architecture may be accepted in lieu of one year of practical experience required under this subsection; or

(b)

a baccalaureate degree from a school, college or university may be accepted in lieu of two years of practical experience required under this subsection.

**B.** Qualifications for certification as a landscape architect in training. A person desiring to be certified as a landscape architect in training shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant has practical experience in landscape architectural work acceptable to the board and:

(1) has graduated from an accredited program in landscape architecture at a school, college or university; or

(2) has graduated from a non-accredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum; or

(3) has graduated from a program related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum.

[16.44.2.8 NMAC - Rp, 16.44.2.8 NMAC, 9-30-2016]

**16.44.2.9 EXAMINATION:**

**A.** Applicants for registration as a landscape architect shall be required to pass the board's examination for landscape architects.

(1) To qualify for licensure, an applicant must demonstrate professional competence by passing the (L.A.R.E.) or have previously passed the uniform national examination (UNE). An applicant who passes the examination



may be issued a registration to practice as a landscape architect provided the applicant meets all the current requirements for licensure.

(2) The board shall conduct examination of applicants at least once each year.

(3) The passing score on the L.A.R.E. is that score recommended by CLARB. The examination is scored on a pass-fail basis.

(4) An applicant who fails to pass the L.A.R.E. may reapply for the examination if the applicant complies with the rules established by the board in effect at the time of reapplication.

(5) An applicant may sit for the L.A.R.E. before or while completing the practical experience/supervision.

**B.** Applicants for certification as a landscape architect in training shall be required to pass the board's examination for landscape architect in training.

(1) To qualify for certification as a landscape architect in training, an applicant must demonstrate some level of professional competence and demonstrate the applicant's pursuit of a landscape architectural career by passing any two sections of the L.A.R.E.

(2) The board shall conduct examinations of applicants for certification as a landscape architect in training at least once each year.

(3) The passing score on the L.A.R.E. is that score recommended by CLARB. The examination is scored on a pass-fail basis.

(4) An applicant who passes the examination may be issued a certificate as a landscape architect in training allowing the use of the landscape architect in training designation provided the applicant meets all the current requirements for certification.

(5) An applicant who fails to pass the examination may reapply for the examination if the applicant

complies with the rules established by the board in effect at the time of reapplication.

(6)

Certification as a landscape architect in training is limited to five years in duration as established by the board. [16.44.2.9 NMAC - Rp, 16.44.2.9 NMAC, 9-30-2016]

**16.44.2.10 [RESERVED]**

**16.44.2.11 RECIPROCIITY:**

The board may issue a license to practice as a registered landscape architect without an examination to an applicant who holds a current registration or license as a landscape architect issued by another state if the standards of the other state are as stringent or higher than those established by the rules and regulations and if the applicant meets the qualifications required of a registered landscape architect in this state.

[16.44.2.11 NMAC - Rp, 16.44.2.11 NMAC, 9-30-2016]

**HISTORY OF 16.44.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations, 11-27-85; LAB 85-1, Rules and Regulations, 12-02-85; LAB 89-1, Rules and Regulations, 05-05-89; Rule 4, NMBLA, Registration, 07-08-92

**History of Repealed Material:** 16 NMAC 44.2, Registration for Licensure - Repealed 10-05-02 16.44.2 NMAC, Registration for Licensure, filed 9-5-2002 - Repealed effective 9-30-2016.

**REGULATION AND LICENSING DEPARTMENT LANDSCAPE ARCHITECTS BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 44 LANDSCAPE ARCHITECTS PART 3 REGISTRATION FOR LICENSURE OR CERTIFICATION**

**16.44.3.1 ISSUING**

**AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504. [16.44.3.1 NMAC - Rp, 16.44.3.1 NMAC, 9-30-2016]

**16.44.3.2 SCOPE:** The provisions of 16.44.3 NMAC apply to all applicants for licensure or certification.

[16.44.3.2 NMAC - Rp, 16.44.3.2 NMAC, 9-30-2016]

**16.44.3.3 STATUTORY**

**AUTHORITY:** This part is adopted pursuant to Landscape Architects Act, Sections 61-24B-4, 61-24B-8, 61-24B-9 NMSA 1978, Uniform Licensing Act, Section 61-1-34 NMSA 1978 and Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-19 NMSA 1978.

[16.44.3.3 NMAC - Rp, 16.44.3.3 NMAC, 9-30-2016]

**16.44.3.4 DURATION:**

Permanent. [16.44.3.4 NMAC - Rp, 16.44.3.4 NMAC, 9-30-16]

**16.44.3.5 EFFECTIVE**

**DATE:** September 30, 2016, unless a later date is cited at the end of a section.

[16.44.3.5 NMAC - Rp, 16.44.3.5 NMAC, 9-30-2016]

**16.44.3.6 OBJECTIVE:**

This part is to establish the minimum requirements for applicants applying for licensure as a landscape architect or certification as a landscape architect in training.

[16.44.3.6 NMAC - Rp, 16.44.3.6 NMAC, 9-30-2016]

**16.44.3.7 DEFINITIONS:**  
(Refer to Part 1)

**16.44.3.8 REGISTRATION OR CERTIFICATION:**

**A.** Unless currently licensed to practice landscape architecture pursuant to the Landscape Architects Act and these rules, no person shall:

- (1) engage in the practice of landscape architecture; or
- (2) use the title or represent himself or herself as a landscape architect; or
- (3) use any other title, abbreviation, letters, signs or devices that indicate the person is a landscape architect.

**B.** Unless currently certified as a landscape architect in training, no person shall:

- (1) use the title or represent himself or herself as a landscape architect in training; or
- (2) use any other title, abbreviation, letters, signs, or devices that indicate the person is a landscape architect in training.

**C.** Any person who renders or offers to render landscape architecture services while his or her license is expired, suspended or revoked is subject to the board's jurisdiction and may face disciplinary action by the board. Any person who renders or offers to render services as a landscape architect in training while he or she is not a certificate holder is subject to the board's jurisdiction and may face disciplinary action by the board.

**D.** It is a misdemeanor:

- (1) for a person not licensed under the Landscape Architects Act to practice landscape architecture or represent himself or herself as a landscape architect; or
- (2) for any person to practice landscape architecture during the time that his or her license as a landscape architect or as a landscape architect in training is

expired, suspended, or revoked.  
[16.44.3.8 NMAC - Rp, 16.44.3.8 NMAC, 9-30-2016]

**16.44.3.9 APPLICATION AND FEES:**

**A.** Application forms: To apply for licensure as a landscape architect or a certificate as a landscape architect in training, the applicant shall submit a completed application on the form provided by the board. The applicant shall ensure that the application is complete and that all fees are paid.

**B.** A non-refundable application fee is due at the time of application. The amount of this fee shall be as defined in 16.44.8.8 NMAC.

**C.** Compliance: The applicant shall comply with the Landscape Architects Act and the board's rules and regulations.

**D.** Examination: Eligibility and application to sit for the landscape architect registration examination (L.A.R.E) shall be as established by the council of landscape architect registration board (CLARB), as prescribed by 16.44.2.9 NMAC.

[16.44.3.9 NMAC - Rp, 16.44.3.9 NMAC, 9-30-2016]

**16.44.3.10 LANDSCAPE ARCHITECT APPLICANTS NOT PREVIOUSLY LICENSED IN ANY JURISDICTION:**

**A.** Application Procedure: The applicant shall submit the following:

- (1) a completed and signed application;
- (2) the application fee as required by board;
- (3) official educational transcripts sent to the board office directly from the institution's office of the registrar;
- (4) verification of practical experience;
- (5) samples of work: to assist the board in evaluating the applicant's practical experience, the applicant shall submit evidence of his or her experience with the completed application form in one or

both of the following formats:

(a) a minimum of six and a maximum of ten graphic images (formatted to 8 1/2 x 11") of projects or drawings depicting construction, planting, irrigation, or design; or

(b) a maximum two-page summary or abstract that describes relevant experience such as administration, research, planning, or teaching;

(6) letters of reference: An applicant for licensure as a landscape architect shall submit three letters of reference, two of which shall be from individuals who are not members of the board; the letters of reference shall be from individuals who are not related to the applicant and who are familiar with and will speak to the applicant's professional activities;

(7) CLARB council record; and

(8) L.A.R.E. test results.

**B.** The board administrator will notify the applicant once the application file appears to be complete. The board will review the application at the next regular scheduled board meeting. The board administrator will notify the applicant of the board's decision relative to the application.

[16.44.3.10 NMAC - Rp, 16.44.3.10 NMAC, 9-30-2016]

**16.44.3.11 [RESERVED]**

**16.44.3.12 LANDSCAPE ARCHITECT APPLICANTS LICENSED IN ANOTHER JURISDICTION, AND WHO ARE NOT CLARB CERTIFIED:**

**A.** The board may issue a license to practice as a landscape architect without an examination to an applicant who holds a current registration or license as a landscape architect issued by another jurisdiction if the education and experience requirements of the other jurisdiction are as stringent or higher than those established in the board's rules and regulations and if the applicant meets the qualifications

required of a registered landscape architect in this state.

**B.** Application procedure: To open an application file, the applicant shall submit the following:

- (1) a completed and signed application;
- (2) the application fee as required by the board;
- (3) official educational transcripts sent to the board office directly from the institution's office of the registrar;
- (4) verification of practical experience;
- (5) samples of work; practical experience for licensure for an applicant shall begin after graduation from the school, college or university program as described in 16.44.2 NMAC; to assist the board in evaluating the applicants practical experience, the applicant shall submit evidence of his or her experience with the completed application form in in one or both of the following formats:
  - (a) a minimum of six and a maximum of 10 graphic images (formatted to 8 1/2 "x 11") of projects or drawings depicting construction, planting, irrigation, or design; or
  - (b) a maximum two-page summary or abstract that describes relevant experience such as administration, research, planning, or teaching.
- (6) letters of reference: An applicant for licensure as a landscape architect shall submit three letters of reference, two of which shall be from individuals who are not members of the board; the letters of reference shall be from individuals who are not related to the applicant and who are familiar with and will speak to the applicant's professional activities as a landscape architect;
- (7) verification of licensure in another jurisdiction; and
- (8) documentation of the licensing jurisdiction's minimum qualifications

for licensure at the time of licensing (i.e. a copy of the applicable law(s) from the licensing jurisdiction at the time of licensure).

**C.** The board administrator will notify the applicant once the application file appears to be complete. The board will review the application at the next regularly scheduled board meeting. The board administrator will notify the applicant of the board's decision relative to the application.

