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New Mexico Register

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

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New Mexico Register

Volume XXVII, Issue 23

December 15, 2016

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Notices of Rulemaking and Proposed Rules

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 January 18, 2017 from 8:30 a.m. to 10:00 a.m. The purpose of the public hearing will be to obtain input on the proposed new rule adoption 6.29.15 NMAC (SPANISH LANGUAGE ARTS COMMON CORE STANDARDS).

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, 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.

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 January 18, 2017 from 10:30 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the proposed new rule adoption 6.29.16 NMAC (SPANISH LANGUAGE DEVELOPMENT).

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, 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.

**REGULATION AND LICENSING DEPARTMENT
DENTAL HEALTH CARE, BOARD OF**

PUBLIC RULE HEARING AND REGULAR BOARD AND COMMITTEE MEETING

Notice is hereby given that the New Mexico Board of Dental Health Care will hold a Rule Hearing on Friday, January 27, 2017. Following the Rule Hearing the New Mexico Dental Hygienists Committee will convene a regular meeting; following the New Mexico Dental Hygienist Committee meeting the New Mexico Board of Dental Health Care will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Dental Health Care Rule Hearing will begin at 8:00 a.m. and the Regular Board Meetings will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, Toney Anaya Building, 2500 Cerrillos Road, Santa Fe, NM, 87505, in the Rio Grande Conference Room.

The purpose of the rule hearing is to consider adoption of proposed amendments, to the following Board Rules and Regulations in 16.5.1 General Provisions, 16.5.9 Non-Dentist Owners, 16.5.16 Dentists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Action, 16.5.28 Dental Hygienists, Local Anesthesia Certification, 16.5.29 Dental Hygienists, Practice, 16.5.57 Management of Pain with Controlled Substances.

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4622 or copies of the proposed rules are available on the Dental board’s website: www.RLD.state.nm.us. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing **no later than January 13, 2017**. Persons wishing to present their comments at the hearing will need thirteen (13) copies of any comments or proposed changes for distribution to the Board and staff.

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

**REGULATION AND
LICENSING DEPARTMENT**
REAL ESTATE COMMISSION

NOTICE OF RULE HEARING

The New Mexico Real Estate Commission will hold a public rule hearing on Monday, January 23, 2017 at 9:00 a.m. at the Real Estate Commission office, 5500 San Antonio Drive NE in Albuquerque, New Mexico.

The Commission is seeking real estate broker and public input on proposed amendments to its rules 16.61.1 NMAC, General Provisions; 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements; 16.61.13 NMAC, Continuing Education Requirements; 16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors; 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities; and 16.61.19 NMAC, Broker Duties and Brokerage Relationships. The Commission will take final action on proposed rule amendments at its March 20, 2017 regular meeting to be held at 9:00 a.m. at the Commission offices at 5500 San Antonio Drive NE in Albuquerque.

Copies of the proposed rule amendments are available from the Commission office at 5500 San Antonio Drive NE, Suite B, Albuquerque, New Mexico or from the Commission web site at www.rld.state.nm.us. Copies of the agenda for the rule hearing may be obtained from the Commission office no later than seventy two (72) hours before the hearing.

Real estate brokers and members

of the public may comment on the proposed rule changes during the hearing and may submit written comments to the Commission during the 30-day period before the hearing and at the hearing. Written comments submitted prior to the hearing should be mailed to Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission, 5500 San Antonio Drive NE, Suite B, Albuquerque, New Mexico 87109 or emailed to Mr. Ciddio at wayne.ciddio@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 other form of auxiliary aid or service to attend or participate in the rule hearing, please contact Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission at (505) 222-9829 or by email at wayne.ciddio@state.nm.us at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and proposed rule changes, can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or other type of accessible format is needed.

Real estate brokers may receive up to four hours of continuing education credit during their three-year licensing cycle by attending a Real Estate Commission meeting, rule hearing, disciplinary hearing, or meeting of the Commission's Education Advisory Committee.

**STATE GAME
COMMISSION**

**STATE GAME COMMISSION
MEETING AND RULE MAKING
NOTICE**

On Thursday, January 12, 2017, beginning at 9:00 a.m., at the Santa Fe Community College Board Room, 6401 Richards Avenue, Santa Fe, New Mexico, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Election of Chair and Vice Chair of the State Game Commission; Annual Adoption of

the Open Meetings Resolution; Future Meeting Schedule and Locations; Approval of Site Plan for Construction of Albuquerque Office; Revocations; State Game Commission Award, Commission to Designate a Commissioner to Review and Select the 2017 Recipient; Presentation of Final Recovery Plan for White-Tailed Ptarmigan; Presentation of Draft Recovery Plan for Gould's Turkey and Gila Monster; Initiation of Migratory Bird Rule for 2017-2018 Hunting Seasons; Fiscal Year 2016 Department Audit Results and Review; Update on the Gold King Mine; Update on Development of Shooting Ranges in New Mexico; Property Acquisition in Guadalupe County in New Mexico; and Closed Executive Session.

Copies of proposed rule changes and the agenda can be obtain from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

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

Adopted Rules

Effective Date and Validity of Rule Filings

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

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

The Board of Trustees for the Museum of Natural History and Science repealed its rule 4.53.2 NMAC - Public Admissions Fees, filed 7-14-2000, effective 11-18-16.

**GAME AND FISH,
DEPARTMENT OF**

On November 17, 2016, the State Game Commission repealed the rule 19.31.4 NMAC, Hunting and Fishing-Fisheries, and replaced it with 19.31.4 NMAC, Hunting and Fishing-Fisheries, effective April 1, 2016.

On November 17, 2016, the State Game Commission repealed the rule 19.31.10 NMAC, Hunting and Fishing-Manner and Method of Taking, and replaced it with 19.31.10 NMAC, Hunting and Fishing-Manner and Method of Taking, effective December 15, 2016.

**GAME AND FISH,
DEPARTMENT OF**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 4 FISHERIES**

19.31.4.1 ISSUING
AGENCY: New Mexico Department of Game and Fish.
[19.31.4.1 NMAC - Rp, 19.31.4.1 NMAC, 12-15-2016]

19.31.4.2 SCOPE:

Sportfishing. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 through 34 of Title 19 NMAC.
[19.31.4.2 NMAC - Rp, 19.31.4.2 NMAC, 12-15-2016]

19.31.4.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26, and 17-2-1 NMSA 1978, provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.
[19.31.4.3 NMAC - Rp, 19.31.4.3 NMAC, 12-15-2016]

19.31.4.4 DURATION: April 1, 2017 through March 31, 2018.
[19.31.4.4 NMAC - Rp, 19.31.4.4 NMAC, 12-15-2016]

19.31.4.5 EFFECTIVE DATE: April 1, 2017, unless a later date is cited at the end of a section.
[19.31.4.5 NMAC - Rp, 19.31.4.5 NMAC, 12-15-2016]

19.31.4.6 OBJECTIVE: Establishing open seasons, bag limits, and other rules pertaining to management and harvest of the fisheries resources of New Mexico.
[19.31.4.6 NMAC - Rp, 19.31.4.6 NMAC, 12-15-2016]

19.31.4.7 DEFINITIONS: Specific terms as used in this regulation are defined.

- A. Boundary descriptions**
- (1) "U.S.", as used in boundary descriptions herein, shall mean United States highway.
- (2) "N.M.", as used in boundary descriptions herein, shall mean New Mexico state road.

(3) "I", as used in boundary descriptions herein, shall mean interstate highway.

B. "Daylight hours" shall mean from one-half hour before sunrise to sunset.

C. "Barbless" lure or fly shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto a hook to resemble or simulate insects, bait fish, or other foods. A fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

D. "Chum" as used herein, is organic material that is not injurious to aquatic life and is used to attract fish.

E. "Snagging" as used herein, is the intentional taking of fish with hooks, gang hooks, or similar devices where the fish is hooked in a part of the body other than the mouth.

F. "Bait fish" is defined as those nongame fish which are not otherwise protected by statute or regulation.

G. "Angling" shall mean taking or attempting to take fish by hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.
[19.31.4.7 NMAC - Rp, 19.31.4.7 NMAC, 12-15-2016]

19.31.4.8 TROUT WATERS AND WARM WATERS:

A. Regular trout waters: The following are designated as regular trout waters: All streams, lakes and ponds lying within the following described areas except

licensed class A lakes and lakes, ponds, and ranch tanks not fed by public waters and not open to public fishing.

(1) Northern area: That portion of New Mexico bounded by a line starting at the intersection of I-25 with the Colorado-New Mexico state line and running south along I-25 to its junction with U.S. 64; thence, south and west on U.S. 64 to its junction with N.M. 58 at Cimarron; thence, south and east on N.M. 21 to its junction with I-25; thence, south, west, and southwest on I-25 and U.S. 84-85 to its junction with U.S. 285-84 at Santa Fe; thence, north on U.S. 285-84 to its intersection with N.M. 502; thence, west on N.M. 502 to the west bank of the Rio Grande; thence, southwesterly along the west bank of the Rio Grande to its intersection with N.M. 44 at Bernalillo; thence, north and west on N.M. 44 to its intersection with U.S. 550; thence, west on U.S. 550 to the west bank of the Animas river; thence, north along the west bank of the Animas river to the Colorado-New Mexico state line; thence, east along the state line to its intersection with I-25. (Except the San Juan river from U.S. 64 bridge at Blanco downstream to N.M. 44 bridge at Bloomfield.)

(2) Ruidoso area: That portion of New Mexico bounded by a line starting at the junction of U.S. 54 and N.M. 506 and running north on U.S. 54 to its intersection with U.S. 380 at Carrizozo; thence, east on U.S. 380 to its junction with N.M. 246 at Capitan; thence, north and east on N.M. 246 to the eastern boundary of the Lincoln national forest; thence, south to Tinnie; thence, west on U.S. 380 to Hondo; thence, south on a north-south line to the junction of N.M. 24 and U.S. 82 north of Dunken; thence south and west on N.M. 24 to Piñon; thence, south approximately one mile to N.M. 506; thence, west along N.M. 506 to its junction with U.S. 54 at Paxton.

(3) Gila area: That portion of New Mexico bounded by a line starting at the junction

of U.S. 180 with the Arizona-New Mexico state line and running north along the state line to its intersection with U.S. 60; thence, east on U.S. 60 to its junction with N.M. 52 west of Magdalena; thence, south on N.M. 52 to Winston and west along the road to Chloride and the eastern boundary of the Gila national forest; thence, south along the forest boundary to its intersection with N.M. 152 east of Kingston; thence, west on N.M. 152 to its junction with U.S. 180 at Central; thence, west and northwest on U.S. 180 to its junction with the Arizona-New Mexico state line. (Except Bear Canyon lake.)

(4) in Sandoval county: all of Las Huertas (Ellis creek);

(5) in San Juan county: the Animas river from the 550 highway bridge in the city of Aztec and downstream to its confluence with the San Juan river;

(6) in Torrance county: all of Tajique creek;

(7) in Union county: all of Dry Cimarron;

(8) in Cibola county: Bluewater creek;

(9) Pecos river from I-25 south to the southeast boundary of Villanueva state park;

(10) the following lakes, ponds, and reservoirs: Alice, Bluewater, Blue Hole Park ponds, Chiuilla well, Clayton, lake Farmington, Jackson, Maloya, Maxwell lake 13, McAllister, McGaffey, Power dam, Perch, Manzano, and Ramah.

(11) In Sierra county: Rio Grande from Elephant Butte dam downstream to, and including, Caballo lake.

B. Winter trout waters: The following are designated as winter trout waters from November 1 through March 31 of the effective years: Sumner lake stilling basin; that portion of the Black river extending from one mile upstream to one mile downstream of Higby hole and located in Sections 8 and 9, T. 24 S., R. 28 E., N.M.P.M., in Eddy county; that portion of the Pecos river from the southeast boundary of

Villanueva state park downstream to, but not including Santa Rosa lake; the following drains: Albuquerque, Atrisco, Belen Riverside, Bernalillo, Corrales, Peralta, and Tome; and the following lakes: Bataan, Bear Canyon, Bill Evans, Bosque Redondo, Bottomless lakes, Burn, Carlsbad municipal, Carrizozo, Chaparral, Conservancy park/Tingley beach, Corrales community pond, Dennis Chavez pond, Escondida, Eunice, Grants river walk pond, Greene Acres, Green Meadow, ponds on Harry McAdams park, Jal, Ned Houk lakes, Oasis park, and Van.

C. Warm waters: "Warm waters", as used herein, shall include all streams, lakes, and ponds except those designated as trout waters above, and except licensed class A lakes.

[19.31.4.8 NMAC - Rp, 19.31.4.8 NMAC, 12-15-2016]

19.31.4.9 SEASON DATES:

A. General seasons: All trout and warm waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:

(1) Special waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister lake, upper and lower Charette lakes, Maxwell lakes 13 and 14, and Clayton lake.

(b) All waters in the Valle Vidal (Vermejo tract of the Carson national forest) shall be open from July 1 through December 31.

(c) Laguna del Campo at Los Ojos trout hatchery shall be open from May 1 through October 31.

(d) Red River city ponds shall be open from March 1 through November 15.

(e) Black Canyon creek in Grant county upstream from lower Black Canyon campground and Mogollon creek in Grant and Catron counties

upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon shall be open from July 1 through October 31.

(f)

All waters on the Valles Caldera national preserve shall be open from May 1 to October 15.

(2) Waters on

national wildlife refuges waters on U. S. national wildlife refuges shall be open for the taking of game fish in accordance with regulations of the U. S. fish and wildlife service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the fish and wildlife service has not regulated season dates.

B. Special Kokanee salmon seasons, dates, and location

(1) The

following waters shall be open October 1 through December 31 for the special Kokanee salmon season: Abiquiu reservoir, Chama river from El Vado lake upstream to the west boundary of the Rio Chama wildlife and fishing area, Eagle Nest lake, El Vado lake, and Navajo lake including the Pine river except as otherwise specified in Paragraph (3) of Subsection B. of 19.31.4.9 NMAC.

(2) Heron

lake shall be open for the special Kokanee salmon season from the second Friday in November through December 31.

(3) Heron

lake, including the Willow creek tributary, and the buoyed "no wake" areas at the Pine boat ramp and Sims mesa boat ramp at Navajo lake, including the shoreline within the "no wake" areas, shall be closed to Kokanee salmon fishing between October 1 and the second Thursday of November. If November 1 is a Friday, then these waters shall be closed to Kokanee salmon fishing between October 1 and the first Thursday of November. It shall be unlawful to fish for, snag, or possess Kokanee salmon in these areas during the closure period.

[19.31.4.9 NMAC - Rp, 19.31.4.9 NMAC, 12-15-2016]

19.31.4.10 HOURS OF FISHING:

A. Day and night

fishing for all species of game fish shall be permitted in all waters during the open season, except Alto, Bonito, Butler street, and Eagle Nest lake where fish may be taken or fished for only between the hours of 5 a.m. and 10 p.m.; and U. S. fish and wildlife service waterfowl refuges where fish may be taken or fished for only during the hours posted at the refuge.

B. Laguna del Campo

located at Los Ojos trout hatchery, Red River hatchery pond at the Red River state fish hatchery, Glenwood pond at the Glenwood state fish hatchery, waters within the Valle Vidal portion of the Carson national forest, and Maddox lake shall be during **daylight hours only**.

C. Fishing at Ned

Houk park lakes and Greene Acres shall be during the **hours posted** by the city of Clovis; fishing at Santa Cruz lake shall be between the **hours of 6 a.m. and 10 p.m.**

D. Fishing at

Conservancy park/Tingley beach shall be only between sunrise and sunset.

[19.31.4.10 NMAC - Rp, 19.31.4.10 NMAC, 12-15-2016]

19.31.4.11 DAILY BAG, POSSESSION LIMITS AND REQUIREMENTS OR CONDITIONS:

A. Trout

(1) Waters

with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown,

rainbow, cutthroat, Gila, lake, brook trout and Kokanee salmon:

(a)

The daily bag limit shall be five trout and no more than 10 trout shall be in possession, unless otherwise specified in special trout waters, Paragraph (4) of Subsection A. of 19.31.4.11 NMAC.

(b)

The daily bag limit for cutthroat trout shall be two trout and no more than

two cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A. of 19.31.4.11 NMAC.

(c)

The daily bag limit for lake trout shall be two trout and no more than four lake trout shall be in possession.

(3) Special

Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season.

(4) Special

trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a)

On those sections of the following waters the daily bag limit shall be two trout and no more than two trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; in Colfax county; the Shuree lakes on the Valle Vidal; all waters of the Valles Caldera National Preserve; In Sandoval county: a posted portion of the Rio San Antonio from the Valles Caldera National Preserve boundary downstream approximately 2.0 miles; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state highway 518 upstream approximately one mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately one mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 0.2 miles below the

bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream; In Catron county: Whitewater creek from Catwalk National Recreation Trail parking area upstream to headwaters including all tributaries; In Catron county: Mineral creek from its confluence with San Francisco river to the headwaters.

(b)

On those sections of the following waters every person must comply with any special requirements listed and no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 3.75 miles to the east side of section 16; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to McKinney pond; In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Sandoval county, Capulin creek from its confluence with the Rio Grande to the headwaters, In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora

county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal except Leandro creek (Vermejo tract - Carson national forest); In Grant and Catron counties: Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon; In Rio Arriba county: the Rio Chama from the United States Geological Survey gaging station located 1.3 miles downstream of El Vado lake dam downstream approximately 3 miles to its confluence with the Rio Nutrias.

(c) In

Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be one fish and no more than one fish may be in possession.

(d) At

Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only and the remaining two ponds shall have daily bag limits of four trout with no more than four trout in possession.

(e)

On those sections of the following waters the daily bag limit shall be three trout and no more than three trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters may be used. In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge; In Taos county: goose lake; In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande; In Taos county: the designated fishing pond at Red River state fish hatchery;

In Taos county: the Red River city ponds; In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately seven miles to the river crossing bridge on U.S. 84 at Abiquiu; In Rio Arriba county: Laguna del Campo at Los Ojos trout hatchery; In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake; In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(f)

On those sections of the following waters no cutthroat trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: In Sandoval county: the Rio Cebolla from McKinney pond to the headwaters; In Taos county: upper Cabresto creek and its tributaries from Cabresto canyon upstream to the headwaters; In Colfax county: the Vermejo river and its tributaries from the Vermejo Park ranch boundary to the headwaters; and in Colfax county: public portions of Leandro creek.

(g)

On those sections of the following waters the daily bag limit shall be two Gila trout and no more than two Gila trout in possession, and the bag limit and possession limit for brown trout is unlimited. Anglers must stop fishing in those waters when the daily bag limit is reached. In Catron county: waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks.

(h)

On those sections of the following waters no Gila trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: in Grant county, Black canyon from the forest road 150 (North Star Mesa road) crossing to the headwaters.

(5) Every

person angling for fish on those sections of the following waters

must be in possession of a Gila trout permit, issued in their name by the department or its designee. In Grant county: Black canyon upstream of its confluence with the East fork Gila River, Sapillo creek; In Catron county: West fork Gila river, Whitewater creek from Catwalk National Recreation Trail parking area upstream to headwaters including all tributaries, Mineral Creek including all tributaries, and waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks; In Grant and Catron counties: the area from the Middle fork Gila river and West fork Gila river confluence downstream to the East fork Gila river confluence and Mogollon creek upstream from the waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

B. Warm-water fishes: The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass one fish;
- (2) largemouth, smallmouth, and spotted bass five fish;
- (3) walleye five fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) all other warm-water game species 20 fish.

C. The following exception shall apply:

- (1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene

Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; Estancia Park lake (Torrance county); Corona lake (Lincoln county); Grants city pond (Cibola county); Conoco lake (Lea county); Dennis Chavez pond (Curry county); Jal lake (Lea county); Ned Houk lakes (Curry county); Young pond (Dona Ana county); Roswell kids pond (Chavez county); Perch lake (Guadalupe county); Blue Hole park pond (Guadalupe county); Alumni pond (Dona Ana county); and Alto lake (Lincoln county): the daily bag limit for channel catfish will be two fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, the limit for tiger muskie (*Esox lucius x E. masquinongy*) shall be one fish over forty (40) inches in length and the possession limit shall be equal to the daily bag limit.

(4) In Eddy county, the Pecos river beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake.

(5) In Colfax county, Eagle Nest lake there is no bag or possession limit for northern pike. All northern pike caught at Eagle Nest lake must be kept in possession. No northern pike shall be intentionally returned to Eagle Nest lake.

[19.31.4.11 NMAC - Rp, 19.31.4.11

NMAC, 12-15-2016]

19.31.4.12 SIZE LIMITS:
A. Salmonids
(1) On Shuree lakes, on the Valle Vidal tract, any trout taken that are less than 15 inches long shall be immediately returned to the water.

(2) In Colfax county, a posted portion of the Cimarron river where only barbless lures or flies may be used (and more specifically described in Subsection A. of 19.31.4.11 NMAC), any trout taken that are less than 16 inches long shall be immediately returned to the water.

(3) [Reserved]
(4) Any trout taken that are less than 12 inches long shall be immediately returned to the water in the following locations:

(a) In San Miguel county: a posted portion of the Pecos river where only barbless lures or flies may be used (more specifically described in Subsection A. of 19.31.4.11 NMAC).

(b) In Lincoln county: a posted section of the Rio Ruidoso where only barbless lures or flies may be used (more specifically described in Subsection A. of 19.31.4.11 NMAC).

(c) In Taos county: a posted section of the Red River from the confluence with Goose creek one mile upstream.

B. Black basses
(1) Any largemouth or spotted bass taken which is less than 14" long shall be immediately returned to the water.

(2) Any smallmouth bass taken which is less than 12" long shall be immediately returned to the water except at Ute and Conchas reservoirs where any smallmouth bass taken which is less than 14" long shall be immediately returned to the water.

C. Walleye: Any walleye taken which are less than 14" long shall be immediately returned to the water.

[19.31.4.12 NMAC - Rp, 19.31.4.12 NMAC, 12-15-2016]

19.31.4.13 [RESERVED]

19.31.4.14 WATERS WITH AGE OR INDIVIDUALS WITH DISABILITIES USE RESTRICTIONS:

A. Only persons **under 12 years of age** may fish in the following waters: Shuree kids' ponds on Valle Vidal (Vermejo tract-Carson national forest); valley improvement association ponds at Belen, Harris pond in Las Vegas, Spring river park in Roswell, and the Brood pond at Seven Springs state fish hatchery.

