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# New Mexico Register

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

**Volume XXVII - Issue 19 - October 14, 2016**

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# New Mexico Register

Volume XXVII, Issue 19

October 14, 2016

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## **The New Mexico Register**

Published by the Commission of Public Records,  
Administrative Law Division  
1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: [staterules@state.nm.us](mailto:staterules@state.nm.us).

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

## Notices of Rulemaking and Proposed Rules

**CULTURAL AFFAIRS,  
DEPARTMENT OF  
MUSEUM OF NATURAL HISTORY  
AND SCIENCE**

NOTICE OF PUBLIC HEARING

The New Mexico Museum of Natural History and Science will hold a public hearing from 1:15 pm to 1:30 pm on November 18, 2016 at the Museum of Natural History and Science, in the Museum Conference Room, on the 2<sup>nd</sup> Floor, at 1801 Mountain Road, NW in Albuquerque.

The board will consider repealing its rule 4.53.2 NMAC, Public Admission Prices filed 12-12-89.

Copies of the draft meeting agenda will be available on the museum's website at [www.NMnaturalhistory.org](http://www.NMnaturalhistory.org) or by calling Dianna Flores at (505) 841-2819.

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 Dianna Flores, at (505) 841-2819 at least one week prior to the meeting or as soon as possible.

**FINANCE AND  
ADMINISTRATION,  
DEPARTMENT OF**

NOTICE OF STATE BOARD OF  
FINANCE RULE

The State Board of Finance is considering amendment of a rule: *Dedication of a Portion of the State's Gross Receipts Tax Increment* (2.61.3 NMAC). Copies of the existing rule and the amendment being considered are available in room 181 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM and on the State Board of Finance website, [http://nmdfa.state.nm.us/Board\\_of\\_Finance.aspx](http://nmdfa.state.nm.us/Board_of_Finance.aspx). The Board

will consider adopting the proposed amendment at its November 15, 2016 meeting, which takes place at 9:00 a. m. in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed amendment to: Leila Kleats, Director, State Board of Finance, 181 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501, by November 13, 2016.

**HEALTH, DEPARTMENT  
OF**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.4.6 NMAC- "Requirements Governing the Harm Reduction/ Syringe Exchange Program". The hearing will be held at 9:00 a.m. on November 9, 2016 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The public hearing will be conducted to receive public comments regarding the proposed repeal and replacement of 7.4.6 NMAC.

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

Please submit any written comments regarding the proposed regulations to the attention of Dominick V. Zurlo at the above address or e-mail prior to the hearing. If you are an individual with a disability who is need of special assistance or accommodations to attend or participate in the hearing, please contact Dominick V. Zurlo

by telephone at 505-827-2507. The Department requests at least ten (10) days' advance notice to provide requested special accommodations.

**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 November 18, 2016 from 1:00 p.m. to 3:00 p.m. The purpose of the public hearing will be to obtain input on the proposed amendment to 6.75.2 NMAC (RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU).

Interested individuals may provide comments at the public hearing and/ or submit written comments to Jamie Gonzales, Policy Division, via email at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), fax (505) 827-6681, or directed to Jamie Gonzales, Policy Division, 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 Jamie Gonzales (505) 827-7889.

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 Jamie Gonzales at (505) 827-7889

as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

## PUBLIC RECORDS, COMMISSION OF

### NOTICE OF REGULAR MEETING AND RULE HEARING

The New Mexico State Commission of Public Records ("Commission") has scheduled a regular meeting and rule hearing for Tuesday, November 15, 2016, at 9:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Carmen Noble at (505) 476-7902 by November 3, 2016. Public documents, including the agenda and minutes, can be provided in various accessible formats.

At the hearing the Commission will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions.

**Interested individuals may submit written comments regarding the proposed rulemaking actions via e-mail at [Carmen.Noble@state.nm.us](mailto:Carmen.Noble@state.nm.us). Written comments must be received no later than 5:00 p.m. on November 1, 2016 for inclusion in the Commission packet.** The submission of written comments as soon as possible is encouraged.

Persons offering written comments at the hearing must have seven (7) copies for the Commission to review.

Copies of the proposed rules are available on the Commission website ([www.nmcpr.state.nm.us](http://www.nmcpr.state.nm.us)) and at the office of the State Records

Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM.

A copy of the agenda for the combined meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting.

#### Amend

- 1.13.2 NMAC Fees
- 1.21.2 NMAC Retention and Disposition of Public Records
- 1.24.15 NMAC New Mexico Register

## TRANSPORTATION, DEPARTMENT OF

### NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on proposed amendments to 18.11.3 NMAC - Air Service Assistance Program and 18.11.9 NMAC - Governing the Approval of Grants. The purpose of the amendments to the rules are to (1) clarify certain provisions of the air service assistance program; (2) clarify the NMDOT Aviation Division's authority to govern and approve grants; and (3) make certain technical updates to the rules to bring them into compliance with current procurement requirements and other standards and regulations.

The hearing is scheduled on November 14, 2016, from 1:00 p.m. to 3:00 p.m. at the New Mexico Department of Transportation, District 3 Auditorium, located at 7500 Pan American Highway, Albuquerque, New Mexico. Please contact Jane Lucero, Airport Development Administrator, Aviation

Division, New Mexico Department of Transportation, P.O. Box 9830, Albuquerque, New Mexico 87119, Telephone (505) 244-1788, Ext. 9111 to request a copy of the rule. This Notice and the proposed rules, as amended, are also available on NMDOT's website: <http://dot.state.nm.us/content/nmdot/en/public-notices.html>.

The hearing will be held before Angela Archibeque, Airport Development Specialist, Aviation Division, NMDOT. Interested persons may also present their views by written statements submitted on or before November 4, 2016, to New Mexico Department of Transportation, Aviation Division, P.O. Box 9830, Albuquerque, New Mexico 87119.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Jane Lucero at (505) 244-1788, Ext. 9111 at least ten (10) days before the hearing.

## TRANSPORTATION, DEPARTMENT OF

### NOTICE OF CANCELLATION OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) had previously scheduled a public hearing for the purpose of receiving oral and written public comment on proposed revisions to 18.31.6 NMAC, State Highway Access Management Requirements. The hearing was scheduled to take place on October 20, 2016, at the New Mexico Department of Transportation, General Office, located at 1120 Cerrillos Road, Santa Fe, New Mexico. This is to provide notice that the hearing has been cancelled and will be rescheduled at a later date. Please contact Rebecca Romero, State Maintenance Division, New Mexico Department of Transportation, P.O.



Box 1149, State Building 4, Santa Fe, New Mexico 87504-1149, Telephone (505) 995-7903 if you have any questions or to request a copy of the proposed rule.

**WORKERS'  
COMPENSATION  
ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Workers' Compensation Administration will conduct a public hearing on the changes to the New Mexico Fee Schedule and Billing Instructions. The hearing will take place on Wednesday, October 19, 2016 at 1:30 p.m. in the Workers' Compensation Administration building located at 2410 Centre Avenue S.E., Albuquerque, NM 87106

Copies of the proposed changes to the fee schedule and billing instructions will be available on October 3, 2016. Written comments on the rule changes will be accepted until the close of business on November 2, 2016.

Copy of the proposed changes may be found at the WCA website at: <http://www.workerscomp.state.nm.us/>.

Comments made in writing and at the public hearing will be taken into consideration. Oral comments may be limited to five (5) minutes per speaker. Comments should be submitted to the WCA Economic Research and Policy Bureau at PO Box 27198, Albuquerque, NM 87125-7198 or to [Richard.Adu-Asamoah@state.nm.us](mailto:Richard.Adu-Asamoah@state.nm.us).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact the General Counsel Office at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Workforce Solutions ("Department") hereby gives notice that the Department will conduct a public hearing in the auditorium of the State Personnel Office located at 2600 Cerrillos Road, Santa Fe, New Mexico on November 21, 2016 from 2:00 P.M. until 4:00 P.M. The purpose of the public hearing will be to obtain input on the adoption of the proposed prevailing wage and fringe benefit rates for public works projects pursuant to 11.1.2.13 NMAC.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Rudolph Arnold. Written comments must be received no later than 5 P.M. on November 21, 2016. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed prevailing wage and fringe benefit rates may be accessed at <http://www.dws.state.nm.us/> or obtained from Rudolph Arnold Tel.: (505) 841-8672 [rudolph.arnold@state.nm.us](mailto:rudolph.arnold@state.nm.us). The proposed prevailing wage and fringe benefit rates will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Mr. Rudolph Arnold as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**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.

#### **ARCHITECTS, BOARD OF EXAMINERS FOR**

Explanatory paragraph: This is an amendment to 16.30.3 NMAC, Section 9, effective 10/14/2016. In 16.30.3.9 NMAC, Subsections A and C thru F were not published as there were no changes.

#### **16.30.3.9 REGISTRATION THROUGH EDUCATION, TRAINING AND EXAMINATION:**

\*\*\*

**B.** Training requirements shall satisfy the NCARB standards of training. The applicant shall provide a NCARB architectural experience program [~~(AXE)~~] (AXP) record number showing enrollment in [~~(AXE)~~] AXP. The education standard shall be in accord with the NCARB guidelines as set forth in the latest edition of the NCARB handbook for interns and architects, the NCARB education standard and [~~(HP)~~] AXP guidelines. Copies of the latest editions of the NCARB handbook for interns and architects, the NCARB education standard and the [~~(HP)~~] AXP guidelines are available from the board office or NCARB.

\*\*\*

[16.30.3.9 NMAC - Rp, 16 NMAC 30.3.9, 9/6/2001; A, 9/16/2004; A, 9/22/2007; A, 9/15/2016; A, 10/14/2016]

#### **GAME AND FISH, DEPARTMENT OF**

On September 16, 2016, the director of the Department of Game and Fish repealed the rule 18.15.2 NMAC,

Off-Highway Motor Vehicle Advisory Board Open Meetings, and replace it with 18.15.2 NMAC, Off-Highway Motor Vehicle Advisory Board Open Meetings, effective October 14, 2016.

On September 16, 2016, the director of the Department of Game and Fish repealed the rule 18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, and replace it with 18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, effective October 14, 2016.

#### **GAME AND FISH, DEPARTMENT OF**

#### **TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 15 OFF-HIGHWAY MOTOR VEHICLE SAFETY PART 2 OFF-HIGHWAY MOTOR VEHICLE ADVISORY BOARD OPEN MEETINGS**

**18.15.2.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.  
[18.15.2.1 NMAC - Rp, 18.15.2.1 NMAC, 10-14-2016]

**18.15.2.2 SCOPE:** Persons interested in and affected by actions of the off-highway motor vehicle advisory board and the department of game and fish.  
[18.15.2.2 NMAC - Rp, 18.15.2.2 NMAC, 10-14-2016]

**18.15.2.3 STATUTORY AUTHORITY:** Sections 10-15-1 to 4 NMSA 1978, (as amended through 2012, "Open Meetings Act") and Section 66-3-1018 NMSA 1978, that provide the New Mexico department of game and fish director with the

authority to establish rules that it may deem necessary to carry out the purpose of Off-Highway Motor Vehicle Act, Sections 66-3-1001 to 21 NMSA 1978 and all other acts pertaining to off-highway motor vehicles. Section 66-3-1017 NMSA 1978 provides that the "off-highway motor vehicle advisory board is created to advise the department on matters related to administration of the Off-Highway Motor Vehicle Act. [18.15.2.3 NMAC - Rp, 18.15.2.3 NMAC, 10-14-2016]

**18.15.2.4 DURATION:** Permanent.  
[18.15.2.4 NMAC - Rp, 18.15.2.4 NMAC, 10-14-2016]

**18.15.2.5 EFFECTIVE DATE:** October 14, 2016, unless a later date is cited at the end of a section.  
[18.15.2.5 NMAC - Rp, 18.15.2.5 NMAC, 10-14-2016]

**18.15.2.6 OBJECTIVE:** To establish rules pursuant to the "Open Meetings Act," determining what constitutes reasonable notice of off-highway motor vehicle advisory board public meetings.  
[18.15.2.6 NMAC - Rp, 18.15.2.6 NMAC, 10-14-2016]

**18.15.2.7 DEFINITIONS:**  
**A. "Department"** shall mean the New Mexico department of game and fish.  
**B. "Board"** means the off-highway motor vehicle advisory board.

**C. "Department's public website"** means: www.wildlife.state.nm.us.

**D. "Emergency meeting"** is a meeting called to address unforeseen circumstances that, if not addressed immediately by

the board, will likely result in injury or damage to persons or property, or substantial financial loss to the trail safety fund or the department.

**E. "Publish"** shall mean to publish via paid legal advertisement in a newspaper of general circulation.

[18.15.2.7 NMAC - Rp, 18.15.2.7 NMAC, 10-14-2016]

**18.15.2.8 OPEN MEETINGS:**

**A. Reasonable notice:** Reasonable notice shall be given, as hereinafter provided, of all meetings of a quorum of the off-highway motor vehicle advisory board held for the purpose of discussing or making recommendations to the director of the department for consideration regarding the Off-Highway Motor Vehicle Act, sections 66-3-1001 to 21 NMSA 1978.

**(1)** Ten day notice for regular meetings: At least 10 days in advance of each regularly scheduled meeting, notice will be posted on the department's public website and social media sites and in addition will be sent to newspapers, radio stations, wire services, and television stations in the state that have provided a written request for the notice of meetings per Section 10-15-1(D) NMSA 1978. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda can be obtained.

**(2)** Three day notice for special meetings: At least three days in advance of each special meeting, notice will be posted on the department's public website and social media sites and given by telephone to newspapers, radio stations, wire services and television stations in the state that have provided a written request for the notice of meetings per Section 10-15-1(D) NMSA 1978. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda can be obtained.