[16.44.3.12 NMAC - Rp, 16.44.3.12 NMAC, 9-30-2016]

**16.44.3.13 LANDSCAPE ARCHITECT APPLICANTS WHO ARE CLARB CERTIFIED:**

**A.** Initial application procedure. To open an initial application file, the applicant shall submit the following:

- (1) a completed and signed application;
- (2) the application fee as required by the board;
- (3) certification received directly from CLARB.

**B.** Once the application file is complete the board office will notify the applicant. The board administrator has been authorized by the board to then issue a license to the applicant.

[16.44.3.13 NMAC - Rp, 16.44.3.13 NMAC, 9-30-2016]

**16.44.3.14 [RESERVED]**

**16.44.3.15 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Landscape architects currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be granted an emergency license in New Mexico during a four-month period following the declared disaster at no cost upon satisfying the following requirements:

- (1) receipt by the board office of a completed application that has been signed and

notarized and accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) other required verification may be obtained from the council of landscape architectural registration boards through the CLARB council record;

(3) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.44.2 NMAC;

(4) sworn affidavit that the applicant was personally or professionally affected by the disaster.

**B.** The board may waive the application fees only.

**C.** The board may waive the specific forms required under 16.44.3.12 NMAC and 16.44.3.13 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D.** The emergency license shall expire on June 30 following the date of issue. Application for initial license shall be made on or before April 1 following the date of issue of the emergency license.

**E.** The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the initial license. [16.44.3.15 NMAC - Rp, 16.44.3.15 NMAC, 9-30-2016]

**16.44.3.16 TERMINATION OF EMERGENCY LICENSE:**

**A.** The emergency license shall terminate upon the following circumstances:

- (1) the issuance of a license under 16.44.3.10; 16.44.3.12 and 16.44.3.13 NMAC; or
- (2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or attempting to procure a license under

this section.

**B.** Termination of an emergency license shall not preclude application for permanent licensure. [16.44.3.16 NMAC - Rp, 16.44.3.16 NMAC, 9-30-2016]

**16.44.3.17 EXEMPTIONS:**

**A.** The following shall be exempt from the provisions of the Landscape Architects Act as long as they do not hold themselves out to the public as landscape architects or use the term "landscape architect" without being registered pursuant to the Landscape Architects Act, 61-24B NMSA 1978:

(1) landscape architects who are not legal residents of or who have no established place of business in this state who are acting as consulting associates of a landscape architect registered under the provisions of the Landscape Architects Act, 61, 24B NMSA 1978, provided that the nonresident landscape architect meets equivalent registration qualifications in his own state or country;

(2) landscape architects acting solely as officers or employees of the United States; and

(3) a person making plans for a landscape associated with a single-family residence or multi-family residential complex of four units or less except when it is part of a larger complex.

**B.** Nothing in the Landscape Architects Act, 61-24B NMSA 1978 is intended to limit, interfere with or prevent a professional architect, engineer or land surveyor from engaging in landscape architecture within the limits of his or her licensure.

**C.** Nothing in the Landscape Architects Act, 61-24B NMSA 1978 is intended to limit, interfere with or prevent the landscape architects in training, drafters, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the registered landscape architect or to prevent the employment of superintendents

on the construction, enlargement or alterations of landscape improvements or any appurtenances thereto or to prevent such superintendents from acting under the immediate personal supervision of registered landscape architects by whom the plans and specifications of any landscape architectural services were prepared. [16.44.3.17 NMAC - Rp, 16.44.3.17 NMAC, 9-30-16]

**16.44.3.18 EXPEDITED LICENSURE/CERTIFICATION BY RECIPROcity FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION:**

**A.** If a military service member, the spouse of a military service member, or a recent veteran submits an application for license or certification and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the license or certification as soon as practicable. The terms "military service member" and "recent veteran" are defined in the Uniform Licensing Act, 61-1-34 NMSA 1978. Any qualified veteran applicant seeking expedited licensure pursuant to this section shall submit a copy of form DD214, certificate of release or discharge from active duty, with the application.

**B.** A license or certification issued pursuant to this section shall not be renewed automatically, and shall be renewed only if the licensee or certificate holder satisfies all requirements for the issuance and renewal of a license or certificate pursuant to the Landscape Architects Act and the board's rules, including 16.44.4 NMAC. [16.44.3.18 NMAC - N, 9-30-2016]

**16.44.3.19 ELECTRONIC APPLICATIONS:** In accordance with the Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-21 NMSA 1978, the board or its designee will accept electronic application.

**A.** A person seeking licensure as a New Mexico landscape

architect or seeking certification as a New Mexico landscape architect in training may do so by submitting an electronic application. Applicants shall submit all information as required by 16.44.3 NMAC.

**B.** A landscape architect may renew his or her license, and a landscape architect in training may renew his or her certificate, electronically through a designated website provided by the board. A person renewing his or her license or certificate shall submit all documentation as required by 16.44.4 NMAC.

**C.** A landscape architect who is currently on inactive status may submit an electronic applications requesting reactivation of his or her certificate of registration. A person requesting reactivation of his or her certificate of registration shall submit all documentation as required by the Landscape Architects Act, Sections 61-24B-9.1 NMSA 1978 and 16.44.6.9 NMAC.

**D.** A person whose landscape architect license or landscape architect in training certificate has been suspended or revoked, or has expired, may in accordance with the Landscape Architects Act, the board's rules and any lawful board or court order, submit an electronic application seeking reinstatement. Applicants shall submit all information as required by the Landscape Architects Act, 61-24B NMSA and the board's rules. [16.44.3.19 NMAC - N, 9-30-2016]

**HISTORY OF 16.44.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations filed 11-27-85; LAB 85-1, Rules and Regulations filed 12-02-85; LAB 89-1, Rules and Regulations filed 05-05-89; Rule 4 NMBLA, Registration filed 07-08-92.

**History of Repealed Material:** 16 NMAC 44.2, Registration for



Licensure - Repealed 10-05-02  
16.44.3 NMAC, Registration for  
Licensure - filed 09-05-02 - Repealed  
effective 9-30-16.

**REGULATION AND  
LICENSING DEPARTMENT  
LANDSCAPE ARCHITECTS  
BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 44 LANDSCAPE  
ARCHITECTS  
PART 4 LICENSE OR  
CERTIFICATE EXPIRATION  
AND RENEWAL**

**16.44.4.1 ISSUING**

**AGENCY:** New Mexico Board  
of Landscape Architects, P. O. Box  
25101, Santa Fe, NM 87504.  
[16.44.4.1 NMAC - Rp, 16.44.4.1  
NMAC, 9-30-2016]

**16.44.4.2 SCOPE:** The  
provisions of 16.44.4 NMAC apply  
to registered landscape architects  
and certified landscape architects in  
training.  
[16.44.4.2 NMAC - Rp, 16.44.4.2  
NMAC, 9-30-2016]

**16.44.4.3 STATUTORY  
AUTHORITY:** This part is adopted  
pursuant to Landscape Architects  
Act, Sections 61-24B-11, 61-24B-  
15 NMSA 1978 and the Uniform  
Licensing Act, Section 61-1-34  
NMSA 1978.  
[16.44.4.3 NMAC - Rp, 16.44.4.3  
NMAC, 9-30-2016]

**16.44.4.4 DURATION:**  
Permanent.  
[16.44.4.4 NMAC - Rp, 16.44.4.4  
NMAC, 9-30-2016]

**16.44.4.5 EFFECTIVE  
DATE:** September 30, 2016, unless  
a later date is cited at the end of a  
section.  
[16.44.4.5 NMAC - Rp, 16.44.4.5  
NMAC, 9-30-2016]

**16.44.4.6 OBJECTIVE:**

This part establishes the procedures  
for license and certificate expiration  
and renewal.  
[16.44.4.6 NMAC - Rp, 16.44.4.6  
NMAC, 9-30-2016]

**16.44.4.7 DEFINITIONS:**  
(Refer to Part 1)

**16.44.4.8 LICENSE AND  
CERTIFICATE RENEWAL:**

**A.** Each landscape  
architect shall renew his or her license  
to practice landscape architecture in  
New Mexico annually on or before  
June 30 of the year by remitting to  
the board administrator a renewal fee  
with the renewal application form  
provided by the board. Continuing  
education hours shall be documented  
as described in 16.44.5.8. NMAC.

**B.** Each landscape  
architect in training shall renew his  
or her certificate to practice in New  
Mexico annually on or before June 30  
of the year by remitting to the board  
administrator a renewal fee with the  
renewal application form provided by  
the board.

**C.** As provided by  
16.44.3.18 NMAC, a license or  
certificate issued pursuant to the  
expedited licensure of a military  
service member or a spouse of a  
military service member or a recent  
veteran shall not be renewed unless  
the licensee or certificate holder  
satisfies the requirements for the  
issuance and for the renewal of a  
license pursuant to the Landscape  
Architects Act, 61-24B NMSA 1978  
and 16.44.3.8 through 16.44.3.13  
NMAC and 16.44.4.8 through  
16.44.4.13 NMAC.  
[16.44.4.8 NMAC - Rp, 16.44.4.8  
NMAC, 9-30-2016]

**16.44.4.9 LICENSE AND  
CERTIFICATE EXPIRATION  
DATE:** A license or certificate shall  
expire on July 1 unless renewed on or  
before June 30.  
[16.44.4.9 NMAC - N, 8-14-16]

**16.44.4.10 [RESERVED]**

**16.44.4.11 LICENSEE  
AND CERTIFICATE HOLDER  
RESPONSIBILITY:**

**A.** The licensee or  
certificate holder shall inform the  
board office of any changes in his or  
her physical mailing address, email  
address and telephone numbers within  
30 days of the change.

**B.** Timely submittal  
of the complete renewal application  
shall be the sole responsibility of the  
licensee or certificate holder. Failure  
to receive a renewal application  
notice shall not relieve the licensee  
or certificate holder of his or her  
responsibility of renewing on or  
before June 30.

[16.44.4.11 NMAC - Rp, 16.44.4.11  
NMAC, 9-30-2016]

**16.44.4.12 RENEWAL OF  
EXPIRED LICENSE:**

**A.** An individual  
holding an expired license or  
certificate may submit a renewal  
application and shall be required to  
pay all applicable renewal fees and  
late fees as prescribed by 16.44.8  
NMAC.

**B.** Expired licenses  
or certificates that are not renewed  
within 12 months of the expiration  
date shall not be renewed.

**C.** Individuals seeking  
to renew licenses or certificates after  
12 months from the expiration date  
shall be required to apply for a new  
license or certificate.

**D.** An individual with  
an expired license and practicing  
landscape architecture or holding  
oneself out to be a landscape  
architect is in violation of the  
Landscape Architects Act and is  
subject to disciplinary proceedings  
in accordance with the Landscape  
Architects Act and the Uniform  
Licensing Act, Sections 61-1-1 et seq.  
NMSA 1978.