B. Only persons **under 12 years of age, those 65 years and over, and individuals with disabilities** may fish in the designated Red River hatchery pond located at the Red River state fish hatchery, Blue Hole park pond (formerly Santa Rosa seniors pond), Estancia park lake at Estancia, and in ponds located in Harry McAdams park.

C. **Only individuals with disabilities and those under 12 years of age** may fish in the posted small pond at Cowles.

D. Olympic pond: Only persons under 12 years of age and those 65 years and over may fish in Olympic pond located at Angel Fire.

E. Laguna del Campo: Only persons 14 years of age and under, those 65 years and over, individuals with disabilities, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Laguna del Campo located near Los Ojos trout hatchery.

F. Conservancy park/Tingley beach kids' pond: Only persons 12 years of age and under may fish in Conservancy park/Tingley beach kids' pond in Albuquerque.

G. Red River city middle kids' pond: Only individuals with disabilities and those 12 years of age and under may fish in Red River city middle kids' pond.

H. Grants city pond: Only persons **under 17 years of age, those 65 years and over, and individuals with disabilities** may fish

in Grants City pond in Grants. [19.31.4.14 NMAC - Rp, 19.31.4.14 NMAC, 12-15-2016]

19.31.4.15 [RESERVED]

19.31.4.16 CLOSED WATERS:

A. Waters closed to fishing

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.

(2) In Catron county: Little creek from the "barrier" upstream through all tributaries.

(3) In Catron county: Spruce creek.

(4) In Catron and Sierra counties: Main Diamond creek above the point of confluence with south Diamond creek.

(5) In Catron and Sierra counties: South Diamond creek drainage.

(6) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry.

(7) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(8) In Grant county: east fork of Mogollon creek upstream of Trail canyon including Woodrow canyon.

(9) In Grant county: McKnight creek.

(10) In Grant county: Sheep corral creek.

(11) In Lincoln county: Pinelodge creek and posted areas of Alto reservoir and Bonito lake near the outlets.

(12) In Catron county: All tributaries of the West fork of the Gila river above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Liley canyon. Mainstem of the West fork of the Gila river will be open to fishing.

(13) In Catron county: Iron creek in the

Gila wilderness upstream of the constructed waterfall barrier located in T12SR17WSec16NE.

(14) In Catron county: McKenna creek.

B. Taking fish from hatchery waters: No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs state fish hatchery, and Laguna del Campo at Los Ojos state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

C. Taking fish from or through the ice: Fish may be taken from or through the ice except on the following waters: Santa Cruz lake, Monastery lake, Bonito lake, and Springer lake.

[19.31.4.16 NMAC - Rp, 19.31.4.16 NMAC, 12-15-2016]

19.31.4.17 [RESERVED]

19.31.4.18 ESTABLISHING FREE FISHING DAYS: The first Saturday in June and the last Saturday in September during the effective dates of this regulation, are established as free fishing days whereby anglers may fish public waters in New Mexico as otherwise provided by regulation, but without benefit of a fishing license or habitat improvement stamp.

[19.31.4.18 NMAC - Rp, 19.31.4.18 NMAC, 12-15-2016]

19.31.4.19 [RESERVED]

HISTORY OF 19.31.4 NMAC: The material in this part was derived from that previously filed with the State Records Center & Archives under: Regulation No. 488, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of

The Fisheries Resources of New Mexico 1968-1969 License Year, April 1, 1968 Through March 31, 1969, filed 12-15-67; Regulation No. 500, Concerning Method & Manner of Hunting, Taking, Possessing, Disposing & Transporting of Game Animals, Birds, Fish Or Bullfrogs, Or Parts Thereof, Taken In NM, filed 5-25-67; Regulation No. 525, Concerning the Method And Manner of Hunting, Taking, Possessing, Disposing And Transporting of Game Animals, Game Birds, Game Fish Or Bullfrogs, Or Parts Thereof, Taken In New Mexico, filed 8-21-68; Regulation No. 499, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico 1969-1970 License Year, April 1, 1969 Through March 31, 1970, filed 12-10-68; Regulation No. 509, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico 1970-1971 License Year, April 1, 1970 Through March 31, 1971, filed 12-8-69; Regulation No. 518, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico 1971-1972 License Year, April 1, 1971 Through March 31, 1972, filed 1-14-71; Regulation No. 530, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico, 1972-1973 License Year, April 1, 1972 Through March 31, 1973, filed 1-11-72; Regulation No. 535, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1972 Through March 31, 1973, filed 5-31-72; Regulation No. 550, Basic Regulation Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting And Fishing, And Use of Department Lands, Filed 5-31-72; Regulation No. 543, Establishing Open Seasons, Bag

Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1973 Through March 31, 1974, filed 12-11-72; Regulation 552, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of Mexico For the Period April 1, 1974 Through March 31, 1975, filed 1-11-74; Regulation No. 562, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1975 Through March 31, 1976, filed 1-3-75; Regulation No. 571, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1976 Through March 31, 1977, filed 2-10-76; Regulation No. 579, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1977, Through March 31, 1978, filed 9-21-76; Regulation No. 581, Establishing Rules Pertaining To Management And Harvest of Commercial Fish Resources of New Mexico, filed 12-20-76; Regulation No. 586, Establishing Rules Pertaining To Management And Harvest of Commercial Fish Resources of New Mexico, filed 5-24-77; Regulation No. 589, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1978, Through March 31, 1979, filed 10-5-77; Regulation No. 595, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1979, Through March 31, 1980, filed 10-3-78; Regulation No. 602, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1980, Through

March 31, 1981, filed 11-21-79; Regulation No. 607, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1981, Through March 31, 1983, filed 10-22-80; Regulation No. 612, Basic Regulation Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting and Fishing, Use of Department Lands, Retention of Protected Species, Permits and Licenses Issued, and the Hunter Safety Certificate Requirement, filed 3-2-82; Regulation No. 619, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period April 1, 1983, Through March 31, 1985, filed 12-8-82; Regulation No. 632, Establishing Open Seasons, Bag Limits And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1985, Through March 31, 1987, filed 11-28-84; Regulation No. 647, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1987, Through March 31, 1989, filed 1-5-87; Regulation No. 662, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1989, Through March 31, 1991, filed 12-19-88; Regulation No. 677, Basic Regulation Governing Water Pollution, Possession of Game, Permits and Licenses Issued, Retention and Importation of Protected Species, Manner of Hunting and Fishing, Use of Department Lands, Hunter Training Course Required, Hunting License Revocation, filed 6-25-90; Regulation No. 681, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1991, Through March 31,

1993, filed 1-11-91; Regulation No. 694, Establishing Open Seasons, Bag Limits, And Other Rules Pertaining To Management And Harvest of the Fisheries Resources of New Mexico For the Period of April 1, 1993, Through March 31, 1995, filed 3-11-93

NMAC History:

19 NMAC 31.4, Hunting and Fishing Regulations - Fisheries, 4-1-95.
 19.31.4 NMAC, Hunting and Fishing Regulations - Fisheries, 11-15-2000.
 19.31.4 NMAC, Hunting and Fishing - Fisheries, 4-15-2002.
 19.31.4 NMAC, Hunting and Fishing - Fisheries, 3-10-2010.
 19.31.4 NMAC, Hunting and Fishing - Fisheries, 12-30-2015.
 19.31.4 NMAC, Hunting and Fishing - Fisheries, 12-15-2016.

History of Repealed Material:

19.31.4 NMAC, Hunting and Fishing-Fisheries, repealed effective 12-15-2016.

**GAME AND FISH,
 DEPARTMENT OF**

**TITLE 19 NATURAL
 RESOURCES AND WILDLIFE
 CHAPTER 31 HUNTING AND
 FISHING
 PART 10 HUNTING
 AND FISHING - MANNER AND
 METHOD OF TAKING**

19.31.10.1 ISSUING

AGENCY: New Mexico Department of Game and Fish.
 [19.31.10.1 NMAC - Rp, 19.31.10.1 NMAC, 12-15-2016]

19.31.10.2 SCOPE: Hunters, anglers, trappers and the general public. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 31, 32, and 33 of Title 19.
 [19.31.10.2 NMAC - Rp, 19.31.10.2 NMAC, 12-15-2016]

19.31.10.3 STATUTORY AUTHORITY: Section 17-1-14 and Section 17-1-26 NMSA 1978

provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.31.10.3 NMAC - Rp, 19.31.10.3 NMAC, 12-15-2016]

19.31.10.4 DURATION:

Permanent.
 [19.31.10.4 NMAC - Rp, 19.31.10.4 NMAC, 12-15-2016]

19.31.10.5 EFFECTIVE DATE:

December 15, 2016, unless a later date is cited at the end of a section.
 [19.31.10.5 NMAC - Rp, 19.31.10.5 NMAC, 12-15-2016]

19.31.10.6 OBJECTIVE:

To establish general rules, restrictions, requirements, definitions, and regulations governing lawful hunting, fishing, or trapping and the lawful taking or killing of game animals, furbearers, game birds, and game fish, water pollution, possession of wildlife, permits and licenses issued, importation, intrastate transportation, release of wildlife, restrictive devices for fish, manner and methods of hunting and fishing and use of department lands.
 [19.31.10.6 NMAC - Rp, 19.31.10.6 NMAC, 12-15-2016]

19.31.10.7 DEFINITIONS:

A. "Big game species" shall mean deer, bear, cougar, elk, pronghorn antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, and Persian ibex.

B. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

C. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent

blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

D. "Restricted muzzle-loading rifle" shall mean any muzzle-loading rifle using open sights, black powder or equivalent and firing a traditional lead bullet. The use of in-line ignition, scopes, pelleted powder, smokeless powder and sabots, including powerbelt-type projectiles, are prohibited.

E. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

F. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

G. "Trotline" shall be synonymous with "set line" or "throw line" or "jug", and shall mean a fishing line that is used without rod or reel and that need not be held in the hand or closely attended.

H. "Angling" shall mean taking or attempting to take fish by angling hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.

I. "Spear fishing" shall mean taking or attempting to take game fish with spears, gigs, and arrows with barbs that are discharged under the surface of the water.

J. "Bait fish" is defined as those nongame fish which are not otherwise protected by statute or regulation.

K. "Chumming" is defined as a means of attracting fish by placing organic materials, non-injurious to aquatic life, into the water.

L. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;

(2) all animals defined as furbearing animals under

Section 17-5-2 NMSA 1978;

(3) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

M. “Retention” or “retain” shall mean the holding of in captivity.

N. “Established road” is defined as follows:

(1) a road, built or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

O. “Non-toxic shot” shall mean shot approved for use by the U. S. fish and wildlife service.

P. “Director” shall mean the director of the New Mexico department of game and fish.

Q. “Baiting” shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take protected game mammals or game birds.

R. “Nets” shall mean cast nets, dip nets, and seines which shall not be longer than 20 feet and shall not have a mesh larger than three-eighths of an inch.

S. “Barbless lure or fly” shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto an angling hook to resemble or simulate insects, bait fish, or other foods. A barbless fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or

rubber or plastic moldings of these or other foods are not included.

T. “Crossbow” shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights or lights on crossbows shall not project light. This definition shall apply to hunting for all species.

U. “Angling hook” shall mean a single, double, or treble (triple) point attached to a single shank.

V. “Sporting arms or weapon types” shall be designated as follows:

(1) all hunt codes denoted with -1- shall authorize use of any legal weapon;

(2) all hunt codes denoted with -2- shall authorize use of bows only;

(3) all hunt codes denoted with -3- shall authorize use of bows, crossbows and muzzle-loading firearms, except that bows and crossbows shall not be allowed during restricted muzzle-loading hunts.

W. “Bag limit” shall mean the protected animal, qualified by species, sex, age, antler requirement, or size allowed by rule that a legally licensed hunter may attempt to take or harvest.

X. “Written permission” shall mean a document (which may include a valid hunting, trapper, or fishing license) that asserts the holder has permission from the private land owner or his designee to hunt, fish, or trap on the landowner’s property. The information on the document must be verifiable and include the name, date, and phone number of the person granting the permission.

Y. “Bow fishing” shall mean taking or attempting to take game fish with arrows with barbs that are discharged above the surface of the water by a bow. Arrows must be attached by string, line, or rope to facilitate fish retrieval.

Z. “Drone” is defined as any device used or designed for

navigation or flight in the air that is unmanned and guided remotely or by an onboard computer or onboard control system. Drones may also be referred to as “unmanned aerial vehicle (UAV)” or “unmanned aerial vehicle systems (UAVS)” [19.31.10.7 NMAC - Rp, 19.31.10.7, 12-15-2016]

19.31.10.8 UNLAWFUL SUBSTANCE IN PUBLIC

WATERS: It shall be unlawful for any person, firm, corporation or municipality to introduce, directly or indirectly, into any public water of this state any substance that may stupefy, injure, destroy, or drive away from such water any protected species or may be detrimental to the growth and reproduction of those protected species except as exempted in Section 17-2-20 NMSA 1978.

[19.31.10.8 NMAC - Rp, 19.31.10.8 NMAC, 12-15-2016]

19.31.10.9 POSSESSION OR SALE OF PROTECTED

SPECIES: It shall be unlawful to possess, sell, or offer for sale all or part of any protected species except as provided below:

A. License or permit:

A person may possess protected species or parts thereof that they have lawfully taken (killed) under a license or permit.

B. Game taken by

another: Any person may have in their possession or under their control any protected species or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the protected species, or parts thereof, and which shall contain the following:

(1) the kind and number of game or furbearer parts donated;

(2) the date and county where the game or furbearer was lawfully taken;

(3) the donor’s name, address, and the number of the hunting or fishing or trapping license under which the game or furbearer was lawfully taken;

(4) the date and place of the donation.

C. Retention of live animals:

It shall be unlawful to retain protected species in a live condition except under permit or license issued by the director for the following purposes:

- (1) zoos open for public display;
- (2) in class A parks;
- (3) in projects for scientific research and propagation;
- (4) a rehabilitation permit;
- (5) under a falconry permit, only those birds listed on the permit;
- (6) under a protected mammal permit, only those mammals listed on the permit;
- (7) under a scientific collection permit, one may collect and possess only those species listed on the permit;
- (8) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected animal being transported.

D. Sale of game animal parts:

Only skins, heads, antlers, horns, or claws of legally taken protected species and feathers from non-migratory game birds may be bartered or sold. (Internal organs of protected species may not be sold). The disposer must supply to the recipient a written statement which shall contain the following:

- (1) description of the skin, head, antlers, horns or claws, or feathers involved;
- (2) the date and county where the game was taken;
- (3) the disposer's name, address and hunting license number under which the game was taken;
- (4) the date and place of the transaction.

E. Possession of game animal parts found in the field:

It shall be unlawful to possess heads, horns, or antlers of protected species

found in the field without invoice or permit from the department of game and fish, with the exception of obviously shed antlers.

F. Big game and turkey:

For licensed hunters of any big game species or turkey, the licensee killing the animal shall immediately punch or completely fill in (black out) the area designated for the appropriate species on the license. Immediately upon arriving at a vehicle, camp or a place of storage, the licensee must permanently fill in the proper date and time of kill on their license.

(1) The properly punched or blacked-out license shall be attached or accompany the carcass while the carcass is left unattended in any vehicle, field, or while it is in camp or at a residence or other place of storage. The punched or blacked-out license may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the punched or blacked-out license shall remain attached to that portion of the carcass left unattended in a camp or vehicle.

(2) Once removed from the field, the licensee must ensure the carcass or parts thereof are accompanied by a properly filled out and punched or blacked-out license or other license information as determined by the director.

(3) It shall be unlawful for any licensee to fail to properly punch or completely black out the area designated by appropriate species on the license immediately upon killing any big game species or turkey.

(4) It shall be unlawful for any licensee for any big game or turkey to fail to properly fill in the date and time of kill on their license as required by rule.

(5) It shall be unlawful to possess any big game species or turkey that are unaccompanied by a properly punched, blacked-out or filled out license or unaccompanied by the other

license information as determined by the director.

(6) It shall be unlawful for any person to transport or possess the carcass of any big game animal or turkey without proof of sex until the carcass arrives at a residence, taxidermist, meat processing facility, place of final storage or if required, is inspected and documented or pelt tagged by a department official.

G. Possession and sale of live wild turkey prohibited:

It shall be unlawful to sell, attempt to sell or possess wild turkey (*Meleagris gallopavo* ssp.) in New Mexico, including captive raised birds, except as by permit issued by the director for verifiable scientific, education, and temporary purposes or for commercial sales to entities outside of the state of New Mexico.

H. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcass of any protected species that is possessed contrary to this section.

[19.31.10.9 NMAC - Rp, 19.31.10.9 NMAC, 12-15-2016]

19.31.10.10 PERMITS AND LICENSES ISSUED:

Permits and licenses may only be issued by the director or his designee as follows:

- A. Uses of wildlife:**
- (1) importation
 - (2) depredation
 - (3) scientific collection
 - (4) possession
 - (5) propagation
 - (6) sale
 - (7) commercial hunting or fishing
 - (8) release
 - (9) falconry
 - (10) rehabilitation
 - (11) zoo

B. Permit or license provisions:

Specific provisions for applications, conditions, reporting, and other stipulations for permits or licenses will be provided by the

department of game and fish with each permit and license.

C. Violation of permit or license provisions: It is unlawful for any person receiving any permit or license provided in Subsection A of 19.31.1.10 NMAC to violate any provision of this section or any provision listed on the permit or license. If such an invalidated permit or license authorized possession of wildlife, the wildlife shall be subject to seizure by any officer authorized to enforce the provisions of Chapter 17 NMSA 1978. It shall be unlawful to purchase, possess, barter, transfer, transport, sell, or offer to sell any imported wildlife contrary to the provisions of any import permit. [19.31.10.10 NMAC - Rp, 19.31.10.10 NMAC, 12-15-2016]

19.31.10.11 RELEASE OF WILDLIFE: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any mammal, bird, fish, reptile or amphibian, except domestic mammals, domestic fowl, or fish from government hatcheries, without first obtaining a permit from the department of game and fish. [19.31.10.11 NMAC - Rp, 19.31.10.11 NMAC, 12-15-2016]

19.31.10.12 RESTRICTIVE DEVICES FOR FISH: The director may require that a screen, paddle wheel, or other device to prevent passage of fish be installed by the owner of any canal or ditch into which waters containing protected fish are diverted. The director may also require that the owner maintain the device during periods when waters are being diverted. [19.31.10.12 NMAC - Rp, 19.31.10.12 NMAC, 12-15-2016]

19.31.10.13 USE OF VEHICLES AND ROADS IN HUNTING:

A. Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any protected species on, from, or across any graded paved, or maintained public road and including the areas lying within right-

of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

B. Roads, artificial wildlife: It shall be unlawful to shoot at artificial wildlife on, from, or across any graded, paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

C. Vehicles, boats, aircraft: It shall be unlawful to shoot at any protected species from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION - Migratory birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

D. Harassing protected wildlife: It shall be unlawful, at any time, to pursue, harass, harry, drive, or rally any protected species by use of or from a motor-driven vehicle, powerboat, sailboat, drone, or aircraft.

E. Hunting after air travel: It shall be unlawful for anyone to hunt for or take any protected species until after the start of legal hunting hours on the day following any air travel except by regularly scheduled commercial airline flights or legitimate direct flight to the final destination.

F. Use of aircraft for spotting game: It shall be unlawful to use aircraft or drone to spot or locate and relay the location of any protected species to anyone on the ground by any means of communication or signaling device or action.

G. Using information gained from air flight:

(1) It shall be unlawful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use

of any aircraft until 48 hours after such aircraft use.

(2) It shall be unlawful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use of any drone at any time.

H. Vehicle off of established road: During the seasons established for any protected species, it shall be unlawful to drive or ride in a motor vehicle which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) To retrieve lawfully taken game not in an area closed to vehicular traffic. 3) All landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

I. Closed roads: During the seasons established for any protected species, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

J. Handicapped license:

(1) Shooting from a vehicle: The holder of a handicap license is authorized to shoot at and kill protected species during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is permanently disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(2) Driving off established roads: Holders of a handicap license may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take squirrels or game birds, excluding turkey, during open seasons.

(3) Assistance

for handicapped hunter: The holder of a handicapped license may be accompanied by another person to assist in reducing to possession any big game animal which has clearly been wounded by the licensed handicapped hunter.

K. Aircraft, drone and vehicle exemptions to this rule:

The Director may exempt a person from the prohibition of utilizing an aircraft, drone or vehicle for management purposes.

[19.31.10.13 NMAC - Rp, 19.31.10.13 NMAC, 12-15-2016]

19.31.10.14 FISHING:

A. Angling: Game fish may be taken by angling in all waters that are open for fishing.

B. Trotlines:

(1) It is unlawful for any person to set more than one trotline at a time. It is unlawful to tie or join together trotlines belonging to two or more persons.

(2) It is unlawful for trotlines to have more than 25 angling hooks.

(3) A person fishing with a trotline shall personally visit and inspect the trotline at least once every 24 hours. Failure to check a trotline every 24 hours is a violation of this paragraph.

(4) It is unlawful for anyone to tamper with another's trotline.

(5) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the fisherman's name, address, fishing license number, and the date the trotline was set. An unlicensed fisherman under 12 years of age shall also list his date of birth.

(6) It is unlawful to set or use a trotline in trout waters, with the following exceptions: Abiquiu lake, Chama river downstream from the northern boundary of the Monastery of Christ in the Desert, Gila river downstream from its junction with its east fork, Navajo lake and the Rio Grande

downstream from its junction with the Chama river.

(7) Any conservation officer or other officer authorized to enforce the game laws may seize and confiscate any trotlines not set in accordance with this subsection.

C. Illegal device

or substance: It is unlawful to use any device or substance capable of catching, stupefying, or killing fish except as permitted by regulation.

D. Bait: It is unlawful to use protected fish, live bullfrogs, or live bullfrog tadpoles as bait in any waters containing protected species. EXCEPTION: the genus *Lepomis* taken by legal means of angling may be used as live bait in the water from which they were taken only in the following waters: Abiquiu reservoir, Cochiti lake, Elephant Butte reservoir, Caballo reservoir, Stubblefield lake, Maxwell lakes, Clayton lake, Conchas lake, Ute lake, Santa Rosa lake, Lake Sumner, Brantley reservoir, and Navajo reservoir. *Lepomis* may be used as dead bait; roe, viscera, and eyes of legally taken game fish may be used as bait; and bullfrogs and bullfrog tadpoles may be used as dead bait. Live bullfrogs or live bullfrog tadpoles may not be in possession while fishing.

E. Use of bait fish:

(1) It is unlawful to use gar (*Lepisosteus* spp.) and goldfish (*Carassius auratus*) as bait in all waters.