**(3)** Twenty-four hour notice for emergency meetings: Notwithstanding any other

provisions of this rule, the chairman of the off-highway motor vehicle board may call an emergency meeting to consider any unforeseen urgent matter that demands immediate board action. Notice of an emergency meeting shall be posted on the department's public website and social media sites at least 24 hours in advance unless threat of personal injury or property damage requires less notice, and shall be given by telephone to the associated press and, if time permits, via news release faxed or hand delivered to at least one daily newspaper of general circulation in the state.

**(4)**

Telephone participation: Board members may choose to participate in properly noticed meetings of the board by telephone or other similar communications equipment, but only when attendance in person is difficult or impossible. Each board member participating by telephone or other similar equipment must be identified when speaking. All board members must be able to hear each other at the same time and hear any speaker, and members of the public attending the meeting must be able to hear any board member.

**B. Correspondence with interested parties:** Prior to each regularly scheduled meeting, correspondence announcing the date, time, and place of the meeting and information on how a copy of the agenda may be obtained shall be sent to agencies, organizations, groups, or individuals who have requested such notice.

**C. Agenda availability and changes:**

**(1)** Agenda availability: Except for emergency meetings, the agenda for a regular or special meeting will be made available to the public by posting on the department's public website and social media sites and from the office of the director, New Mexico department of game and fish, one wildlife way, Santa Fe, New Mexico 87507 at least 72 hours in advance of each meeting

**(2)** The

proposed agenda for any meeting is subject to change as deemed necessary by the chairman of the off-highway vehicle board. However, such changes may not be made less than 72 hours in advance of any meeting and the final agenda, incorporating any such changes, will be made available to the public at least 72 hours in advance of the meeting from the office of the director.

[18.15.2.8 NMAC - Rp, 18.15.2.8 NMAC, 10-14-2016]

**HISTORY OF 18.15.2 NMAC:**

**History of Repealed Material:** 18.15.2 NMAC, Off-Highway Motor Vehicle Advisory Board Open Meetings, repealed effective 10-14-2016.

**GAME AND FISH, DEPARTMENT OF**

**TITLE 18  
TRANSPORTATION AND HIGHWAYS  
CHAPTER 15 OFF-HIGHWAY MOTOR VEHICLE SAFETY  
PART 3 OFF-HIGHWAY MOTOR VEHICLE SAFETY STANDARDS**

**18.15.3.1 ISSUING AGENCY:** New Mexico Department of Game and Fish. [18.15.3.1 NMAC - Rp, 18.15.3.1 NMAC, 10-14-2016]

**18.15.3.2 SCOPE:** This rule prescribes safety standards, registration, and safety permit requirements for all persons seeking to operate an off-highway motor vehicle and applies to all persons seeking to operate an off-highway motor vehicle safety training organization, or serve as an off-highway motor vehicle instructor, or off-highway motor vehicle tour operator or guide in New Mexico. [18.15.3.2 NMAC - Rp, 18.15.3.2 NMAC, 10-14-2016]

**18.15.3.3 STATUTORY AUTHORITY:** Sections 66-3-1001

through 66-3-1020 NMSA 1978.  
[18.15.3.3 NMAC - Rp, 18.15.3.3  
NMAC, 10-14-2016]

**18.15.3.4 DURATION:**

Permanent.  
[18.15.3.4 NMAC - Rp, 18.15.3.4  
NMAC, 10-14-2016]

**18.15.3.5 EFFECTIVE**

**DATE:** October 14, 2016, unless  
a later date is cited at the end of a  
section.

[18.15.3.5 NMAC - Rp, 18.15.3.5  
NMAC, 10-14-2016]

**18.15.3.6 OBJECTIVE:**

The purpose of this rule is to provide  
minimum and uniform standards  
for the registration, permitting, and  
safe operation of off-highway motor  
vehicles, for the certification of off-  
highway motor vehicle safety training  
organizations and instructors, for the  
conduct of off-highway motor vehicle  
tour operators and guides, and matters  
incident thereto.

[18.15.3.6 NMAC - Rp, 18.15.3.6  
NMAC, 10-14-2016]

**18.15.3.7 DEFINITIONS:**

**A. "ASI"** means the  
ATV safety institute, a division of the  
specialty vehicle institute of America.

**B. "All-terrain  
vehicle (ATV)"** which means a motor  
vehicle 50 inches or less in width,  
having an unladen dry weight of  
1,000 pounds or less, traveling on  
three or more low-pressure tires and  
having a seat designed to be straddled  
by the operator and handlebar-type  
steering control.

**C. "Certificate"**  
means one of the following  
documents issued by the department  
or an organization recognized by the  
department authorizing a person to:

- (1) "Safety  
training permit": operate an off-  
highway motor vehicle if under 18  
years of age or;
- (2) "Instructor  
certificate": serve as an off-highway  
motor vehicle safety training lead  
instructor or junior instructor.

(3) "Registration certificate": operate on

public land an off-highway motor  
vehicle for which registration fees  
have been paid in accordance with  
Chapter 66, Article 3 NMSA 1978.

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

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

**F. "Division"** means  
the motor vehicle division of the  
New Mexico taxation and revenue  
department.

**G. "Enrolled"** means  
the status of a student who has begun  
to participate in a department-certified  
or department-recognized safety  
training course and will continue until  
the course is completed.

**H. "MSF"** means the  
motorcycle safety foundation.

**I. "Off-highway  
motor vehicle (OHV)"** means  
a motor vehicle designed by  
the manufacturer for operation  
exclusively off the highway or road as  
defined in statute or as designated by  
the director.

**J. "Off-highway  
motorcycle (OHM)"** means a motor  
vehicle traveling on not more than  
two tires and having a seat designed  
to be straddled by the operator and  
that has handlebar-type steering  
control.

**K. "Off-highway  
motor vehicle safety training  
organization"** (also referred to in  
these rules as "OHV safety training  
organization" or "organization")  
means a business certified by the  
department as qualified to provide off-  
highway vehicle safety training.

**L. "Person"** means  
an individual, firm, partnership,  
association, corporation, limited  
liability company, or other legal  
entity.

**M. "ROHVA"** means  
the recreational off-highway vehicle  
association.

**N. "Recreational off-  
highway vehicle (ROV)"** means a  
motor vehicle designed for travel on  
four or more non-highway-legal tires,  
for recreational use by one or more  
persons, and having:

- (1) a steering  
wheel for steering control;
- (2) non-  
straddle seating;
- (3) maximum  
speed capability greater than 35 miles  
per hour;
- (4) gross  
vehicle weight rating (GVRW) no  
greater than 1,750 pounds;
- (5) less than  
80 inches in overall width, exclusive  
of accessories;
- (6) engine  
displacement of less than 1,000 cubic  
centimeters;
- (7)  
identification by means of a  
17-character vehicle identification  
number.

**O. "ROV youth  
model"** means an OHV intended  
by the manufacturer for use by  
operators under 16 years of age that  
meets all requirements of an ROV  
with the exception that it is capable  
of reaching a minimum speed of 10  
miles per hour, and having an engine  
displacement of 200 cubic centimeters  
or less.

**P. "Revocation or  
revoked"** means the involuntary  
permanent termination of a certificate  
by the department for cause.

**Q. "Snowmobile"**  
means a motor vehicle designed for  
travel on snow or ice and steered and  
supported in whole or in part by skis,  
belts, cleats, runners, or low-pressure  
tires.

**R. "Specialty off-  
highway motor vehicle (SOHV)"**  
means any self-propelled vehicle  
which is designed to travel on wheels  
or track in contact with the ground,  
which is designed primarily for use  
off the public highways, and which  
is generally and commonly used to  
transport persons for recreational  
purposes, that does not meet the  
definition of an all-terrain vehicle,  
off-highway motorcycle, recreational  
off-highway vehicle, or snowmobile.  
Go-karts, golf carts, battery-powered  
toys, and motorized scooters are not  
included in this definition.

**S. "Student"** means a  
person who has enrolled in an OHV

safety training course certified or recognized by the department.

**T. “Suspended or suspension”** means the involuntary permanent termination of a certificate, either indefinitely pending an administrative appeals process or for a certain, limited period of time, by the department for cause.

**U. “Trail etiquette”** means a set of guidelines describing the correct and appropriate interaction between all types of trail users, respect for and adherence to rules and laws governing use on public and private land, and respect for natural resources.

[18.15.3.7 NMAC - Rp, 18.15.3.7 NMAC, 10-14-2016]

**18.15.3.8 EQUIPMENT REQUIREMENTS:**

**A. Safety helmets:** All OHV operators and passengers operating on paved streets or highways and all off-highway motor vehicle operators and passengers under the age of 18 shall wear safety helmets that comply with the safety standards of Title 49 Transportation, Chapter V - National Highway Traffic Safety Administration, Department of Transportation, Part 571-Federal Motor Vehicle Safety Standards, Subpart B-Federal Motor Vehicle Safety Standards, Standard No. 218, Motorcycle helmets of the Code of Federal Regulations (49CFR571.218); or with the safety standards of the United Nations Economic Commission for Europe Regulation 22.05, or their superseding standards. A decal exhibiting the symbol DOT in conformance with 49CFR571.218, or the symbol ECE22.05 in conformance with ECE Regulation 22, permanently affixed to a safety helmet shall constitute prima facie evidence of compliance with this standard.

**B. Eye protection:** All OHV operators and passengers operating on paved streets or highways in accordance with a resolution adopted by a local authority or state transportation commission and at all times those operators and passengers less than 18 years of age must wear eye protection that meets

or exceeds the Vehicle Equipment Safety Standards Regulations VESC-8 (Minimum Requirements for Motorcycles, Eye Protection Section 11-1306(e) or the American National Standards Institute (ANSI) Standard Z87.1 and more generally known as safety glasses, safety goggles, or a face shield. Additionally, the protective eyewear must be free of scratches and fastened securely in the manner that the eyewear’s manufacturer prescribes.

**C. Age-appropriate size-fit standards for ATVs:** Standards governing the relationship between the engine size (displacement measured in cubic centimeters, or cc.) of an ATV and the minimum age an operator must attain before operating an ATV of that engine size, combined with objective measurements of how a rider physically fits on an ATV and can operate basic controls, are called “age-appropriate size-fit standards” and include, but are not limited to:

(1) No person less than six years of age shall operate an ATV on public land.

(2) Operators less than 10 years of age shall not operate an ATV with an engine size larger than 110 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.

(3) Operators from 10 through 15 years of age shall not operate an ATV with an engine size larger than 250 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.

(4) Notwithstanding Paragraph (3) of this subsection, operators who are 14 or 15 years of age and who possess a valid driver’s license may operate an ATV with an engine size not larger than 450 cubic centimeters.

(5) Operators at least 16 years of age and less than 18 may operate an ATV with an engine size larger than 250 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection D of this section.

**D. Physically-**

**appropriate size-fit standards for ATVs:** Unless the relationship between an operator and the ATV being operated complies with the following standards, it is a violation of the age-appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards set forth above in Subsection C preceding this section.

(1) **Seat clearance when standing:** The minimum clearance between the ATV seat and the operator’s inseam while standing on the operator’s foot rests should be three inches. The intent for requiring minimum clearance is two-fold: first, to permit the rider to stand up and absorb shocks through the legs while traversing rough terrain; second, to minimize the possibility of the rider being struck by the seat and catapulted over the handle bars.

(2) **Upper leg position when seated:** The upper portion of the operator’s leg, roughly from the top of the knee to the hip, should be approximately horizontal when seated. Minor departures a little above or below the horizontal are not violations of this standard, but gross departures (knees visibly significantly below or above the hips) shall warrant further inquiry and may constitute a violation of this standard. Knees that are significantly above the hips and which contact the handlebars in either direction when they are turned constitute a violation of this standard.

(3) **Foot reach:** With the boot or shoe placed in the proper position upon the foot rest or on the running board, the toe should be able to operate the foot brake (on an ATV so equipped) with a simple downward rotation of the foot. The rider should be able to operate the brakes consistently with no impairment of full range of motion. The same standard applies to the operator’s boot or shoe and the foot-operated shift lever (on an ATV so equipped).

(4) **Handlebar grip reach:** With the rider in the normal seated position (not leaning forward) and the hands on the



handlebar grips, the elbows should have a distinct angle between the upper arm and the forearm. If the operator's posture is such that the operator's arms present a straight line from wrist to shoulder, then the operator's ability to maintain directional control of the ATV is compromised, particularly in rough terrain.

(5) Throttle and engine stop switch: With the hands in the normal operating position and the handlebars turned fully either left or right, the operator must be able to operate the throttle and engine stop switch.

(6) Hand-brake lever or clutch lever reach: With the hands in the normal operating position and the handlebars turned fully either left or right the first joint (from the tip) of at least one finger should be able to extend beyond the hand-brake levers (or clutch lever on an ATV so equipped) and fully operate the hand levers. If not, the hands are too small to grasp the levers effectively.

**E. Age-appropriate size-fit standards for ROVs and ROV youth models:** Standards governing the relationship between the engine size (displacement measured in cubic centimeters, or cc.) of an ROV or ROV youth model and the minimum age an operator must attain before operating an ROV or ROV youth model of that engine size, combined with objective measurements of how a rider physically fits in an ROV or ROV youth model and can operate basic controls, are called "age-appropriate size-fit standards" and include, but are not limited to:

(1) No person under six years of age shall operate an ROV or ROV youth model on public land.

(2) Operators at least six and less than 10 years of age shall not operate an ROV or ROV youth model with an engine size larger than 200 cubic centimeters and shall comply with the physical fit standards set forth below in Subsection F of this section.