**E.** An individual  
with an expired certificate holding  
oneself out to be a landscape architect  
in training is in violation of the  
Landscape Architect Act and is  
subject to disciplinary proceedings  
in accordance with the Landscape  
Architect Act and of the Uniform  
Licensing Act, Sections 61-1-1 et seq.  
NMSA 1978.

[16.44.4.12 NMAC - Rp, 16.44.4.12



NMAC, 9-30-2016]

**16.44.4.13 APPROVAL OF RENEWAL APPLICATION:**  
 Upon receipt of a complete renewal application, the board authorizes the administrator to issue a license or certificate with an expiration date of June 30, which shall be ratified by the board at their next regularly scheduled meeting.  
 [16.44.4.13 NMAC - Rp, 16.44.4.13 NMAC, 9-30-2016]

**HISTORY OF 16.44.4 NMAC:**  
**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations filed 11-27-85;  
 LAB 85-1, Rules and Regulations filed 12-02-85;  
 LAB 89-1, Rules and Regulations filed 05-05-89;  
 Rule 8 NMBLA, Failure to Renew filed 07-08-92;  
 Rule 9 NMBLA, Continuing Education filed 07-08-92  
**History of Repealed Material:**  
 16 NMAC 44.5, Renewal and Continuing Education - Repealed 10-05-02.  
 16.44.4 NMAC, Registration for Licensure - filed 09-05-02 - Repealed 9-30-2016.

**REGULATION AND LICENSING DEPARTMENT  
 LANDSCAPE ARCHITECTS BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
 CHAPTER 44 LANDSCAPE ARCHITECTS  
 PART 5 CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS**

**16.44.5.1 ISSUING AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.  
 [16.44.5.1 NMAC - Rp, 16.44.5.1 NMAC, 9-30-16]

**16.44.5.2 SCOPE:** The provisions of 16.44.5 NMAC apply to all registered landscape architects who are applying to renew their license.  
 [16.44.5.2 NMAC - Rp, 16.44.5.2 NMAC, 9-30-16]

**16.44.5.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape Architects Act, Sections 61-24B-11, 61-24B-15 NMSA 1978.  
 [16.44.5.3 NMAC - Rp, 16.44.5.3 NMAC, 9-30-16]

**16.44.5.4 DURATION:** Permanent.  
 [16.44.5.4 NMAC - Rp, 16.44.5.4 NMAC, 9-30-16]

**16.44.5.5 EFFECTIVE DATE:** September 30, 2016, unless a later date is cited at the end of a section.  
 [16.44.5.5 NMAC - Rp, 16.44.5.5 NMAC, 9-30-16]

**16.44.5.6 OBJECTIVE:** The objective of 16.44.5 NMAC is to establish criteria for professional continuing education for landscape architects licensed in New Mexico.  
 [16.44.5.6 NMAC - Rp, 16.44.5.6 NMAC, 9-30-16]

**16.44.5.7 DEFINITIONS:** (Refer to Part 1)

**16.44.5.8 PURPOSE OF CONTINUING PROFESSIONAL EDUCATION:**

**A.** The purpose of continuing professional education (CPE) requirements for registered landscape architects is to ensure that the licensees update and advance their skill such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, registered landscape architects are encouraged to fulfill a portion of their (CPE) requirements in the areas of ethics, professional conduct and public health, safety and welfare.

**B.** Timeframe of CPE: The board requires every two years

a minimum of 30 contact hours of CPE to be completed as a condition for renewal of any registration under the Landscape Architects Act. While the license renewal shall be every year, with the CPE reporting every other year. The 30 hours reporting period will begin July 1 of every odd-numbered year. During a biennial reporting period every registrant is required to obtain 30 CPE hours as approved by the board. During a biennial reporting period the licensee shall submit to the board the report itemizing CPE contact hours for the applicable reporting period, every other year. If a registrant exceeds the minimum biennium requirement in any reporting cycle, credits may not be carried forward into the subsequent biennium.

**C. Recordkeeping:** Each registered landscape architect shall maintain:

(1) a log showing the subject and type of activity claimed, the sponsoring organization, location, duration and instructor's or speaker's name;  
 (2) documentation sufficient to prove completion of the activity claimed, such as attendance verification records, completion certificates or other documents;

(3) records for at least four years, and throughout any period when registration is in an inactive status if applicable;

(4) copies of all records that may be requested by the board for audit verification purposes, which shall include:

(a) a list showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and CPE hours earned; and

(b) attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance; these records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

(5) a form

as provided by the board in order to document CPE units.

[16.44.5.8 NMAC - Rp, 16.44.5.8 NMAC, 9-30-16]

**16.44.5.9 PREAPPROVED PROGRAM CATEGORIES:**

**A.** Listed below are pre-approved methods for acquiring CPE hours. Hours must be relevant to the design professions that are recognized as landscape architects, engineers, and architects. The conversion of hours or credit is as follows:

(1) three college semester hours: 30 hours per biennium;

(2) three college quarter hours: 20 hours per biennium;

(3) each continuing education unit: 10 hours per biennium;

(4) professional development in course work, seminars, professional conventions, workshops related to design professions: hour per hour of lecture time per biennium;

(5) teaching credit (valid for teaching a course or seminar for the first time only): 15 hours per biennium;

(6) each published professionally related paper, article, or book: 10 hours per biennium;

(7) each professional presentation when presented at a national, state, regional or municipal program for the first time only: three hours per biennium;

(8) serving on federal, state or municipal boards and commissions as a design professional where one is elected or appointed: one hour per month of service not to exceed 24 hours per biennium;

(9) active participation in professional and technical societies and their committees: four hours per biennium;

(10) committee chair or elected official of a professional technical society: eight hours per biennium;

(11) active

participation in a public board specifically related to the practice of landscape architecture; licensee must not receive a salary and is only paid pursuant to the Per Diem and Mileage Act: eight hours per biennium;

(12) business related courses: 10 hours per biennium;

(13) self-improvement courses: 6 hours per biennium

(14) short subjects for design professionals, i.e. CLARB, NCARB etc.: as established by sponsor.

**B.** Determination of credit: The board has final authority with respect to approval of courses, credit, CPE value for courses, and other methods of earning credit.

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

(2) Credit for seminars, workshops, professional conventions and course/activities may be as recommended by the professional societies.

(3) Educational travel/independent study credit allowed shall not exceed eight hours of occurrence with a maximum of 16 hours per biennium.

**C.** Exemptions: A registered landscape architect may be exempt, upon board review and approval, from CPE requirements in any of the following situations:

(1) the new landscape architect's first renewal period is less than one year from the original date of licensure;

(2) a landscape architect is called to active duty in the armed forces for a period of time exceeding 120 consecutive days in a calendar year; this individual may be exempt from obtaining one-half of the required CPE during the current biennium;

(3) a landscape architect experiences physical disability or illness that prevents the landscape architect from practicing landscape architecture;

the landscape architect shall provide supporting documentation for the board's review and approval; if the landscape architect elects to return to practice, the landscape architect shall complete all CPE hours required during the current biennium.

**D.** Audit: Upon request, each registered landscape architect shall provide proof of satisfying the CPE requirements. If the landscape architect fails to furnish the information to the board or if the information is not sufficient to satisfy the requirements, the licensee shall not be renewed.

**E.** Disallowance: If the board disallows one or more CPE activities claimed, the board may, at its discretion, allow the registered landscape architect up to 120 days after notification to substantiate the original claim or to complete other CPE activities sufficient to meet the minimum requirements.

**F.** Noncompliance: A registrant who does not satisfy the CPE requirement for registration renewal will be placed on probationary status and so notified by the board following the renewal date. The registrant must comply within six months following the renewal date or the registration may be classified as suspended. The contact hours needed to fulfill the prior biennial period requirement shall not be included in the subsequent renewal period. Failure of a registrant to satisfy the CPE requirements for registration renewal may be cause for the board to deny license renewal for the licensee. [16.44.5.9 NMAC - Rp, 16.44.5.9 NMAC, 9-30-16]

**HISTORY OF 16.44.5 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations filed 11-27-85; LAB 85-1, Rules and Regulations filed 12-02-85; LAB 89-1, Rules and Regulations filed 05-05-89; Rule 8 NMBLA, Failure to Renew filed 07-08-92;

Rule 9 NMBLA, Continuing Education filed 07-08-92.  
**History of Repealed Material:**  
 16 NMAC 44.5, Renewal and Continuing Education - Repealed, 10-05-02.  
 16.44.5 NMAC, Renewal and Continuing Education, filed 9-5-2002 - Repealed effective 9-30-16.

**REGULATION AND LICENSING DEPARTMENT**  
**LANDSCAPE ARCHITECTS BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 44 LANDSCAPE ARCHITECTS**  
**PART 6 INACTIVE STATUS AND REINSTATEMENT**

**16.44.6.1 ISSUING**  
**AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.  
 [16.44.6.1 NMAC - Rp, 16.44.6.1 NMAC, 9-30-16]

**16.44.6.2 SCOPE:** The provisions of 16.44.6.6 NMAC apply to all registered landscape architects who plan to place their license on inactive status, or reinstate their inactive license to active status.  
 [16.44.6.2 NMAC - Rp, 16.44.6.2 NMAC, 9-30-16]

**16.44.6.3 STATUTORY AUTHORITY:** This part is adopted pursuant to Landscape Architects Act, Section 61-24B-9.1 NMSA 1978.  
 [16.44.6.3 NMAC - Rp, 16.44.6.3 NMAC, 9-30-16]

**16.44.6.4 DURATION:** Permanent.  
 [16.44.6.4 NMAC - Rp, 16.44.6.4 NMAC, 9-30-16]

**16.44.6.5 EFFECTIVE DATE:** September 30, 2016, unless a later date is cited at the end of a section.  
 [16.44.6.5 NMAC - Rp, 16.44.6.5 NMAC, 9-30-16]

**16.44.6.6 OBJECTIVE:**  
 This part establishes the requirements and procedures to place an active license on inactive status or to reinstate the license to active status.  
 [16.44.6.6 NMAC - Rp, 16.44.6.6 NMAC, 9-30-16]

**16.44.6.7 DEFINITIONS:**  
 (Refer to Part 1)  
 [16.44.6.7 NMAC - Rp, 16.44.6.7 NMAC, 9-30-16]

**16.44.6.8 INACTIVE STATUS:**  
**A.** A current licensee in good standing is eligible to be placed on inactive status. A licensee who failed to renew a license by June 30 of any year shall renew the license in accordance with 16.44.4 NMAC before the licensee can be considered for inactive status.

**B.** A licensee who wishes to be placed on inactive status shall notify the board administrator in writing before his or her current license expires. The administrator will acknowledge receipt of the notification.