(2) It is unlawful to use live common carp (*Cyprinus carpio*), river carpsucker (*Carpoides carpio*), and smallmouth buffalo (*Ictiobus bubalus*) in all waters. However, these species may be used as dead bait in any water where bait may be used.

(3) It is unlawful to use bait fish in all trout waters except fathead minnows and red shiners may be used in the following trout waters: Abiquiu, Clayton lake, Jackson lake, Lake 13 (Maxwell refuge), Navajo lake, Caballo lake, the Rio Grande downstream of the Taos junction bridge (excluding the special trout

water described in 19.31.4.11 NMAC), Power Dam lake, and the Animas river.

(4) It is unlawful to use any bait fish in Bitter lake national wildlife refuge and Bottomless lakes state park.

(5) Bait fish may be used in all other waters with the following restrictions:

(a) In the Gila river and San Francisco river drainages only fathead minnows may be used.

(b) In the Pecos river drainage only fathead minnows and red shiners may be used.

(c) In the Rio Grande drainage only fathead minnows, red shiners, and shad may be used except in Elephant Butte and Caballo where golden shiners are also allowed

(d) In the Canadian river drainage only fathead minnows, red shiners, and shad may be used.

(e) In the San Juan river drainage only fathead minnows and red shiners may be used.

(f) In Eagle Nest and Heron lakes only dead bait fish may be used. No live bait fish may be in possession.

F. Release of bait fish: It is unlawful to release any bait fish into any water containing game fish.

G. Eradication of fish: In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers, the director may permit licensed fishermen and unlicensed persons under 12 years of age to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission, the director may specify bag and possession limits and manner and method of taking for such waters.

H. Methods for taking bait fish for personal use: Licensed fishermen and unlicensed persons under 12 years of age may take bait fish for personal use only in waters

containing game fish by angling, nets, traps, spears, arrows, and seines. All protected species of fish taken in seines, nets, and traps shall be immediately returned to the water.

I. Illegal taking of bait fish: It is unlawful for licensed minnow dealers to take bait fish for sale from waters not specified on their licenses. They may take these fish only by use of traps, seines, or cast nets, as specified on their licenses. All protected species of fish taken in such traps, seines, or nets shall be immediately returned to the water from which they were taken.

J. Permits for taking bait fish: The director may issue permits for the use of nets, seines, traps, or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking, and duration of the permit. The permittee shall report monthly the species, numbers and poundage of bait fish taken during the preceding month.

K. Limit on angling hooks: It is unlawful to angle with more than two (2) barbless lures or flies with single point angling hooks on a single line when fishing the special trout water on the San Juan river designated in Subsection A. of 19.31.4.11 NMAC.

L. [Reserved]

M. Number of fishing poles: It is unlawful to angle with more than one pole without having a current two rod validation or stamp affixed on the current license. It is unlawful under any circumstance to angle with more than two poles.

N. Exceeding daily bag limit: It is unlawful to exceed the daily bag limit or possession limit of any protected fish species, as specified in 19.31.4.11 NMAC.

O. Exceeding daily bag or possession limit - Penalty Assessment: For those fish species or waters where the daily bag limit or possession limit is more than two fish as specified in 19.31.4.11 NMAC, violators that exceed the bag limit or possession limit by four fish or less shall be offered a penalty assessment. For those fish species or waters with

special, reduced or restricted bag limits or possession limits of two or less as specified in 19.31.4.11 NMAC, violators that exceed the bag limit or possession limit by one fish shall be offered a penalty assessment.

P. Snagging game fish: It is unlawful to snag game fish except during the special Kokanee salmon season as specified in 19.31.4.9 NMAC.

Q. Chumming: It is unlawful to "CHUM" except in the following waters: All waters designated as warm waters; Gila river downstream from its junction with its east fork; Rio Grande downstream from its junction with the Chama river, excluding the special trout water below Elephant Butte dam described in Subsection A. of 19.31.4.11 NMAC.

R. Special trout waters: Only barbless lures or flies may be used in the special trout waters designated in Subsection A. of 19.31.4.11 NMAC, except in the special trout water on the Rio Grande below Elephant Butte dam in which soft plastic lures may also be used, and in the following waters any legal angling gear and legal bait for trout waters may be used: Conservancy Park lake/Tingley beach the Kids' pond and Central pond, the Vermejo river system within Vermejo Park ranch boundaries, Gilita, Little Turkey, and Willow creeks, Mineral creek, Whitewater creek from Catwalk National Recreation Trail parking area upstream to headwaters, and those waters designated in Subparagraph (e) of Paragraph (4) of Subsection A. of 19.31.4.11 NMAC.

S. Attracting or concentrating fish:

(1) Artificial lights: Use of artificial lights is permitted for attracting game fish.

(2) Disturbing the bottom: It is unlawful in all special trout waters defined in Subsection A. of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such

disturbance has occurred.

T. Spearfishing and bow fishing:
(1) Game fish may be taken by spearfishing and bow fishing only in lakes and reservoirs open to fishing.

(2) In addition, during the season established by Subsection B. of 19.31.4.9 NMAC, Kokanee salmon may be taken by the use of spears, gigs, and arrows with barbs that are discharged above or below the water and not driven by explosives, gas, air, or crossbow, except in the Pine river where spears, gigs, and arrows are prohibited. [19.31.10.14 NMAC - Rp, 19.31.10.14 NMAC, 12-15-2016]

19.31.10.15 LANDS AND WATERS OWNED, ADMINISTERED, CONTROLLED, OR MANAGED BY THE STATE GAME COMMISSION:

A. Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

B. Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

C. Trespass on state game commission owned lands: It shall be unlawful to hunt, fish, camp, or trespass upon state game commission owned lands unless allowed under regulation or provided for under Subsection A. [19.31.10.15 NMAC - Rp, 19.31.10.15 NMAC, 12-15-2016]

19.31.10.16 AREAS CLOSED TO HUNTING, FISHING AND TRAPPING: The following areas shall remain closed to hunting, fishing, and trapping, except as permitted by regulation.

- A.** Sugarite canyon state park.
- B.** Portion of the Wild Rivers recreation area: an area bounded on the north by the power

line from Bear Crossing to Red River hatchery, south along the Red River to the confluence of the Rio Grande, and north along the Rio Grande to the power lines at Bear Crossing is closed to all hunting; Taos valley overlook.

C. All wildlife management areas (except non-game hunting shall be allowed on the Water canyon WMA January 1 through March 31 annually).

D. Valle Vidal area.

E. Sub-Unit 6B (Valles Caldera national preserve)
[19.31.10.16 NMAC - Rp,
19.31.10.16 NMAC, 12-15-2016]

19.31.10.17 REGULATIONS PERTAINING TO BOATS, OTHER FLOATING DEVICES, AND MOTORS:

A. **Charette, Clayton, and McAllister lakes:** On the following lakes controlled by the department of game and fish, boats and other floating devices with or without electric or gas motors shall be permitted only during the season and hours when fishing is permitted. Boats or floating devices on these lakes shall not be operated at greater than normal trolling speed: Charette, Clayton, and McAllister lakes

B. On **Springer lake**, boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed when water storage is less than 1,000 acre feet.

C. On **Ramah lake**, boats and floating devices shall not be operated at greater than normal trolling speed.

D. On the following lakes controlled by the department of game and fish, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted: **Bear canyon, Bill Evans, Green Meadow, Fenton, Hopewell, Jackson, lake Roberts, Maddox, Morphy, Quemado, Snow, Wall, Conoco lake, and waters located on the Ladd S. Gordon wildlife area.**

E. On the following

lakes controlled by the department of game and fish, only boats and other floating devices using no motors shall be permitted: **Bernardo waterfowl management area, La Joya waterfowl management area, McGaffey, San Gregorio, Shuree ponds.**

F. On the following lakes controlled by the department of game and fish, no boats or other floating devices shall be permitted:

Bonito, Laguna del Campo lake at Los Ojos state fish hatchery, Monastery lake, Power dam, and Red River hatchery pond.

G. Department of game and fish personnel or persons authorized by the director of the department of game and fish may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.

[19.31.10.17 NMAC - Rp,
19.31.10.17 NMAC, 12-15-2016]

19.31.10.18 UNLAWFUL TAKING OR KILLING OF GAME ANIMALS, FURBEARERS, GAME BIRDS, OR GAME FISH ON PRIVATE LAND:

A. It shall be unlawful to hunt, capture, take, attempt to take, or kill any game animal, furbearer, game bird, or game fish on any private property that is in compliance with Section 30-14-1 and Section 30-14-6 NMSA 1978 posting requirements without possessing written permission from the landowner or person in control of the land or trespass rights, unless otherwise permitted in rule or statute.

B. It shall be unlawful to hunt, capture, take, attempt to take, or kill any game animal, furbearer, game bird, or game fish on private property if the consent to enter or remain has been denied or withdrawn by the owner or person in control of the land or trespass rights, per Section 30-14-1 NMSA 1978, unless otherwise permitted in rule or statute.

C. It shall be unlawful to knowingly enter upon any private property to hunt, capture, take, attempt to take, or kill any game animal, furbearer, game bird, or

game fish without possessing written permission from the landowner or person in control of the land or trespass rights unless otherwise permitted in rule or statute.

D. Any game animals, furbearers, game birds, or game fish taken in violation of this section shall be subject to seizure.

[19.31.10.18 NMAC - Rp,
19.31.10.18 NMAC, 12-15-2016]

19.31.10.19 TAKING GAME ANIMALS, FURBEARERS, GAME BIRDS BY CROSSBOW:

A. Crossbows may be used to take or kill any game animal, furbearer or game bird by a licensed hunter in possession of a valid department mobility impaired (MI) card or in possession of a reasonable accommodation issued by the director, or as otherwise allowed by rule.

B. It shall be unlawful to hunt with a crossbow without a hunter possessing a MI card or reasonable accommodation from the director, or contrary to rule or hunt code.

C. It shall be unlawful to hunt with a crossbow that has a scope, telescopic sight or magnification device during any bow only hunt for big game.

[19.31.10.19 NMAC - Rp,
19.31.10.19 NMAC, 12-15-2016]

Continued On The Following Page

19.31.10.20 MANNER AND METHOD PENALTY ASSESSMENTS: Individuals who commit the following violations shall be offered penalty assessments:

Size limits (fish)	Contrary to: 19.31.4 NMAC
Waters with age or individuals with disabilities use restrictions	Contrary to: 19.31.4 NMAC
Use of live animals	Contrary to: 19.31.5; 19.31.6; 19.31.11; 19.31.12; 19.31.13; 19.31.14; 19.31.15; 19.31.16; 19.31.17; 19.31.21 NMAC
Use of a calling device	Contrary to: 19.31.5; 19.31.6; 19.31.11; 19.31.12; 19.31.13; 19.31.14; 19.31.15; 19.31.16; 19.31.17; 19.31.21 NMAC
Unlawful ammunition / weapon type	Contrary to: 19.31.5; 19.31.6; 19.31.11; 19.31.12; 19.31.13; 19.31.14; 19.31.15; 19.31.16; 19.31.17; 19.31.21 NMAC
Shooting hours violations	Contrary to: 19.31.5; 19.31.6 NMAC
Possession of game animal parts found in field	Contrary to: 19.31.10 NMAC
Shoot at artificial wildlife from the road	Contrary to: 19.31.10 NMAC
Harassing wildlife	Contrary to: 19.31.10 NMAC
Driving off road with licensed hunter/angler/trapper	Contrary to: 19.31.10 NMAC
Driving on a closed road	Contrary to: 19.31.10 NMAC
Trotline violations	Contrary to: 19.31.10 NMAC
Unlawful bait	Contrary to: 19.31.10 NMAC
Unlawful use of bait fish	Contrary to: 19.31.10 NMAC
Unlawful release of bait fish	Contrary to: 19.31.10 NMAC
More than two hooks on San Juan special trout water	Contrary to: 19.31.10 NMAC
More than two poles	Contrary to: 19.31.10 NMAC
Exceeding the bag or possession limit of fish as established in 19.31.14 NMAC	Contrary to: 19.31.10 NMAC
Snagging of game fish	Contrary to: 19.31.10 NMAC
Chumming	Contrary to: 19.31.10 NMAC
Bait/barbs on special trout waters	Contrary to: 19.31.10 NMAC
Disturbing the bottom “shuffling”	Contrary to: 19.31.10 NMAC
Spearfishing and bow fishing violations	Contrary to: 19.31.10 NMAC
Violation of posted signs	Contrary to: 19.31.10 NMAC
Use of dogs	Contrary to: 19.31.12; 19.31.13; 19.31.14; 19.31.15; 19.31.16; 19.31.17; 19.31.21 NMAC
Non-toxic shot requirement on commissioned lands	Contrary to: 19.31.5; 19.31.6; 19.31.16 NMAC
Habitat stamp (Sikes Act)	Contrary to: 19.34.6 NMAC
Two poles without validation stamp	Contrary to: 19.31.10 NMAC
Habitat management and access validation stamp (HMAV)	Contrary to: 17-4-34 NMSA

[19.31.10.20 NMAC - Rp, 19.31.10.20 NMAC, 12-15-2016]

19.31.10.21 DIRECTOR’S AUTHORITY TO ACCOMMODATE DISABILITY OR MEDICAL IMPAIRMENT: The director may authorize reasonable modifications to the manner and method of take for any licensee who has a verifiable medical condition that, in the director’s sole discretion, necessitates such accommodation. In order to apply for such accommodation, the licensee shall complete and submit any form, information and records required by the director. Any licensee granted an accommodation must adhere to all other rules as to manner and method of take that are not specifically waived by such accommodation; and shall adhere to any restrictions imposed by the

director.
[19.31.10.21 NMAC - Rp,
19.31.10.21 NMAC, 12-15-2016]

HISTORY OF 19.31.10 NMAC:
Pre-NMAC History: The material in this part was derived from that previously file with the Commission of Public Records - State Records Center and Archives:
DFR 67-5 Basic Regulation No. 500, Concerning Method and Manner of Hunting, Taking, Possessing, Disposing, and Transporting of Game Animals, Birds, Fish or Bullfrogs, or parts thereof, Taken in New Mexico, Use and Occupancy of Lands and Waters Administered, Owned, Controlled or Managed by the State Game Commission, 5-25-67.
DGF 68-11 Basic Regulation No. 525, Concerning Method and Manner of Hunting, Taking, Possessing, Disposing, and Transporting of Game Animals, Game Birds, Game Fish or Bullfrogs, or parts thereof, Taken in New Mexico, the Use and Occupancy of Lands and Waters Administered, Owned, Controlled or Managed by the State Game Commission, 8-21-68.
DGF 72-6 Basic Regulation 550 Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting and Fishing, and Use of Department Lands, 5-31-72.
Regulation No. 612 Basic Regulation Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting and Fishing, Use of Department Lands, Retention of Protected Species, Permits and Licenses Issued, and the Hunter Safety Certificate Requirement, 3-2-82.
Regulation No. 677 Basic Regulation Governing Water Pollution, Possession of Game, Permits and Licenses Issued, Retention and Importation of Protected Species, Manner of Hunting and Fishing, Use of Department Lands, Hunter Training Course Required, Hunting License Revocation, Camping Near a Water Hole, 6-25-90.
Order No. 5-91 Requiring that Live-Firing Courses by Taught only by Department of Game and Fish

and Volunteer Hunter Education Instructors Certified in Live-Firing Instruction, 10-3-91.

NMAC History:
19 NMAC 31.1, Hunting and Fishing - Manner and Method of Taking, 3-1-95.

History of Repealed Material:
19.31.10 NMAC, Hunting and Fishing - Manner and Method of Taking - Repealed 4-1-2007.
19.31.10 NMAC, Hunting and Fishing - Manner and Method of Taking - Repealed 12-15-2016.

PUBLIC EDUCATION DEPARTMENT

The Public Education Department approved, at its 11/18/2016 hearing, to repeal its rule 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau (filed 9/28/2010) and replace it with 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, effective 12/15/16.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 75 INSTRUCTIONAL MATERIALS AND TECHNOLOGY
PART 2 RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU**

6.75.2.1 ISSUING AGENCY: Public Education Department.
[6.75.2.1 NMAC - Rp, 6.75.2.1 NMAC, 12/15/16]

6.75.2.2 SCOPE: This rule governs the procedures for the adoption, purchase, and delivery of instructional material.
[6.75.2.2 NMAC - Rp, 6.75.2.2 NMAC, 12/15/16]

6.75.2.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 9-24-8, 22-2-1, 22-15-4, and 22-15-8 NMSA 1978.
[6.75.2.3 NMAC - Rp, 6.75.2.3 NMAC, 12/15/16]

6.75.2.4 DURATION: Permanent.
[6.75.2.4 NMAC - Rp, 6.75.2.4 NMAC, 12/15/16]

6.75.2.5 EFFECTIVE DATE: December 15, 2016, unless a later date is cited at the end of a section.
[6.75.2.5 NMAC - Rp, 6.75.2.5 NMAC, 12/15/16]

6.75.2.6 OBJECTIVE: This rule is designed to facilitate the adoption, requisition and distribution of instructional material.
[6.75.2.6 NMAC - Rp, 6.75.2.6 NMAC, 12/15/16]

6.75.2.7 DEFINITIONS:
A. "Adoption" means authorization by the secretary of a multiple list of core/basal instructional materials and a list of supplementary materials for use in the schools.

B. "Adoption cycle" means the six year adoption cycle unless the department determines a need to change the cycle as described in Subsection B of 6.75.2.8 NMAC.

C. "Alternative format" means the exact duplicate version of the title submission in a format or language other than the original version; examples of alternative formats include CD-ROM, software, online or web based, DVD, compact video or audio disc, video or audio tape.

D. "Basal" means the materials that constitute the necessary instructional components of a course of study, generally including a student edition, a teacher edition, and workbooks.

E. "Bundles/packages" means supplementary instructional material packaged together for retail, identified and labeled as: "teacher support", "student support" or "classroom support".

F. “Bureau” means the instructional material bureau of the department

G. “Challenge to title score” means a written, publisher-submitted document challenging the final score of a title submitted for consideration as an adopted core/basal text.

H. “Chief” means the bureau chief of the state instructional material bureau.

I. “Classroom kit” means the packaging of supplementary student support materials which provide exact duplicate items per student for whole class instruction and is sold as one retail price.

J. “Core” means those subjects for which the department has developed content standards and benchmarks.

K. “Data” refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures or symbols.

L. “Department” means the New Mexico public education department.

M. “Depository” or “textbook depository” - see New Mexico instructional material depository.

N. “Digital direct instruction course/program” means computer based instruction in which courses use software or internet based programs as the primary delivery method of instruction. The digital instructor provides direct instruction to the student. The classroom instructor primarily provides support rather than instruction. A textbook may or may not be required.

O. “Digital learning content” means technology application information incorporated within the content of the instructional material for the purpose of supporting development of technological knowledge and skills that students can then apply to all curriculum areas.

P. “Distribution” means transporting to the schools those items of instructional material on the multiple list requisitioned by a particular school or school district.

Q. “Educational media” means print, digital, or electronic material providing or conveying information to the student or otherwise containing intellectual content and contributing to the learning process.

R. “Educational digital media” means a digital system of instructional material, computer software, interactive videodisc, magnetic media, CD-ROM, DVD, computer courseware, online services, electronic media, or other means of conveying information to the student or otherwise containing intellectual content that contributes to the learning process.

S. “Electronic record” means a computer generated item such as an e-mail message, a document file, an image file, etc., received and stored in a form only an electronic device can process.

T. “Eligible entities” means education entities that may participate as agents for the benefit of students in the state-funded free use of instructional material program, including all public schools and districts, charter schools, and state-supported schools.

U. “E-mail” means:

(1) a system that enables users to compose, transmit, receive and manage electronic messages and images across wired or wireless computer networks and through gateways connecting to other local area networks;

(2) a message transmitted electronically over a communications network.

V. “Form E” means the publisher’s form for the submission of core/basal and supplementary titles.

W. “Governing authority” means the governing authority of a state agency or a public two-year post secondary institution accredited by the department.

X. “In-state distribution point”. See “New Mexico instructional materials in-state distribution point”.

Y. “Instructional material” means school textbooks

and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media (not to include computers, laptops, handheld computers, or other devices).

Z. “Instructional material bureau” means that unit established within the department pursuant to the Instructional Material Law.

AA. “Instructional material summer review institute” means the annual review of all submitted core/basal instructional materials required by 22-15-8 NMSA 1978. The institute is conducted by the bureau.

BB. “Kit” means supplementary instructional material packaged together for one retail price.

CC. “Local school board” means the governing body of a school district or, as appropriate, the governing authority of a charter school.

DD. “Multiple list” means a written list of those instructional materials approved by the department.

EE. “New Mexico instructional material in-state distribution point” means a facility or a set of procedures developed and maintained by a publisher, used by only that publisher, meeting the criteria established in Subsection C of 6.75.2.12 NMAC and authorized through application to the bureau chief, for the purpose of facilitating distribution of that publisher’s instructional materials within New Mexico. The distribution point is responsible for accounting, acquisition, storage, distribution and disposition of adopted instructional materials.

FF. “New Mexico instructional material depository” means a facility authorized through application to the bureau chief to serve as an agent representing multiple publishers and other educational entities for the purpose of managing district/school instructional material orders. The depository is responsible for accounting,

acquisition, storage, distribution and disposition of adopted instructional materials.

GG. “New Mexico regional review center” means a state authorized location where samples of instructional materials are received from publishers and made available to evaluators, teachers and educational practitioners. The review center is responsible for storage, disposition and inventory of current adopted core/basal instructional materials.

HH. “Online course/program” means computer based instruction in which courses use the internet as the primary delivery method of information. A textbook may or may not be required.

II. “Online direct instruction course/program” means computer based instruction in which courses use the internet as the primary delivery method of instruction. The cyber instructor provides direct instruction to the student. The classroom instructor primarily provides support rather than instruction. A textbook may or may not be required.

JJ. “Other adoptions” means an adoption of new material that is not conducted during the summer review institute. It may be convened at the request of a publisher with the approval of the chief, or for other reasons as determined by the chief. Other adoptions may be for core/basal material, which is reviewed, or for supplementary material which is not reviewed. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

KK. “Other classroom material” means materials other than textbooks that are used to support direct instruction to students.

LL. “Packages/bundles” means supplementary instructional material packaged together as a single unit of purchase, identified and labeled as “teacher support”, “student support” or “classroom support”.

MM. “Professional development” means the process

of increasing the professional capabilities of staff by providing training and educational opportunities.

NN. “Protest” - see “challenge to title score”.

OO. “Permanent records” means records that are preserved in an archive.