(3) Operators at least 10 years of age and less than 18 years of age shall comply with the physical fit standards set forth below in Subsection F of this section

**F. Physical-appropriate size-fit standards for ROVs and youth-model ROVs:**

Unless the relationship between an operator and the ROV or ROV youth model being operated complies with the following standards, it is a violation of the age-appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards set forth above in Subsection E of this section.

(1) The operator shall be able to reach and fully operate the pedals with the operator's back flat against the driver's seat and with the operator's seatbelt properly fastened.

(2) The operator shall be able to reach the steering wheel and turn the wheel fully in both directions with arms slightly bent while keeping the operator's back flat against the driver's seat with the operator's seatbelt properly fastened.

[18.15.3.8 NMAC - Rp, 18.15.3.8 NMAC, 10-14-2016]

**18.15.3.9 MINIMUM CRITERIA FOR APPROVAL AND CERTIFICATION OF OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATIONS, INSTRUCTORS, AND CURRICULA; OUT-OF-STATE SAFETY PERMITS; GRANDFATHERED SAFETY PERMITS:**

**A. ASI standard adopted:** the department shall approve and certify all ATV safety training organizations whose applications establish that the organization will:

(1) use ASI's instructional materials, e-course, or a materially equivalent curriculum; and

(2) comply with the inclusion of New Mexico-specific curriculum with respect to

environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, laws and prohibitions against operating OHVs under the influence of alcohol or drugs.

**B. MSF standard adopted:** the department shall approve and certify all OHM safety training organizations whose applications establish that the organization will:

(1) use the MSF "dirt bike school" instructional materials, e-course, or a materially equivalent curriculum; and

(2) comply with the inclusion of New Mexico-specific curriculum with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, and state laws and prohibitions against operating OHVs under the influence of alcohol or drugs.

**C. ROHVA standard adopted:** the department shall approve and certify all ROV safety training organizations whose applications establish that the organization will:

(1) use ROHVA's instructional materials, e-course, or a materially equivalent curriculum; and

(2) comply with the inclusion of New Mexico-specific curriculum with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, laws and prohibitions against operating OHVs under the influence of alcohol or drugs.

**D. Snowmobile standard. [Reserved]**

**E. Out-of-state safety permits:** a current OHV safety permit issued by another state or an ASI, MSF, ROHVA, or equivalent certificate as determined by the department to be evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an OHV safety training course before operating an OHV in New Mexico.

**F. Grandfathered safety permits:** a safety certificate issued prior to January 1, 2007, by ASI, MSF, 4-H, or equivalent certificates as determined by the department to be evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an OHV safety training course for the purpose of operating an OHV in New Mexico. [18.15.3.9 NMAC - Rp, 18.15.3.10 NMAC, 10-14-2016]

**18.15.3.10 CERTIFICATION OF OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING INSTRUCTORS:**

**A. Review by the department:** when reviewing applications for OHV safety training instructors, the department shall consider whether:

- (1) the information provided by the applicant is accurate and valid;
- (2) the character and employment references provided by the applicant report that the applicant is fit to conduct an OHV safety training course;
- (3) the applicant has a criminal history, as evidenced by a background check conducted by the department.

**B. Disqualification:** a criminal record of conviction of any of the following offenses shall disqualify an applicant or instructor for certification.

- (1) assault in any degree;
- (2) assault with intent to commit a violent felony in any degree;
- (3) attempt to commit criminal sexual penetration (CSP) or criminal sexual contact (CSC) in any degree;
- (4) abandonment or abuse of a child, cruelty to animals in any degree, or indecent exposure;
- (5) any drug-related felony;
- (6) a crime in which an element of the crime is the use or threat of use of physical force;

or  
(7) a crime in which fraud, theft, or embezzlement is considered to be an element of the conviction;

**C. Denial of certificate:** If the department determines that an applicant is disqualified in Subsection B of this rule, or is deemed unsuitable for other reasons as the department may determine, the department will issue a letter stating the reasons for denial of certification. An applicant may address the reasons for denial in a reapplication for a certification. Reapplications for certification must be submitted in written form to the department within 15 calendar days of the applicant receiving the letter stating the reasons for denial of certification.

**D. Term of certification:** Initial certification shall be valid from the date of issuance and shall be valid for a period of three years thereafter, unless suspended or revoked for cause before that date.

**E. Certification renewal:** A certified OHV instructor must apply for renewal of their certificate with the department 30 days prior to the expiration of their certification. The department shall renew an instructor certification if:

- (1) the instructor consents to a new background check;
- (2) the instructor has taught an average of three safety courses per year; and
- (3) the instructor has not found to be in violation of any part of this rule, to include successful completion of a background check as described in 18.14.3.11 NMAC.

**F. Early termination:**  
(1) A certification shall terminate if an OHV safety training instructor fails to teach a course within one full calendar year.  
(2) The department may suspend or revoke a certification for cause as provided in this rule.

[18.15.3.10 NMAC - Rp, 18.15.3.10

NMAC, 10-14-2016]

**18.15.3.11 ON-LINE SAFETY TRAINING:**

**A. Course length and testing requirement:** an OHV safety training program shall provide at least four hours of curriculum on safe and responsible OHV operation. Upon successful completion of the curriculum and final exam, a safety permit shall be issued. A student must correctly answer at least seventy percent of the questions to pass the final exam and receive a permit.

**B. Curriculum requirement:** Only the curriculum, chapter review material, and final examination questions approved by the department may be used. An on-line safety training curriculum must include lessons about:

- (1) safety awareness;
- (2) New Mexico operations requirements as required by Chapter 66, Article 3 NMSA 1978;
- (3) safety equipment requirements as required by 18.15.3.8 NMAC;
- (4) age-appropriate OHV size-fit as outlined by 18.15.3.8 NMAC;
- (5) responsible use of OHVs with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, OHV operating laws and prohibitions against operating OHVs under the influence of alcohol or drugs;
- (6) safety awareness; preparation to ride; controls and equipment checks; starting procedures; posture, starting out, shifting gears, braking and parking; turning; quick stops and swerving; riding strategies; riding over obstacles; riding on hills; and safe riding practices; and
- (7) trail etiquette and respect for natural resources.

**C. Other requirements:** A safety training organization shall provide the

department with a monthly (or as requested) report of students successfully completing the on-line safety training course. The information should include each student's first and last name, middle initial, date of birth, last four digits of social security number, and student's home telephone number, date training was completed, the student's final grade and total number of hours spent for completion of the training course. This information shall be held confidential by the safety training organization and the department and for the sole purpose of record keeping.

[18.15.3.11 NMAC - Rp, 18.15.3.11 NMAC, 10-14-2016]

**18.15.3.12 OFF-HIGHWAY MOTOR VEHICLE (OHV) TOUR OPERATORS AND GUIDES:**

**A.** Off-highway motor vehicle (OHV) tour operators and guides shall complete an approved OHV safety course for each type of OHV being operated by their clients and carry proof of applicable OHV safety training while providing tour operator or guide services.

**B.** OHV tour operators and guides shall comply with all applicable laws, statutes, regulations, and rules for the types of OHVs being operated and for the locations in which tour operator or guide services are being provided.

**C.** OHV tour operators and guides shall provide to their clients photocopies of all applicable laws, statutes, regulations, and rules for the types of OHVs being operated and for the locations in which tour operator or guide services are being provided. OHV tour operators and guides shall provide a mandatory safety briefing before each guided tour that includes a walk around of the OHVs that will be used by the clients to include how to operate the OHV, proper use of safety equipment, what to do in case of an emergency, etc. During the safety briefing the OHV tour operators and guides shall request proof of a current OHV safety permit from all youth clients.

[18.15.3.12 NMAC - N, 10-14-2016]

**18.15.3.13 DISPLAY OF OHV REGISTRATION PLATES OR DECALS:**

**A. All OHVs:** shall display a registration decal or plate assigned to the vehicle and issued by the division, or a suitable decal as issued by the department, which shall contain the year and month in which it expires, except for OHVs exempted or owned by those persons exempted under Section 66-3-1005 NMSA 1978.

**B. Registration plate or decal:** shall at all times be securely affixed to the vehicle for which it is issued, and shall be mounted or affixed in a position clearly visible, shall be maintained in a condition so as to be clearly legible, and displayed only for the period for which it is valid. Nothing shall be used to block, dim, or cover any portion of the plate or decal. All registration plates or decals issued on or after January 1, 2012 shall be displayed as follows:

**(1)** OHMs shall display decal horizontally on the left fork leg of the motorcycle, and shall be visible from the left side of the motorcycle.

**(2)** ATVs shall display decal horizontally on the left rear quadrant on permanent body or frame and visible from the left side of the all-terrain vehicle.

**(3)** ROVs and youth-model ROVs shall display decal horizontally on the left front quarter panel of a recreational off-highway vehicle.

**(4)** Snowmobiles shall display decal horizontally on the left tunnel on the back of snowmobile.

**(5)** SOHV shall display decal on the left side, on the front quarter of the machine.

**(6)** Failure to comply with any part of this section constitutes grounds for revocation or suspension.

**C. Exceptions:** No off-highway vehicle shall deviate from this display requirement except:

**(1)** if displaying a valid license plate, temporary registration, or dealer

demonstration permit visible from the rear of the vehicle; or

**(2)** non-residents who have a valid OHV permit displayed on their OHV that is currently in compliance with another state's OHV registration, user fee or similar law or rule demonstrated by certificate of registration, permit or similar evidence.

**D. Replacement fee:** The division shall charge a transition fee of seven dollars fifty cents to replace a previously issued license plate with a decal when requested by the registered owner of an OHV. The previously issued license plate will be surrendered upon issue of a decal, and the decal will be valid for the remaining term of the registration. [18.15.3.13 NMAC - Rp, 18.15.3.12 NMAC, 10-14-2016]

**18.15.3.14 OPERATION ON STREETS AND HIGHWAYS:**

**A.** A person shall not operate an off-highway motor vehicle on any:

**(1)** limited access highway or freeway at any time;

**(2)** paved street or highway except as provided in Subsection B of this section, or except in compliance with the provisions of 66-3-1011 NMSA 1978 (the Off-Highway Motor Vehicle Act); or

**(3)** pedestrian walkways and non-motorized trails.

**B.** Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

**C.** If authorized by ordinance or resolution of a local authority or the state transportation commission, an ROV or an ATV may be operated on a paved street or



highway owned and controlled by the authorizing entity if:

(1) the vehicle has one or more functioning headlights and one or more functioning taillights that comply with the Off-Highway Motor Vehicle Act;

(2) the vehicle has brakes, mufflers, and mirrors attached to the left and right side, providing an unobstructed view to the rear;

(3) the operator has a valid driver's license, instruction permit or provisional license and an off-highway motor vehicle safety permit;

(4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act;

(5) the operator of the vehicle and all occupants are wearing approved eye protection and an approved safety helmet in compliance with Rule 18.15.3 NMAC; and

(6) the operator is in compliance with all existing traffic laws, including speed limits and operating restrictions as may be established by local authority or the state transportation commission.

[18.15.3.14 NMAC - N, 10-14-2016]

**18.15.3.15 ORDINANCE NOTIFICATION PROCESS:** Any county, municipal, or other local or state government authority that authorizes or changes OHV use on designated paved roads within its jurisdiction shall notify the department of the authorization and upon the authorization becoming effective shall provide the department a copy of the authorization.

[18.15.3.15 NMAC - N, 10-14-2016]

**HISTORY OF 18.15.3 NMAC:**

**History of Repealed Material:**  
 18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, repealed effective May 28, 2010.  
 18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, repealed effective 10-14-2016.

**REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS**

This is an amendment to 16.34.1 NMAC, Section 7, effective 10-29-2016.

**16.34.1.7 DEFINITIONS:**

As used in the Barbers and Cosmetologists Act:

**A.** "applicant" means a person who has applied for a license;

**B.** "apprentice" means a person enrolled in a barber apprenticeship program approved by and registered with the state apprenticeship agency;

**[B:] C.** "approval number" means the number assigned by the board to designate an approved provider;

**[C:] D.** "approved" means accepted as a provider by the board;

**[D:] E.** "barber" means a person, other than a student, who for compensation engages in barbering;

**F.** "barber apprenticeship" means an apprenticeship program registered with the state apprenticeship agency;

**[E:] G.** "barbering" means shaving or trimming the beard or cutting the hair, curling and waving, including permanent waving, straightening the hair, giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, shampooing, bleaching or dyeing the hair or applying tonics or applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrolysis;

**[F:] H.** "board" means the board of barbers and cosmetologists;

**[G:] L.** "booth establishment license" means a license required of an individual who rents space within another licensed establishment for the purpose of rendering licensed services as a separate, independent business;

**[H:] J.** "branch campus/ additional location" means an additional location that provides the same administrative services as the main campus, and offers at least one complete program entered into the programs offered at the main campus; a branch campus/additional location must be approved by the board as a separate school with a stand-alone license;

**[H:] K.** "clean or cleansing" means washing with liquid soap and water, detergent, antiseptics, or other adequate methods to remove all visible debris or residue. Cleansing is not disinfection;

**[J:] L.** "contact hour" means one contact hour equals a minimum of [fifty] 50 minutes of instruction;

**[K:] M.** "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

**[H:] N.** "cosmetology" means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances, using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person, manicuring and pedicuring the nails of a person, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrolysis. A cosmetologist shall not perform any type of shaving using a straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.