**C.** A licensee shall pay the fees established by the board to be placed on inactive status.

**D.** Rendering or offering to render landscape architectural services or engaging in the practice of landscape architecture while on inactive status shall be considered sufficient grounds for disciplinary action by the board.

**E.** An inactive licensee shall comply with the continuing professional education (CPE) requirements (including reporting CPE's) as described in 16.44.5 NMAC.

**F.** An inactive licensee shall not represent himself or herself as a registered landscape architect in public statements that include, but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations.

**G.** A licensee on

inactive status shall at all times comply with the provisions of 16.44.7 NMAC.  
 [16.44.6.8 NMAC - Rp, 16.44.6.8 NMAC, 9-30-16]

**16.44.6.9 REINSTATEMENT FROM INACTIVE STATUS:**

**A.** If the inactive licensee requests reinstatement to active status, he or she shall:

**(1)** notify the board in writing, requesting reinstatement to active status;

**(2)** provide satisfactory proof of completion of the CPE requirements;

**(3)** not have violated any rule of the Landscape Architects Act or the rules and regulations of the board; and

**(4)** pay the appropriate renewal fee established by the board.

**B.** A licensee on inactive status can return to active status any time provided he or she pays the appropriate fees and is current with the CPE requirements of 16.44.5 NMAC.

**C.** A licensee on inactive status shall not render or offer to render landscape architectural services or otherwise engage in the practice of landscape architectural until he or she receives an active license.

**D.** A licensee who does not meet the CPE requirements may not move into active status.

[16.44.6.9 NMAC - Rp 16.44.6.9 NMAC, 9-30-16]

**HISTORY OF 16.44.6 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations, 11-27-85; LAB 85-1, Rules and Regulations, 12-02-85; LAB 89-1, Rules and Regulations, 05-05-89; Rule 4, NMBLA, Registration, 07-08-92

**History of Repealed Material:** 16.44.6 NMAC, Landscape Architects

- Inactive Status and Reinstatement filed 09-05-02 - Repealed effective 09-30-16.

**REGULATION AND  
LICENSING DEPARTMENT  
LANDSCAPE ARCHITECTS  
BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 44 LANDSCAPE  
ARCHITECTS  
PART 7 CODE OF  
PROFESSIONAL CONDUCT**

**16.44.7.1 ISSUING AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.  
[16.44.7.1 NMAC – Rp, 16.44.7.1 NMAC, 9-30-16]

**16.44.7.2 SCOPE:** This part applies to the board, licensees, certificate holders, applicants for licensure or certification, and the general public.  
[16.44.7.2 NMAC – Rp, 16.44.7.2 NMAC, 9-30-16]

**16.44.7.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape Architects Act, Sections 61-24-B1, 61-24-B3, 61-24-B6, 61-24-B7, 61-24-B10 NMSA 1978.  
[16.44.7.3 NMAC – Rp, 16.44.7.3 NMAC, 9-30-16]

**16.44.7.4 DURATION:** Permanent.  
[16.44.7.4 NMAC – Rp, 16.44.7.4 NMAC, 9-30-16]

**16.44.7.5 EFFECTIVE DATE:** September 30, 2016, unless a later date is cited at the end of a section.  
[16.44.7.5 NMAC – Rp, 16.44.7.5 NMAC, 9-30-16]

**16.44.7.6 OBJECTIVE:** This part establishes the standards against which the required professional conduct of a registered

landscape architect or a landscape architect in training is measured. Each licensee, certificate holder and applicant will be governed by this part whenever providing landscape architectural services. A violation of this part is sufficient reason for disciplinary action pursuant to the Landscape Architects Act.  
[16.44.7.6 NMAC – Rp, 16.44.7.6 NMAC, 9-30-16]

**16.44.7.7 DEFINITIONS:**  
(Refer to Part 1)

**16.44.7.8 CODE OF PROFESSIONAL CONDUCT:**

**A.** This code expresses in general terms the level of professional conduct expected of licensees in the state of New Mexico. Such a code is no guarantee of moral actions on the part of the licensees but depends upon the integrity of each registrant or certificate holder to conduct himself or herself in a responsible and straightforward manner both in dealings with clients and other professionals.

**B.** Licensees should be more than a group of individuals offering a service to the public. They should comprise an entity with a bond between licensees based on mutual respect and a dedication to improving the quality of life for all persons.

**C.** The licensee shall:

**(1)** exert every effort towards the preservation and protection of our natural resources and toward understanding the interaction of the economic and social systems with these resources;

**(2)** further the welfare and advancement of the profession by constantly striving to provide the highest level of professional services, avoiding even the appearance of improper professional conduct;

**(3)** serve the client or employer with integrity, understanding, knowledge, and creative ability and respond morally to social, political, economic, and technological influences;

**(4)** make full disclosure to the client or employer

of any financial interest, that even remotely bears upon the services or project;

**(5)** truthfully and clearly inform the client or employer of his or her qualification and capabilities to perform services;

**(6)** not make exaggerated, misleading, deceptive or false statements or claims to the public about his or her professional qualifications, experience or performance;

**(7)** regard as confidential any information obtained by him or her as to the business affairs and technical methods or processes of a client or employer;

**(8)** not give, lend, or promise anything of value to any public official in order to influence or attempt to influence the official's judgment or action in the letting of contracts;

**(9)** refrain from lending his or her name or stamp/seal for plans or other documents for the preparation of which he or she was not directly responsible;

**(10)** refrain from using the advantages of a salaried position to influence the letting of contracts;

**(11)** not knowingly make false statements about the professional work of others; and

**(12)** refrain from engaging in any discriminatory practices prohibited by law in the employment of his or her professional and non-professional personnel and in the conduct of his or her business.

[16.44.7.8 NMAC – Rp, 16 44.7.8 NMAC, 9-30-16]

**HISTORY OF 16.44.7 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations, 11-27-85; LAB 85-1, Rules and Regulations, 12-02-85; LAB 89-1, Rules and Regulations, 05-05-89; Rule 4, NMBLA, Registration, 07-



08-92

**History of Repealed Material:**

16 NMAC 44.7, Code of Professional Conduct - Repealed 10-05-02  
 16.44.7 NMAC, Code of Professional Conduct filed 9-5-2002 - Repealed effective 09-30-16.

**REGULATION AND LICENSING DEPARTMENT  
 LANDSCAPE ARCHITECTS BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
 CHAPTER 44 LANDSCAPE ARCHITECTS  
 PART 8 FEES**

**16.44.8.1 ISSUING**

**AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.  
 [16.44.8.1 NMAC – Rp, 16.44.8.1 NMAC, 9-30-16]

**16.44.8.2 SCOPE:** The provisions of 16.44.8 NMAC apply to all applicants for, registration or certification, annual renewal for licensees and anyone who requests a mailing list of licensees or copies of public records.  
 [16.44.8.2 NMAC – Rp, 16.44.8.2 NMAC, 9-30-16]

**16.44.8.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape Architects Act, Section 61-24B11 NMSA 1978.  
 [16.44.8.3 NMAC – Rp, 16.44.8.3 NMAC, 9-30-16]

**16.44.8.4 DURATION:** Permanent.  
 [16.44.8.4 NMAC – Rp, 16.44.8.4 NMAC, 9-30-16]

**16.44.8.5 EFFECTIVE DATE:** September 30, 2016, unless a later date is cited at the end of a section.  
 [16.44.8.5 NMAC – Rp, 16.44.8.5 NMAC, 9-30-16]

**16.44.8.6 OBJECTIVE:** The objective of 16.44.8 NMAC is

to establish fees to generate revenue adequate to fund the cost of program administration.  
 [16.44.8.6 NMAC – Rp, 16.44.8.6 NMAC, 9-30-16]

**16.44.8.7 DEFINITIONS:**  
 (Refer to Part 1)

**16.44.8.8 FEES:**

**A.** The following is a schedule of fees to be paid by applicant or licensee. All fees are non-refundable:

- (1) Application for licensure \$ 75.00
- (2) Initial registration for landscape architects \$200.00
- (3) Initial certification for landscape architects in training \$150.00
- (4) Annual renewal for landscape architects \$200.00
- (5) Annual renewal for landscape architects in training \$150.00
- (6) Duplicate of original certificate \$35.00
- (7) Replacement certificate, new name \$35.00
- (8) Mailing list \$100.00
- (9) Mailing labels \$125.00
- (10) Verification of registration or certification \$10.00
- (11) Score verification by CLARB as required
- (12) L.A.R.E. as required by CLARB
- (13) Inactive status fee \$ 100.00
- (14) Reactivation of licensure from inactive status \$ 200.00
- (15) Copying

cost per 8 1/2" x 11" page  
 \$ .30

**(16)**

Reinstatement of suspended license:  
 Current renewal fees and late fees as assessed

**B. Late fees:**

- (1) If the renewal application is not received or postmarked by June 30, a late fee of \$100.00 is assessed. If the renewal application is not received or postmarked by August 31, an additional late fee of \$100.00 for a total of \$200.00 is assessed.
- (2) A late fee will be assessed if the renewal fee, renewal form, and, when applicable, complete continuing professional education (CPE) requirements are not received by the board administrator or post marked by June 30.
- (3) If a registrant is approved under an exemption as described in Paragraph (2) and (3) of Subsection C of 16.44.5.9 NMAC, a late fee will not be assessed.  
 [16.44.8.8 NMAC - Rp, 16.44.4.8 NMAC, 9-30-16]

**HISTORY OF 16.44.8 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations filed 11-27-85; LAB 85-1, Rules and Regulations filed 12-02-85; LAB 89-1, Rules and Regulations filed 05-05-89; Rule 7 NMBLA, Fees filed 07-08-92.  
**History of Repealed Material:** 16 NMAC 44.4, Fees - Repealed 10-09-02  
 16.44.8 NMAC, Fees filed 9-5-2002 - Repealed effective 9-30-16.