PP. “Public record” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained. (Public Records Act, Section 14-2-6 NMSA 1978).

QQ. “Publisher’s agreement” means an agreement between the department and the publisher or publisher’s agent to provide certain material at the lowest price for the use of students in New Mexico schools and including a penalty for failure to perform.

RR. “Reading intervention program” as used in instructional material law means instructional materials specifically organized and intended to support a program of instruction to develop increased reading skills of struggling readers.

SS. “Regional review center” - see “New Mexico regional review center”.

TT. “Request for applications (RFA)” means the written notice issued by the department to all publishers listing the subjects for which they will adopt material in a specific year and the terms and conditions under which applications from publishers to supply such material will be considered.

UU. “Requisition” means a list of items that local school boards or governing authorities wish to purchase. Such a list must be in a format specified by the in-state distributors and must be transmitted to the in-state distribution point before it becomes a requisition.

VV. “Review” means

a standardized process examining submitted core/basal instructional materials to determine the extent of the material’s alignment with the requirements of instructional material law and therefore its suitability for adoption under instructional material law. There are four categories of review.

(1) A “review” is conducted during the annual summer review institute (institute) by a panel of three highly qualified teachers who have been selected for this purpose.

(2) A “second review” is conducted during the annual summer review institute for all titles submitted for review that did not achieve a ninety percent alignment score, but that achieved or exceeded an eighty percent score. The second review is conducted by a different panel of three highly qualified teachers in order to validate scores and ensure that titles receive a full opportunity to meet adoption requirements.

(3) A “departmental review” is a third review that may be convened for any submitted title at the chief’s discretion. It may be conducted during the institute or at a later time. The departmental review is conducted by a panel of three department administrators in order to ensure the reliability and validity of the review process.

(4) “Special review” means a review of new material that is not conducted during the summer review institute. It may be convened at the request of a publisher with the approval of the chief, or for other reasons as determined by the chief. The special review is conducted by a panel of three highly qualified teachers who have been selected for this purpose. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

WW. “Review set” means the instructional material submitted for review at the summer institute for

inclusion as core/basal. The review set generally consists of the student edition and the teacher edition. The review set may include the student workbook, if the student workbook is relied upon to meet any of the citations demonstrating alignment with the standards and other relevant criteria.

XX. “Set” means supplementary curriculum or instructional materials packaged together as a single unit, with one retail price.

YY. “Substitution” means the replacement of an item under publisher’s agreement with a revised edition of the item.

ZZ. “Summer review institute” - see “instructional material summer review institute”.

AAA. “Supplement 9” means the written set of administrative requirements developed by the instructional material bureau to provide guidance regarding regulations, policy and general procedures for districts, charter schools, state-supported schools and publishers to participate in the “free use of instructional material” program.

BBB. “Supplementary materials” means materials used to reinforce, enrich, or extend the basic program of instruction; including ancillary items referenced as, bundles, packages, kits, classroom kits, sets, libraries, and collections.

CCC. “Waiver” means a process by which a district may request authorization to use funds allocated for the purchase of instructional materials included on the state adopted multiple list for purchase of materials not included on the state adopted multiple list. [6.75.2.7 NMAC - Rp, 6.75.2.7 NMAC, 12/15/16]

6.75.2.8 REQUIREMENTS - RESPONSIBILITIES OF THE DEPARTMENT:

A. There shall be a summer review institute; however, the chief may allow other adoptions upon a finding, made by the chief, that an educational need exists.

B. Materials shall be adopted for a period of six years unless the department determines a need to alter the cycle due to instructional or financial reasons. The subject area of each annual adoption shall consist of those subject areas whose adoption period expires at the end of the year during which the adoption is conducted unless the cycle is altered by the department. The department shall notify the districts, charter schools, and state-supported schools of the cycle alteration no later than December 31 of the year prior to the summer review institute.

C. The department will issue the RFA. The RFA shall specify:

- (1) timelines for adoption, requisition, and distribution of instructional material;
- (2) length of publisher’s agreement;
- (3) a submission fee to be collected by the department not to exceed the retail value of the materials submitted for adoption; and
- (4) such other terms and conditions as the department determines.

D. The chief, subject to review by the department, may reject any application that fails to comply fully with the provisions of the request for applications, or may reject any or all applications.

E. The chief, subject to review by the department, may accept any conforming application which is determined to be most advantageous to the state, considering the educational value of material, cost to state, reliability of the publisher, and all other significant factors.

F. The department shall conduct an annual summer review institute for the review of core/basal materials submitted for adoption.

G. In conducting the summer review institute, the department shall:

- (1) appoint highly qualified teachers (licensure levels 2 and 3-A) who are endorsed in the content areas under review as

the reviewers of record; to the extent possible, reviewers will be selected proportionally across the state from the eight local school board regions and Albuquerque;

(2) appoint highly qualified teachers (licensure levels 2 and 3-A) as facilitators of the review teams;

(3) appoint New Mexico community members, parents, level one teachers, and students preparing for careers as teachers to observe the reviewers of record in the review;

(4) contract with qualified vendors to arrange venue management and to provide for meals, lodging and compensation consistent with prevailing rates for facilitators and reviewers; and

(5) where appropriate as determined by the chief, reimburse other personnel who have contracted or agreed to provide services such as clerical support, process management, additional supervision or training for mileage, provided they meet state qualification standards for mileage reimbursement, and provide room and board and meal reimbursement not to exceed state standards for meal reimbursement.

H. Printed and digital materials under review shall be scored according to the extent of their alignment with state content and performance standards, pedagogy consistent with current educational taxonomies, and other relevant criteria.

I. The department shall develop and use a standardized review form incorporating the scoring rubric and space for the publishers’ alignment citations and the reviewer’s scores.

J. The review form shall be divided into two sections.

K. Section I shall consist of citations showing alignment with New Mexico standards and benchmarks and shall include scorable performance indicators for all relevant standards and benchmarks consistent with any generally accepted taxonomies as determined by the bureau.

L. Section II shall consist of citations showing that the material under review meets other relevant criteria, including:

- (1) is built around effective pedagogy and instructional design;
- (2) incorporates the principles of culturally responsive pedagogy and differentiated instruction;
- (3) incorporates and reflects current educational taxonomies supporting the development of higher order thinking skills;
- (4) has no factual error;
- (5) has no religious affiliation or partisanship;
- (6) has no cultural bias or gender bias;
- (7) demonstrates and reflects images, references and points of view reflecting a multicultural society;
- (8) integrates digital learning content within the text;
- (9) supports differentiated or personalized learning through style, pace, or needs;
- (10) can be adapted or configured by teacher to meet evolving needs;
- (11) supports accountability through integration of assessments and content; and
- (12) provides both formative and summative assessment opportunities.

M. Core/basal materials may also be scored on the basis of research-based, data proven effectiveness, publisher-provided professional development, pedagogy consistent with current educational taxonomies and other relevant criteria as determined by the bureau chief or developed in consultation with the department and other highly qualified educational practitioners.

N. The materials under review shall be scored as follows.

- (1) Materials that achieve a final total score of ninety percent or higher alignment with state content and performance

standards and other relevant criteria may be considered for recommendation to the secretary for adoption as core/basal materials.

- (2) Materials that score less than ninety percent alignment but greater than eighty percent with state content and performance standards and other relevant criteria shall be re-assessed by a second panel of reviewers for validation of the score.

(3) The chief, subject to the review of the department, may also convene a departmental panel of reviewers in order to ensure the validity and reliability of the review process.

- (4) Materials that score less than ninety percent alignment with state content and performance standards and other relevant criteria will be recommended to the secretary for adoption as supplementary.

(5) Submitted supplementary titles and instructional materials that are not reviewed may also be considered for recommendation to the secretary for adoption as supplementary materials.

O. Educational digital media. The contract, review, and evaluation process and standards involving digital, electronic, or web-based materials and media shall be the same as print materials, with these qualifications.

- (1) Educational digital media shall comply with current interoperability standards; and any other specifications deemed necessary by the chief for an appropriate and effective review of educational digital media.

(2) Equipment such as computer hardware, technology devices or equipment intended to deliver or display the material but which are not instructional materials shall not be offered free or at reduced prices with instructional materials. This includes computers, laptops, handheld devices, CD/DVD players, overhead or LCD projectors, electronic whiteboards, phone/music/transmitting and listening devices, and cameras.

(3) Publishers are required to provide to the instructional material bureau at the time of the review any hardware, software, or special equipment which may be needed for a review of instructional material.

(4) Publishers will be responsible for costs associated with the provision of needed hardware, software or special equipment.

(5) Materials requiring proprietary equipment provided by or through the publisher will not be considered for adoption.

P. Subsequent to the summer review institute, the bureau will submit to the secretary of education a list of materials recommended for adoption as core/basal and supplementary. The secretary will authorize adoption of instructional materials recommended as a result of the summer review institute no later than ninety days after the conclusion of the summer review institute.

Q. Pursuant to Section 22-15-13 NMSA 1978, the department may enter into a publisher's agreement for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

R. Administration. It is the responsibility of the instructional material bureau to administer the provisions of the Instructional Material Law (22-15-1 NMSA 1978). The bureau shall issue such additional guidance, clarification and direction as deemed necessary by the chief to promote effective, efficient and equitable processes for all bureau responsibilities pertaining to the free use of instructional materials. This material shall be compiled or revised annually and issued as a supplement to 6.75.2 NMAC. The supplement is hereby incorporated by reference as if fully set out within this document. In addition, the bureau shall develop, implement and maintain procedures to address the requirements that:

- (1) funds are efficiently allocated by the

instructional material bureau to districts, charter schools, and state-supported schools using estimated 40-day membership for the next school year;

(2) funds are efficiently disbursed by the fiscal grants management bureau of the administrative services division to districts, charter schools, and state-supported schools;

(3) schools wishing to use instructional material funds to purchase non-adopted materials are provided with examples and assistance in determining whether the desired materials are allowed under instructional material law; and

(4) the state is receiving the lowest price offered for materials.

S. Pursuant to Subsections A and B of 22-15-4 NMSA 1978 the bureau shall, at the discretion of the chief, conduct periodic audits of the instructional material accounts and textbook inventories required under Subsections E and F of 6.75.2.9 NMAC of any entities receiving funds under the provisions of Instructional Material Law.

T. Pursuant to Subsection C of 22-15-4 NMSA 1978 the bureau shall withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law.

U. The department shall consider for approval, requests for waiver by the local superintendent to use funds allocated for the purchase of adopted instructional material to purchase non-adopted instructional material. The request shall include the specific materials to be purchased, the cost of the purchase and justification for the purchase relating to the improved performance of students.

[6.75.2.8 NMAC - Rp, 6.75.2.8 NMAC, 12/15/16]

6.75.2.9 REQUIREMENTS - RESPONSIBILITIES OF

LOCAL SCHOOL BOARDS OR GOVERNING AUTHORITIES:

A. Each local school board shall develop and implement a process for the selection of instructional materials and shall ensure that parents and other community members are involved in the implementation of this process.

B. Schools and districts must submit to authorized New Mexico depositories or authorized New Mexico in-state distribution points all requisitions for instructional materials for the next school year no later than April 15, unless justification is provided. Delivery schedules are to be as follows:

(1) For core/basal and supplementary instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to April 15 of each year, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(2) Core/basal and supplementary orders received after April 15 will be delivered by the later of the following dates: within 60 days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to April 15, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after April 15 will be delivered by the later of the following dates: within 60 days after the receipt of the order or August 1.

C. Each public school district, charter school, and state institution may purchase items of instructional material as defined herein and not on the state-adopted list by issuing a purchase order to the publisher or the publisher's authorized agent. The entity is responsible for payment to the vendor/publisher,

etc. The cost of the items, plus transportation charges, will be charged to the non-adopted funds (maximum fifty percent of the total allocation) line item of the entity's instructional material allocation.

D. If entities do not receive their orders on a timely basis, they shall provide to the bureau written documented evidence of ordering dates and other pertinent information as required by the department.

E. Annually, at a time and in a format specified by the department, each local school board of a school district and each governing authority of a state institution acquiring instructional material pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978) shall file a report with the department. The annual report shall include the total instructional material allocation received, the average per pupil cost, year-end cash balances and other documentation as required by the department.

F. Pursuant to the Instructional Material Law (22-15-1 to 22-15-14 NMSA 1978), each local school board of a school district and each governing authority of a state institution shall keep an itemized list of instructional materials purchased in a format prescribed by the bureau.

G. Disposal of instructional materials.

(1) Out of adoption (older than six years). Instructional material deemed unusable/obsolete does not require bureau approval to discard or donate. These items may be disposed of at the district/school's discretion.

(2) In-adoption (still within the six-year cycle).

(a) A district/school wishing to discard, donate or give away instructional material still listed on the NM multiple adoption list must obtain bureau approval. The request shall include a letter justifying the request to discard, donate or give the items away and an inventory listing of the materials shall be provided to the

chief.

(b)

A district/school wishing to sell instructional material that is under adoption does not require bureau approval. All funds received from the sale of the material must be remitted to the bureau for redeposit in the school's/district's instructional material account.

(3) Upon

order of the chief, a school/district or state institution shall transfer to the department or its designee instructional material purchased with instructional material funds that is in usable condition and for which there is no use expected by the respective school.

H. All entities

receiving monies for instructional materials will be provided training on the process of obtaining funds, ordering materials, receiving funds, returning funds for sold or lost materials, and completing the annual report.

[6.75.2.9 NMAC - Rp, 6.75.2.9 NMAC, 12/15/16]

6.75.2.10 REQUIREMENTS - RESPONSIBILITIES OF PUBLISHERS:

A. Publisher's

agreements shall be returned to the department fully executed by the publisher no later than 30 days after receipt by the publisher. Failure to return the fully executed publisher's agreement may result in the rejection of the publisher's application.

B. Publisher's

agreements shall be for a period of six years, except where material is necessary for:

(1) the

completion or update of a series or educational media previously adopted; or

(2) the transfer

of a subject from one section to another; or

(3) other

adoptions, special reviews, or a change to the adoption cycle.

C. The publisher's

agreement shall:

(1) require that

the publisher agrees to furnish and provide distribution to the schools the instructional material submitted and adopted;

(2) require that

the publisher agrees to keep sufficient stock at the designated New Mexico instructional material depository or New Mexico instructional material in-state distribution point to assure delivery in accordance with the timelines set forth in this regulation;

(3) require that

if delivery of instructional material is delayed beyond deadlines established in 6.75.2.12 NMAC or specified in correspondence to the publisher by the chief, the publisher shall pay the NMPED \$100 per day per title for each day delivery is delayed, as liquidated damages, to include instructional materials labeled/promoted as being of no cost or at reduced price;

(4) require that

the publisher (or designee) agrees to bill the public school districts, charter schools and state-supported schools for instructional material ordered;

(5) require

that all materials submitted for adoption and sale in the state of New Mexico conform to the requirements of the Consumer Product Safety Improvement Act;

(6) require that

the publisher agrees to submit files of adopted instructional materials that conform to the national instructional material accessibility standard (NIMAS) at no additional cost to the national instructional material accessibility center (NIMAC) repository at the American printing house for the blind (Section 22-15-26 thru 29 NMSA 1978 "Braille Access Act", and 6.75.4 NMAC);

(7) require the

publisher to maintain, for three years after the termination or expiration of the agreement, or after any court proceedings involving this agreement, copies of all billings generated under this agreement.

D. Qualifications.

(1) Publishers

are required to provide to the instructional material bureau at the

time of the review any hardware, software, or special equipment which may be needed for a review of instructional material.

(2) Publishers

will be responsible for costs associated with the provision of needed hardware, software or special equipment.

(3) Items

of instructional material, including accompanying material, must be in proof format by the adoption date and in finished format by May 1 immediately preceding the annual instructional material summer review institute.

(4)

Substitutions of new or revised editions will be allowed by the chief:

(a)

only if the substitution will be advantageous to the user schools;

(b)

subject to all terms and conditions of the original publisher's agreement, including an equal or lower price; and

(c)

upon a determination by the chief that the proposed changes are minor, the new edition is substantially the same material as the old edition, and a special review is not necessary.

(5) Software

updates that improve functionality, performance, or accuracy may be allowed after review by the chief.

(6) Materials

designated by the publisher on the final approved list as free or reduced cost material and services such as teachers' editions, workbooks, duplicating masters, in service training, consultants, etc., will be made available at no cost or at a reduced cost to any schools that adopt its instructional material.

(7) Free or

reduced cost materials or service may not include computer hardware, technology devices or equipment intended to deliver or display the material but which are not instructional materials. This includes computers, laptops, handheld devices, CD/DVD players, overhead or LCD projectors, electronic whiteboards, phone/music/transmitting and

listening devices, and cameras.

(8) Any free or reduced cost material or service described on the state adoption list and made available at no cost or at a reduced cost to a school that adopts its instructional material will be made available on an equitable basis to all schools that adopt its instructional material.

(9) The quantity of free or reduced price material provided shall be calculated according to the number of teachers using the material, and not according to the amount of material purchased.

(10) The publisher shall make no offer of free or reduced price material or services that have not been designated as such on the final approved list.

(11) If the publisher fails to list all free or reduced price material and services the publisher will be suspended from participation in the New Mexico instructional material process until such time as the department determines that the publisher shall be allowed to resume participation.

(12) If the publisher fails to make available at no cost or at a reduced cost to all schools the same material or service that is offered or provided at no cost or at a reduced cost to any school, the publisher will be suspended from participation in the New Mexico instructional material process until such time as the department determines that the publisher shall be allowed to resume participation.

E. The publisher shall designate a New Mexico instructional material depository meeting the criteria established in Subsection C of 6.75.2.12 NMAC or a New Mexico in-state distribution point meeting the criteria established in Subsection C of 6.75.2.13 NMAC for the distribution of instructional material and to act as the agent for the publisher for requisition, billing, and receipt of payments for the purchase of instructional material.

F. The publisher shall provide samples of core/basal student and teacher instructional materials

as well as other material they deem necessary to provide adequate instruction to designated regional review centers within 30 days of the finalization of a publisher's agreement.

G. The publisher shall reduce the price of instructional material under publisher's agreement in New Mexico when prices are reduced elsewhere in the United States so that no such item or items shall at any time be sold in New Mexico at a higher wholesale price than received for items elsewhere in the United States, like conditions prevailing.

H. The publisher shall ensure the use of the international standard book number (ISBN) system where applicable.

I. Publishers are prohibited from conducting a pilot program in which schools receive free materials and professional development during the 18 month period previous to the official date of adoption of those materials (August 1 for each cycle).

J. Challenges to review scores must be filed by the publisher within 10 working days of receipt of the price agreement from the department.

[6.75.2.10 NMAC - Rp, 6.75.2.11 NMAC, 12/15/16]

6.75.2.11 REQUIREMENTS - RESPONSIBILITIES OF NEW MEXICO INSTRUCTIONAL MATERIAL DEPOSITORIES:

A. It is the responsibility of depositories to distribute instructional materials to schools and districts in a timely and accurate fashion and to ensure the following:

(1) For core/basal and supplementary instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to April 15 of each year, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(2) Core/basal and supplementary orders received

after April 15 will be delivered by the later of the following dates: within 60 days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to April 15, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after April 15 will be delivered by the later of the following dates: within 60 days after the receipt of the order or August 1.

B. The depositories will provide training to all entities receiving monies for instructional materials on the online process for ordering instructional materials.

C. Depositories must meet the following requirements:

(1) financial viability adequate to ensure performance of all obligations under a contract between the publisher and the depository for the purpose of distributing instructional material to schools and school districts within New Mexico;

(2) warehouse facilities, including location, equipment, and staffing patterns, adequate to ensure performance of all obligations under a contract between the publisher and the depository for the purpose of distributing instructional material to schools and school districts within New Mexico;

(3) procedures, systems and capacity to interface directly with an approved online ordering, inventory and reporting system to receive and process instructional material orders;

(4) procedures, systems and capacity to communicate such reports as the department may require in the automated format as established by the department; and

(5) sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth in this regulation.

[6.75.2.11 NMAC - Rp, 6.75.2.12 NMAC, 12/15/16]

6.75.2.12

REQUIREMENTS: Responsibilities of in-state distribution points:

A. It is the responsibility of publishers operating in-state distribution points to distribute instructional materials to schools and districts in a timely and accurate fashion and to ensure the following:

(1) For core/basal and supplementary instructional materials requisitions received by the New Mexico depository or in-state distribution point prior to April 15 of each year, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(2) Core/basal and supplementary orders received after April 15 will be delivered by the later of the following dates: within 60 days after the receipt of the order or August 1.

(3) For free instructional material requisitions received by the New Mexico depository or in-state distribution point prior to April 15, delivery to schools shall be made by the later of the following dates: within 30 days prior to the beginning of classes, or by July 1.

(4) Free instructional material requisitions received after April 15 will be delivered by the later of the following dates: within 60 days after the receipt of the order or August 1.

B. The publisher operating the in-state distribution point will provide training to all entities receiving monies for instructional materials on the process for ordering instructional materials.

C. In-state distribution points must meet the following requirements:

(1) financial viability adequate to ensure performance of all obligations described in Paragraphs (1) through (4) of Subsection A of 6.75.2.12 NMAC for distributing instructional

material to schools and school districts within New Mexico;

(2) storage and shipping facilities and procedures adequate to ensure performance of all obligations under Paragraphs (1) through (4) of Subsection A of 6.75.2.12 NMAC for distributing instructional material to schools and school districts within New Mexico;

(3) contractual arrangements with a New Mexico instructional material depository to receive, process and forward instructional material orders through an approved online ordering, inventory and reporting system, or procedures, systems and capacity to interface directly with an approved online ordering, inventory and reporting system to receive and process instructional material orders;

(4) procedures, systems and capacity to communicate such reports as the department may require in the automated format as established by the department; and

(5) sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth in this regulation.

[6.75.2.12 NMAC - Rp, 6.75.2.13 NMAC, 12/15/16]

6.75.2.13 UNOBLIGATED AND UNEXPENDED INSTRUCTIONAL MATERIAL

BALANCES: Instructional material funds allocated to a school district or state institution during any fiscal year and not obligated or expended prior to the close of that fiscal year are available to the school district or state institution for expenditure in subsequent fiscal years. Funds meeting this definition shall be budgeted and expended in subsequent fiscal years consistent with the requirements of Subsection C of Section 22-15-9 NMSA 1978.

[6.75.2.13 NMAC - Rp, 6.75.2.1 NMAC, 12/15/16]

HISTORY OF 6.75.2 NMAC:

Pre-NMAC History: The material is this part was derived from that previously filed with the State Records Center and Archives:

SDE 75-2, (Certificate No. 75-2) Regulation Relating to the State Department of Education Instructional Materials Division, filed 6-4-1975. SDE 77-2, Regulation Relating to the State Department of Education Instructional Materials Division, filed 2-7-1977.