**[M:] O.** "current work experience" means verified work that has occurred within the previous five years;

**[N:] P.** "disinfect or disinfection" means the use of chemical agents (after cleaning) to destroy potentially dangerous pathogens on non-porous items;

**[O:] Q.** "disinfectant"

means an EPA-registered bactericidal, virucidal and fungicidal chemical effective against pathogens of concern when used as directed on the manufacturer's label. For purposes of this rule alcohol and UV light boxes are not approved for disinfection;

~~[P:]~~ **R.** "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

~~[Q:]~~ **S.** "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

~~[R:]~~ **T.** "enterprise" means a business venture, firm, or organization;

~~[S:]~~ **U.** "expansion campus facility" means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

~~[T:]~~ **V.** "establishment" means an immobile beauty shop, barbershop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;

~~[U:]~~ **W.** "esthetician" means a person, other than a student, who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person; using the term or title of "medical esthetician" is not allowable under the act; this term is misleading and could be deemed deceptive or fraudulent;

~~[V:]~~ **X.** "executive director" means the director for the board;

~~[W:]~~ **Y.** "expansion campus facility" means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

~~[X:]~~ **Z.** "externship" means a student enrolled in any course licensed by this act may, at the school's option, participate in an externship program upon completion of seventy-five percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except for offering complete services on the public, applying any chemicals, or receiving any compensation;

~~[Y:]~~ **AA.** "HSD" means the New Mexico human services department;

~~[Z:]~~ **BB.** "hands-on training" means student training on clients, students or models that includes active personal participation and practical experience necessary to gain knowledge. Training on mannequins is considered hands-on training;

~~[AA:]~~ **CC.** "instructor" means a person licensed to teach in a school of cosmetology, barbering or in a school of electrology;

**DD.** "journey worker" means a person who holds a current New Mexico barber license; is recognized by the sponsor as having attained and mastered a level of skill, abilities, and competencies in barbering and is authorized to provide related instruction and/or on-the-job training to licensed apprentices. The maximum allowable ratio of licensed apprentices to journey workers during on-the-job training is one to one;

~~[BB:]~~ **EE.**

"jurisprudence exam" means the examination given regarding the laws, rules and regulations, which relate to the practice of barbers and cosmetologists in the state of New Mexico;

~~[CC:]~~ **FF.** "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of the act;

~~[DD:]~~ **GG.** "license in good standing" refers to a current, valid, board-issued license with no restrictions placed on the license by the board;

~~[EE:]~~ **HH.** "main campus" means a school, which has been licensed by the board; any change in location of the main campus must comply with the procedures set forth in 16.34.8 NMAC of these rules; the main campus includes the primary facilities and any separate or detached expansion campus facility of the primary training site within a two-mile radius;

~~[FF:]~~ **II.** "manicurist-esthetician" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and who uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

~~[GG:]~~ **JJ.** "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

~~[HH:]~~ **KK.** "multi-use" means non-porous instruments, items, equipment, implements or tools that must be cleaned and disinfected.

The items must be disinfected by a complete immersion in an EPA registered, bactericidal, virucidal and fungicidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer’s directions. Non-porous items are the only items that can be disinfected;

[~~HH~~] LL. “non-porous”

means multi-use items such as metal, glass and plastic;

[~~JJ~~] MM. “outreach

enterprise” means an independent mobile unit, or system of units, equipped with or carrying both professional and special equipment used by a professional licensee of this act to a site or premises for the purpose of providing professional services to the handicapped, restricted, homebound, impaired, incapacitated, delicate, or otherwise constrained client;

NN. “sponsor”

means the sponsor in whose name the standards of apprenticeship will be registered with the state apprenticeship agency, and which will have the full responsibility for administration and operation of a barber apprenticeship program;

[~~KK~~] OO. “provider”

means the person, firm, corporation, institution or agency approved to conduct or sponsor a continuing education program and ensure its integrity;

[~~EE~~] PP. “reciprocity”

means a mutual exchange of privileges between states;

[~~MM~~] QQ. “revoke a

license” means to prohibit the conduct authorized by the license;

[~~NN~~] RR. “sanitation”

means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

[~~OO~~] SS. “school”

means a public or private instructional facility approved by the board that teaches cosmetology or barbering;

[~~PP~~] TT. “single use

items” means tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not

limited to: disposable razors, pedipads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, and porous files, etc.) shall be disposed of immediately after use;

UU. “state apprenticeship agency” means the department of workforce solutions’ state apprenticeship agency;

[~~QQ~~] VV. “statement of compliance” means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;

[~~RR~~] WW. “statement of non-compliance” means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support;

[~~SS~~] XX. “sterilize or sterilization” means to eliminate all forms of bacteria or other microorganisms;

[~~TT~~] YY. “student” means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis;

[~~UU~~] ZZ. “supervising licensee” means licensee designated by the establishment owner or manager to act on behalf of the enterprise or establishment in the absence of the owner or manager. The supervising licensee must be licensed in all aspects of the activity being practiced in the enterprise or establishment;

[~~VV~~] AAA. “suspend a license” means to prohibit, for a stated period of time, the conduct authorized by the license; “suspend a license” also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension;

[~~WW~~] BBB. “verified work experience” means work experience in the applicable discipline in a licensed establishment, enterprise or electrology clinic as verified by:

(1)

certified and notarized statement by employer(s);

(2) certified and notarized statement by licensed co-worker(s);

(3) certified and notarized statement by client(s);

(4) certified and notarized copies of tax returns;

(5) certified and notarized copies of W-2’s; or

(6) other related form(s) of documentation.

[16.34.1.7 NMAC - Rp 16 NMAC 34.1.7, 06-16-01; A, 07-16-04; A, 10-04-07; A, 12-17-15; A, 10-29-16]

**REGULATION AND LICENSING DEPARTMENT  
BARBERS AND COSMETOLOGISTS**

This is an amendment to 16.34.2 NMAC, Section 8, effective 10-29-2016.

**16.34.2.8 GENERAL LICENSING PROCEDURES:**

**A.** Application forms:  
(1)

Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Applications must include the required fee in the form of a money order, cashier’s check, business check, or credit card for on-line renewal only, (no personal checks will be accepted). Incomplete applications will be returned. Applications are valid for one year from date of receipt. Designated deadlines will apply to resubmitted applications.

(2) With the exception of applications for barber apprentice licenses as listed in Subsection E below, applications for licensure must include:

(a) proof of age indicating applicant is at least [seventeen] 17 years of age; please provide one of the following: a copy of birth certificate, driver’s license, state issued identification card, or baptismal certificate.

(b)



proof of applicable secondary education: please provide a copy of one of the following: a high school diploma, G.E.D. certificate or transcript of G.E.D. test scores, letter from the high school attended containing the school seal, copy of the high school transcript showing 10th grade equivalency or higher, a post-secondary transcript, successful completion of a 10th grade equivalency test, letter from the G.E.D. testing facility showing that the G.E.D. has been passed; documents submitted in a language other than English must be accompanied by a certified translation completed by a government certified translator;

(c) a transcript of hours from a school or a certificate of completion of a barber apprenticeship issued by the state apprenticeship agency showing that the training hours were completed within the preceding [~~twenty-four~~] 12 months; if the training hours were obtained more than [~~twenty-four~~] 12 months before the application is submitted to the board, then the applicant will need to register at a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education; upon completion and proof of the remediation, the applicant may apply for and submit to the complete theory examination, the applicable practical examination and a state law examination

**B.** Photographs: applicants for original licensure shall attach a recent passport size, color photograph, front-view of face. The photo must be at least 1.5" X 1.5" and no larger than 2" X 3".

**C.** Electronic signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.

**D.** Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications.

**E.** Upon acceptance into a barber apprenticeship program,

the apprentice shall apply for a barber apprentice license on the form required and provided by the board. Applications shall include the required fee in the form of a money order, cashier's check, business check or credit card (no personal checks will be accepted).

[~~E.~~] **F.** Renewal is the responsibility of the licensee:

(1) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees or reexamination as set forth in the act.

(2) A licensee, with a valid instructor license for the preceding [~~twelve~~] 12 months, may use the instructor license to renew or reinstate his original practitioner license.

(3) The board will issue renewal licenses within [~~fifteen~~] 15 working days of receipt of the renewal request and applicable fee.

(4) Timely renewal of an establishment, enterprise, electrology clinic and school license is the full and complete responsibility of the LICENSEE. Failure to renew the license within [~~thirty~~] 30 days after its expiration, will result in payments of renewal and late fees.

[16.34.2.8 NMAC - Rp 16 NMAC 34.2.8, 06-16-01; A, 07-16-04; A, 10-04-07; A, 12-17-15; A, 10-29-16]

## REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.4 NMAC, Section 9, effective 10-29-2016.

**16.34.4.9** [~~RESERVED~~]  
**SPECIAL LICENSES:** The board shall issue a barber apprentice license to an applicant who submits the apprentice license fee, the application form required and provided by the board, and a copy of

the apprenticeship agreement between the apprentice and the registered apprenticeship program, issued by the state apprenticeship agency.

**A.** A barber apprentice license is valid during the time the apprentice is active in a registered apprenticeship program, but in no case longer than 36 months from the date of issuance. A barber apprentice license will automatically become invalid upon the apprentice's cancellation from a registered apprenticeship program or deregistration of an apprenticeship program by the state apprenticeship agency. The apprentice is responsible for returning the invalid license to the board within 30 days of the apprentice's cancellation or deregistration of the program.

**B.** The board may recommend to the state apprenticeship agency deregistration of a barber apprenticeship program for any violation of the board's rules or regulations.

**C.** A barber apprentice may receive related instruction from a journey worker/licensed barber instructor outside of a licensed establishment; however, barber apprentice services may not be performed on the public and practical application may not be taught outside of a licensed establishment.

[16.34.4.9 NMAC - Rp 16 NMAC 34.4.9, 06-16-01; Repealed, 10-04-07; A, 10-29-16]

## REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.5 NMAC, Sections 7 and 8, effective 10-29-16.

**16.34.5.7** **DEFINITIONS:**  
[Refer to Part I] Refer to 16.34.1 NMAC

[16.34.5.7 NMAC - Rp 16 NMAC 34.5.7, 06-16-01; A, 10-29-16]

**16.34.5.8** **GENERAL LICENSURE REQUIREMENTS:**

**A.** Any person is eligible to be registered as a practitioner and is qualified to receive a license as a registered barber, cosmetologist, manicurist, esthetician, manicurist/esthetician, or electrologist who submits proof that the applicant:

(1) is at least 17 years of age;

(2) has an education equivalent to the completion of the second year of high school;

(3) has completed the course of study for the license in a licensed school within the preceding ~~twenty-four~~ 12 months; or for a barber license, proof that the applicant has either completed the course of study in a licensed school within the preceding 12 months or has successfully completed a barber apprenticeship program registered by the state apprenticeship agency within the preceding 12 months;

(4) has paid the required fees as set forth in these rules; and

(5) has passed the practical and written examination conducted by the board.

**B.** Any person is eligible for initial registration or re-registration as an instructor and is qualified to receive a license as an instructor who submits proof that the applicant has met all the above requirements and in addition:

(1) has an education equivalent to the completion of four years of high school; and

(2) holds a current license in New Mexico as a practitioner in the field in which the applicant is seeking licensure as an instructor.

**C.** Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal 150 hours of training. Work experience less than six full months will not be considered toward training

hours.

**D.** Applications are valid for one year from date of receipt.

**E.** All application fees are non-refundable. [16.34.5.8 NMAC - Rp 16 NMAC 34.5.8, 06-16-01; A, 07-16-04; A, 12-17-15; A, 10-29-16]

**REGULATION AND LICENSING DEPARTMENT  
BARBERS AND COSMETOLOGISTS**

This is an amendment to 16.34.6 NMAC, Sections 7 and 8, effective 10-29-2016.

**16.34.6.7 DEFINITIONS:**  
[Refer to Part 1] Refer to 16.34.1 NMAC

[16.34.6.7 NMAC - Rp 16 NMAC 34.6.7, 06-16-01; A, 10-29-16]

**16.34.6.8 RECIPROCITY:**

**A.** An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules.

**B.** Credit for work experience. Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal 150 hours of training. Work experience less than six full months will not be considered toward training hours. To obtain any license by reciprocity, no more than fifty percent of the hours required for licensure by in-state applicants may be obtained by work experience. ~~[Apprenticeship training hours shall be considered on an individual case basis and will not be credited for more than fifty percent of the hours required for licensure by in-state applicants.]~~

**C.** Full hours or work experience, out-of-state license. Any person who seeks licensure in the state of New Mexico through reciprocity from any other state shall:

(1) furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with the state;

(2) furnish a certified transcript for the course of study or affidavit of hours from the regulatory agency or school attended in the state from which the applicant is applying;

(3) complete the application for reciprocity on a form provided by the board and submit the required fee; and

(4) furnish notarized letters of employment from past employers or employment records to prove work experience as stated in B of this section, if needed.

**D.** Foreign training. All foreign trained applicants must submit to the applicable examination. Refer to 16.34.3 NMAC for requirements.

**E.** Incomplete hours, out of state license.

(1) An applicant who holds a valid license in another state and who needs additional training not in excess of 100 hours may obtain the training hours in any state. Upon submitting proof of having acquired the additional training hours, the applicant may then be licensed through reciprocity.

(2) An applicant licensed in a state where the course of study is not equivalent to New Mexico's may apply work experience or apprenticeship training hours, on a case by case basis, toward the training requirements as stated in Subsection B of 16.34.6.8 NMAC, provided these hours do not exceed fifty percent of the required hours in New Mexico. If the allowed hours credited from work experience or apprenticeship training meet or exceed the equivalent of the New Mexico course of study, the applicant may obtain licensure through reciprocity.

(3) An applicant who cannot obtain a license through reciprocity with the previous training and work experience, he will be required to obtain approval of the

previous hours of training as stated in Subsection I of 16.34.6.8 NMAC, obtain the additional hours needed and submit to the New Mexico licensing examination applicable to the license he is seeking.