**REGULATION AND LICENSING DEPARTMENT  
 LANDSCAPE ARCHITECTS BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**



**CHAPTER 44 LANDSCAPE ARCHITECTS**  
**PART 9 COMPLAINTS**

**16.44.9.1 ISSUING**

**AGENCY:** New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.  
 [16.44.9.1 NMAC – Rp, 16.44.9.1 NMAC, 9-30-16]

**16.44.9.2 SCOPE:** The provisions of 16.44.9 NMAC apply to all licensees and applicants for such registration or certification licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensee of this board.  
 [16.44.9.2 NMAC – Rp, 16.44.9.2 NMAC, 9-30-16]

**16.44.9.3 STATUTORY AUTHORITY:** This part is adopted pursuant to Landscape and Architects Act, Sections 61-24B12, and Section 61-24B16 NMSA 1978.  
 [16.44.9.3 NMAC – Rp, 16.44.9.3 NMAC, 9-30-16]

**16.44.9.4 DURATION:** Permanent.  
 [16.44.9.4 NMAC – Rp, 16.44.9.4 NMAC, 9-30-16]

**16.44.9.5 EFFECTIVE DATE:** September 30, 2016, unless a later date is cited at the end of a section.  
 [16.44.9.5 NMAC - Rp 16.44.9.5 NMAC, 9-30-16]

**16.44.9.6 OBJECTIVE:** The objective of 16.44.9 NMAC is to establish the procedures for filing complaints against a licensee, the authority of the board regarding grounds for denial, suspension, or revocation of a license.  
 [16.44.9.6 NMAC – Rp, 16.44.9.6 NMAC, 9-30-16]

**16.44.9.7 DEFINITIONS:** (Refer to Part 1)

**16.44.9.8 COMPLAINT PROCEDURES:**

**A.** Inquiries regarding

filing of complaints.

**(1)** Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

**(2)** Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board’s jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints shall be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based.

**B.** Procedures for processing complaints. The board administrator shall:

- (1)** log in the date of receipt of the complaint;
- (2)** determine that the subject of the complaint is a registered landscape architect, a certified landscape architect in training or an applicant or person otherwise within the jurisdiction of the board;
- (3)** assign a complaint number and set up an individual file; complaint numbering shall begin in January of each year;
- (4)** forward the complaint to the chair of the complaint committee and the complaint manager or a designee;
- (5)** send a letter to the complainant confirming receipt of the complaint.

**C.** Review by the complaint committee.

**(1)** The chairperson of the board shall appoint a board member to chair the complaint committee. The complaint committee shall consist of at least one member of the board.

**(2)** The complaint manager, if assigned, or designee will review the complaint and meet with the administrative prosecutor and complaint committee chair as needed.

**(3)** If the

allegations in the complaint would, if substantiated, constitute grounds for disciplinary action, the complaint committee will recommend a course of action regarding investigation of the complaint.

**(4)** The complaint committee shall oversee the investigation of the complaint. A case summary including the alleged violations of the code of conduct or other parts of the regulations or act will be presented to the full board along with recommendation(s) for disposition of the complaint. The identity of the licensee or applicant and the complainant will not be disclosed to the full board by the complaint committee.

**(5)** Unless the complaint committee determines that it will impede an investigation or interfere with the acquisition of documents or relevant papers or the development of the case, the complaint committee shall inform the licensee or applicant of the complaint and request a response to the allegations. Disclosure of data, communications, and information relating to actual or potential disciplinary action shall be made in accordance with Section 61-1-11 NMSA 1978 or superseding statute.

**(6)** The complaint committee may employ experts, consultants, or private investigators to assist in investigations of complaints.

**(7)** The complaint committee, on behalf of the board, may issue investigative subpoenas, pursuant to Subsection A of Section 61-1-4 NMSA 1978.

**D.** Review by the full board.

**(1)** Any board member or any member of the complaint committee who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances shall not participate in the decision whether to issue a notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.

**(2)**

The board shall review the case summary presented by the complaint committee, relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence that a violation may have occurred, the board shall forward the evidence to the administrative prosecutor for issuance of a notice of contemplated action.

**(3)**

Following the issuance of a notice of contemplated action, the board may at its option authorize a board member, the hearing officer, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement must be approved by the board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee of his or her rights to hearing under the Uniform Licensing Act.

**(4)** The board may refer a complaint to the attorney general for injunctive proceedings or to the district attorney for criminal prosecution.

[16.44.9.8 NMAC – Rp, 16.44.9.8 NMAC, 9-30-16]

**16.44.9.9 ADJUDICATORY PROCEEDINGS:**

**A.** General provisions and pre-hearing and preliminary matters.

**(1)** All hearings shall be conducted either by the board or, at the election of the board, by a hearing officer.

**(2)** If the board appoints a hearing officer, the hearing officer shall have authority to decide pre-hearing matters, preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case.

Except as otherwise limited in this part, the hearing officer shall have the authority to rule on all non-dispositive motions. If the board

does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case, including, without limitation:

**(a)** unopposed or stipulated motions to change venue;

**(b)** motions for continuance of a hearing date; a motion to vacate the hearing must contain a statement that the licensee or applicant waives his or her right to a hearing held not more than 60 days from the date of service of the notice of hearing;

**(c)** the granting of one notice of peremptory excusal to each party if the notice is timely and if the peremptory excusal does not result in a loss of a quorum of the board; and

**(d)** motions regarding discovery.

**(3)** The original of any papers and pleadings shall be filed with the board. Copies shall be sent to the hearing officer and attorneys or parties of record.

**(4)** The hearing officer or designated board member shall issue appropriate orders to control the course of the proceedings.

**(5)** Consistent with provisions of the Uniform Licensing Act and to the extent practicable, the rules of civil procedure for the district courts shall apply unless the hearing officer or designated board member orders otherwise.

**(6)** A request for an order shall be made by motion filed with the board. Except for motions made during the course of the hearing, a motion shall be in writing. A motion shall state with particularity the grounds for the motion and shall set forth the relief

and order sought.

**(7)** A motion shall be accompanied by a memorandum brief in support of the motion. The brief shall state with particularity the grounds for the motion and shall contain citation to authorities, statutes, and references to the pleadings on file. If matters outside of the pleadings are considered, a copy of the referenced material shall be attached to the brief.

**(8)** The hearing officer or the designated board member may order the filing of briefs or other documents and may set oral argument on any matter.

**(9)** No more than two continuances of the hearing date will be granted without the approval of the board for good cause shown.

**(10)** All dispositive motions shall be decided by the board.

**(11)** No proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall be effective unless approved by the board and executed by the board and the licensee or applicant. The board or hearing officer may seek information from the administrative prosecutor and the licensee or applicant concerning circumstances of the case relevant to a consideration of the proposed settlement or clarification of the proposed terms and conditions. No board member is presumed to be biased and shall not be excused based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case. The board may submit a counterproposal for the settlement or resolution of the case.

**(12)** Any proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall contain at least the following:

**(a)** an

admission of all jurisdictional facts; an acknowledgment of the rights contained in the Uniform Licensing Act and an express waiver of those rights and of all rights to hearing and judicial review or any other opportunity to contest the validity of the board order in any other proceeding or forum;

(b)

a provision that the proposal resolves only the violations alleged in the specific notice of contemplated action and a statement that the board reserves the right to initiate other proceedings for any other violations of the act or board regulations;

(c)

a description of the facts underlying each alleged violation;

(d)

if appropriate, a list of the acts or practices from which the licensee or applicant will refrain in the future;

(e)

a statement of the type, terms, and conditions of the proposed disciplinary action of the board;

(f)

a statement that the licensee will be responsible for all costs of disciplinary proceedings or a statement setting forth the reason why the licensee should be excused from paying costs; the affidavit of the board administrator concerning the costs incurred to date shall accompany the proposal;

(g) a

statement that the decision and order of the board shall be a public record and shall be reported as required by law; and

(h)

other provisions necessary to ensure the complete and final resolution of the proceedings.

(13) A proposal

to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or presiding officer upon the filing of a timely motion.

**B. Duties of the board administrator.** The board administrator shall:

(1) after

consultation with the board or hearing

officer, issue a notice of hearing stating the date, time, and place of the hearing;

(2) execute on

behalf of the hearing officer or board notices, scheduling orders, subpoenas, and subpoenas duces tecum, and other routine procedural documents that facilitate the efficient conduct of adjudicatory proceedings;

(3) maintain

the official record of all papers and pleadings filed with the board in any matter;

(4) prepare an

affidavit as to costs of any disciplinary proceeding at the conclusion of any hearing or upon request by a party submitting a proposed settlement, consent agreement, or voluntary surrender of a license in lieu of prosecution;

(5) prepare,

certify, and file with the district court the record of the case on appeal or review;

(6) unless

the board orders otherwise, have the authority to sign the decision of the board to grant or refuse a request to reopen the case.

**C. Conduct of**

hearings.

(1) The

hearing officer, or presiding officer if the case is heard by the board, shall ensure the fair, efficient, and orderly conduct of the hearing in accordance with the Uniform Licensing Act.

(2) Unless

the board orders otherwise, a board member hearing officer, the board chair, or presiding officer shall have the authority to sign the written decision of the board.

(3) The board

administrator shall serve the decision of the board on the licensee or applicant in accordance with law.

(4) A motion

for an order staying the operation of a board decision shall be decided by the board.

[16.44.9.9 NMAC – Rp, 16.44.9.9 NMAC, 9-30-16]

**16.44.9.10 SURRENDER OF LICENSE:**

**A.** If a license is suspended or revoked by the board for any reason specified in the rules and regulations of the board or in the act, the licensee shall immediately surrender his or her license in person or by registered mail to the board.

**B.** If the licensee’s scope of practice is restricted or limited or otherwise subject to conditions, the license may reflect the restriction, limitations, or condition. [16.44.9.10 NMAC – Rp, 16.44.9.10 NMAC, 09-30-16]

**HISTORY OF 16.44.9 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: LAB 85-1, Rules and Regulations filed 11-27-85; LAB 85-1, Rules and Regulations filed 12-02-85; LAB 89-1, Rules and Regulations filed 05-05-89; Rule 5 NMBLA, Complaints filed 07-08-92; Rule 6, NMBLA, Denial, Suspension, Revocation filed 07-08-92.

**History of Repealed Material:**

16 NMAC 44.3, Complaints - Repealed 10-05-02. 16.44.9 NMAC, Complaints, filed 9-5-2002 - Repealed effective 9-30-16.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 10 HEALTH  
INSURANCE  
PART 28 PROVIDER  
PAYMENT AND PROVIDER  
CREDENTIALING  
REQUIREMENTS**

**13.10.28.1 ISSUING**

**AGENCY:** Office of Superintendent of Insurance (OSI), Life and Health (L&H)

[13.10.28.1 NMAC - N, 01/01/17]

**13.10.28.2 SCOPE:**

**A.** Applicability. This

rule applies to all health carriers, including health maintenance organizations, individual health plans, group and blanket plans, provider service networks, non-profit healthcare plans and third-party payers or their agents that provide, offer or administer health benefit plans, including health benefit plans and managed health care plans subject to the insurance laws and regulations of this state. This rule also applies to all health care providers who are licensed to provide health-related services in this state.

**B. Timely Payments.**

This rule addresses the timely payment to providers by health carriers for covered services that have been provided to the carrier's enrollees or covered persons, the credentialing process by which health carriers review and select providers who apply to join carriers' networks, and a dispute resolution process to be utilized by providers and health carriers to resolve differences pertaining to provider credentialing and payment for covered services.