SBE 79-12, Relating to the State Department of Education Instructional Material Division, Procedures for the Adoption, Purchase and Delivery of Instructional Material, filed 9-21-1979.

SBE Regulation No. 83-5, Relating to the State Department of Education Instructional Material Division - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 8-31-1983.

SBE Regulation 93-20, Relating to the State Department of Education Instructional Materials Bureau - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 10-19-1993.

History of Repealed Material:

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 11-1-2000 - Repealed effective 1-31-2006.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 1-13-2006 - Repealed effective 10-15-2010.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 9-28-2010 - Repealed effective 12-15-2016.

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.13.2 NMAC, Section 18, effective 1/1/2017.

1.13.2.18 CHARGES FOR PUBLISHING IN THE NEW MEXICO REGISTER:

There shall be a \$[2-50] 3.00 per column inch charge to agencies publishing material in the New Mexico register.

[1.13.2.18 NMAC - N, 7/15/03; A,

7/1/09; A, 10/15/14; A, 1/1/2017]
 [Charges for publishing in the New Mexico register are also found in 1.24.15.13 NMAC.]

**PUBLIC RECORDS,
 COMMISSION OF**

This is an amendment to 1.24.15 NMAC, Section 13, effective 1/1/2017.

1.24.15.13 CHARGES FOR PUBLISHING IN THE NEW MEXICO REGISTER: There shall be a [~~\$2.50~~] \$3.00 per column inch charge to agencies publishing material in the New Mexico register. [1.24.15.12 NMAC - Rp, 1 NMAC 3.3.15.10, 2/29/2000; A, 7/15/2003; A, 7/1/2009; A, 10/15/2014; 1.24.15.13 NMAC - Rn, 1.24.15.12 NMAC, 11/30/2015; A, 1/1/2017] [Charges for publishing in the New Mexico register are also found in 1.13.2.18 NMAC.]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.1 NMAC, Section 9, effective December 16, 2016. In 15.2.6.9 NMAC, Subsection A, Paragraph (1), Subparagraphs (b) and (c) of Paragraph (2), Subparagraphs (c) and (d) of Paragraph (3), Paragraphs (4) through (6), Subparagraphs (c) thru (f) of Paragraph (7) and Paragraphs (8) through (10) of Subsection B, and Subparagraphs (a) and (b) of Paragraph (1), Subparagraphs (b) through (f) of Paragraph (2), Paragraphs (3) thru (6), Subparagraphs (b) through (d) of Paragraph (7) and Paragraphs (8) through (22) of Subsection C were not published as there were no changes.

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

B. PROCEEDINGS BEFORE THE STEWARDS:

(2)

Complaints.

(a)

On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the stewards may conduct an inquiry and disciplinary hearing regarding the licensee's actions. [~~The stewards shall not conduct a disciplinary hearing regarding a licensee's action that results in detection of a Class 1 or 2 drug as found in 15.2.6 NMAC. Hearings on these matters shall proceed directly to the commission and shall be conducted in accordance with 15.2.1.9 NMAC.~~]

(3)

Summary suspension.

(a)

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

(b)

A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the [~~third~~] 10th day after the license was summarily suspended. The licensee may waive their right to a hearing on the summary suspension within the [~~three-day~~] 10-day limit.

(7)

Ruling.
(a)

The issues at a disciplinary hearing shall be decided by a majority vote of the stewards. If the vote is not unanimous, the dissenting steward shall include with the record of the hearing a written statement of the reasons for the dissent.

(b)

A ruling by the stewards must be on a form prescribed by the commission and include: the full name, [~~date of birth,~~] license type, [~~and~~] license

number, and applicant ID number of the person who is the subject of the hearing; a statement of the charges against the person, including a reference to the specific section of the Racing Act or rules of the commission that the licensee is found to have violated; the date of the hearing and the date the ruling was issued; the penalty imposed; any changes in the order of finish or purse distribution; other information required by the commission.

C. PROCEEDINGS BY THE COMMISSION:

(1) Party

designations.

(c)

A party summoned to appear at a hearing must appear unless the party is excused by the commission presiding officer. Parties may appear with counsel or other representatives of their choice. Counsel must be an attorney licensed to practice law in this state or with the permission of the commission is associated with an attorney licensed to practice law in this state and must submit an entry of appearance no later than [~~ten~~] 10 days prior to the hearing date.

(d)

A non-party to a proceeding who wishes to appear in a contested case pending before the commission must prove that they have an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

(2) Notice.
(a)

Not less than [~~twenty~~] 20 days before the date set for a hearing, the agency director, or acting agency director, shall serve written notice on each party of record to the proceeding. The person may waive their right to said notice by executing a written waiver.

(7) Presiding officers.

(a) One or more members of the commission, an administrative law judge, or a duly designated hearing officer may serve as the presiding officer for a commission proceeding. Objections to the presiding officer must be made in writing to the agency director at least [twenty] 20 days prior to the hearing.

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

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.2 NMAC, Section 8, effective December 16, 2016. In 15.2.2.8 NMAC Subsections A through Q and Subsections S through X were not published as there were no changes.

15.2.2.8 ASSOCIATIONS:

R. FIRE PREVENTION

(1) An association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention.

(2) Not later than three days before the first day of a race meeting, an association shall deliver to the commission a copy of the state or local fire marshal's certification regarding the association's compliance with fire safety regulations or the fire

marshal's plan of corrections. The certification or plan must be based on an inspection of the association grounds conducted by the fire marshal not more than 30 days before the first day of a race meeting.

(3) No person shall: [~~smoke in stalls, feed rooms or under shed rows; burn open fires or oil and gas lamps in the stable area; leave unattended any electrical appliance that is plugged-in to an electrical outlet; permit horses to come within reach of electrical outlets or cords; store flammable materials such as cleaning fluids or solvents in the stable area; lock a stall which is occupied by a horse.~~]

(a) smoke in stalls, feed rooms or under shed row;

(b) burn open fires or oil and gas lamps in the stable area;

(c) use or leave unattended, any electrical appliance that is plugged-in to an electrical outlet, that is not in safe working order and does not meet the manufacturer's recommendations;

(d) use extension cords that are not approved to meet OSHA standards, nor should extension cords be fastened with staples, hung from nails or suspended by wire;

(e) use worn, cracked, frayed or otherwise damaged electric cords or cables;

(f) permit horses to come within reach of electrical outlets or cords;

(g) store flammable materials such as cleaning fluids or solvents in the stable area; or

(h) lock a stall which is occupied by a horse.

(4) An association shall post a notice in the stable area which lists the prohibitions outlined in Paragraph (3) of Subsection R [Paragraph (3)] of 15.2.2 NMAC above.

[15.2.2.8 NMAC - Rp, 15 NMAC 2.2.8, 03/15/2001; A, 08/30/2001; A, 11/14/2002; A, 08/30/2007; A, 01/01/2013; A, 06/01/2016; A, 12/16/2016]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.3 NMAC, Section 8, effective December 16, 2016. In 15.2.3.8 NMAC, Subsection A, Subsection E, Subsections G and H, Subsection J through N, and Subsection P were not published as there were no changes.

15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

B. Stewards. (1) General

authority. The stewards for each meeting shall be responsible to the commission for the conduct of the race meeting in accordance with the laws of this state and these rules.

(a) The stewards shall enforce these rules and the racing laws of this state.

(b) The stewards' authority includes supervision of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with the act and these rules.

(c) The stewards shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

(d) The stewards have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules. Whenever the stewards find any person culpable for any act or omission in violation of these regulations or any violation of the Horse Racing Act, the person shall be subject to disciplinary

action, which could include a fine, suspension, or revocation/denial of license or any combination of these penalties.

(e)

The stewards shall have the authority to amend, revoke, rescind or modify any ruling that they issued in error in accordance with the laws of this state and these rules.

(2) **Period**

of authority. The stewards' period of authority shall commence up to ten days prior to the beginning of each meeting and shall terminate with the completion of their business pertaining to the meeting. Following the completion of the stewards' business, the agency director shall carry out the duties of the stewards as described in this chapter.

(3)

Disciplinary action. The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

(a)

The stewards shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

(b)

The stewards may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

(c)

The stewards may at any time inspect license documents, registration papers, and other documents related to racing.

(d)

The stewards have the power to administer oaths and examine witnesses.

(e)

The stewards shall consult with the official veterinarian to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

(f)

The stewards may impose any of the following penalties on a licensee for a violation of the act or these rules: issue a reprimand; assess a fine;

require forfeiture or redistribution of purse or award, when specified by applicable rules [and/or] and at their discretion; place a licensee on probation; suspend a license or racing privileges; revoke a license; exclude from grounds under the jurisdiction of the commission.

(g)

The stewards may order that a person be ineligible for licensing; or they may deny a license to an applicant on grounds set forth in the act or these rules.

(h)

The stewards shall submit a written report to the commission of every inquiry and hearing.

(i) A

stewards' ruling shall not prevent the commission from imposing a more severe penalty.

(j)

The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a steward's referral shall not preclude commission action in any matter.

(k)

Purses, prizes, awards, and trophies shall be redistributed if the stewards or commission order a change in the official order of finish.

(l)

All fines imposed by the stewards shall be paid to the commission within 30 days after the ruling is issued, unless otherwise ordered.

(4) **Protests,**

objections, and complaints. The stewards shall investigate promptly and render a decision in every protest, objection and complaint made to them. They shall maintain a record of all protests, objections and complaints. The stewards shall file daily with the commission a copy of each protest, objection or complaint and any related ruling.

(5) **Stewards'**

presence. Three stewards shall be present in the stewards' stand during the running of each race.

(6) **Order of**

finish for pari-mutuel wagering.

(a)

The stewards shall determine the

official order of finish for each race in accordance with 15.2.5 NMAC.

(b)

The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

(7) **Cancel**

wagering. The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

(8) **Records**

and reports.

(a)

The stewards shall prepare a daily report, on a form approved by the commission, detailing their actions and observations made during each day's race program. The report shall contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, and objections and any unusual circumstances or conditions. The report shall be signed by each steward and be filed with the commission not later than 24 hours after the end of each race day.

(b)

The stewards shall maintain a detailed log of the stewards' official activities. The log shall describe all questions, disputes, protests, complaints, or objections brought to the attention of the stewards and all interviews, investigations and rulings made by the stewards. The log shall be available at all times for inspection by the commission or its designee.

(c)

Not later than seven days after the last day of a race meeting, the stewards shall submit to the commission a written report regarding the race meeting. The report shall contain: the stewards' observations and comments regarding the conduct of the race meeting and the overall conditions of the association grounds during the race meeting; any recommendations for improvement

by the association or action by the commission.

(9) Stewards' list.

(a)
The stewards shall maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance behavior on the racetrack that endangers the health or safety of other participants in racing or for positive tests pursuant to Subsection C of 15.2.6.9 NMAC.

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

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

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

(e)
A horse that has been placed on the steward's list for a positive test pursuant to Subsection C of 15.2.6.9 NMAC may only be removed if the criteria set forth in that subsection are met or in the event of a split sample result which does not confirm the official laboratory's original finding of a positive test.

C. Racing secretary.
(1) General authority. The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations and scratches.

(2) Foal, health and other eligibility certificates. The racing secretary shall be responsible for receiving, inspecting and safeguarding the foal and health certificates and other documents of eligibility for all horses competing at the track or stabled on the grounds.

(3) Allocation of stalls.

(a)
The racing secretary shall assign stall applicants such stabling as is deemed proper and maintain a record of arrivals and departures of all horses stabled on association grounds.

(b)
Stall approvals shall be determined by: each track's screening rule as approved by the New Mexico racing commission; consideration given to stables with a balanced application; and, New Mexico bred on each application shall have preference over horses of comparable quality.

(4) Conditions.

(a)
The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office.

(b)
For the purpose of establishing conditions, winnings shall be considered to include all monies won up to the time of the start of a race.

(c)
Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

(d)
A minimum of three [(3)] races restricted to registered New Mexico bred horses shall be offered daily in the condition book excluding trials.

(5) Listing of horses. The racing secretary shall: examine all entry blanks and declarations to verify information as set forth therein; select the horses to start and the also eligible horses from the declarations in accordance with these rules.

(6) Posting of

entries. Upon completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in [his/her] their office and make the list available to the media. If the racing secretary declares a race off, the names of entrants in that race shall be posted on the official bulletin board that day, identifying the race by number as it appears in the condition book.

(7) Daily program. The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information:

(a)
sequence of races to be run and post time for the first race;

(b)
purse, conditions and distance for each race, and current track record for such distance;

(c)
the name of the licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;

(d)
the name of the trainer and the name of the jockey named for each horse together with the weight to be carried;

(e)
the post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;

(f)
identification of each horse by name, color, sex, age, sire and dam;

(g)
a notice shall be included in the daily program stating that all jockeys may carry approximately three [(3)] pounds more than the published and announced weights to account for inclement weather clothing and equipment when weighing in; and

(h)
such other information as may be requested by the association or the commission.

(8) Nominations and declarations. The racing secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify

the eligibility of all declarations and nominations and compile lists thereof for publication.

(9) Stakes

and entrance money records: The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance monies due are paid prior to entry for races conducted at the meeting.

D. Horsemen's bookkeeper.

(1) General

authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the association and commission may prescribe.

(2) Records.

(a)

The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(b)

The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents.

(c)

All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the association.

(d)

All records of the horsemen's bookkeeper including records of accounts and monies and funds kept on deposit are subject to inspection by the commission at any time.

(e)

The association licensee is subject to disciplinary action by the commission for any violations of or non-compliance with the provisions of this rule.

(3) Monies

and funds on account.

(a)

All monies and funds on account with

the horsemen's bookkeeper shall be maintained: separate and apart from monies and funds of the association; in a trust account designed as "horsemen's trust account"; in an account insured by the federal deposit and insurance corporation or the federal savings and loan insurance corporation.

(b)

The horsemen's bookkeeper shall be bonded in accordance with commission stipulations.

(4) Payment

of purses.

(a)

The horsemen's bookkeeper shall receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other monies that properly come into [his/her] their possession in accordance with the provision of commission rules.

(b)

The horsemen's bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(c)

The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within 48 hours of the completion of the race with respect to all horses not tested and when no timely appeal has been filed, and where a horse been tested within [forty-eight] 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards or the commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory(ies).

(d)

Absent a prior request, the horsemen's bookkeeper shall disburse monies to the persons entitled to receive same within [fifteen] 15 days after the last race day of the race meeting,

including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(e)

In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse within [forty-eight] 48 hours of receipt of dismissal or a final non-appealable order disposing of such protest or appeal.

F. Horse identifier.

(1) General

authority. The horse identifier shall: when required, ensure the safekeeping of registration certificates and racing permits for horses stabled [and/or] or racing on association grounds; inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting; examine every starter in the paddock for sex, color, markings and lip tattoo or other approved method of positive identification, for comparison with its registration certificate to verify the horse's identity; supervise the tattooing, branding or other approved method of positive identification, for identification of any horse located on association grounds. Positive identification may include verification that the breed registration certificate has been submitted for correction or verification that the tattooing process has been initiated.

(2) Report

violations. The horse identifier shall report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

I. Starter.

(1) General

authority. The starter shall: have

complete jurisdiction over the starting gate, the starting of horses and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start; appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate; in emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters; assign the starting gate stall positions to assistant starters by lot and notify the assistant starters prior to post time for the first race of their respective stall positions which will remain that assistant starter's position throughout the day; there shall be no changes except with permission of the stewards; assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and shall make said assessment known to the stewards; load horses into the gate in any order deemed necessary to ensure a safe and fair start.

(2) Assistant starters. With respect to an official race, the assistant starters shall not: handle or take charge of any horse in the starting gate without the expressed permission of the starter; impede the start of a race; apply any device, without the approval of the stewards to assist in loading a horse into the starting gate; slap, boot or otherwise dispatch a horse from the starting gate; strike or use abusive language to a jockey; accept or solicit any gratuity or payment other than [his/her] their regular salary, directly or indirectly, for services in starting a race.

(3) Starter's list. No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the

starter's list. Schooling shall be under the supervision of the starter.

(4) Report violations. The starter and assistant starter shall report all unauthorized activities to the stewards.

O. Racing veterinarian.

(1) General authority. At the discretion of the commission, the racing veterinarian may be an employee of the commission. At the discretion of the commission, the duties of the racing veterinarian may be assumed by the official veterinarian.

(2) The association may employ an additional racing veterinarian in order to further ensure the safety of racing.

(3) The racing veterinarian shall:

(a) be directly responsible to the official veterinarian;

(b) be a graduate veterinarian and be licensed to practice in the state;

(c) be available to the racing secretary and the stewards prior to scratch time each racing day, at a time designated by the stewards, to inspect any horses and report on their condition as may be requested by the stewards;

(d) be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;

(e) inspect any horse when there is a question as to the physical condition of such horse;

(f) recommend scratching a horse to the stewards if, in the opinion of the racing veterinarian, the horse is physically incapable of exerting its best effort to win;

(g) inspect any horse which appears in physical distress during the race or at the finish of the race; and shall

report such horse together with [his/her] their opinion as to the cause of the distress to the stewards and to the official veterinarian;

(h) refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the commission;

(i) refrain from directly treating or prescribing for any horse scheduled to participate during [his/her] their term of appointment at any recognized meeting except in cases of emergency, accident or injury;

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

(k) conduct soundness inspections on horses participating in races at the meeting; and

(l) with approval of the official veterinarian, place horses on the bleeders list.

(4) The racing veterinarian shall place horses on the veterinarian's list, when necessary, and may remove from the list those horses which are, in the racing veterinarian's opinion, able to satisfactorily compete in a race.

(5) The racing veterinarian shall be present at the office of the racing secretary or stewards prior to scratch time each racing day at a time designated by the stewards, to inspect any horses and report on their condition as may be requested by the stewards.

(6) The restrictions of Paragraph (3) of Subsection O of 15.2.3.8 NMAC may be waived for a temporary appointment to replace an absent racing veterinarian or in the event of an emergency situation with prior approval from the director of the commission.

(7) Veterinarian's list.

(a)

The racing veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

(b)

A horse may be removed from the veterinarian's list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of performing in a race.

[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 04/13/2001; A, 11/15/2001; A, 08/30/2007; A, 06/15/2009; A, 06/30/2009; A, 12/01/2010; A, 05/01/2015; A/E, 06/28/2016; A, 09/15/16; A, 12/16/2016]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.4 NMAC, Section 8, effective December 16, 2016. In 15.2.4.8 NMAC Subsection A, C, D, F, Paragraphs (4) through (7) of Subsection G were not published as there were no changes.

15.2.4.8 CLAIMING RACES:

B. CLAIMING OPTION ENTRY:

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

(a)

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

(b)

the horse is entered for a claiming price equal to or greater than the claiming price of the horse's last start; and

(c)

the horse's last race as an official starter was one in which the horse was eligible to be claimed.

(2) Failure to

declare the horse ineligible at the time of entry may not be remedied.

(3)

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

E. PROHIBITIONS:

(1)

A person shall not claim a horse in which the person has a financial or beneficial interest as an owner or trainer.

(2)

A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(3)

A person shall not enter into an agreement for the purpose of preventing another person from obtaining a horse in a claiming race.

(4)

A person shall not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

(5)

A person shall not claim more than one horse in a race. No authorized agent shall submit more than one claim for the same horse in a race, even if the authorized agent represents several owners.

G. TRANSFER OF CLAIMED HORSES:

(1)

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

(2)

A person shall not refuse to deliver a properly claimed horse to the successful

claimant.

(3) Transfer

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

[15.2.4.8 NMAC - Rp, 15 NMAC 2.4.8, 03/15/2001; A, 10/31/2006; A, 06/15/2009; A, 06/30/2009; A, 01/01/2013; A, 06/01/2016; A/E, 06/28/16; A, 12/16/16]

RACING COMMISSION

15.2.5 NMAC

Explanatory paragraph: This is an amendment to 15.2.5 NMAC, Sections 8, 11 and 13, effective December 16, 2016. In 15.2.5.8 NMAC Subsections A, C through I were not published as there were no changes. In 15.2.5.11 NMAC, Subsections B through D were not published as there were no changes. In 15.2.5.13, Paragraphs (1) through (7) of Subsection A; Subsection B; Paragraphs (1) through (10) and Paragraphs (12) and (13) of Subsection C; Paragraphs (1) through (5) and Paragraphs (7) through (10) of Subsection D; Paragraph (1) and Paragraphs (3) through (11) of Subsection E were not published as there were no changes.

15.2.5.8 ENTRIES AND NOMINATIONS:

B. PROCEDURE:

(1) Entries

and nominations shall be made with the racing secretary and shall not

be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

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

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

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

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

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

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

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

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

(10) Any approved change of equipment must be declared at time of entry. Any

changes after that time must be approved by the stewards.

[15.2.5.8 NMAC - Rp, 15 NMAC 2.5.8, 03/15/2001; A, 05/15/2001; A, 11/15/2001; A, 12/14/2001; A, 03/31/2003; A, 05/30/2003; A, 06/13/2003; A, 09/29/2006; A, 10/31/2006; A, 01/01/2013; A, 06/01/2016; A, 12/16/2016]

15.2.5.11 WORKOUTS:

A. REQUIREMENTS:

(1) A non-starter must have had within ~~[sixty]~~ 60 days ~~[of entry]~~ prior to time of race one ~~[(+)]~~ approved official schooling race or at least two ~~[(2)]~~ workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to time of race, one ~~[(+)]~~ of the two ~~[(2)]~~ workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within six ~~[(6)]~~ months, must have one ~~[(+)]~~ official workout from the starting gate or must have proof of standing the horse at least one ~~[(+)]~~ time within a ~~[sixty]~~ 60 day period. Any horse which has started, but not within ~~[sixty]~~ 60 days, must have at least one ~~[(+)]~~ workout within ~~[sixty]~~ 60 days prior to time of race. Horses that have not started within six ~~[(6)]~~ months of entry must have at least two ~~[(2)]~~ approved workouts within the ~~[sixty]~~ 60 days.

(3) Horses that have never raced around the turn will be required to have within ~~[thirty]~~ 30 days prior to time of race, at least one ~~[(+)]~~ workout at 660 yards or farther. Horses that have previously started in a race around the turn, but not within ~~[sixty]~~ 60 days, will be required to have at least one ~~[(+)]~~ workout at 660 yards or farther prior to time of race.