**F.** In order to expedite the process of approving training hours and work experience for reciprocity applicants and transfer students, the board executive director may forward the required documents to a member of the board who is also a licensee for approval.

**G.** Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or greater.  
[16.34.6.8 NMAC - Rp 16 NMAC 34.6.8, 06-16-01; A, 10-04-07; A, 04/12/10; A, 12-17-15; A, 10-29-16]

**REGULATION AND LICENSING DEPARTMENT BARBERS AND COSMETOLOGISTS**

This is an amendment to 16.34.14 NMAC, Sections 2, 7 and 8, effective 10-29-2016.

**16.34.14.2 SCOPE:** All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, specialty licenses, enterprises and establishments.  
[16.34.14.2 NMAC - Rp 16 NMAC 34.14.2, 06-16-01; A, 10-29-16]

**16.34.14.7 DEFINITIONS:** [Refer to Part 1] Refer to 16.34.1 NMAC  
[16.34.14.7 NMAC - Rp 16 NMAC 34.14.7, 06-16-01; A, 10-29-16]

**16.34.14.8 FEES:** The fees for examination, original licensure and annual renewal, licensure by reciprocity and special fees are as follows:

A. Enterprise or establishment license (original) \$200.00

B. Enterprise or establishment license (renewal) \$50.00  
C. Booth establishment license (original) \$200.00  
D. Booth establishment license (renewal) \$50.00  
E. School license (original and renewal) \$500.00  
F. Relocation of a school \$185.00  
G. Barber license (original and renewal) \$50.00  
H. Cosmetologist license (original and renewal) \$50.00  
I. Manicurist/pedicurist license (original and renewal) \$50.00  
J. Manicurist/esthetician license (original and renewal) \$50.00  
K. Electrologist license (original and renewal) \$50.00  
L. Esthetician license (original and renewal) \$50.00  
M. Instructor license (original and renewal) \$50.00  
N. Reciprocity (original) \$150.00  
O. Administrative fee (other examination administrative costs) a maximum of \$100.00  
P. Administrative fee (lists on disks) \$95.00  
Q. Administrative fee (relocation of establishments, etc.) \$25.00  
R. Examinations and re-examinations all licenses except instructor a maximum of \$100.00  
S. Instructor examination and re-examination a maximum of \$100.00  
T. Duplicate licenses

\$25.00  
U. Student permit license \$25.00  
V. Barber apprentice license \$25.00  
[W:] W. Late fee \$40.00  
[X:] X. Provider approval, initial and renewal \$50.00  
[16.34.14.8 NMAC - Rp 16 NMAC 34.14.8, 06-16-01; A, 07-16-04; A, 10-04-07; A, 04-12-10; A, 10-29-16]

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

**This is an amendment to 16.19.3 NMAC, Sections 1, 3, 6, 8, 9, 10, 11, 12, 13, 14 and 15, effective 10-16-2016.**

**16.19.3.1 ISSUING AGENCY:** Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM [(505) 222-9830]. [02-15-96; 16.19.3.1 NMAC - Rn, 16 NMAC 19.3.1, 03-30-02; A, 01-31-07; A, 10-16-16]

**16.19.3.3 STATUTORY AUTHORITY:** Section 61-11-10 NMSA 1978 authorizes the board of pharmacy to issue a certificate of [registration] licensure as a pharmacist, with or without examination, by reciprocity. [02-15-96; 16.19.3.3 NMAC - Rn, 16 NMAC 19.3.3, 03-30-02; A, 10-16-16]

**16.19.3.6 OBJECTIVE:** The objective of Part 3 of Chapter 19 is to recognize qualifications of pharmacists [registered] licensed by examination in other states that grant reciprocal privileges in New Mexico and to establish uniform criteria for obtaining licensure as a pharmacist by reciprocity. [02-15-96; 16.19.3.6 NMAC - Rn, 16 NMAC 19.3.6, 03-30-02; A, 10-16-16]

**16.19.3.8 RECIPROCAL [REGISTRATION] LICENSURE:** Reciprocal [registration] licensure shall be granted to those persons [registered] licensed by examination as a [registered] licensed pharmacist in other states or territories of the United States which grant reciprocal privileges in New Mexico. [~~Provided, they were apprentices in pharmacy prior to November 20, 1934 and licensed in pharmacy prior to May 20, 1940, after which date~~] An applicant must be a graduate of an approved college of pharmacy and have completed required intern training or have worked one year as a [registered] licensed pharmacist in the state in which the applicant has [registered] licensure by examination. [08-27-90; 16.19.3.8 NMAC - Rn, 16 NMAC 19.3.8, 03-30-02; A, 10-16-16]

**16.19.3.9 APPLICANT INELIGIBLE:**

**A.** An applicant [may] shall be deemed to be ineligible to reciprocate if [registration] licensure in the state of examination is not current; or if the pharmacist has worked less than one year [and his] or internship requirements at the time of examination, did not meet New Mexico's internship requirements.

**B.** An applicant who has not been active in pharmacy for a period of [~~twelve months~~] one year or more, [may] shall be required to complete such internship as the board [may] shall deem necessary. [~~but not to exceed 750 hours, and/or may~~] The internship period shall be a minimum of 60 hours for each year inactive. The applicant shall be required to successfully complete the [NABPLEX and/or Jurisprudence examination] North American pharmacist licensure examination (NAPLEX) or multi-state pharmacy jurisprudence examination (MPJE). [08-27-90; 16.19.3.9 NMAC - Rn, 16 NMAC 19.3.9, 03-30-02; A, 10-16-16]

**16.19.3.10 [APPLICANT INELIGIBLE, NON-RECIPROCAL STATE-**

**REGISTRATION] LICENSURE REINSTATEMENT OF RECIPROCALITY LICENSE ELIGIBILITY:** An applicant who qualifies for and acquired a license in a state that does not grant reciprocal privileges with New Mexico [may] shall be deemed ineligible for reciprocal [registration] licensure.

**A.** An applicant must have current pharmacist licensure in the state in which the applicant has licensed by examination.

**B.** If an applicant has not been active in the area of pharmacy practice for greater than one year but less than five years, the pharmacist candidate shall complete the following:

- (1)** submit renewal form;
- (2)** pay past renewal fees and reinstatement fees;
- (3)** submit proof of continuing education for each inactive renewal period;
- (4)** submit proof of completed internship a minimum of 60 hours for each year of inactivity;
- (5)** successfully complete the MPJE; and
- (6)** submit a current letter of good standing from the state of examination.

**C.** In lieu of past renewal fees, reinstatement fees and proof of continuing education, an inactive pharmacist shall successfully complete the internship minimum of 60 hours for each year of inactivity, and successfully pass the NAPLEX and the MPJE.

**D.** If a pharmacist has not been active in the area of pharmacy practice for six years or more, the pharmacist candidate shall:

- (1)** complete the internship minimum of 60 hours for each year of inactivity; and
- (2)** successfully pass the NAPLEX and the MPJE.

[08-27-90; 16.19.3.10 NMAC - Rn, 16 NMAC 19.3.10, 03-30-02; A, 10-16-16]

**16.19.3.11 JURISPRUDENCE EXAMINATION:**

**A.** An applicant for reciprocity will be required to submit all paperwork required for reciprocity, take the [jurisprudence examination] MPJE and shall make a score of not less than [75%] seventy-five percent [in the New Mexico Jurisprudence examination] prior to issuance of a license.

**B.** Failure to appear and take the jurisprudence examination within one year after the application is received shall nullify the application and a refund of fees will not be made.

**C.** Upon submittal of the proper application and fee, a candidate may repeat the MPJE. A candidate shall take the MPJE no more than five consecutive times without passing. Failure to finish the examination is counted as an attempt. Candidates who fail or do not complete the MPJE shall wait a period of at least 30 days prior to retaking the examination. [07-28-91; 16.19.3.11 NMAC - Rn, 16 NMAC 19.3.11, 03-30-02; A, 10-16-16]

**16.19.3.12 PHOTO REQUIRED:** Each applicant for [registration] licensure shall furnish two permanent photographs, head and shoulders only, approximately 3 x 4 inches and signed and dated on the back. [07-28-91; 16.19.3.12 NMAC - Rn, 16 NMAC 19.3.12, 03-30-02; A, 10-16-16]

**16.19.3.13 EVIDENCE OF QUALIFICATIONS:** The New Mexico board of pharmacy [may] shall deem an applicant ineligible to be [registered] licensed by reciprocity if the application that he submits fails to furnish evidence:

**A.** that the license which applicant acquired by examination in the state which he applies is in good standing;

**B.** that applicant [if examined after July 1, 1936, passes written examination in pharmacy, chemistry, pharmacology, pharmacognosy, pharmaceutical and chemical math, and a practical-



examination with a general average of 75% in the written examination or less than 75% in the practical examination; or that applicant, if examined prior to July 1, 1936, obtained a general average of 75% and not less than 60% in any written or practical examination] completed the NAPLEX examination with a passing score;

C. that the applicant is, in fact, competent and qualified to function as a pharmacist;

D. that applicant is of good moral character and is not addicted to the use of alcohol, narcotic or hypnotic drugs;

E. that the applicant has not been charged with, convicted, fined or had his license suspended or revoked for violation of pharmacy, liquor, narcotic or drug laws. [08-27-90; 16.19.3.13 NMAC - Rn, 16 NMAC 19.3.13, 03-30-02; A, 10-16-16]

**16.19.3.14 PENDING INDICTMENT OR ALLEGED VIOLATIONS:**

An applicant shall be ineligible for reciprocal [registration against whom] licensure if there is pending an indictment or alleged violation of any pharmacy, liquor, narcotic or drug laws or has been convicted of a felony within five years prior to application. [08-27-90; 16.19.3.14 NMAC - Rn, 16 NMAC 19.3.14, 03-30-02; A, 10-16-16]

**16.19.3.15 TEMPORARY LICENSE:**

A. Persons who provide acceptable evidence of being currently licensed by examination under the laws of other states in the United States and the District of Columbia, shall be authorized to practice pharmacy for a period of (90) days from the date on receipt of a complete application and [~~\$50~~ a \$50.00 fee. Fee which will go towards the eventual licensing fee. Persons must become duly licensed in this state within 90 days. The licensing agency in each state in which the applicant holds or has held a license shall submit a statement to

the board confirming the applicant to be or have been in good standing in that state.

B. The temporary licensee shall not act as the pharmacist-in-charge (unless there is no other pharmacist in the designated facility), a preceptor, or supervisor of interns or externs.

C. The temporary licensee shall be subject to discipline in the same manner as those holding a full license, and shall be subject to immediate suspension upon reasonable evidence of false or incorrect statements in the documents submitted or if found not to be in good standing in other states.

D. The temporary license shall not be renewed or extended. [16.19.3.15 NMAC - N, 01-31-07; A, 10-16-16]

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

**This is an amendment to 16.19.4 NMAC, Section 9, 16 and 17, effective 10-16-2016.**

**16.19.4.9 DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:**

A. Preamble: In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

B. Professional conduct may be defined as complying with all the laws and regulations that apply to a given professional activity.

C. Definition: Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to.

(1) Violation of any provision of the Pharmacy Act as determined by the board.

(2) Violation of the board of pharmacy regulations as determined by the board.

(3) Violation of the Drug and Cosmetic Act as

determined by the board.

(4) Violation of the Controlled Substances Act as determined by the board.

(5) Failure of the pharmacist to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep his pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of his professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) Failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions, and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities.

(9) Participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare.

(10) The solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

(12) Failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.19.4.12 NMAC.

(13) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

(14)

Conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States.

**(15)**

Suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

**(16)** Dispensing

a prescription for a dangerous drug to a patient without an established practitioner-patient relationship:

**(a)**

except for the provision of treatment of partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health;

**(b)**

except for on-call practitioners providing services for a patient's established practitioner;

**(c)**

except for delivery of dangerous drug therapies to patients ordered by a New Mexico department of health physician as part of a declared public health emergency;

**(d)**

except for dispensing ~~a prescription for~~ the dangerous drug naloxone ~~to a person for administration to another~~ as authorized in ~~public health law 24-23 administration of opioid antagonist~~ Section 24-23-1 NMSA 1978;

**(e)**

except for the prescribing or dispensing and administering for immunizations programs.

**(17)** Dispensing

a prescription order for a dangerous drug to a patient if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order was issued on the basis of an internet-based questionnaire or an internet-based consultation without a valid practitioner-patient relationship.

**(18)** Failure to

perform a prospective drug review as described in Subsection D of 16.19.4.17 NMAC and document steps taken to resolve potential problems.

[03-01-93; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 03-30-02; A, 07-15-02; A, 01-15-08; A, 09-16-11; A, 8-31-12; A, 03-23-16; A, 10-16-16]

**16.19.4.16**

**RESPONSIBILITIES OF PHARMACIST AND PHARMACIST INTERN:**

**A.** The following responsibilities require the use of professional judgement and therefore shall be performed only by a pharmacist or pharmacist intern:

**(1)** receipt of

all new verbal prescription orders and reduction to writing;

**(2)** initial

identification, evaluation and interpretation of the prescription order and any necessary clinical clarification prior to dispensing;

**(3)**

professional consultation with a patient or his agent regarding a prescription;

**(4)** evaluation

of available clinical data in patient medication record system;

**(5)** oral

communication with the patient or patient's agent of information, as defined in this section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;

**(6)**

professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized agent regarding a patient and any medical information pertaining to the prescription;

**(7)** drug

regimen review, as defined in 61-11-2L;

**(8)**

professional consultation, without dispensing, will require that the patient be provided with the identification of the pharmacist or pharmacy intern providing the

service.