**C. Exclusions.** This rule does not impose any requirement on health carriers as to which providers must be accepted into health carriers' networks, specify terms of contracts established between health carriers and providers, establish standard reimbursement rates for payment by health carriers to in- or out-of-network providers for services, or interpret terms of any contract established between a health carrier and its enrollees or covered persons. [13.10.28.2 NMAC - N, 01/01/17]

**13.10.28.3 STATUTORY AUTHORITY:** Sections 59A-16-20; 59A-16-21.1, 59A-22-54, 59A-23-14, 59A-46-54, and 59A-47-48 NMSA 1978. [13.10.28.3 NMAC - N, 01/01/17]

**13.10.28.4 DURATION:** Permanent. [13.10.28.4 NMAC - N, 01/01/17]

**13.10.28.5 EFFECTIVE DATE:** January 1, 2017, unless a later date is cited at the end of a

section. [13.10.28.5 NMAC - N, 01/01/17]

**13.10.28.6 OBJECTIVE:** The purpose of this rule is to establish a uniform and efficient provider credentialing process and to ensure that providers receive prompt payment from health carriers for clean claims and interest on unpaid claims. This rule also establishes a process for resolving payment-related credentialing disputes between health carriers and providers. [13.10.28.6 NMAC - N, 01/01/17]

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

**A. "Business day"** means a consecutive 24-hour period, excluding weekends or holidays.

**B. "Claim"** means a request from a provider for payment for health care services.

**C. "Clean claim"** means a manually or electronically submitted claim from an eligible provider that: **(1)** contains substantially all the required data elements necessary for accurate adjudication without the need for additional information from outside of the health carrier's system;

**(2)** is not materially deficient or improper, including lacking substantiating documentation currently required by the health carrier; and

**(3)** has no particular or unusual circumstances requiring special treatment – such as, but not limited to, coordination of benefits, pre-existing conditions, subrogation, or suspected fraud – that prevents payment from being made by the health carrier within 30 days of the date of receipt if submitted electronically or 45 days if submitted manually.

**D. "Completed credentialing application"** means a credentialing application that is free of defects and contains all of the information that, when later supplemented by verifications and documentation gathered by the health carrier during the primary source

verification process, is necessary for the health carrier to make a credentialing decision.

**E. "Covered benefits"** means the specific health services provided under a health benefits plan.

**F. "Credentialing"** means the process of obtaining and verifying information about a provider and evaluating that provider when that provider applies to become a participating provider within a health carrier's network.

**G. "Credentialing application"** means the application form to be used for the credentialing of providers.

**H. "Credentialing intermediary"** means a person to whom a health carrier has delegated credentialing or re-credentialing authority and responsibility.

**I. "Date of receipt"** means the date on which a claim or credentialing application is deemed received, as follows:

**(1)** for claims and credentialing applications submitted electronically or sent via fax and unless the sender is notified immediately of a transmission error, the date of receipt is the date on which a claim or credentialing application is submitted or, for claims that arrive on a non-business day, the date of the first business day thereafter;

**(2)** for claims and credentialing applications that are hand delivered, the date of receipt is the date of delivery; or

**(3)** for claims and credentialing applications submitted through the US mail, the health carrier may select and shall consistently administer one of the following options:

**(a)** the first business day following the date of actual receipt by a person or organization that has been designated by the health carrier to manage incoming mail;

**(b)** if no person or organization has been designated to manage incoming mail, then the first business day following the date of actual receipt by the health carrier; or



(c) three business days after the postmark on the claim or application that is submitted through the US mail.

**J. “Day”** means a calendar day, including weekends, holidays, and any other non-business days.

**K. “Electronic claim submission”** means a request for payment that is submitted by a provider to a health carrier via an electronic portal or using another on-line form or submission process that complies with state and federal patient privacy protection requirements and links or transmits directly to the health carrier.

**L. “Enrollee or covered person”** means an individual who is entitled to receive health care benefits provided by a health carrier for covered health-related services, subject to out-of-network costs, deductibles, co-payments, co-insurance deductibles or other cost-sharing provisions provided by the health benefits plan.

**M. “Health benefits plan”** means a policy, contract, certificate or agreement entered into, offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

**N. “Health care professional”** means an individual engaged in the delivery of health care services that is licensed or authorized to practice in this state.

**O. “Health care services”** means services, supplies, and procedures for the diagnosis, prevention, treatments, cure or relief of a health condition, illness, injury, or disease, and includes, to the extent offered by the health benefits plan, physical and mental health services, including community-based mental health services, and services for developmental disability or developmental delay.

**P. “Health insurer or health carrier”** means an entity subject to the insurance laws and regulations of this state, including a health insurance company, a health carrier, a health maintenance

organization, a hospital and health service corporation, a provider service network, a non-profit health care plan, a third-party, or any other entity that contracts or offers to contract, or enters into agreements to provide, deliver, arrange for, pay for or reimburse any costs of health care services, or that provides, offers or administers health benefit policies and managed health care plans in this state.

**Q. “Manual claim submission”** means a request for payment that is submitted by a provider to a health carrier via US mail, fax, e-mail, or hand delivery.

**R. “Network”** means the group(s) of participating providers who provide services under a network plan or managed health care plan.

**S. “Network plan”** means a health benefits plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with or employed by the health carrier.

**T. “Participating provider”** means a provider, health care professional, or facility who under express contract with a health carrier or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment directly or indirectly from the health carrier, subject to co-payments, co-insurance deductibles, or other cost-sharing provisions.

**U. “Provider”** means a physician, hospital or other health care professional licensed or otherwise authorized to furnish health care services in this state.

**V. “Practice group”** means an incorporation or other legal collaboration of providers who work together sharing responsibility for providing care, liability and resources.

**W. “Provisional acceptance”** means a provider that is treated by a health carrier as a participating provider for a period of up to one-year, based on the results of credentialing.

**X. “Standard**

**reimbursement rate”** means the usual, customary and reasonable reimbursement rate paid to providers for health care services that is at or near the median rate paid for similar health care services within the surrounding geographic area where the charges were incurred.

**Y. “Superintendent”** means the superintendent of insurance, acting on behalf of the office of the superintendent, or anyone acting in an official capacity on the superintendent’s behalf.

**Z. “Uniform credentialing forms”** means the version current at the time of the application or re-application process of forms used by the hospital services corporation (HSC), the counsel for affordable quality healthcare datasource (CAQH), or another form as approved by the superintendent provided that the form is used only for the credentialing of facility and ancillary providers, or other credentialing forms as specified by a bulletin posted on the OSI website, including any revisions thereto and as developed and updated from time to time and including electronic versions of such forms.

**AA. “Verification or verification supporting statement”** means documentation confirming the information submitted by an applicant for credentialing by a specifically named entity or by a regional, national, or general data depository providing primary source verification, including but not limited to a college, university, medical school, teaching hospital, specialty certification board, health care facility or institution, state licensing board, federal agency or department, professional liability insurer, or the national practitioner data bank.

[13.10.28.7 NMAC - N, 01/01/17]

### **13.10.28.8 CLAIM SUBMISSION AND CODING CHANGES:**

#### **A. General.**

**(1)** Health carriers shall comply with both the provisions of this section and with the provisions of 13.10.12 NMAC, which



provides for standardization of health claim forms.

(2) Claims information, including claim status information shall be subject to state and federal patient privacy protection laws.

(3) A health carrier that has entered into a contract with one or more intermediaries to conduct provider credentialing or provide payments to providers shall require the intermediary to indicate the name of the intermediary and the name of the health carrier for which it is conducting the work when contacting a provider on behalf of the health carrier.

**B. Electronic submission.**

(1) Health carriers shall make available to participating providers a process and procedure for submitting claims electronically.

(2) Health carriers shall make available to participating providers a process and procedure for electronically making coding changes for claims after submission.

(3) Claims that are transmitted electronically are deemed to be received by the health carrier on the date of receipt unless the provider receives immediate notice of a transmission error.

(4) When a claim is submitted electronically and the health carrier subsequently determines that there is an error or omission with the submission that will delay or prevent payment to the participating provider, the health carrier shall make a good faith effort to notify the participating provider by fax, electronic, or other written communication within 30 days following the date of receipt.

(5) Any notification from a health carrier to a provider that there is an error or omission in a claim submission must contain a specific statement regarding all information sought to rectify the error or omission. The carrier shall make a good faith effort to convey all of the errors or omissions to

the provider at one time. A pattern of repetitive requests for the same information from a health carrier to a provider is a violation of Article 16 of the Insurance Code, as defined at §59A-16-20.

**C. Manual submission.**

(1) Health carriers shall make standard forms available to providers for submitting claims manually via US mail, fax, e-mail, or hand delivery.

(2) Health carriers shall make standard forms available to providers for manual coding changes to be submitted via US mail, fax, e-mail, or hand delivery.

(3) Claims that are submitted via US mail are deemed to be received by the health carrier on the date of receipt. Claims that are transmitted via fax, E-mail or hand delivery are deemed to be received by the health carrier on the date of receipt unless the provider receives immediate notice of a transmission error.

(4) When a claim is submitted manually and the health carrier subsequently determines that there is an error or omission with the submission that will delay or prevent payment to the provider, the health carrier shall make a good faith effort to notify the participating provider in writing within 45 days following the date of receipt.

(5) Any notification from a health carrier to a provider that there is an error or omission in a claim submission must contain a specific statement regarding all information sought to rectify the error or omission. The carrier shall make a good faith effort to convey all of the errors or omissions to the provider at one time. A pattern of repetitive requests for the same information from a health carrier to a provider is violation of Article 16 of the Insurance Code, as defined at §59A-16-20.

**D. Access to Claims Status Information.**

(1) Health carriers shall provide an electronic means whereby participating

providers can access claim information within three business days of the date of receipt for electronic claims and within 10 business days of the date of receipt for manual claims.

(2) The information that is available to the provider shall indicate the status of the request for payment, including, but not limited to the following:

(a) date of receipt;

(b) identifying claim information, which may include enrollee/covered persons identifiers, date(s) of service, and appropriate coding, as required by the health carrier and agreed to by the provider;

(c) whether the claim is pending or if it has been accepted or rejected for payment;

(d) if the claim is pending, whether the health carrier has requested additional information from the provider to complete processing of the claim;

(e) if the claim has been accepted, the payment amount that has been approved; and

(f) a clear explanation of the circumstances if the claim has been found to involve particular or unusual circumstances that require special treatment and that are likely to delay payment.