(4) Gate approvals at a licensed facility must be made by a licensed starter on a

commission approved form.

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 03/15/2001; A, 03/30/2007; A, 06/15/2009; A, 07/05/2010; A, 01/01/2013; A, 03/15/2016; A, 12/16/16]

**15.2.5.13 RUNNING OF THE RACE:
A. EQUIPMENT.**

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

(a) The approved protective helmet and safety vest shall be worn when:

- (i) racing, parading or warming up a horse prior to racing; or
- (ii) jogging, training or exercising a horse at any time.

(b) The helmet worn must comply with one of the following minimum safety standards or later revisions:

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

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

- (i) British equestrian trade association (BETA):2000 level 1; or
- (ii) euro norm (EN) 13158:2000 1; or

(iii) American society for testing and materials (ASTM) F2681-08 or F1937; or

(iv) shoe and allied trade research association (SATRA) jockey vests document M6 Issue 3; or

(v) Australian racing board (ARB) standard 1.1998.

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

C. JOCKEY REQUIREMENTS.

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

D. PADDOCK TO POST.

(6) In case of accident to a jockey or [his/her] their mount or equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay, and may permit all jockeys to dismount and all horses to be attended to during the delay.

E. POST TO FINISH.

(2) Interference, jostling or striking.

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

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

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

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

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Sections 8 and 9, effective December 16, 2016. In 15.2.6.8 NMAC, Subsection A, Subsections C through E were not published as there were no changes. In 15.2.6.9 NMAC, Subsection A, Paragraph (1) of Subsection C, Paragraph (2) of Subsection D, Subsections F and G, Paragraphs (2) through (5) of Subsection H, Subsection I, Paragraph (2) and Paragraph (4) through (10) of Subsection J, Paragraphs (1) and (4) of Subsection K, Subsections L through M, Paragraphs (1) and (2), Subparagraphs (a) through (f) of Paragraph (3), Paragraphs (1) through (4) of Subsection N were not published as there were no changes.

15.2.6.8 VETERINARY PRACTICES:

B. TREATMENT RESTRICTIONS:

(1) Except as otherwise provided by this subsection, no person other than a veterinarian

licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) This subsection does not apply to the administration of the following substances [~~except in approved quantitative levels, if any, present in post-race samples~~] pursuant to the restrictions set forth in 15.2.6.9 NMAC or as they may interfere with post-race testing:

- (a) a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;
- (b) a non-injectable substance on the direction or by prescription of a licensed veterinarian;
- (c) a non-injectable non-prescription medication or substance.

(3) No person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission, or a veterinary assistant licensed by the commission acting under the direct supervision of a licensed veterinarian, shall possess on any location under the jurisdiction of the commission any of the following unless approved by the commission:

- (a) any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe, or hypodermic needle;
- (b) any hypodermic syringe, hypodermic needle or any equipment associated with the aid of intravenous administration.

(c) No veterinary assistant licensed by the commission shall be allowed to administer a prohibited item pursuant to Paragraph (3) of Subsection B of

15.2.6.8 NMAC.

(4) At any location under the jurisdiction of the commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the commission.

(5) If a person has a medical condition which makes it necessary to possess a prohibited item pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that person may:

(a) request permission of the stewards or the commission in writing;

(b) furnish a letter from a licensed physician explaining why it is necessary for the person to possess a prohibited item;

(c) and must comply with any conditions and restrictions set by the stewards or the commission.

~~[(6) — If the licensee is a trainer the following requirements are to be followed: Commencing on the day of the alleged violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC, all of the trainer’s horses that will be racing within 48 hours will be tested by the commission’s official laboratory. Upon a finding of a violation by the board of stewards of Paragraph (3) of Subsection B of 15.2.6.8 NMAC payment of all costs for testing of the horses shall be borne by the trainer.]~~

~~[(7) (6) The recommended penalty (in absence of mitigating circumstances) for a violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC is a [fifteen hundred dollar] \$1,500 fine and a six month suspension. Additionally, the commission may order all horses under the trainer’s care that are entered to race to be tested with the cost of testing borne by the trainer.~~

~~[(8) (7) Veterinarians shall not have contact with an entered horse on race day except for the administration of furosemide under the guidelines set forth in Subsection [F] D of~~

15.2.6.9 NMAC unless approved by the official veterinarian or in an emergency situation. Should an emergency occur during evening hours, the veterinarian shall notify the official veterinarian as soon as possible the following morning.

~~(8) Veterinarians may employ persons licensed by the commission as veterinary assistants to work under their direct supervision. Veterinary assistants shall not inject, directly treat, or diagnose any animal. The practicing veterinarian must be present on the grounds if a veterinary assistant has access to injection devices or injectable substances. The practicing veterinarian shall assume all financial and regulatory responsibility for the actions of their licensed veterinary assistant.~~

~~(9) Veterinarians who possess any pre-drawn injectable syringes containing any substance must also possess the partially filled or empty labeled source container from which the injectable substance was drawn. Pre-drawn syringes and the labeled source container from which it was drawn are subject to confiscation by the commission and are subject to testing by the official laboratory. The injectable substance must be clearly indentified on each pre-drawn syringe.~~

[15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 04/13/2001; A, 07/15/2002; A, 02/15/2012; A, 07/31/2012, A, 05/16/2014; A, 12/16/16]

15.2.6.9 MEDICATIONS AND PROHIBITED

SUBSTANCES: The classification guidelines contained within the “uniform classification guidelines for foreign substances and recommended penalties and model rule”, April 8, 2016, version 12.0 and “association of racing commissioners international inc. controlled therapeutic medication schedule for horses”, version 3.0, revised March 25, 2016 by the association of racing commissioners international, are incorporated by

reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

Continued On The Following Page

B. PENALTY RECOMMENDATIONS:

[_____] **(1)** Category A penalties will be assessed for violations due to the presence of a drug-carrying a category A penalty. Recommended penalties for category A violations are as follows:

LICENSED TRAINER:**1st offense:**

A minimum one-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum three-year suspension. A minimum fine of \$10,000 or ten percent of total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$25,000 or twenty-five percent of total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

2nd LIFETIME offense in any jurisdiction:

A minimum three-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period. A minimum fine of \$25,000 or twenty-five percent of total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$50,000 or fifty percent of total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.

3rd LIFETIME offense in any jurisdiction:

A minimum five-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period. A minimum fine of \$50,000 or fifty percent of total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$100,000 or one hundred percent of the purse (greater of the two), and may be referred to the commission for any further action deemed necessary by the commission.

LICENSED OWNER:**1st offense:**

Disqualification and loss of purse.

2nd LIFETIME offense in stable in any jurisdiction:

Disqualification and loss of purse.

3rd LIFETIME offense in stable in any jurisdiction:

Disqualification, loss of purse, \$50,000 fine, and referral to the commission with a recommendation of a suspension for a minimum of 90 days.

[_____] **(2)** Category B penalties will be assessed for violations due to the presence of a drug-carrying a category B penalty and for the presence of more than one NSAID in a plasma/serum sample in accordance with Paragraphs (3) and (4) of Subsection P of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:

LICENSED TRAINER:**1st offense:**

A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.

2nd LIFETIME offense (365-day period) in any jurisdiction:

A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.

3rd LIFETIME offense (365-day period) in any jurisdiction:

A 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

LICENSED OWNER:

1st-offense:
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
2nd LIFETIME-offense in stable (365-day period) in any jurisdiction:
Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.
3rd LIFETIME-offense in stable (365-day period) in any jurisdiction:
Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine* and horse shall be placed on the veterinarian's list for 45 days and must pass a commission-approved examination before becoming eligible to be entered.
(3) Category C penalties will be assessed for violations due to the presence of a drug-carrying a category C penalty and overages for NSAID's, the presence of more than one NSAID in a plasma or serum sample in accordance with Subparagraph (f) of Paragraph (4) of 15.2.6.9 P NMAC and furosemide (all concentrations are for measurements in serum or plasma). Recommended penalties for category C violations are as follows:
LICENSED TRAINER:
1st-offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum of a written warning to maximum fine of \$500: phenylbutazone (2.1-5.0 mcg/ml) flunixin (21-100 ng/ml) ketoprofen (11-50 ng/ml) furosemide (>101 ng/ml) no detectable furosemide concentration when identified as administered.
2nd-offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum of a written warning to maximum fine of \$750: phenylbutazone (2.1-5.0 mcg/ml) flunixin (21-100 ng/ml) ketoprofen (11-50 ng/ml) furosemide (>101 ng/ml) no detectable furosemide concentration when identified as administered.
3rd-offense (365-day period) in any jurisdiction in the following levels, the penalty is a minimum fine of \$500 to a maximum fine of \$1,000: phenylbutazone (2.1-5.0 mcg/ml) flunixin (21-100 ng/ml) ketoprofen (11-50 ng/ml) furosemide (>101 ng/ml) no detectable furosemide concentration when identified as administered.
LICENSED OWNER:
1st-offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run: phenylbutazone (2.1-5.0 mcg/ml) flunixin (21-100 ng/ml) ketoprofen (11-50 ng/ml) furosemide (>101 ng/ml) no detectable furosemide concentration when identified as administered.
2nd-offense (365-day period) in any jurisdiction in the following levels, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run: phenylbutazone (2.1-5.0 mcg/ml) flunixin (21-100 ng/ml) ketoprofen (11-50 ng/ml) furosemide (>101 ng/ml) no detectable furosemide concentration when identified as administered.

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

phenylbutazone (2.1-5.0 mcg/ml)

flunixin (21-100 ng/ml)

ketoprofen (11-50 ng/ml)

furosemide (>101 ng/ml)

no detectable furosemide concentration when identified as administered.

LICENSED TRAINER:

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

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations:

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

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations:

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

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations:

LICENSED OWNER:

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

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations:

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

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations:

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

phenylbutazone (5.1 mcg/ml or greater)

flunixin (101 ng/ml or greater)

ketoprofen (51 ng/ml or greater)

penalty class C violations:

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

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

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

(1) Category A penalties will be assessed for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations are as follows:

LICENSED TRAINER:

1st offense:

A minimum one-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum three-year suspension. A minimum fine of \$10,000 or ten percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$25,000 or twenty-five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

2nd LIFETIME offense in any jurisdiction:

A minimum three-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period. A minimum fine of \$25,000 or twenty-five percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$50,000 or fifty percent of the total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.

3rd LIFETIME offense in any jurisdiction:

A minimum five-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period. A minimum fine of \$50,000 or fifty percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$100,000 or one hundred percent of the total purse (greater of the two), and may be referred to the commission for any further action deemed necessary by the commission.

LICENSED OWNER:

1st offense:

Disqualification and loss of purse.

2nd LIFETIME offense in stable in any jurisdiction:

Disqualification and loss of purse.

3rd LIFETIME offense in stable in any jurisdiction:

Disqualification, loss of purse, \$50,000 fine, and referral to the commission with a recommendation of a suspension for a minimum of 90 days.

(2) Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraphs (3) and (4) of Subsection P of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:

LICENSED TRAINER:

1st offense:

A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.

2nd LIFETIME offense in any jurisdiction:

A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum fine of \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.

3rd LIFETIME offense in any jurisdiction:

A 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

LICENSED OWNER:

1st offense:

Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.

2nd LIFETIME offense in stable in any jurisdiction:

Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.

3rd LIFETIME offense in stable in any jurisdiction:

Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine* and horse must pass a commission-approved examination before becoming eligible to be entered.

(3) Category C (**minor**) penalties will be assessed for violations due to the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraph (6) of Subsection N of 15.2.6.9 NMAC and overages for NSAIDs or for furosemide violations utilizing the following concentrations in serum or plasma:

- (a) phenylbutazone >2.0 mcg/ml and up to 5.0 mcg/ml; or
- (b) flunixin > 20 ng/ml and up to 100 ng/ml; or
- (c) ketoprofen > 2 ng/ml and up to 50 ng/ml; or
- (d) furosemide >100 ng/ml; or
- (e) no detectable furosemide concentration when identified as administered.

Recommended penalties for category C (**minor**) violations are as follows:

LICENSED TRAINER:

1st offense (365-day period) in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of \$500.

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

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

LICENSED OWNER:

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

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

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

(4) Category C (**major**) penalties will be assessed for violations due to the presence of a drug carrying a category C penalty.

- (a) phenylbutazone >5.1 mcg/ml; or
- (b) flunixin >101 ng/ml; or
- (c) ketoprofen >51 ng/ml; or
- (d) the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraph (5) of Subsection N of 15.2.6.9 NMAC; or
- (e) penalty class C drugs.

Recommended penalties for category C (**major**) violations are as follows:

LICENSED TRAINER:
<u>1st offense (365-day period) in any jurisdiction, the penalty is a minimum fine of \$1,000.</u>
<u>2nd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of \$1,500 and 15 day suspension.</u>
<u>3rd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of \$2,500 and a 30 day suspension.</u>
LICENSED OWNER:
<u>1st offense (365-day period) in any jurisdiction, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run.</u>
<u>2nd offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse and if same horse, that horse shall be placed on veterinarian's list for 45 days and must pass a commission-approved examination before being eligible to run.</u>
<u>3rd offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse, minimum \$5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass a commission-approved examination before being eligible to run.</u>

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

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

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

C. MEDICATION RESTRICTIONS:

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

~~(3) (2) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.~~

~~[(4) (3) There is no permissible concentration of clenbuterol that is allowed to appear in any official sample.~~

~~[(5) (4) The restrictions set forth in Paragraph (2) above do not apply to the following substances:~~

~~(a) Topical applications, such as antiseptics, ointments, salves, leg rubs and leg paints which may contain antibiotics (excluding procaine, penicillin and chloramphenicol) but which shall not contain ethanol, benzocaine, dimethylsulfoxide, lidocaine, steroids or other medications.~~

~~(b) Vitamins and electrolytes, provided the vitamins and electrolytes are administered orally and do not contain any medications.~~

~~(c) Mentholated products designed to be used and administered topically to the nostril areas.~~

~~(5) Commission personnel may at any time confiscate any material or devices used for the administration of any substance identified in Paragraph (4) above and submit it to the official laboratory for testing in order to ensure the contents are accurately identified.~~

~~(6) The use of a nebulizer or any similar device used to administer a drug or other substance by inhalation is not permitted on the day a horse is entered to race.~~

~~(7) Any horse that is the subject of a positive test report from the official laboratory for a drug in one of the following categories shall be placed immediately on the steward's list:~~

~~(a) any drug categorized by the association of racing commissioner's international "uniform classification guidelines for foreign substance and recommended penalties and model rule" incorporated by reference under 15.2.6.9 NMAC as a penalty class A substance;~~

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

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

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

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

~~(6)~~ (8) Horses placed on the steward's list for a positive test for any of the substances listed in Paragraph ~~(5)~~ (7) of Subsection C above shall remain on the steward's list for 60 days. The first day shall be considered the day following the date of the signed report from the official laboratory.

~~(7)~~ (9) In order to be removed from the steward's list and prior to entry, the following conditions shall be met:

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

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

(c) the collected samples must test negative for any substance identified in Paragraph ~~(5)~~ (7) of Subsection C above;

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

~~(8)~~ (10) If a split sample obtained under Subsection D of 15.2.6.10 NMAC does not confirm the original finding of the official laboratory of a positive test, the horse shall be removed from the steward's list.

~~(9)~~ (11) A practicing veterinarian that is licensed by the commission may prescribe a drug identified by Paragraph ~~(5)~~ (7) of Subsection C above under the

following conditions:

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

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

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

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

(e) the collected samples must test negative for the prescribed substance and any other substance identified in Paragraph ~~(5)~~ (7) of Subsection C above;

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

(g) horses placed on the veterinarian's list for the therapeutic use of any substance identified in Paragraph ~~(5)~~ (7) of Subsection C above will be subject to out of competition sampling pursuant to Subsection J of 15.2.6.9 NMAC to ensure that the concentration of drug found is within the range expected for the recognized therapeutic dose of the drug.

D. FUROSEMIDE:

(1) Furosemide may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after the trainer enters the horse on ~~[the bleeder list by so declaring~~

~~it as a bleeder]~~ furosemide on the entry card and only after the official veterinarian has placed the horse on the furosemide list. In order for a horse to be placed on the furosemide list, the following process must be followed:

(a) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide the official veterinarian or their designee shall be notified using the prescribed form, that the horse is to be put on the furosemide list.

(b) The form must be received by the official veterinarian or their designee by the proper deadlines so as to ensure public notification.

(c) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or their designee, on the proper form, no later than the time of entry.

(d) After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official furosemide list a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.

(e) Furosemide shall only be administered on association grounds.

(f) Furosemide shall be the only authorized bleeder medication.

(3) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide

shall be administered by the official veterinarian, the racing veterinarian, or practicing veterinarian no less than four hours prior to post in which a horse is entered; the horse must be logged in at the stable gate with time and location no less than one hour prior to administration; the furosemide dosage administered shall not exceed 500 milligrams nor be less than 150 milligrams; the trainer of the treated horse shall cause to be delivered to the official veterinarian or [his/her] their designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide was administered to the entered horse; the dosage amount of furosemide administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide.

(4)

Any veterinarian or veterinarian technicians participating in a third-party furosemide administration process under association requirements must be prohibited from working as private veterinarians or technicians on the racetrack or with participating licensees.

(5)

The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed.

~~(5)~~ (6)

Quantitation of furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

E. BLEEDER LIST:

(1) The

official veterinarian shall maintain a bleeder list of all horses ~~[which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.~~

(2)

The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list.

~~Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request.~~

A copy of the bleeder certificate shall be attached to the horse's certificate of registration.] which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official or racing veterinarian.

~~(3)~~ (2)

Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a)

First incident - 10 days;

(b)

Second incident within 365-day period - 30 days;

(c)

Third incident within 365-day period - 180 days;

(d)

Fourth incident within 365-day period - barred for racing lifetime.

(3) For the

purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(4)

The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.

~~(4)~~ (5)

A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal ~~[and only after remaining on the bleeder list for a minimum of 60 days].~~

~~(5)~~ (6) A horse, which has been placed on a bleeder list in another jurisdiction pursuant to these rules, [may] shall be placed on a bleeder list in this jurisdiction ~~[by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction].~~

H. MEDICAL LABELING:

(1) No

person on association grounds where horses are lodged or kept, excluding ~~[Heensed]~~ veterinarians licensed by the commission, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effect or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

J. OUT OF COMPETITION TESTING:

(1) A horse

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

(a) on

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

(b)

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

(c)

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

(d)

has been nominated to a stakes race; or

(e)

on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC.

(3) The

penalty for a positive test resulting from an out of competition sample will be determined by the penalty class of the drug listed in the association of racing commissioners international “uniform classification guidelines for foreign substances and recommended penalties and model rule” and incorporated by reference under 15.2.6.9 NMAC. Positive tests for substances identified under Paragraph (5) of Subsection C of 15.2.6.9 NMAC will be placed on the steward’s list as per the conditions set forth in that subsection. Horses already on the steward’s list for violations of Subsection C of 15.2.6.9 NMAC that have a positive out of competition test for one of the substances identified in the referenced paragraph shall be placed on the steward’s list for an additional, consecutive 60-day period.

K. CONTRABAND:

(2) The New Mexico racing commission may confiscate any contraband ~~[named]~~ in violation of Subsection H of 15.2.6.9 NMAC and any drug or illegal substance that is found on association premises which a licensed trainer occupies or has the right to occupy, or in that trainer’s personal property, effects or vehicle in that trainer’s care, custody or control.

(3) Upon finding a violation of this subsection, the stewards shall consider the classification level as it is listed in the uniform classification guidelines for foreign substances and recommended penalties as promulgated by ~~[the association of racing commissioners international]~~ Subsection A of 15.2.6.9 NMAC.

N. NON-STEROIDAL ANTI-INFLAMMATORY DRUGS (NSAIDs): The use of NSAIDs

shall be governed by the following conditions:

(5) A NSAID stacking violation with a penalty class C (**major**) occurs when any one substance noted ~~[in at or below the restrictions]~~ in Subparagraphs (a) through (e) of Paragraph (3) above is found in excess of the restrictions contained therein in combination with any one of the following substances at ~~[levels below the restrictions so noted but in excess of]~~ the following levels:

(a) Flunixin - 3 nanograms per milliliter of plasma or serum but below 20 nanograms per milliliter of plasma or serum;

(b) Ketoprofen - 1 nanogram per milliliter of plasma or serum but below 2 nanograms per milliliter of plasma or serum;

(c) Phenylbutazone - 0.3 micrograms per milliliter of plasma or serum but below 2 micrograms per milliliter of plasma or serum.

(6) A NSAID stacking violation with a penalty class C ~~[(fines only)]~~ (**minor**) occurs when any combination of two of the following non-steroidal anti-inflammatory drugs are found ~~[at or below the restrictions in Subparagraphs (a) through (e) of Paragraph 3 above but in excess of]~~ at concentrations between the noted restrictions:

(a) Flunixin - 3 nanograms per milliliter of plasma or serum but below 20 nanograms per milliliter of plasma or serum;

(b) Ketoprofen - 1 nanogram per milliliter of plasma or serum but below 2 nanograms per milliliter of plasma or serum;

(c) Phenylbutazone - 0.3 micrograms per milliliter of plasma or serum but below 2 micrograms per milliliter of plasma or serum.

(7) Any

horse to which a NSAID has been administered shall be subject to having a blood sample or urine sample, or both blood and urine sample(s), taken at the direction of the official veterinarian to determine the quantitative NSAID level(s). [15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013; A, 04/01/2014; A, 05/16/2014; A, 08/15/2014; A, 09/15/2014; A, 03/16/2015; A, 09/16/15; A, 03/15/2016; A, 06/15/2016; A/E, 06/28/2016; A, 09/15/16; A, 12/16/16]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.7 NMAC, Section 12, effective December 16, 2016. In 15.2.7.12 NMAC, Subsections A and B, Paragraphs (1) through (3) of Subsection C, Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Subparagraphs (b) and (c) of Paragraph (3) of Subsection D, Subsections E through T, Paragraphs (1) through (5), Subparagraphs (a) through (c) of Paragraph (6) of Subsection U, and Subsection V were not published as there were no changes.

15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

C. PLACE POOLS:

(4) If there is a dead heat for second involving:
(a) contestants representing the same

betting interest, the place pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the place pool is divided with one-half [(1/2)] of the profit distributed to place wagers on the betting interest finishing first and the remainder is distributed equally amongst place wagers on those betting interests involved in the dead heat for second.