**B.** Only a pharmacist shall perform the following duties:

**(1)** final

check on all aspects of the completed prescription including sterile products and cytotoxic preparations, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container;

**(2)** evaluation

of pharmaceuticals for formulary selection within the facility;

**(3)** supervision

of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications;

**(4)** ensure

that supportive personnel have been properly trained for the duties they may perform;

**(5)** any verbal

communication with a patient or patient's representative regarding a change in drug therapy or performing therapeutic interchanges (i.e. drugs with similar effects in specific therapeutic categories); this does not apply to substitution of generic equivalents;

**(6)** any other

duty required of a pharmacist by any federal or state law.

**C.** Patient records.

**(1)** A

reasonable effort must be made to obtain, record and maintain at least the following information:

**(a)**

name, address, telephone number, date of birth (or age) and gender of the patient;

**(b)**

individual medical history, if significant, including disease state or states, known allergies and drug reactions and a comprehensive list of medications and relevant devices; and

**(c)**

pharmacists comments relevant to the individuals drug therapy.

**(2)** Such

information contained in the patient record should be considered by the

pharmacist or pharmacist intern in the exercise of their professional judgement concerning both the offer to counsel and the content of counseling.

**D.** Prospective drug review.

**(1)** Prior to dispensing any prescription, a pharmacist shall review the patient profile for the purpose of identifying:

- (a)** clinical abuse/misuse;
- (b)** therapeutic duplication;
- (c)** drug-disease contraindications;
- (d)** drug-drug interactions;
- (e)** incorrect drug dosage;
- (f)** incorrect duration of drug treatment;
- (g)** drug-allergy interactions;
- (h)** appropriate medication indication.

**(2)** Upon recognizing any of the above, a pharmacist, using professional judgment, shall take appropriate steps to avoid or resolve the potential problem. These steps may include requesting and reviewing a controlled substance prescription monitoring report or another states' reports if applicable and available, and consulting with the prescriber and counseling the patient. The pharmacist shall document steps taken to resolve the potential problem.

**E.** Prescription monitoring program (PMP) report for [opiate] opioid prescriptions. When presented with an [opiate] opioid prescription for a patient, obtaining and reviewing a [prescription-monitoring] PMP report for that patient can be an important tool that assists the pharmacist in identifying issues or problems that put his or her patient at risk of prescription drug abuse, overdose, or diversion. A pharmacist shall use professional judgment based on prevailing standards of practice in determining whether to obtain and review a [prescription-monitoring] PMP report

before dispensing an [opiate] opioid prescription to that patient, and shall document his or her action regarding such reports.

**(1)** A pharmacist shall request and review a [prescription-monitoring] PMP report covering at least a one year time period and another states' report, where applicable and available if:

**(a)** a pharmacist becomes aware of a person currently exhibiting potential abuse or misuse of [opiates] opioids (i.e. over-utilization, early refills, [multiple] multiple prescribers, appears overly sedated or intoxicated upon presenting a prescription for an [opiate] opioid or an unfamiliar patient requesting an [opiate] opioid by specific name, street name, color, or identifying marks, or paying cash when the patient has prescription insurance);

**(b)** a pharmacist receives an [opiat] opioid prescription [requesting-the dispensing of opiates from a prescription] issued by a prescriber with whom the pharmacist is unfamiliar ([e.+] i.e. prescriber is located out-of-state or prescriber is outside the usual pharmacy geographic prescriber care area);

**(c)** [providing opiates for a patient that is receiving chronic pain management prescriptions:] a pharmacist receives an opioid prescription for an unfamiliar patient who resides outside the usual pharmacy geographic patient population area;

**(d)** a pharmacist receives an initial prescription for any long-acting opioid formulations, including oral and transdermal dosage forms (e.g. fentanyl or methadone);

**(e)** a pharmacist becomes aware of a patient receiving an opioid concurrently with a benzodiazepine or carisoprodol;

**(2)** The pharmacist shall document the review of these PMP reports.

**(3)** Upon recognizing any of the above

conditions described in Paragraph (1) of Subsection E of 16.19.4.16 NMAC, a pharmacist, using professional judgement, shall take appropriate steps to avoid or resolve the potential problem. These steps may include consulting with the prescriber and counseling the patient. The pharmacist shall document steps taken to resolve the potential problem.

~~[(2)]~~ **(4)** After obtaining an initial [prescription-monitoring] PMP report on a patient, a pharmacist shall use professional judgment base on prevailing standards of practice, in deciding the frequency of requesting and reviewing further prescription monitoring reports and other states' reports for that patient. Except that PMP reports shall be reviewed a minimum of once every three months during the continuous use of opioids for each established patient. The pharmacist shall document the review of these reports.

~~[(3)]~~ **(5)** In the event a report is not immediately available, the pharmacist shall use professional judgment in determining whether it is appropriate and in the patient's best interest to dispense the prescription prior to receiving a report.

~~[(4)]~~ **(6)** A prescription for an [opiate] opioid written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness is exempt from [Subsection D of 16.19.29.8 NMAC] Subsection E of 16.19.4.16 NMAC. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner. The pharmacist shall document whether the patient is "terminally ill" or an "LTCF patient".

**F.** Counseling.

**(1)** Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist or pharmacist intern shall personally offer to counsel on matters which will enhance or optimize drug therapy with each patient or the patient's agent. Upon receipt of

a refill prescription drug order a pharmacy technician may query the patient or patient's agent regarding counseling by the pharmacist or pharmacist intern concerning drug therapy. Such counseling shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling which may include, in their professional judgement, one or more of the following:

- (a) the name and description of the drug;
- (b) the dosage form, dosage, route of administration, and duration of drug therapy;
- (c) intended use of the drug and expected action;
- (d) special directions and precautions for preparation, administration and use by the patient;
- (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur;
- (f) techniques for self-monitoring drug therapy;
- (g) proper storage;
- (h) prescriptions refill information;
- (i) action to be taken in the event of a missed dose;
- (j) the need to check with the pharmacist or practitioner before taking other medication; and
- (k) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) [REPEALED]

(3) Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information

leaflets, pictogram labels and video programs.

(4) Patient counseling, as described above and defined in this regulation shall not be required for in-patients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(5) A pharmacist shall in no way attempt to circumvent or willfully discourage a patient or patient's agent from receiving counseling. However, a pharmacist shall not be required to counsel a patient or patients's agent when the patient or patients's agent refuses such consultation.

(6) When the patient or agent is not present when the prescription is dispensed including, but not limited to, a prescription that was shipped by the mail, the pharmacist shall ensure that the patient receives written notice of available counseling. Such notice shall include days and hours of availability, and: (1) of his or her right to request counseling; and (2) a toll-free telephone number in which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record. For pharmacies delivering more than [50%] fifty percent of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than [6] six days per week. The facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

(7) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice concerning available counseling.

G. [REPEALED]  
 H. Regulatory assessment. Profiles, either electronic or hard copy, shall be available for inspection, and shall provide the capability of storing the described historical information. The profiles must demonstrate that an effort is being made to fulfill the requirements

by the completion of the detail required. A patient record shall be maintained for a period of not less than three [~~3~~] years from the date of the last entry in the profile record. [08-27-90; 16.19.4.16 NMAC - Rn, 16 NMAC 19.4.16, 03-30-02; 16.19.4.16 NMAC - Rn, 16.19.4.17 NMAC, 12-15-02; A, 02-01-04; A, 11-30-04; A, 01-15-05; A, 01-31-07; A, 08-31-12; A, 10-25-12; A, 10-16-16]

**16.19.4.17 PHARMACIST CLINICIAN:**

A. Purpose: The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, registration, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 of the Pharmacist Prescriptive Authority Act.

B. Initial certification and registrants.

(1) The board may certify and register a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for certification and registration as a pharmacist clinician shall complete application forms as required by the board and shall pay a fee. The fee shall be set by the board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification and registration as a pharmacist clinician, [~~she/he must submit the following~~] the following must be submitted:

(a) proof of completion of [~~sixty~~] 60 hour board approved physical assessment course, followed by a 150 hour, 300 patient contact preceptorship supervised by a physician or other practitioner with prescriptive



authority, with hours counted only during direct patient interactions;

(b) the applicant will submit a log of patient encounters as part of the application;

(c) patient encounters must be initiated and completed within [2] two years of the application;

(d) a pharmacist clinician requesting a controlled substance registration to prescribe controlled substance in Schedule II or Schedule III shall be trained in responsible opioid prescribing practices. Educational programs shall include an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction, and diversion, and awareness of the state and federal regulations of the prescribing of controlled substances.

(4) The board shall register each pharmacist certified as a pharmacist clinician.

(5) Upon certification and registration by the board, the name and address of the pharmacist clinician, (name of the supervising physician if applicable), and other pertinent information shall be enrolled by the board on a roster of pharmacist clinicians.

C. Biennial renewal of registration.

(1) Renewal applications shall be submitted prior to the license expiration.

(2) Applications for renewal must include:

(a) after January 1, 2013, documentation of continuing education hours, including proof of completion of 2.0 CEU [~~twenty~~ 20 contact hours of live CPE or continuing medical education (CME) approved by (ACPE) or AACME (live programs provided by other continuing education providers may be submitted for review and approval to the board), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the board; and

(b) effective January 1, 2015, a pharmacist clinician with a controlled substance registration to prescribe controlled substances listed in Schedule II or Schedule III shall complete a minimum of 0.2 CEU ([2] two contact hours) per renewal period in the subject area of responsible opioid prescribing practices, and

(c) a current protocol of collaborative practice signed by the supervising physician (if prescriptive authority is sought); and

(d) a copy of the pharmacist clinicians registration with the supervising physicians board (if prescriptive authority is sought); and

(e) other additional information as requested by the board.

D. Prescriptive authority, guidelines or protocol.

(1) Only a registered pharmacist clinician with current protocols, registered with the New Mexico medical board or the New Mexico board of osteopathic medical examiners, may exercise prescriptive authority.

(2) A pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the board. The application must include the supervising physicians' name and current medical license, protocol of collaborative practice and other information requested by the board. A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified and registered as a pharmacist clinician.

(3) The protocol will be established and approved by the supervising physician as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the board.

(4) The protocol must include:

(a) name of the physician(s) authorized to

prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) ordering lab tests and other tests appropriate for monitoring of drug therapy;

(iii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing physician concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for consulting with the supervising physician, including a quality assurance program for review of medical services provided by the pharmacist clinician, (this quality assurance program will be available for board review); and

(e) description of the scope of practice of the pharmacist clinician.

(5) Pharmacist clinicians shall not prescribe dangerous drugs including controlled substances for self-treatment or treatment of immediate family members, except under emergency situations. This will not apply to [~~pharmacist administered-vaccinations~~] medications that may be prescribed under 16.19.26 NMAC. Pharmacist clinicians shall not write a recommendation for the use of medical cannabis.

E. Scope of practice.

(1) A pharmacist clinician shall perform only those services that are delineated in the protocol and are within the scope of practice of the supervising physician [and/or] or alternate supervising physician(s).

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician:

(a) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(b) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and [Section 3, A.] Subsection A of 61-11B-3 of the Pharmacist Prescriptive Authority Act.

(4) The board may, in its discretion after investigation and evaluation, place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising physician [and/or] or alternate supervising physician(s).

F. [Collaborative professional relationship between pharmacist clinicians and supervising physician(s):

(1) The direction and supervision of pharmacist clinicians may be rendered by approved supervising physician/ designated alternate supervising physician(s).

(2) This direction may be done by written protocol or by oral consultation. It is the responsibility of the supervising physician to assure that the appropriate directions are given and understood.

(3) The pharmacist clinician must have prompt access to consultation with the physician for advice and direction.

(4) Upon

any change in supervising physician between registration renewals, a pharmacist clinician shall submit to the board, within ten (10) working days, the new supervising physician's name, current medical license, and protocol; notification to and completion of requirements for the supervising physicians' board shall be completed per that board's requirements. This notice requirement does not apply to an alternate supervising physician who is designated to cover during the absence of the supervising physician.]

Prescription monitoring program:

(1) A pharmacist clinician exercising prescriptive authority in the prescribing of a controlled substance:

(a) shall register with the board to become a regular participant in PMP inquiry and reporting;

(b) may authorize delegate(s) to access the PMP report consistent with 16.19.29 NMAC; while a pharmacist clinician's delegate may obtain a report from the states' PMP, pharmacist clinician is solely responsible for reviewing the PMP report and documenting the receipt and review of a report in the patient's medical record;

(c) before a pharmacist clinician prescribes for the first time, a controlled substance in Schedule II, III or IV to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the pharmacist clinician shall review a PMP report for the patient for the preceeding 12 months; when available, the pharmacist clinician shall review similar reports from adjacent states; the pharmacist clinician shall document the receipt and review of such reports in the patient's medical record;

(d) a PMP report shall be:

(i) reviewed a minimum of once every three months during the continuous use of an opioid, benzodiazepine, or

carisoprodol for each patient; and (ii) reviewed a minimum of once every six months during the continuous use of a controlled substance in Schedule II, III or IV which is not an opioid, benzodiazepine, or carisoprodol for each patient; and

(iii) the pharmacist clinician shall document the review of these reports in the patient's medical record; nothing in this section shall be construed as preventing a pharmacist clinician from reviewing PMP reports with greater frequency than that required by this section;

(e) a pharmacist clinician does not have to obtain and review a PMP report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III or IV;

(i) to a patient in a nursing facility; or (ii) to a patient in hospice care.