[13.10.28.8 NMAC - N, 01/01/17]

**13.10.28.9 PAYMENT OF CLAIMS, OVERDUE CLAIMS AND CALCULATION OF INTEREST:**

**A. Payment of claims - timeliness.**

(1) Claim payment. Health carriers shall promptly pay providers upon receipt of clean claims for uncontested covered health care services that the provider has supplied.

(2) Timeliness. The health carrier shall reimburse the eligible provider within 30 days of the date of receipt if the clean claim has been submitted electronically or

within 45 days of the date of receipt if the clean claim has been submitted manually.

(3) Prompt payment. For purposes of prompt payment, a claim shall be deemed to have been "paid" upon one of the following:

(a) a check is mailed by the health carrier or its intermediary to the provider; or

(b) an electronic transfer of funds is made by the health carrier or its intermediary to the provider.

(4) Reimbursement rate. The health carrier shall make payment to the provider based on the standard reimbursement rate as specified within the contractual agreement, or as otherwise agreed upon between the health carrier and the provider.

(5) Multi-claim payments. A single payment made to a provider can serve as payment for multiple claims, but must clearly identify each claim and the amount of the claim that has been satisfied by the payment. If non-claim payments to a provider are included in a multi-claim payment, the nature of those payments must also be clearly identified.

**B. Interest on unpaid clean claims.** A health carrier shall pay interest as set forth in Subsection D of 13.10.28.9 NMAC on the amount of any clean claim that has not been paid within the time specified in Subsection A of 13.10.28.9 NMAC.

**C. Pending claims.**  
(1) Questionable liability and special treatment claims.

(a) If, upon receipt of a claim, a health carrier is unable to determine liability for, or otherwise refuses to pay a claim or a portion of a claim of an eligible provider within the time specified in Subsection A of 13.10.28.9 NMAC, the health carrier shall make a good faith effort to notify the eligible provider electronically, in writing, or by another method, as agreed between

the health carrier and provider, within 30 days of the date of receipt of the claim if submitted electronically and within 45 days of the date of receipt of the claim if submitted manually.

(b) If, upon receipt of a claim, a health carrier determines that a claim or a portion of a claim requires special treatment due to particular or unusual circumstances that will delay payment beyond the time specified in Subsection A of 13.10.28.9 NMAC, the health carrier shall make a good faith effort to notify the eligible provider electronically, in writing, or by another method, as agreed between the health carrier and provider, within 30 days of the date of receipt of the claim if submitted electronically and within 45 days of the date of receipt of the claim if submitted manually.

(2) Notification of pending claims. The notification required by Subsection C of 13.10.28.9 NMAC, shall:

(a) specify the reason(s) why the health carrier is refusing to pay the claim, has determined it is not liable for the claim, or shall specify what information is required to determine liability for the claim;

(b) clearly indicate if only certain charges associated with a claim are contested; and

(c) shall be repeated by the health carrier at least monthly until the matter is resolved.

(3) Uncontested portion of pending claims. The timely payment requirement described in Section A of 13.10.28.9 NMAC applies to any uncontested portion of a contested claim.

(4) Liability resolved. The date on which liability or special treatment issues are resolved for a pending claim is the date that the claim becomes a clean claim and shall initiate the timely payment requirement described in Subsection A of 13.10.28.9 NMAC.

**D. Overdue payments, calculation of interest.**

(1) When payment is not made by the health carrier to the provider within the time specified in Subsection A of 13.10.28.9 NMAC and there is no question of liability or special treatment as described in Subsection C of 13.10.28.9 NMAC or questions of liability or special treatment have been resolved, interest shall be calculated and paid to the provider, on the unpaid portion of the claim as follows:

(a) For any full or partial month, beginning on the 31st day after the claim has been submitted electronically and on the 46th day for claims submitted manually, the health carrier shall calculate and pay interest in the amount of one and one-half percent for each full or partial month. For purposes of this section, any 30-day period is the equivalent of one month, excepting that a calendar year shall only be equal to 12 months; and

(b) Interest shall be calculated beginning the day after the required payment date and ending on the date the claim is paid. The health carrier shall not be required to pay any interest calculated to be less than two dollars (\$2.00). The interest shall be paid within 30 days of the payment of the claim. Interest can be paid on the same check or electronic transfer as the claim payment or on a separate check or electronic transfer. If the health carrier combines interest payments for more than one late clean claim, the check or electronic transfer shall include information identifying each claim covered by the check or electronic transfer and the specific amount of interest being paid for each claim.

(2) When a claim that involves a question of liability or special treatment is ultimately resolved in favor of the provider and is not paid within 30 or 45 days of becoming an electronic or manual clean claim, respectively, the health carrier shall pay all of the interest due on the unpaid claim, to be calculated as described in Paragraph (1) of Subsection D of 13.10.28.9

NMAC.

[13.10.28.9 NMAC - N, 01/01/17]

**13.10.28.10 GENERAL PROVIDER CREDENTIALING:**

The provisions of this section apply equally to initial credentialing applications and applications for re-credentialing.

**A. Credential verification program.**

(1) In order to ensure accessibility and availability of services, each health carrier shall establish a program in accordance with this regulation that verifies that its participating providers are credentialed before the health carrier accepts a provider into its network and lists a provider in the health carrier's provider directory, handbooks, or other marketing or member materials.

(2) The credential verification program established by each health carrier shall provide for an identifiable person(s) to be responsible for all credential verification activities, which person(s) shall be capable of carrying out that responsibility.

(3) A health carrier is not obligated to approve all applications for credentialing and may deny any application based on existing network adequacy, issues with an application, failure by provider to provide a complete credentialing application, or another reason.

(4) No contract between a health carrier and a participating provider shall include a clause that has the effect of relieving either party of liability for its actions or inactions.

**B. Delegation of credential verification activities.**

(1) Whenever a health carrier delegates credential verification activities to a contracting entity, whether a credentialing intermediary or subcontractor, the health carrier shall review and approve the contracting entity's credential verification program before contracting and shall require that the entity comply with all applicable

requirements of this regulation.

(2) The health carrier shall monitor the contracting entity's credential certification activities.

(3) The health carrier shall implement oversight mechanisms, including:

(a) reviewing the contracting entity's credential verification plans, policies, procedures, forms, and adherence to verification procedures; and

(b) conducting an evaluation of the contracting entity's credential verification program at least every two years.

(4) The health carrier's monitoring activities should at least meet the verification procedures and standards as defined by the national committee for quality assistance (NCQA).

**C. Written credential verification plan.**

(1) Each health carrier shall develop and adopt a written credentialing plan that contains policies and procedures to support the credentialing verification program.

(2) Each health carrier's written credential verification plan shall:

(a) include the purpose, goals, and objectives of the credential verification program;

(b) include written criteria and procedures for initial enrollment, renewal, restrictions, and termination of providers;

(c) be provided to the superintendent upon request;

(d) provide an organized system to manage and protect confidentiality of credentialing files and records; and

(e) require that records and documents relating to provider credentialing be retained for at least six years.

(3) Each health carrier's credentialing verification plan shall include a

process to assess and verify the qualifications of providers applying to become participating providers within 45 calendar days of receipt of a provider's request for credentialing or a provider's completed uniform credentialing form, whichever is earlier. The plan shall allow for the following to take place within this 45 calendar days:

(a) time required to obtain the completed uniform credentialing form in electronic format, if necessary;

(b) time to request and obtain primary source verifications and other information that must be obtained from third parties in order to authenticate the applicant's credentials;

(c) a final decision by a credentialing committee if the health carrier's plan requires such review; and

(d) time to notify the provider of the health carrier's decision.

**D. Reporting requirements.** Each health carrier shall submit a report to the superintendent regarding its credentialing process for the prior two-year period beginning December 31, 2018, and on December 31 for all even numbered years thereafter, or as otherwise directed by the superintendent. The report shall include the following:

(1) the number of applications made to the plan for each type of provider;

(2) the number of applications approved by the plan for each type of provider;

(3) the number of applications rejected by the plan for each type of provider;

(4) the number of providers terminated for reasons of quality; and

(5) the amount of time taken to review and reach a determination on an application.

**E. Use of uniform credentialing forms required:**

(1) Beginning January 1, 2017, a health carrier shall

not use any provider credentialing application form other than uniform credentialing forms, as that term is defined in 13.10.28.7 NMAC.

(2) Should the superintendent determine that these forms no longer represent industry standards; the superintendent will issue a bulletin advising of alternative credentialing forms to be used to satisfy this requirement.

(3) A health carrier or its credentialing or re-credentialing intermediary shall make uniform credentialing application forms available to any health care provider that seeks to be credentialed or re-credentialed by that health carrier or its credentialing intermediary and also accept uniform credentialing applications electronically or through electronic transfer upon the request of any provider.

(4) An exception to Paragraph (1) of Subsection E of 13.10.28.10 NMAC is made for providers who:

(a) are licensed and also practice outside of New Mexico; and

(b) prefer to use the credentialing forms required by their respective states. In such circumstances, the health carrier and its delegated entity, if any, may accept those forms.

**F. Required information.** A health carrier shall not require an applicant to submit information not required by the uniform credentialing or re-credentialing forms other than information or documentation that is reasonably related to information on the application.

**G. Accreditation by nationally recognized accrediting entity.**

(1) Nothing in this section shall require a health carrier to violate or fail to meet a standard or requirement of a nationally recognized accrediting entity.

(2) A health carrier may seek a waiver of these requirements from the superintendent

by submitting accreditation by a nationally recognized entity as evidence of compliance with the requirements of this section.

(3) In those instances where a health carrier seeks to meet the requirements of this section through accreditation by a private accrediting entity, the health carrier shall submit to the superintendent the following information:

(a) current standards of the private accrediting entity in order to demonstrate that the entity's standards meet or exceed the requirements of this rule;

(b) documentation from the private accrediting entity showing that the health carrier has been accredited by the entity; and

(c) a summary of the data and information that was presented to the private accrediting entity by the health carrier and upon which accreditation of the health carrier was based.

(4) A health carrier accredited by the private accrediting entity that has submitted all of the requisite information to the superintendent may then be determined by the superintendent to have met the requirements of the relevant provisions of this section where comparable standards exist, provided that the private accrediting entity from which the health carrier obtained accreditation is recognized and approved by the superintendent. [13.10.28.10 NMAC - N, 01/01/17]

**13.10.28.11 TIMELY CREDENTIALING DECISIONS:**

**A. Initiation of credentialing process.** The credentialing process may be initiated by a provider, who either:

(1) provides a completed uniform credentialing form directly to the health carrier; or

(2) notifies the health carrier that the provider is requesting credentialing by the health carrier, that the provider's completed uniform credentialing form is in

electronic format and is available to the health carrier for access via the credentialing form's website or on-line database, and that the health carrier is requested to obtain the provider's completed uniform credentialing form.