D. SHOW POOLS:

(2) The net show pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) if contestants of a coupled entry or mutuel field finished in the first three places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise;

(b) if contestants of a coupled entry or mutuel field finished as two of the first three finishers, the profit is divided with two-thirds [(2/3)] distributed to those who selected the coupled entry or mutuel field and one-third [(1/3)] distributed to those who selected the other betting interest included within the first three finishers; otherwise;

(3) If there is a dead heat for first involving:

(a) two contestants representing the same betting interest, the profit is divided with two-thirds [(2/3)] distributed to those who selected the first-place finishers and one-third [(1/3)] distributed to those who selected the betting interest finishing third;

(4) If there is a dead heat for second involving:

(a) contestant representing the same

betting interest, the profit is divided with one-third [(1/3)] distributed to those who selected the betting interest finishing first and [~~two-third~~ (2/3)] two-thirds distributed to those who selected the second-place finishers;

(b) contestants representing two betting interests, the show pool shall be distributed as a profit split;

(c) contestants representing three betting interests, the show pool is divided with one-third [(1/3)] of the profit distributed to show wagers on the betting interest finishing first and the remainder is distributed equally amongst show wagers on those betting interests involved in the dead heat for second.

(5) If there is a dead heat for third involving:

(a) contestants representing the same betting interest, the show pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the show pool is divided with two-thirds [(2/3)] of the profit distributed to show wagers on the betting interests finishing first and second and the remainder is distributed equally amongst show wagers on those betting interests involved in the dead heat for third.

U. EXACTA (n) POOLS:

(6) Mandatory Distribution: A written request for permission to distribute the exacta (n) carryover on a specific performance may be submitted to the commission. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

The association must notify the commission at least 10 days prior to implementation. If the exacta (n)

pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next scheduled mandatory distribution performance.

(d) If there are no wagers which correctly selected the first and second place finishers, in exact order, in at least one of the exacta (n) contests, based upon the official order of finish, then all exacta (n) tickets shall become winners and receive 100 [%] percent of that day's net exacta (n) pool and the exacta (n) carryover pool as single price pool.

(e) Subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The exacta (n) carryover plus accrued interest shall then be added to the net exacta (n) pool of the following meet on a date and performance so designated by the commission.

W. MATCH RIVAL POOLS:

(1) The match rival requires the selection of the winning contestant in a designated contest or series of contests, in a competition between two or more equally matched betting interests, or based on the sportsmanship or skill of the jockeys or trainers, regardless of the official placing of the other betting interests in that contest or series of contests.

(2) The choice of which contestants from a contest shall participate in the match rival shall be made as follows:

(a) the association must obtain written approval from the commission concerning who shall determine the contestants for each match rival contest;

(b) the matching of contestants for the match rival shall be limited to contestant versus contestant, jockey

versus jockey or trainer versus trainer:

(c)

the contestants chosen for the match rival wager shall be conspicuously identified in the official program:

(3) The net

match rival pool shall be distributed to winning wagers in the following precedence, based on the official order of finish:

(a)

as a single price pool to those whose selection finished first in a single match rival contest, or first in the greatest number of a series of match rival contests; but if there are no such wagers, then:

(b)

the match rival pool shall be refunded: (4) If there is a dead heat in a contest involving two or more of the contestants in:

(a) a

single-contest match rival pool, then the entire pool shall be refunded; or

(b)

one or more contests of a series, then all contestants involved in the dead heat shall be considered winners and the net pool shall be distributed as a single price pool, provided that:

(c) in

a series of contests, if there is a dead heat in half or more of the contests then the match rival pool for those contests shall be refunded.

(5) If any

match rival contest is cancelled or declared no contest:

(a) in

a single-contest match rival pool, the pools shall be refunded:

(b) in

a series of contests, if half or more of the contests are cancelled or declared no contest, then the match rival pool for those contests shall be refunded.

(6) If any

contestant is scratched or declared a non-starter in any match rival contest, then that contest shall be cancelled.

(7) If all

contestants fail to finish in a match rival contest, then that contest shall be cancelled.

[15.2.7.12 NMAC - Rp, 15 NMAC 2.7.12, 03/15/2001; A, 03/31/2003; A, 09/15/2003; A, 04/14/2005;

A, 07/15/2005; A, 11/30/2005; A, 03/30/2007; A, 06/15/2009; A, 12/01/2010; A, 11/01/2011; A, 01/01/2013; A, 09/15/2014; A, 12/16/2016]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 16.47.1 NMAC, Sections 8, 10 and 12, effective December 16, 2016. In 15.2.6.8 NMAC, Paragraphs (1) through (4) of Subsection A, Subsections B through K, Subparagraphs (a) through (e) of Paragraph (1), Paragraphs (2) through (4) of Subsection L, Subsections M, N, P through T, and Subsection V were not published as there were no changes. In 15.2.6.10 NMAC, Subsections A, B, Paragraphs (1) through (4) of Subsection C, and Subsections D through F were not published as there were no changes. In 15.2.6.12 NMAC, Paragraphs (1) through (5) of Subsection B, and Subsections D through F were not published as there were no changes.

16.47.1.8 GENERAL PROVISIONS:

A. LICENSES

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

(5) As a participant of the national racing compact licensing program and as an alternative to the licensure requirements set forth in Paragraphs (2) through (4) of Subsection A of 16.47.1.8 NMAC, the commission may authorize applicants to utilize the national racing compact licensing program to obtain a New Mexico racing license subject to the applicable licensure fees set forth in Paragraph (2) of Subsection A of 16.47.1.8 NMAC.

L. GROUNDS FOR DISCIPLINARY MEASURES FOR A LICENSEE, AND REFUSAL, DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE:

(1) The

commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

(f)

has been found to have made false or misleading statements to the commission, stewards, or any racing official:

(g)

has been or is currently excluded from association grounds by a recognized racing jurisdiction;

~~(g)~~ (h)

has had a license denied, suspended, or revoked by any racing jurisdiction;

~~(h)~~ (i)

is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting; interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to danger anywhere on the racetrack grounds; the fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

~~(i)~~ (j)

demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused; for the purpose of this subsection, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within [thirty] 30 days of the date of the notice, the applicant provides the

commission with a certified statement from the department that they are in compliance with a judgment and order for support;

(f) (k) is ineligible for employment pursuant to federal or state law concerning age or citizenship.

O. TEMPORARY LICENSES:

(1) The commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the commission with the exception of casino employees and also food concession employees who work in non-restricted areas.

(2) The commission may grant an association, who is not conducting a live horse race meeting, a grace period of [thirty] 30 days to obtain the required licenses for its simulcast employees. An association shall provide to the commission each month, an employment roster for all simulcast employees.

U. PROTECTION OF HORSES:

(1) Each person licensed by the commission shall do all that is reasonable and within [his/her] their power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

(2) No licensee or other person under the jurisdiction of the commission shall subject or permit any animal under [his/her] their control, custody or supervision to be subjected to

or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

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

16.47.1.10 TRAINERS:

C. OTHER RESPONSIBILITY: A trainer is responsible for:

(5) the proper identity, custody, care, health, condition, and safety of horses in [his/her] their charge;

(6) disclosure of the true and entire ownership of each horse in [his/her] their care, custody or control; any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary;

(7) training all horses owned wholly or in part by [him/her] them which are participating at the race meeting; registering with the racing secretary each horse in [his/her] their charge within 24 hours of the horse's arrival on association grounds;

(8) immediately notify the stewards and commission veterinarian of all out-of-state certified horses on [Salix®] furosemide;

(9) having each horse in [his/her] their care that

is racing, or is stabled on association grounds, tested for equine infectious anemia (EIA) and for filing evidence of such negative test results with the racing secretary as required by the commission;

(10) using the services of those veterinarians licensed by the commission to attend horses that are on association grounds;

(11) immediately reporting the alteration in the sex of a horse in [his/her] their care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

(12) promptly reporting to the racing secretary and the official veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

(13) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in [his/her] their charge;

(14) promptly reporting the death of any horse in [his/her] their care on association grounds to the stewards and the official veterinarian and compliance with the rules in Subsection C of 15.2.6.12 NMAC governing post-mortem examinations;

(15) maintaining a knowledge of the medication record and status of all horses in [his/her] their care;

(16) immediately reporting to the stewards and the official veterinarian if [he/she-knows] they know, or has cause to believe, that a horse in [his/her] their custody, care or control has received any prohibited drugs or medication;

(17) representing an owner in making entries and scratches and in all other matters pertaining to racing; horses entered as to eligibility and weight or other allowances claimed;

(18) horses entered as to eligibility and weight or

other allowances claimed;

(19) ensuring the fitness of a horse to perform creditably at the distance entered;

(20) ensuring that [his/her] their horses are properly shod, bandaged, and equipped; toe grabs with a height greater than two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited; the horse shall be scratched and the trainer may be subject to fine;

(21) ensuring that [his/her] horses are properly bandaged, and equipped; and no jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein; a safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp;

(22) presenting [his/her] horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(23) personally attending to [his/her] their horses in the paddock and supervising the saddling thereof, unless excused by the stewards; if the trainer is excused, the trainer must secure another trainer or assistant trainer who is licensed by the commission to assume those duties;

(24) instructing the jockey to give [his/her] their best effort during a race and that each horse shall be ridden to win;

(25) attending the collection of urine or blood sample from the horse in [his/her] their charge or delegating a licensed employee or the owner of the horse to do so;

(26) notifying horse owners upon the revocation or suspension of [his/her] their trainer's license; upon application by the owner, the stewards may approve the

transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007; A, 06/30/2009; A, 09/15/2009; A, 07/05/2010; A, 05/16/2014; A, 09/15/2014; A, 03/15/2016; A, 06/01/2016; A, 12/16/16]

16.47.1.12 JOCKEYS

A. ELIGIBILITY:

(1) A jockey must pass a physical examination given within the previous [~~twelve~~] 12 months by a licensed physician affirming fitness to participate as a jockey. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

(2) [~~An applicant must demonstrate by prior licensing, and the demonstration of riding ability which may include participation in up to five races with the stewards' prior approval and the consideration of the recommendations from] Prior to obtaining a license an applicant for a first time jockey or an apprentice jockey license must demonstrate their riding ability by participating in five races and must receive prior approval from the stewards, the starter, the head outrider, and the designated representatives of the jockeys and the horsemen at the track. The demonstration of riding competence and ability is defined as a minimum of:~~

- (a) breaking a horse in company from the starting gate;
- (b) working a horse in company from the starting gate;
- (c) switching the whip from one hand to the other while maintaining control of the horse in a stretch drive; and
- (d) causing the horse to switch leads

coming out of a turn.

(3) Failure to demonstrate the required ability shall result in the withdrawal of the license.

(4) The stewards may authorize a temporary license to ascertain the applicant's riding competence and ability.

~~(4)~~ (5) A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

(6) An applicant whose weight exceeds 130 pounds at the time of application shall not be issued a jockey's license.

B. APPRENTICE JOCKEYS:

(6) An apprentice jockey shall ride with a five pound weight allowance beginning with [his/her] their first mount and for one full year from the date of [his/her] their fifth winning mount. If after riding one year from the date of [his/her] their fifth winning mount, the apprentice jockey has failed to ride a total of [~~forty~~] 40 winners, [he/she] they shall continue to ride with a five pound weight allowance for one more year from the date of [his/her] their fifth winning mount or until [he/she has] they have ridden [~~forty~~] 40 winners, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount unless an apprentice jockey is unable to ride for a period of seven consecutive days or more after the date of [his/her] their fifth winning mount because of service in national armed forces, enrollment in high school or an institution of secondary education, or because of physical disablement, or restriction on racing or other valid reasons, the commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride. The stewards or commission may issue apprentice extensions with proper documentation.

(7) An apprentice jockey must meet the conditions set forth in Subsection A of 16.47.1.12 NMAC.

C. FOREIGN

JOCKEYS: Whenever a jockey from a foreign country rides in this jurisdiction, the jockey must declare that [he/she is] they are a holder of a valid license in [his/her] their country and currently not under suspension. To facilitate this process, the jockey shall present a declaration sheet in a language recognized in this jurisdiction to the commission. The jockey must complete a license application and be fingerprinted to be maintained in the files of the commission.

[16.47.1.12 NMAC - Rp, 16 NMAC 47.1.12, 03/15/2001; A, 08/31/2004; A, 10/31/2006; A, 06/15/2009; A, 12/14/2012; A, 12/16/2016]

SUPERINTENDENT OF INSURANCE, OFFICE OF

On September 21, 2016, the Office of Superintendent of Insurance repealed its rule 13.10.17 NMAC, Grievance Procedures and replaced with a new rule 13.10.17 NMAC, Grievance Procedure, effective January 1, 2017.

SUPERINTENDENT OF INSURANCE, OFFICE OF

**TITLE 13 INSURANCE
CHAPTER 10 HEALTH
INSURANCE
PART 17 GRIEVANCE
PROCEDURES**

13.10.17.1 ISSUING

AGENCY: Office of Superintendent of Insurance (OSI), Managed Health Care Bureau (MHCB).
[13.10.17.1 NMAC - Rp, 13.10.17.1 NMAC, 1/1/17]

13.10.17.2 SCOPE:

A. Applicability. This rule applies to all health care insurers that provide, offer or administer health benefits plans, including health benefits plans:

(1) with a point-of-service option that allows subscribers to obtain health care services out-of-network;

(2) provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act (Sections 13-7-1 through 13-7-11 NMSA 1978); and

(3) utilizing a preferred provider network, as defined under Section 59A-22A-3 NMSA 1978.

B. Exemptions. This rule does not apply to policies or certificates that provide coverage for:

(1) only short-term travel, accident-only, specified disease or other limited benefits; or

(2) credit, disability income, hospital indemnity, long-term care insurance, vision care or any other limited supplemental benefit; or

(3) self-funded plans that are subject to the Employee Retirement Income Security Act of 1974 (ERISA).

C. Conflicts. For purpose of this rule, if any provision in this rule conflicts with any provision in 13.10.13 NMAC, Managed Health Care or 13.10.16 NMAC, Provider Grievances, the provisions in this rule shall apply.

[13.10.17.2 NMAC - Rp, 13.10.17.2 NMAC, 1/1/17]

13.10.17.3 STATUTORY

AUTHORITY: Sections 59A-1-16, 59A-2-8, 59A-2-9, 59A-15-16, 59A-16-3, 59A-16-11, 59A-16-12, 59A-16-12.1, 59A-16-20, 59A-16-22, 59A-19-4, 59A-19-6, 59A-22A-7, 59A-46-10, 59A-46-11, 59A-57-2, 59A-57-4, and 59A-57-5 NMSA 1978.

[13.10.17.3 NMAC - Rp, 13.10.17.3 NMAC, 1/1/17]

13.10.17.4 DURATION:

Permanent.

[13.10.17.4 NMAC - Rp, 13.10.17.4 NMAC, 1/1/17]

13.10.17.5 EFFECTIVE

DATE: January 1, 2017, unless a later date is cited at the end of a section.

[13.10.17.5 NMAC - Rp, 13.10.17.5 NMAC, 1/1/17]

13.10.17.6 OBJECTIVE:

The purpose of this rule is to establish procedures for filing and processing adverse determination grievances and administrative grievances regarding actions taken or inaction by a health care insurer.

[13.10.17.6 NMAC - Rp, 13.10.17.6 NMAC, 1/1/17]

13.10.17.7 DEFINITIONS:

As used in this rule:

A. "Administrative decision" means a decision made by a health care insurer regarding any aspect of a health benefits plan other than an adverse determination, including but not limited to:

(1) administrative practices of the health care insurer that affect the availability, delivery, or quality of health care services;

(2) claims payment, handling or reimbursement for health care services, including but not limited to complaints concerning co-payments, co-insurance and deductibles; and

(3) terminations of coverage.

B. "Administrative grievance" means an oral or written complaint submitted by or on behalf of a covered person regarding an administrative decision.

C. "Adverse determination" means any of the following:

(1) any rescission of coverage (whether or not the rescission has an adverse effect on any particular benefit at the time);

(2) a denial, reduction, or termination of, or a failure to make full or partial payment for a benefit including any such denial, reduction, termination,

or failure to make payments, that is based on a determination of a covered person's eligibility to participate in a health benefits plan; or

(3) a denial, reduction or termination of, or a failure to make full or partial payment for a benefit resulting from the application of any utilization review; or

(4) failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental, or investigational or not medically necessary or appropriate.

D. "Adverse determination grievance" means an oral or written complaint submitted by or on behalf of a covered person regarding an adverse determination.

E. "Certification" means a determination by a health care insurer that a health care service requested by a provider or covered person has been reviewed and, based upon the information available, meets the health care insurer's requirements for determining medical necessity, appropriateness, health care setting, level of care and effectiveness, and the requested health care service is therefore approved.

F. "Clinical peer" means a physician or other health care professional who holds a non-restricted license in a state in the United States and in the same or similar specialty as typically manages the medical condition, procedure or treatment under review.

G. "Co-insurance" is a cost-sharing plan that requires an insured person to pay a stated percentage of medical expenses after the deductible amount, if any, was paid; co-insurance rates may differ for different types of services.

H. "Co-payment" is a cost-sharing plan that requires an insured person to pay a fixed dollar amount when a medical service is received or when purchasing medicine after the deductible amount, with the health care insurer paying the balance; there may be different co-payments for different types of service.

I. "Covered benefits"

means those health care services to which a covered person is entitled under the terms of a health benefits plan.

J. "Covered person" means a policyholder, subscriber, enrollee or other individual participating in a health benefit plan.

K. "Culturally and linguistically appropriate manner of notice" means:

(1) Notice that meets the following requirements:

(a) the health care insurer must provide oral language services (such as the telephone customer assistance hotline) that includes answering questions in any applicable non-English language and providing assistance with filing claims and reviews (including IRO reviews and external reviews) in any applicable non-English language;

(b) the health care insurer must provide, upon request, a notice in any applicable non-English language; and

(c) the health care insurer must include in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the health care insurer.

(2) For purposes of this definition, with respect to an address in any New Mexico county to which a notice is sent, a non-English language is an applicable non-English language if 10 percent or more of the population residing in the county is literate only in the same non-English language, as determined by the department of health human services (HHS); the counties that meet this 10 percent standard, as determined by HHS, are found at <http://ccio.cms.gov/resources/factsheets/clas-data.html> and any necessary changes to this list are posted by HHS annually.

L. "Day or Days" shall be interpreted as follows, unless otherwise specified:

(1) 1-5 days means only working days and excludes weekends and state holidays;

and

(2) 6 days or more means calendar days, including weekends and holidays.

M. "Deductible" means a fixed dollar amount that the covered person may be required to pay during the benefit period before the health care insurer begins payment for covered benefits; plans may have both individual and family deductibles and separate deductibles for specific services.

N. "Expedited review" means a review with a shortened timeline, as described in sections 13.10.17.14 NMAC, 13.10.17.16 NMAC, 13.10.17.21 NMAC, 13.10.17.22 NMAC, and 13.10.17.24 NMAC, which is required in urgent care situations or when the grievant is receiving an on-going course of treatment which the health care insurer seeks to reduce or terminate.

O. "External review" means the external review conducted pursuant to this rule by the superintendent or by an IRO appointed by the superintendent, depending on the circumstances.

P. "Final adverse determination" means an adverse determination that has been upheld by a health care insurer at the conclusion of the internal review process.

Q. "Grievance" means an oral or written complaint submitted by or on behalf of a covered person regarding either an adverse determination or an administrative decision.

R. "Grievant" means a covered person or that person's authorized representative, provider or other health care professional with knowledge of the covered person's medical condition, acting on behalf of and with the covered person's consent.

S. "Health benefits plan" means a health plan or a policy, contract, certificate or agreement offered or issued by a health care insurer or plan administrator to provide, deliver, arrange for, pay for or reimburse the costs of health care services, including a traditional fee-

for-service health benefits plan and coverage provided by, through or on behalf of an entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act.

T. “Health care insurer” means a person that has a valid certificate of authority in good standing issued pursuant to the Insurance Code to act as an insurer, health maintenance organization, non-profit health benefits plan, fraternal benefit society, vision plan or pre-paid dental plan.

U. “Health care professional” means a physician or other health care practitioner, including a pharmacist, who is licensed, certified, or otherwise authorized by the state to provide health care services consistent with state law.

V. “Health care services” means services, supplies and procedures for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease, and includes, to the extent offered by the health benefits plan, physical and mental health services, including community-based mental health services, and services for developmental disability or developmental delay.

W. “Hearing officer, independent co-hearing officer (ICO)” means a health care or other professional licensed to practice medicine or another profession who is willing to assist the superintendent as a hearing officer in external review hearings.

X. “Independent review organization (IRO)” means an entity that is appointed by the superintendent to conduct independent external reviews of adverse determinations and final adverse determinations pursuant to this rule; and which renders an independent and impartial decision.

Y. “Initial determination” means a formal written disposition by a health care insurer affecting a covered person’s rights to benefits, including full or partial denial of a claim or request for

coverage or its initial administrative decision.

Z. “Managed health care bureau (MHCB)” means the managed health care bureau within the office of the superintendent of insurance.

AA. “Medical necessity or medically necessary” means health care services determined by a provider, in consultation with the health care insurer, to be appropriate or necessary, according to any applicable generally accepted principles and practices of good medical care or practice guidelines developed by the federal government, national or professional medical societies, boards and associations, or any applicable clinical protocols or practice guidelines developed by the health care insurer consistent with such federal, national, and professional practice guidelines, for the diagnosis, or direct care and treatment of a physical, behavioral, or mental health condition, illness, injury or disease.

BB. “Office of the superintendent of insurance (OSI)” means the office of the superintendent or its staff.

CC. “Post-service claim” means a claim submitted to a health care insurer by or on behalf of a covered person after health care services have been provided to the covered person.

DD. “Prior authorization” (also called pre-certification) means a pre-service determination made by a health care insurer regarding a member’s eligibility for services, medical necessity, benefit coverage, location or appropriateness of services, pursuant to the terms of the health care plan.

EE. “Prospective review” means utilization review conducted prior to provision of health care services in accordance with a health care insurer’s requirement that the services be approved in advance.

FF. “Provider” means a duly licensed hospital or other licensed facility, physician or other health care professional authorized to

furnish health care services within the scope of their license.

GG. “Rescission of coverage” means a cancellation or discontinuance of coverage that has retroactive effect; a cancellation or discontinuance of coverage is not a rescission if:

(1) the cancellation or discontinuance of coverage has only a prospective effect; or

(2) the cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or

(3) the cancellation or discontinuance of coverage is initiated by the covered person or the covered person’s authorized representative and the employer or health care insurer did not, directly or indirectly, take action to influence the covered person’s decision or otherwise retaliate against, interfere with, coerce, threaten or intimidate the covered person; or

(4) the cancellation or discontinuance is initiated by the health insurance exchange.