(f) upon review of a PMP report for a patient, the pharmacist clinician shall identify and be aware of a patient currently receiving:

(i) opioids from multiple prescribers; (ii) opioids and benzodiazepines concurrently;

(iii) opioids for more than 12 consecutive weeks;

(iv) more than one controlled substance analgesic;

(v) opioids totaling more than 90 morphine milligram equivalents per day;

(vi) exhibiting potential for abuse of misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

(g) upon recognizing any of the above conditions described in Subparagraph

(f) of Paragraph (1) of Subsection F of 16.19.4.17 NMAC, the pharmacist clinician using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose; these steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, offering or arranging treatment for opioid or substance use disorder; the pharmacist clinician shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

**(2)** Pharmacist clinician's licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a PMP report upon a patients' initial enrollement into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II for the purpose of treating opioid use disorder. The pharmacist clinician shall document the receipt and review of a report in the patients' medical record.

**G.** Complaints and appeals.

**(1)** The chair of the board will appoint two [(2)] members of the board, and the president of the supervising physician respective board will appoint [(2)] **two** members of the respective board to the oversight committee; the oversight committee will review complaints concerning the pharmacist clinician practice; the oversight committee will make a report that may include non-binding recommendations to both the board and respective board(s) regarding disciplinary action. Each board can accept or reject the recommendations.

**(2)** Any applicant for certification or any pharmacist clinician may appeal a decision of the board in accordance with the provisions of the Uniform

Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[03-14-98; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 03-30-02; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12-15-02; A, 09-30-03; A, 01-31-07; A, 05-14-10; A, 08-16-10; A, 10-25-12; A, 03-23-13; A, 06-29-13; A, 08-12-13; A, 10-16-16]

## REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

**This is an amendment to 16.19.20 NMAC, Sections 20, 42, 45 and 65, effective 10-16-2016.**

### 16.19.20.20 INVENTORY RECORDS:

**A.** All registrants are required to keep inventory and procurement records.

**B.** All registrants shall comply with the following inventory requirements: Schedule I, II, III, IV and V Annual Inventory

**C.** The annual inventory date shall be May 1 for the initial inventory by the registrant or on the registrant's regular general physical inventory date, provided that date does not vary by more than [6] **six** months before or after May 1. The registrant shall notify the board of pharmacy of the date on which the annual inventory will be taken, if different from May 1. The actual taking of the inventory should not vary more than four [(4)] days from the annual inventory date. The inventory shall document being taken either as of the opening or as of the close of business activity, the inventory date and time, and shall be entered on the inventory record.

**D.** Controlled substances added to the Controlled Substances Act after date of enactment, which substance was, immediately prior to that date, not listed on any schedule, every registrant who possesses that substance shall take an inventory of all stock of the substance on hand and file this record with the other inventory records as required.

**E.** Upon the change of a pharmacist-in-charge, an inventory of all controlled substances shall be taken within 72 hours, by the new pharmacist-in-charge. The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.

**F.** Upon transfer of ownership of a pharmacy, an inventory of all controlled substances shall be taken by the pharmacist-in-charge. The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.

[16.19.20.20 NMAC - Rp 16 NMAC 19.20.13, 07-15-02; A, 10-16-16]

### 16.19.20.42 PRESCRIPTION REQUIREMENTS:

**A.** All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.

Information on the prescription may be added or clarified by the pharmacist after consultation with the practitioner. A practitioner may sign a paper prescription in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). Where an oral order is not permitted, paper prescriptions must be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by the practitioner. A computer-generated prescription that is printed out or faxed by the practitioner must be manually signed. Electronic prescriptions shall be created and signed using an application that meets the requirements of Part 1311 of the Code of Federal Regulations. An individual practitioner may sign and transmit electronic prescriptions for controlled substances provided the practitioner meets all of the



requirements of Part 1306.08 of the Code of Federal Regulations.

**B.** A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in Subsections C and D of 16.19.20.41 NMAC and Subsection E of 16.19.20.42 NMAC. The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

**C.** A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the parenteral products pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

**D.** A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a Schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

**E.** A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a Schedule II narcotic substance for a patient enrolled in a hospice program certified by medicare under title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves

as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

**F.** A pharmacist may dispense directly a controlled substance listed in Schedule III or IV, which is a prescription drug as determined under the New Mexico Drugs and Cosmetics Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner. ~~[A new telephone prescription for any Schedule III, IV, or V opiate shall not exceed a ten day supply, based on the directions for use, and cannot be refilled. Verbal refill authorizations and clarifications to existing prescriptions are exempt from this requirement]~~ A telephone order for a new therapy for an opiate listed in Schedule III, IV, or V shall not exceed a 10 day supply, based on the directions for use, unless a written prescription is on file at this pharmacy from any practitioner for the same opiate within the past six months. A telephone order for this new opiate therapy may not be refilled.

**G.** A pharmacy employee ~~[must]~~ shall verify the identity of the patient or the patient's representative ~~[before a new]~~ who is receiving any prescription for a controlled substance listed in Schedule II, III, ~~[or]~~ IV, or V before it is ~~[delivered]~~ released. Acceptable identification means a current state issued driver's license, including photo, or other current government issued photo identification of the person presenting said identification. The identification type (e.g. driver's license, identification card, passport, etc.), number, name imprinted on that identification, and state [of the government issued identification and the name imprinted on that identification] must be recorded [in a

manner to be determined by a written policy developed by the pharmacist-in-charge]. Exceptions are, a new controlled substance prescription filled for a patient known to the pharmacist or pharmacist intern, whose identification has already been documented in a manner determined by a written policy developed by the pharmacist-in-charge; a controlled substance prescription filled for home delivery; or a controlled substance prescription filled for and delivered to a licensed facility.

[16.19.20.42 NMAC - Rp 16 NMAC 19.20(1), 07-15-02; A, 01-15-08; A, 08-31-12; A, 10-16-16]

#### **16.19.20.45 PRESCRIPTION REFILL REQUIREMENTS:**

**A.** Prescriptions for ~~[Schedule III or IV substances]~~ any controlled substance shall not be filled ~~[or refilled]~~ more than six ~~[(6)]~~ months after the date of issue ~~[or be refilled more than five (5) times unless renewed by the practitioner and a new prescription is placed in the pharmacy files]~~.

**(1)** Controlled substance prescriptions dispensed directly to a patient shall not be refilled before ~~[75%]~~ seventy-five percent of the prescription days' supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

**(2)** Controlled substance prescriptions delivered to a patient indirectly (as mail order) to a patient shall not be refilled before ~~[66%]~~ sixty-six percent of a 90 day supply has passed or ~~[50%]~~ fifty percent of a 30 day supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

**B.** ~~[Schedule V prescriptions may be refilled only as expressly authorized by the prescribing physician on the prescription. If no such authorization is given, the prescription may not be refilled]~~ Prescriptions for Schedule III, IV, or V controlled substances shall not be filled or refilled more than six months after the date of issue or

be filled more than five times unless renewed by the practitioner and a new prescription is placed in the pharmacy files.

[16.19.20.45 NMAC - Rp 16 NMAC 19.20.20(4), 07-15-02; A, 08-31-12; A, 10-16-16]

**16.19.20.65 SCHEDULE I:**

**A. [NMSA-1978]**

Section 30-31-6 NMSA 1978, Schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

- (1) Acetylmethadol
- (2) Allylprodine
- (3) Alphacetylmethadol
- (4) Alphameprodine
- (5) Alphamethadol
- (6) Alpha-methyl fentanyl
- (7) Benzethidine
- (8) Betacetylmethadol
- (9) Betameprodine
- (10) Betamethadol
- (11) Betaprodine
- (12) Clonitazene
- (13) Desmethyltramadol
- (14) Dextromoramide
- (15) Diampromide
- (16) Diethylthiambutene
- (17)

- Dimethylthiambutene (18)
- Difenoxin (19)
- Dimenoxadol (20)
- Dimepheptanol (21)
- Dimethylthiambutene (22)
- Dioxaphetyl Butyrate (23)
- Dipipanone (24)
- Ethylmethylthiambutene (25)
- Etonitazene (26)
- Etoxidine (27)
- Furethidine (28)
- Hydroxypethidine (29)
- Ketobemidone (30)
- Levomoramide (31)
- Levophenacymorphan (32)
- Morpheridine (33)
- Noracymethadol (34)
- Norlevorphanol (35)
- Normethadone (36)
- Norpipanone (37)
- Phenadoxone (38)
- Phenamprodine (39)
- Phenomorphin (40)
- Phenoperidine (41)
- Piritramide (42)
- Proheptazine (43)
- Propoperidine (44)
- Propiram (45)
- Racemoramide (46)

- Tilidine (47)
- Trimeperidine
- B. OPIUM DERIVATIVES:** Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.
- (1) Acetorphine
- (2) Acetyl dihydrocodeine
- (3) Benzyl morphine
- (4) Codeine methylbromide
- (5) Codeine-N-Oxide
- (6) Cyprenorphine
- (7) Desomorphine
- (8) Dehydro morphine
- (9) Etorphine
- (10) Heroin
- (11) Hydromorphanol
- (12) Methyldesorphine
- (13) Methyldihydromorphine
- (14) Morphine methylbromide
- (15) Morphine methylsulfonate
- (16) Morphine-N-Oxide
- (17) Myrophine
- (18) Nicocodeine
- (19) Nicomorphine
- (20) Normorphine
- (21) Pholcodine
- (22) Thebacon
- (23) Drotebanol

(24)  
Beta-Hydroxy-3-Methylfentanyl  
(25)  
3-Methylthiofentanyl  
(26)  
Acetyl-Alpha-Methyl fentanyl  
(27)  
Alpha-Methylthiofentanyl  
(28)  
Beta-hydroxfentanyl  
(29)  
Para-Fluoro fentanyl  
(30)  
Thiofentanyl  
(31)

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**6-acetylmorphine (6AM)**  
(32)

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**Acetyl fentanyl**  
(33)

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**Butyryl fentanyl**  
(34)

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**Betahydroxythiofentanyl**  
(35)

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**Furanyl fentanyl**  
(36)

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**AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide)**  
(37)

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**U47700 (trans-3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide)**  
(38)

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**MT-45 (1-(4-Nitrophenylethyl)piperidylidene-2-(4-chlorophenyl)sulfonamide)**  
(39)

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**W-15 (4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide)**  
(40)

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**W-18 (1-(4-Nitrophenylethyl)piperidylidene-2-(4-chlorophenyl)sulfonamide)**

**C. HALLUCINOGENIC SUBSTANCES:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the

term "isomers" includes the optical position, and geometric isomers).  
(1)  
3,4 -methylenedioxy amphetamine;  
(2)  
5 - methoxy - 3,4-methylenedioxy amphetamine;  
(3)  
3,4,5 -trimethoxy amphetamine;  
(4)  
Bufotenine;  
(5)  
Diethyltryptamine; DET;  
(6)  
Dimethyltryptamine; DMT;  
(7)  
4-methyl-2,5-dimethoxy-amphetamine; DOM or STP;  
(8)  
Lysergic acid amide;  
(9)  
Lysergic acid diethylamide;  
(10)  
Marijuana;  
(11)  
Mescaline;  
(12)  
Peyote;  
(13)  
N-ethyl-3-piperidyl benzilate;  
(14)  
N-methyl-3-piperidyl benzilate;  
(15)  
Psilocybin;  
(16)  
Psilocyn;  
(17)  
Tetrahydrocannabinols;  
(18)  
Parahexyl (synthetic analog of delta-9-tetrahydrocannabinol (THC) an active ingredient of cannabis);  
(19)  
Hashish;  
(20)  
2, 5 -dimethoxyamphetamine; 2, 5-DMA;  
(21)  
4-bromo-2, 5-dimethoxy amphetamine; 2,5-DMA;  
(22)  
4-methoxyamphetamine; PMA;  
(23)  
Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE);  
(24)  
Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of

the drug phencyclidine;  
(25)  
Thiophene (analog of phencyclidine) TCP or TPCP;  
(26)  
Alpha-ethyltryptamine;  
(27)  
2, 5-dimethoxy-4-ethylamphet-amine;  
(28)  
Ibogaine;  
(29)  
2,.5 dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);  
(30)  
Alpha-methyltryptamine (AMT);  
(31)  
5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);  
(32)  
2-(4-bromo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe);  
(33)  
2-(4-chloro-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe);  
(34)  
2-(4-iodo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe);  
(35)  
Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture of preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity:  
(a)  
CP 55,244 ((hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl] 1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol);  
(b)  
CP 55,940 (5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol);  
(c)  
JWH-081 (1-pentyl-3-[1-(4-methoxynaphthoyl)]indole);  
(d)  
JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole);  
(e)  
JWH-133 3-(1,1-dimethylbutyl)-6a,7,10,10a-tetrahydro

-6,6,9-trimethyl-6H dibenzo[b,d] pyran;

(f)

JWH 203 1-pentyl-3-(2-chlorophenylacetyl)indole);

(g)

JWH 210 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone;

(h)

AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole);

(i)

AM-1221 (1-(N-methylpiperidin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole);

(j)

AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole);

(k)

RCS-4 or SR-19 (1-pentyl-3-[(4-methoxy)-benzoyl]indole);

(l)

RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole);

(m)

JWH-210 (1-pentyl-3-(4-ethylnaphthoyl)indole);

(n)

WIN-49,098 (Pravadoline) (4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl] methanone;

(o)

WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone);

(p)

any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation;

(i)

naphthoylindoles: any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including,

but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201;

(ii)

naphthylmethyloindoles: any compound containing a 1Hindol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199;

(iii)

naphthoylpyrroles: any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307;

(iv)

naphthylmethyloindenes: any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176;

(v)

phenylacetylindoles: any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group,

whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8;