**B. Initial verification upon receipt.**

(1) Upon receiving a provider's request for credentialing or a provider's completed credentialing form, a health carrier or a health carrier's agent shall review the application to verify that the application includes all necessary information and documentation that is reasonably related to the information in the application. The health carrier may initially attempt to obtain additional or missing information by informal means including but not limited to fax, telephone, or e-mail.

(2) A health carrier or a health carrier's agent shall notify the applicant by US certified mail within 10 days of receipt that the request for credentialing has been received, but that if the application is incomplete that the 45-day time period set forth in Subsection C of 13.10.28.11 NMAC shall not commence until the applicant provides all requested information or documentation.

(3) Any request for additional information that has not been met through an informal exchange and remains outstanding at the end of the initial 10-day review period shall also be sent to the provider via the same or separate certified mail within 10 business days of receipt of the application, to include:

(a) a complete and detailed description of all of the information or supporting documentation that is reasonably related to information in the application that the insurer requires to approve or reject the credentialing application; and

(b) the name, address, e-mail, and telephone number of a person who serves as the applicant's point



of contact for completing the credentialing application process; and

(c) notice that if an application remains incomplete and the applicant has been unresponsive to requests for information beyond 45 days, then the health carrier may deny the application for failure to respond and notify the applicant that the application is denied.

**C. Timely decision.**

(1) Within 45 calendar days of the date of receipt of a request for credentialing, the health carrier or the health carrier's agent shall:

(a) assess and verify the qualifications of a provider applying to become a participating provider; and

(b) review the application and determine whether to approve or deny the credentialing application.

(2) The health carrier may:

(a) approve the provider for the health carrier's network for a period of up to three years;

(b) provisionally accept the provider for the health carrier's network for a period of one-year, or the maximum duration up to one-year as allowed by the health carrier's accreditation organization; or

(c) deny the provider for the health carrier's network.

(3) The health carrier's decision must be issued to the provider in writing by US mail at the physical or mailing address listed in the application, and by e-mail if an e-mail address has been provided.

**D. Timing for re-credentialing.**

(1) If the credentialing application is approved, re-credentialing verification may not be required more frequently than every three years.

(2) If the application is approved provisionally, then re-credentialing shall be required

annually or at the conclusion of the shorter period if required by a health carrier's accreditation organization and approved by the superintendent.

(3) Nothing in this section shall be construed to require a health carrier to credential or provisionally credential any provider.

(4) Nothing in this section shall be construed to prevent a health carrier from terminating its participation agreement with a provider for cause at any time; regardless of time remaining before re-credentialing is due.

(5) Except as may otherwise be required by a health carrier's accreditation organization a health carrier may not require a participating provider to be re-credentialed based on:

(a) a change in the provider's federal tax identification number;

(b) a change in the federal tax identification number of a provider's employer; or

(c) a change in the provider's employer, if the new employer:

(i) is a participating provider; or

(ii) also employs other participating providers.

(6) A health carrier may require that a participating provider or the provider's employer give written notice to the health carrier of a change in the provider's or the provider's employer's federal tax identification number not less than 45 calendar days before the effective date of the change.

**E. Accreditation by nationally recognized accrediting entity.**

(1) A health carrier may seek a waiver of these credentialing requirements from the superintendent by submitting accreditation by a nationally recognized entity as evidence of compliance with the requirements of this section.

(2) In those instances where a health carrier

seeks to meet the requirements of this section through accreditation by a private accrediting entity, the health carrier shall submit to the superintendent the following information:

(a) current standards of the private accrediting entity in order to demonstrate that the entity's standards meet or exceed the requirements of this rule;

(b) documentation from the private accrediting entity showing that the health carrier has been accredited by the entity; and

(c) a summary of the data and information that was presented to the private accrediting entity by the health carrier and upon which accreditation of the health carrier was based.

(3) The superintendent will determine whether a health carrier that has been accredited by a private accrediting entity and has submitted all of the requisite information has met the requirements of the relevant provisions of this section where comparable standards exist.

[13.10.28.11 NMAC - N, 01/01/17]

**13.10.28.12 REIMBURSEMENT BY HEALTH CARRIER UPON DELAY IN CREDENTIALING PROCESS:**

**A. Terms for reimbursement.** A health carrier shall reimburse a provider, subject to co-payments, co-insurance, deductibles, or other cost-sharing provisions, for any clean claims for covered services, provided that:

(1) the date of service is more than 45 calendar days after the date the provider requested credentialing from the health carrier and either the provider supplied a completed uniform credentialing application or made the completed uniform credentialing application available for electronic access by the health carrier, including submission of any supporting documentation that the health carrier requested in writing during the initial 10-day review

period;

(2) the health carrier has approved, or has failed to approve or deny the applicant's completed uniform credentialing application within the timeframe established pursuant to Subsection C of 13.10.28.11 NMAC;

(3) the provider has no past or current license sanctions or limitations, as reported by the New Mexico medical board or another pertinent licensing and regulatory agency, or by a similar out-of-state licensing and regulatory entity for a provider licensed in another state; and

(4) the provider has professional liability insurance or is covered under the Medical Malpractice Act.

**B. Sole practitioner.**

A provider who, at the time services were rendered has been approved by a health carrier for credentialing or who has been awaiting a credentialing decision pursuant to Subsection C of 13.10.28.11 NMAC and was not in a practice or group that has contracted with the health carrier to provide services at specified rates of reimbursement, shall be paid by the health carrier in accordance with the carrier's standard reimbursement rate or at an agreed upon rate.

**C. Provider group reimbursement.** A provider who, at the time services were rendered, has been approved by a health carrier for credentialing or who has been awaiting a credentialing decision pursuant to Subsection C of 13.10.28.11 NMAC and was in a provider group that has contracted with the health carrier to provide services at specified rates of reimbursement, shall be paid by the carrier in accordance with the terms of the provider group contract.

**D. Reimbursement period.** A health carrier shall reimburse a provider pursuant to Subsections A, B, and C of 13.10.28.12 NMAC until the earlier of the following occurs:

(1) the health carrier denies the provider's credentialing application;

(2) the health

carrier approves the provider's credentialing application and the provider and health carrier enter a contract to replace a previously agreed upon rate, or

(3) the passage of three years from the date the insurer received the provider's completed uniform credentialing application.

[13.10.28.12 NMAC - N, 01/01/17]

**13.10.28.13 CREDENTIALING AND PAYMENT DISPUTE RESOLUTION:**

**A. Internal review process.**

(1) Each health carrier shall establish an internal process for resolving disputes regarding payment of claims between the health carrier and providers arising when a credentialing decision is delayed beyond the timeline found in Subsection C of 13.10.28.11 NMAC, the prompt payment deadline described in Paragraph (2) of Subsection A of 13.10.28.9 NMAC has passed, and payment has not been made.

(2) The internal process shall include required notification regarding pending claims and calculation and payment of interest on overdue claims, as described in Subsections C and D of 13.10.28.9 NMAC.

(3) The internal process shall provide for resolution of disputes regarding reimbursement rates as described in 13.10.28.12 NMAC.

(4) At a minimum, the internal review process shall provide for the following:

(a) To initiate a payment dispute, the provider shall contact the health carrier in writing to determine the status of a claim, to ensure that sufficient documentation supporting the claim has been provided, and to determine whether the claim is considered by the health carrier to be a clean claim.

(b) The health carrier shall respond in writing to a provider's inquiry

regarding the status of an unpaid claim within 15 days of receiving the inquiry.

(c) The health carrier's response shall explain its failure or refusal to pay, and the expected date of payment if payment is pending.

(5) The internal review process may provide specific procedures for resolving payment disputes, including but not limited to, the use of medication.

**B. Complaint filed with Superintendent.**

(1) If the health carrier fails to respond or the provider believes that payment is being denied, delayed, or calculated in error and the matter has not been successfully resolved at the internal level within 45 days, then the provider may file a complaint, either individually or in batches, with the superintendent using the form found on the OSI website.

(2) Complaints filed with the superintendent shall contain the following information:

(a) the provider's name, identification number, address, daytime telephone number and the claim number;

(b) the date that the provider's request for credentialing was complete;

(c) the name and address of the health carrier;

(d) the name of the patient and employer (if known);

(e) the date(s) of service and the date(s) the claims were submitted to the health carrier;

(f) relevant correspondence between the provider and the health carrier, including requests for additional information from the health carrier;

(g) additional information which the provider believes would be of assistance in the superintendent's review; and

(h) only those excerpts from provider

contracts that are minimally necessary to resolve the dispute shall be submitted to the superintendent, who shall maintain the confidentiality of such excerpts to the fullest extent allowed by applicable law.

(3) The complaining provider shall furnish the health carrier with a complete copy of the complaint and submitted documentation concurrently with the provider's submission to the superintendent.

(4) The health carrier shall be afforded 10 business days after the provider's submission to resolve the matter or to submit additional information that the health carrier believes would be of assistance to the superintendent's review.

(5) The superintendent will review the matter, based on documents and other materials that are submitted by the provider and health carrier for this purpose.

(6) The superintendent may issue an order resolving the dispute, with or without a hearing.

(7) If the superintendent determines, at his sole discretion, that a hearing is necessary, then the provider and the health carrier may appear and may elect to be represented by counsel at the hearing.

(8) The superintendent may designate one or more persons to act as hearing officer. The hearing officer shall prepare a recommendation for the superintendent's review.

(9) The superintendent's decision will be issued within 30 days of receiving a payment complaint if no hearing is required or within 30 days of the hearing, if a hearing is held.

(10) The superintendent may order a health carrier to reimburse a provider at the standard reimbursement rate for covered services provided to the health carrier's enrollees, subject to out-of-network costs, deductibles, co-payments, co-insurance or other cost-sharing provisions due from the

enrollee.

(11) In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the insurance code, the superintendent may find that violators of the regulations set forth in this section are subject to the standard penalties for material violations of the insurance code, in accordance with sections 59A-1-18 and 59A-46-25 NMSA 1978.

(12) The provisions of this subsection do not prevent the superintendent from investigating a complaint when the provider has failed to contact the health carrier.

[13.10.28.13 NMAC - N, 01/01/17]

**13.10.28.14 SEVERABILITY:**

If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected.

[13.10.28.14 NMAC - N, 01/01/17]

**HISTORY OF 13.10.28 NMAC:  
[RESERVED]**

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**END OF ADOPTED  
RULES**

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## Submittal Deadlines and Publication Dates

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Issue 8	April 18	April 30
Issue 9	May 2	May 13
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Issue 19	October 3	October 14
Issue 20	October 17	October 31
Issue 21	November 1	November 15
Issue 22	November 16	November 30
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