(vi)

cyclohexylphenols: any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490;

(vii)

benzoylindoles: any compound containing a 3-(benzoyl) [ 5 ] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241;

(q)

UR-144 1-(pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl) methanone;

(r)

XLR11 1-(5-fluoro-pentyl)-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl) methanone;

(s)

AKB48 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide;

(t)

Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22, QUPIC);

(u)

Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB22; 5F-PB22);

(v)

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-



carboxamide (AB-FUBINACA):  
(w)  
N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA):  
(x)  
N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA):  
(y)  
N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA):  
(z)  
[1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201):  
(aa)  
FDU-PB-22 IUPAC: 1-Naphthyl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate:  
(bb)  
5-fluoro ABICA IUPAC: N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide:  
(cc)  
FUB-144 IUPAC: [1-(4-fluorobenzyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (AKA FUB-UR-144):  
(dd)  
MN-18 IUPAC: N-(1-Naphthyl)-1-pentyl-1H-indazole-3-carboxamide:  
(ee)  
FUB-PB-22 IUPAC: Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate:  
(ff)  
ADB-CHMINACA (N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide):  
(gg)  
AMB-FUBINACA (methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate):  
(hh)  
5-fluoro-AMB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-L-valine, methyl ester):  
(ii)  
5-fluoro-ADB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-3-methyl-D-valine, methyl ester):  
(36) Substances

determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:  
(a)  
salvia divinorum;  
(b)  
salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2H-benzo[f]isochromene-7-carboxylate);  
(37)  
4-methyl-ethylcathinone (4-MEC);  
(38)  
4-ethyl-methcathinone (4-EMC);  
(39)  
2-ethylamino-1-phenyl-propan-1-one (ethcathinone);  
(40)  
3',4'-methylenedioxyethcathinone (ethylone);  
(41)  
beta-keto-N-methyl-3,4-benzodioxolybutanamine (bk-MBDB, butylone);  
(42)  
naphthylpyrovalerone (NRG-1, naphyrone);  
(43)  
N,N-dimethylcathinone (metamfepramone);  
(44)  
alpha-pyrrolidinopropiophenone (alpha-PPP);  
(45)  
alpha-pyrrolidinobutiophenone (alpha-PBP);  
(46)  
4'-methoxy-alpha-pyrrolidinopropiophenone (MOPPP);  
(47)  
4'-methyl-alpha-pyrrolidinopropiophenone (MPPP);  
(48)  
3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP);  
(49)  
3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone (MDPBP);  
(50)  
4'-methyl-alpha-pyrrolidinobutiophenone

(MPBP);  
(51)  
alpha-pyrrolidinovalerophenone (alpha-PVP);  
(52)  
5,6-methylenedioxy-2-aminoindane (MDAI);  
(53)  
alpha-methylamino-butyrophenone (buphedrone);  
(54)  
beta-keto-ethylbenzodioxolylbutanamine (eutylone);  
(55)  
beta-keto-ethylbenzodioxolylpentanamine;  
(56)  
beta-keto-methylbenzodioxolylpentanamine (pentylone);  
(57)  
4-Bromo-2,5-dimethoxyphenethylamine (2c-B, Nexus);  
(58)  
N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine, and N-hydroxy MDA);  
(59)  
5-methoxy-N,N-dimethyltryptamine (5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);  
(60)  
4-methylmethcathinone (Mephedrone);  
(61)  
3,4-methylenedioxypropylvalerone (MDPV);  
(62)  
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);  
(63)  
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);  
(64)  
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);  
(65)  
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T4);  
(66)  
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);

(67) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);	(86) (79) 5-methyl-3,4-methylenedioxyamphetamine (5-Me MDA);	(104) (97) 4-acetoxy-N,N-diisopropyltryptamine (4-acetoxy DiPT, ipracetin);
(68) 2-(2,5-Dimethoxy-4-(n-propylphenyl)ethanamine (2C-P);	(87) (80) 6-benzofuran (6-APB);	(105) (98) O-Acetylpsilocin (4-acetoxy DMT, psilacetin);
(69) 3,4-Methylenedioxy-N-methylcathinone(Methylone);	(88) (81) 4-methoxyamphetamine (PMA);	(106) (99) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO MET, metocin);
(70) Aminorex (2-amino-5-phenyl-2-oxazoline);	(89) (82) 2,5-dimethoxy-4-bromophenethylamine (2C-B);	(107) (100) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO MiPT, hats);
(71) — Quinolin-8-yl 1-pentyl-1 <i>H</i> -indole-3-carboxylate (PB-22, QUPIIC)	(90) (83) 2,5-dimethoxy-4-chlorophenethylamine (2C-C);	(108) (101) 5-methoxy- $\alpha$ -methyltryptamine, (5-MeO-aMT, Alpha-O);
(72) — Quinolin-8-yl 1-(5-fluoropentyl-1 <i>H</i> -indole-3-carboxylate (5-fluro-PB22; 5F-PB22)	(91) (84) 4-methyl-2,5-dimethoxyphenethylamine (2C-D);	(109) (102) N-[2-(5-methoxy-1 <i>H</i> -indol-3-yl)ethyl]-N-methylpropan-2-amine (5-MeO-MiPT);
(73) — N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamide (AB-FUBINACA)	(92) (85) 2,5-dimethoxy-4-ethylphenethylamine, (2C-E, aquarust, cindy);	(110) (103) N,N-diisopropyltryptamine (DiPT);
(74) — N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1 <i>H</i> -indazole-3-carboxamine (ADB-PINACA)	(93) (86) 3,4-dimethyl-2,5-dimethoxyphenethylamine (2C-G);	(111) (104) dipropyltryptamine (DPT);
(75) (71) Pentadrone;	(94) (87) 2,5-dimethoxy-4-iodophenethylamine (2C-I);	(112) (105) N,N-diallyl-5-methoxytryptamine (5-MeO-DALT);
(76) (72) 4-fluro-N-methylcathinone (4-FMC; flephedrone);	(95) (88) 2-[2,5-dimethoxy-4-(2-fluoroethylthio)phenyl]ethanamine (2C-T21);	(113) (106) 3-methoxyphencyclidine (3-MeO PCP);
(77) (73) 3-fluro-N-methylcathinone (3-FMC);	(96) (89) 2-(8-bromo-2,3,6,7-tetrahydrofuro[2,3-f][1]benzofuran-4-yl)ethanamine (2C-B-FLY);	(114) (107) 4-methoxyphencyclidine (4-MeO PCP);
(78) — N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1 <i>H</i> -indazole-3-carboxamide (AB-CHHMNACA)	(97) (90) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, (Bromo-DragonFLY, 3C-Bromo-Dragonfly, DOB-Dragonfly);	(115) (108) dizocilpine (MK-801);
(79) — N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1 <i>H</i> -indazole-3-carboxamide (AB-PINACA)	(98) (91) 2,5-Dimethoxy-4-bromoamphetamine (DOB);	(116) (109) tetrachloroethylene (PCE, perchloroethylene, perchloroethene, Perc);
(80) — [1-(5-fluoropentyl)-1 <i>H</i> -indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201)	(99) (92) 2,5-Dimethoxy-4-chloroamphetamine (DOC);	(117) (110) 3-MeO-2-Oxo-PCE (methoxetamine);
(81) (74) 3-methylmethcathinone (3-MMC);	(100) (93) 2,5-Dimethoxy-4-methylamphetamine (DOM);	(118) (111) phencyclamine, N-(1-phenylcyclohexyl)propanamine (PCPr);
(82) (75) 3,4-Dimethylmethcathinone (3,4 DMMC);	(101) (94) 2,4,5-trimethoxyamphetamine (TMA2);	(119) (112) 1-(1-(2-thienyl)cyclohexyl)piperidine (Tenocyclidine);
(83) (76) 3-Methyl-N-ethylcathinone (3-MEC);	(102) (95) 2,4,6-trimethoxyamphetamine (TMA6);	(120) (113) 3-methoxyeticyclidine, N-ethyl-1-(3-methoxyphenyl)cyclohexanamine (3-MeO PCE);
(84) (77) 2-methylamino-1-(4-methylphenyl)butan-1-one (4-methylbuphedrone; 4-MeBP);	(103) (96) 6,7-methylenedioxy-2-aminotetralin (MDAT);	(121) (114) 6-ethyl-6-nor-lysergic acid diethylamide (ETH-LAD);
(85) (78) 4-methylthioamphetamine (4 MTA);		(122) (115) 6-allyl-6-nor-LSD (AL-LAD);

~~(+23)~~ (116)  
10-didehydroergoline-8-carboxamide (PRO-LAD);

**D. DEPRESSANTS:**

Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) mecloqualone;
- (2) methaqualone;
- (3) benzodiazepines;
  - (a) bromazepam;
  - (b) camazepam;
  - (c) cloxazolam;
  - (d) delorazepam;
  - (e) ethylloflazepate;
  - (f) fludiazepam;
  - (g) flunitrazepam;
  - (h) haloxazolam;
  - (i) ketazolam;
  - (j) loprazolam;
  - (k) lormetazepam;
  - (l) medazepam;
  - (m) nimetazepam;
  - (n) nitrazepam;
  - (o) nordiazepam;
  - (p) oxazolam;
  - (q) pinazepam;
  - (r) tetrazepam;

(4) gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB;

(5) gamma butyrolactone and any chemical compound that is metabolically converted to GHB;

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB;

(7)  $\gamma$ -hydroxyvaleric acid (GHV, 4-methyl-GHB);

(8)  $\gamma$ -valerolactone (GVL);

(9) methylmethaqualone (MMQ);

(10) mebroqualone (MBQ);

**E. STIMULANTS:**

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

- (1) fenethylamine;
- (2) N-ethylamphetamine;
- (3) cis-4-methylaminorex;
- (4) N, N-dimethylamphetamine;
- (5) N-benzylpiperazine (BZP, 1-benzylpiperazine);
- (6) 2,3-dichlorophenylpiperazine (DCPP);
- (7) dibenzylpiperazine (DBZP);
- (8) methylbenzylpiperazine (MBZP);
- (9) meta-chlorophenylpiperazine (mCPP);
- (10) methylenedioxybenzylpiperazine (MDBZP);
- (11) para-methoxyphenylpiperazine (meOPP);
- (12)

para-chlorophenylpiperazine (pCPP);

(13) para-fluorophenylpiperazine (pFPP);

(14) 2-diphenylmethylpiperidine, (2-DPMP, desoxy pipradrol);

(15) diphenyl-2-pyrrolidinemethanol (D2PM, diphenylprolinol);

(16) methylnaphthidate (HDMP-28);

(17) 3 $\alpha$ -carbomethoxy-4 $\beta$ -(4-chlorophenyl)-N-methylpiperidine (Nocaine, (+)-CPCA);

(18) butyltolylquinuclidine (2-Butyl-3-(p-tolyl)quinuclidine, BTQ);

**F. Any material, compound, mixture of preparation which contains any quantity of the following substances.**

- (1) 3-methylfentanyl(N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers;
- (2) 3,4-methylenedioxyamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers;
- (3) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers;
- (4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers;
- (5) cathinone;
- (6) methcathinone.  
[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08; A, 05-14-10; A, 11-27-11; A, 06-15-12; A, 08-31-12; A, 12-19-13; A, 06-28-14; A, 12-13-15; A, 10-16-16]

**End Of Adopted Rules**



# 2016 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXVII, Issues 1-24

<b>Volume XXVII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 4</b>	<b>January 15</b>
<b>Issue 2</b>	<b>January 19</b>	<b>January 29</b>
<b>Issue 3</b>	<b>February 1</b>	<b>February 12</b>
<b>Issue 4</b>	<b>February 15</b>	<b>February 29</b>
<b>Issue 5</b>	<b>March 1</b>	<b>March 15</b>
<b>Issue 6</b>	<b>March 16</b>	<b>March 31</b>
<b>Issue 7</b>	<b>April 1</b>	<b>April 15</b>
<b>Issue 8</b>	<b>April 18</b>	<b>April 30</b>
<b>Issue 9</b>	<b>May 2</b>	<b>May 13</b>
<b>Issue 10</b>	<b>May 16</b>	<b>May 31</b>
<b>Issue 11</b>	<b>June 1</b>	<b>June 15</b>
<b>Issue 12</b>	<b>June 16</b>	<b>June 30</b>
<b>Issue 13</b>	<b>July 1</b>	<b>July 15</b>
<b>Issue 14</b>	<b>July 18</b>	<b>July 29</b>
<b>Issue 15</b>	<b>August 1</b>	<b>August 15</b>
<b>Issue 16</b>	<b>August 16</b>	<b>August 31</b>
<b>Issue 17</b>	<b>September 1</b>	<b>September 15</b>
<b>Issue 18</b>	<b>September 16</b>	<b>September 30</b>
<b>Issue 19</b>	<b>October 3</b>	<b>October 14</b>
<b>Issue 20</b>	<b>October 17</b>	<b>October 31</b>
<b>Issue 21</b>	<b>November 1</b>	<b>November 15</b>
<b>Issue 22</b>	<b>November 16</b>	<b>November 30</b>
<b>Issue 24</b>	<b>December 16</b>	<b>December 30</b>

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## 2017 New Mexico Register

### Submittal Deadlines and Publication Dates

#### Volume XXVIII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 17
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	April 27	May 16
Issue 10	May 18	May 30
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	June 29	July 11
Issue 14	July 13	July 25
Issue 15	July 27	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
Issue 18	September 14	September 26
Issue 19	September 28	October 17
Issue 20	October 19	October 31
Issue 21	November 2	November 14
Issue 22	November 16	November 28
Issue 23	November 30	December 12
Issue 24	December 14	December 26

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