HH. “Retrospective review” means utilization review that is not conducted prior to provision of health care services.

II. “Summary of benefits” means the written materials required by Section 59A-57-4 NMSA 1978 to be given to the grievant by the health care insurer or group contract holder.

JJ. “Superintendent” means the superintendent of insurance, or the office of the superintendent of insurance.

KK. “Termination of coverage” means the cancellation or non-renewal of coverage provided by a health care insurer to a grievant, but does not include a voluntary termination by a grievant, termination initiated by the health insurance exchange, or termination of a health benefits plan that does not contain a renewal provision.

LL. “Traditional fee-for-service indemnity benefit” means a fee-for-service indemnity benefit, not associated with any financial incentives that encourage covered person to utilize preferred providers, to follow pre-authorization rules, to utilize prescription drug formularies, or other cost-saving procedures to obtain prescription drugs, or to otherwise comply with a plan’s incentive program to lower cost and improve quality, regardless of whether the benefit is based on an indemnity form of reimbursement for services.

MM. “Uniform standards” means all generally accepted practice guidelines, evidence-based practice guidelines, or practice guidelines developed by the federal government, or national and professional medical societies, boards and associations; and any applicable clinical review criteria, policies, practice guidelines, or protocols developed by the health care insurer consistent with the federal, national and professional practice guidelines that are used by a health care insurer in determining whether to certify or deny a requested health care service.

NN. “Urgent care situation” means a situation in which the decision regarding certification of coverage shall be expedited because:

- (1) the life or health of a covered person would otherwise be jeopardized;
- (2) the covered person’s ability to regain maximum function would otherwise be jeopardized;
- (3) the physician with knowledge of the covered person’s medical condition **reasonably** requests an expedited decision;
- (4) in the opinion of the physician with knowledge of the covered person’s medical condition, delay would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim;
- (5) the medical exigencies of the case require

an expedited decision, or
(6) the covered person’s claim otherwise involves urgent care.

OO. “Utilization review” means a set of formal techniques designed to monitor the use of or evaluate the medical necessity, appropriateness, efficacy or efficiency of health care services, procedures, providers, or facilities. [13.10.17.7 NMAC - Rp, 13.10.17.7 NMAC, 1/1/17]

13.10.17.8 COMPUTATION OF TIME: Whenever this rule requires that an action be taken within a certain period of time from receipt of a request or document, the request or document shall be deemed to have been received within three days after the date it was mailed. [13.10.17.8 NMAC - Rp, 13.10.17.8 NMAC, 1/1/17]

13.10.17.9 GENERAL REQUIREMENTS REGARDING GRIEVANCE PROCEDURES:

A. Written grievance procedures required. Every health care insurer shall establish and maintain separate written procedures that comply with this rule to provide for the internal review of adverse determination grievances and administrative grievances.

B. Divisible grievance. If a grievance contains clearly divisible administrative and adverse determination issues, then the health care insurer shall initiate separate complaints for each issue with an explanation of the health care insurer’s actions contained in one acknowledgment letter.

C. Assistance to grievants. In those instances, where a grievant requests or expresses interest in pursuing a grievance, the health care insurer shall assist the grievant to complete all the forms required to pursue internal review and shall advise grievant that the MHCBC is available for assistance.

D. Retaliatory action prohibited. No person shall be subject to retaliatory action by the health care insurer for any reason

related to a grievance. [13.10.17.9 NMAC - Rp, 13.10.17.9 NMAC, 1/1/17]

13.10.17.10 INFORMATION ABOUT GRIEVANCE PROCEDURES:

A. For covered persons/grievants. A health care insurer shall:
(1) include a clear and concise summary of the grievance procedures, both internal and external, in boldface type in all handbooks or evidences of coverage, issued to covered persons, along with a link to the full version of the grievance procedures, as found on the OSI website;

(2) when the health care insurer makes either an initial or final adverse determination or an administrative decision, provide the following to a covered person, that person’s authorized representative or a provider acting on behalf of a covered person:

- (a)** a concise written summary of its grievance procedures;
- (b)** a copy of the applicable grievance forms;
- (c)** a link to the full version of the grievance procedures, as found on the OSI website; and

(d) a toll-free telephone number, facsimile number, e-mail and mailing addresses of the health care insurer’s consumer assistance office and for the MHCBC.

(3) notify covered person that a representative of the health care insurer and the MHCBC are available upon request to assist covered person with grievance procedures by including such information and a toll-free telephone number for obtaining such assistance in the enrollment materials and summary of benefits issued to covered person;

(4) make available on its website or upon request, consumer education brochures and materials developed and approved by the superintendent

in consultation with the health care insurer;

(5)

provide notice to covered person in a culturally and linguistically appropriate manner as defined in Subsection H of 13.10.17.7 NMAC;

(6) provide

continued coverage for an approved on-going course of treatment pending the final determination on review;

(7) not reduce

or terminate an approved on-going course of treatment without first notifying the grievant sufficiently in advance of the reduction or termination to allow a covered person to request a review and obtain a final determination on review of the proposed reduction or termination; and

(8) allow

covered person in urgent care situations and those receiving an on-going course of treatment that the health care insurer seeks to reduce or terminate to proceed with an expedited IRO review at the same time as the internal review process.

B. For providers.

A health care insurer shall inform all providers of the grievance procedures and shall make all necessary forms available upon request, including consumer education brochures and materials developed or approved by the superintendent for distribution. These items may be provided in paper format or electronically.

C. Special needs.

Information about grievance procedures must be provided in accordance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101, *et seq.*; the Patient Protection and Affordable Care Act of 2010, P.L. 111-152 as codified in the U.S.C.; and 13.10.13 NMAC, and MHCBC, particularly 13.10.13.29 NMAC, Cultural and Linguistic Diversity. [13.10.17.10 NMAC - N, 13.10.17.10 NMAC, 1/1/17]

13.10.17.11 INITIAL DETERMINATIONS:

A. Expedited initial decision.

A health care insurer shall make its initial certification or

adverse determination decision in urgent care situations in accordance with the medical exigencies of the case. The health care insurer shall make decisions within 24 hours after receipt of the request for an expedited decision. An expedited decision is not available for post-service claims.

B. Standard initial decision.

A health care insurer shall make all other initial utilization review decisions within five days after receipt of the request. The health care insurer may extend the review period for a maximum of 10 days if it:

(1) can

demonstrate reasonable cause beyond its control for the delay;

(2) can

demonstrate that the delay will not result in increased medical risk to the covered person; and

(3) provides

a written progress report and explanation for the delay to the covered person and provider within the original five-day review period.

C. Coverage.

When considering whether to certify a health care service requested by a provider or covered person, the health care insurer shall determine whether the requested health care service is covered by the health benefits plan. Before denying a requested health care service on grounds of a lack of coverage, the health care insurer shall determine that there is no provision of the health benefits plan under which the requested health care service could be covered. If the health care insurer finds that the requested health care service is not covered by the health benefits plan, the health care insurer need not address the issue of medical necessity.

D. Medical necessity.

(1) If the

health care insurer finds that the requested health care service is covered by the health benefits plan, then when considering whether to certify a requested health care service, the health care insurer shall assign a physician, registered nurse, or other health care professional to determine, within the timeframe required by the medical exigencies of the case,

whether the requested health care service is medically necessary.

(2) Before a

health care insurer denies a health care service requested by a provider or covered person on grounds that it is determined to be not medically necessary, experimental, or investigational a physician shall render an opinion, either after consultation with specialists who are experts in the area that is the subject of review or after application of uniform standards used by the health care insurer. The physician shall be under the clinical authority of the medical director responsible for health care services provided to covered person.

E. Incomplete information.

If the covered person fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the health benefits plan, the covered person shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than two days, to provide the specified information.

(1) Expedited

initial decision. If the covered person has been afforded time to provide additional information, then the health care insurer shall have 24 hours after the additional information is received to make its determination.

(2) Standard

initial decision. If the covered person has been afforded time to provide additional information, then the health care insurer shall have five days after the additional information is received to make its determination.

[13.10.17.11 NMAC - Rp, 13.10.17.15 NMAC, 1/1/17]

13.10.17.12 NOTICE OF INITIAL DETERMINATION:

A. Certification.

The health care insurer shall send written notice to the covered person and provider of the certification by mail or electronic communication within one day after the date the health care service was certified, unless earlier notice is required by the medical exigencies of the case.

B. Notice of adverse determination or administrative decision; explanatory contents.

The health care insurer shall notify a covered person and provider of an adverse determination by telephone or as required by the medical exigencies of the case, but in no case later than one day after making the adverse determination. Additionally, the health care insurer shall notify the covered person and provider of the adverse determination or administrative decision in writing by mail or electronic communication sent within one day after the telephone notice.

C. Contents of notice of initial adverse determination or administrative decision.

(1) The notices required in Paragraph C, Subparagraphs (2) and (3) of Section 13.10.17.12 shall be provided to the covered person, the covered person's authorized representative, if applicable, and to a provider or other health care professional with knowledge of the covered person's medical condition.

(2) Adverse determination.

(a) If an adverse determination is based on a determination that the requested service is experimental, investigational or not medically necessary, clearly and completely explain why the requested health care service is not medically necessary or is experimental or investigational; a statement that the health care service is not medically necessary, is experimental, or is investigational will not be sufficient.

(b) If an adverse determination is based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan; a statement that the requested health care service is not covered by the health benefits plan will not be sufficient.

(c) If

the service has already been provided, then include the date of service, the provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning.

(d) Include a description of the health care insurer's standard that was used in denying the claim.

(e) Provide information stating that a request for review of an adverse determination must be filed with the health care insurer within 180 days.

(f) If the adverse determination involves an urgent care situation, provide information that an expedited IRO review to be conducted at the same time as an expedited internal review may be requested.

(g) Describe the procedures and provide all necessary grievance forms for requesting internal review of the decision.

(3) Administrative decision.

(a) If the decision involves claims payment, handling or reimbursement for health care services, identify the provisions of the plan that were relied upon in making the decision, including cost-sharing provisions such as co-payments, co-insurance and deductibles.

(b) If the decision involves termination of coverage, identify the provisions of the plan that were relied upon in making the determination.

(c) If the service has already been provided, then include the date of service, the provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning.

(d) Provide information that a request

for an internal review of an administrative decision must be filed with the health care insurer within 180 days.

(e) Describe the procedures and provide all necessary grievance forms for requesting internal review of the decision.

[13.10.17.12 NMAC - Rp, 13.10.17.16 NMAC, 1/1/17]

13.10.17.13 PRELIMINARY DETERMINATION OF

GRIEVANCE: Upon receipt of a grievance, a health care insurer shall first determine the type of grievance at hand.

A. If the grievance seeks review of an adverse determination, it is an adverse determination grievance and the health care insurer shall review the grievance in accordance with its procedures for adverse determination grievances and the requirements of 13.10.17.14 NMAC through 13.10.17.26 NMAC 1978.

B. If the grievance is not based on an adverse determination, it is an administrative grievance and the health care insurer shall reconsider the decision in accordance with its procedures for administrative grievances and the requirements of 13.10.17.27 NMAC through 13.10.17.33 NMAC. [13.10.17.13 NMAC - N, 1/1/17]

13.10.17.14 INTERNAL FIRST LEVEL REVIEW OF ADVERSE DETERMINATIONS:

A. **Right to internal review.** Every grievant who is dissatisfied with an adverse determination shall have the right to request internal review of the adverse determination by the health care insurer within 180 days of the date of the adverse determination. Nothing in this rule precludes the health care insurer and grievant from resolving a request prior to completion of the internal review.

B. **Acknowledgement of request.** Upon receipt of a request for first level internal review of an adverse determination, the health

care insurer shall date and time stamp the request, and within three days after receipt send the grievant an acknowledgment that the request has been received. The acknowledgment shall contain the name, address and direct telephone number of an individual representative of the health care insurer who may be contacted regarding the grievance.

C. Full and fair internal review. To ensure that a grievant receives a full and fair internal review, the health care insurer must:

(1) allow the grievant to review the claim file;

(2) allow the grievant to present evidence and submit evidence, including but not limited to written comments, documents, records and other materials relating to the request for benefits;

(3) as soon as possible but no less than five days in advance of the date of the internal review of adverse benefit determination, provide the grievant, free of charge, with:

(a) copies of all documents, policies, guidance, statements, records and other information relevant to the request for benefits; and

(b) all evidence or rationale, considered, relied upon, or generated by the health care insurer.

(4) allow the grievant a reasonable opportunity to respond before the adverse determination is reviewed and if the evidence or rationale is not provided to the grievant in time for the grievant to have a reasonable opportunity to respond, provide additional time at the grievant's request in order for the grievant to prepare a response.

D. Conflict of interest. The health care insurer must ensure that all claims and internal reviews are handled in a manner designed to ensure the independence and impartiality of the person(s) involved in making the decisions in such a way that decisions regarding hiring, compensation, termination,

promotion, or other similar matters with respect to any individual (such as a claims adjudicator or a medical expert) must not be made based upon the likelihood that the individual will support the denial of benefits.

E. Utilization review. In the case of an adverse determination involving utilization review, the health care insurer shall designate one or more appropriate clinical peer(s) of the same or similar specialty as would typically manage the case being reviewed to review the adverse determination. The clinical peer(s) shall not have been involved in the initial adverse determination. If more than one clinical peer is involved in the review, a majority of the individuals reviewing the adverse determination shall be health care professionals who have appropriate expertise.

F. Timeframe for internal reviews of adverse determinations. Upon receipt of a request for internal review of an adverse determination, the health care insurer shall conduct either a standard or expedited internal review, as appropriate.

(1) **Expedited internal review.** Whenever a request involves an urgent care situation, a health care insurer shall complete an expedited internal review as required by the medical exigencies of the case, but in no case later than 72 hours from the time the internal review request was received.

(2) **Standard internal review.** In all cases that do not require expedited review, both the standard first level internal review and, if requested, the internal panel's review, as described in 13.10.17.16 NMAC, shall be completed within 30 days after receipt of a request for internal review conducted prior to service and within 60 days after receipt of a request involving a post-service claim.

(a) The timeframe for completing an internal panel review may be extended, at the grievant's request, to afford the grievant a reasonable opportunity to respond to any new

or additional rationale or evidence provided to the grievant by the health care insurer during the internal review process.

(b) The health care insurer shall not unreasonably deny a request by the grievant to postpone the internal panel review for up to 30 days.

(c) The timeframe for completing both internal reviews shall be extended during the period of any such postponement.

(d) The health care insurer shall have three days after concluding the postponed internal review to issue its determination.

G. Additional requirements for expedited internal review of an adverse determination.

(1) In an expedited review, all information required to be exchanged shall be transmitted between the health care insurer and the grievant by the most expedient method available.

(2) If an expedited review is conducted during a patient's hospital stay or approved course of treatment, health care services shall be continued without cost (except for applicable co-payments, co-insurance and deductibles) to the grievant until the health care insurer makes a final decision and notifies the grievant.

(3) A health care insurer shall not conduct an expedited review of an adverse determination made after health care services have been provided to a grievant.

H. Failure to comply with deadline. If the health care insurer fails to comply with the deadline for completion of an internal review, unless such deadline is postponed by the grievant, the requested health care service shall be deemed approved, provided that the requested health care service reasonably appears to be a covered benefit under the applicable health benefits plan.

I. New Mexico Health Care Purchasing Act. For

grievants who are covered under the New Mexico Health Care Purchasing Act, the health care insurer must provide both a first level review and a review by a panel.

[13.10.17.14 NMAC - Rp,
13.10.17.17 NMAC, 1/1/17]

13.10.17.15 NOTICE FOLLOWING FIRST LEVEL INTERNAL REVIEW OF ADVERSE DETERMINATIONS:

A. Notice requirements. The health care insurer shall notify the grievant and provider of the decision within 24 hours by telephone and in writing by mail or electronic communication sent within one day after the initial attempt to provide telephonic notice, unless earlier notice is required by the medical exigencies of the case.

B. Contents of notice. If the initial decision denying certification is upheld in whole or in part, then the health care insurer’s notice shall include the following:

- (1) the name, title and qualifying credentials of the person who provided the review;
- (2) a statement of the reviewer’s understanding of the nature of the grievance;
- (3) a description of the evidence relied on by the reviewer in reaching a decision;
- (4) if an adverse determination is upheld based on a determination that the requested service is experimental, investigational or not medically necessary, then:

(a) clearly and completely explain why the requested health care service is not medically necessary, is experimental or investigational; a statement that the health care service is not medically necessary, is experimental or investigational will not be sufficient; and

(b) include a citation to the uniform standards relevant to the grievant’s medical condition and an explanation of whether each standard supported or did not support the determination that

the requested service is experimental, investigational, or is not medically necessary.

(5) if an adverse determination is upheld based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan; a statement that the requested health care service is not covered by the health benefits plan will not be sufficient;

(6) if the service has already been provided, then include the date of service, the provider, the claim amount (if applicable), and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning;

(7) notice that the grievant may request either:

(a) an internal panel review within five days; or

(b) an external review within four months.

(8) if the adverse determination involves an urgent care situation, advise that the grievant may immediately request an expedited IRO external review;

(9) if the grievant is covered by the New Mexico Health Care Purchasing Act, then advise the grievant that an internal panel review is required before the grievance will be reviewed by the grievant’s specific review board and only then may the grievant request an external review; and

(10) describe the procedures and provide all necessary grievance forms to the grievant for requesting an internal panel review, for requesting an external review, or for requesting an expedited review.

C. Information for requesting an external review.

Notice of the grievant’s right to request an external review shall

include the address and telephone number of the MHCB, a description of all procedures and time deadlines necessary to pursue an external review, copies of all forms required to initiate an external review and the following notice:

“We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed, at no cost to you, by an impartial Independent Review Organization (IRO) who has no association with us and is appointed by the Office of Superintendent of Insurance (OSI). If our decision involved making a judgment as to the medical necessity, experimental nature or investigational nature of the requested service, or the appropriateness, health care setting, or level of care, then the IRO review will be performed by one or more health care professionals. You may also request an external review by OSI for rescissions or for adverse determinations that do not involve medical judgment. For more information contact OSI by electronic mail at mhcb.grievance@state.nm.us; by telephone at (505) 827-4601; or toll-free at 1-(855)-427-5674. You may also visit the OSI website at <http://www.osi.state.nm.us> for more information.”

D. Grievance discontinued. If the grievant informs the health care insurer by telephone that the grievant does not wish to pursue the grievance, then the health care insurer’s notice shall include confirmation of the grievant’s decision not to pursue the matter further.

E. Grievant’s decision unknown. If the health care insurer is unable to contact the grievant by telephone within one day of the decision to uphold the adverse determination, the health care insurer’s written notice shall include a self-addressed stamped envelope and response form which asks whether the grievant wishes to request either an internal panel review or an external review. The form shall provide check boxes as follows:

Do you want to

appeal the decision?

- No
- Yes

(If yes, then please select one of the following:)

- Internal panel review requested
- External review requested

F. Extending the timeframe for requesting a standard review. If the grievant does not make an immediate decision to pursue the grievance, or the grievant has requested additional time to supply supporting documents or information, or postponement pursuant to Subsection F of 13.10.17.14 NMAC, the timeframe shall be extended to include the additional time if requested by the grievant.

[13.10.17.15 NMAC - N, 1/1/17]

13.10.17.16 INTERNAL PANEL REVIEW OF ADVERSE DETERMINATIONS:

A. Applicability of internal panel review.

(1) A health care insurer that offers managed health care plans shall establish a panel review process for its managed health care plans to give those grievants who are dissatisfied with the internal review decision the option to request a panel review, at which the grievant has the right to appear in person before a panel of designated representatives of the health care insurer.

(2) This section also applies to persons covered under the New Mexico Health Care Purchasing Act (public employees and retirees, public school employees and retirees only).

B. Acknowledgment of request. Upon receipt of a request for internal panel review of an adverse determination, the health care insurer shall date and time stamp the request and:

(1) for a standard internal panel review, within three working days after receipt of the request, send the grievant an acknowledgment that the request has

been received; or

(2) for an expedited internal panel review, acknowledge the request telephonically or by electronic communication; and

(3) the acknowledgment shall:

(a) contain the name, address and direct telephone number of an individual representative of the health care insurer who may be contacted regarding the grievance;

(b) specify the date, time and location for the internal panel review meeting and provide a toll-free number for the grievant to participate telephonically;

(c) include the grievant's rights as set forth below; and

(d) inform the grievant if the health care insurer will be represented by an attorney.

C. Grievant's rights.

The health care insurer shall notify the grievant of the grievant's right to:

(1) request the opportunity to appear in person or telephonically before an internal review panel comprised of the health care insurer's designated representatives;

(2) present the grievant's case to the internal review panel orally or in writing;

(3) submit written comments, documents, records, and other material relating to the request for benefits for the internal review panel to consider when conducting the review both before and, if applicable, at the review panel's meeting;

(4) if applicable, ask questions of any representative of the health care insurer or health care professional on the internal review panel;

(5) be assisted or represented by an individual of the grievant's choice, including legal representation at the grievant's expense;

(6) hire a specialist to participate in the

internal panel review at the grievant's expense, but such specialist may not participate in making the decision; and

(7) request a postponement of the internal panel review for up to 30 days.

D. Conduct of the internal panel review.

(1) Upon receipt of a grievant's request for an internal panel review, the health care insurer shall appoint a panel to review the request.

(a) The health care insurer shall select representatives of the health care insurer and if the adverse determination was based on a determination that the requested service is not a medical necessity, is experimental or investigational, or is considered not a covered benefit, one or more qualified health care professionals shall serve on the internal review panel. At least one of the health care professionals selected shall be a clinical peer that practices in a specialty that would typically manage the case that is the subject of the grievance or be mutually agreed upon by the grievant and the health care insurer.

(b) A panel shall be comprised of individuals who have no financial interest in the outcome of the review and who were not involved in the initial determination or the first internal review decision, except that an individual who was involved in the first internal review decision may appear before the panel to present information or answer questions.

(2) In conducting the review, the internal review panel shall take into consideration all comments, documents, records and other information regarding the request for benefits submitted by the grievant, without regard to whether the information was submitted or considered in reaching the initial determination or the first internal review decision.

(3) The internal review panel shall have the

legal authority to bind the health care insurer to the panel's decision.

(4) If the initial adverse determination was based on a lack of coverage, the internal review panel shall review the health benefits plan and determine whether there is any provision in the plan under which the requested health care service could be certified. If the internal review panel finds that the requested health care benefit is not covered by the health benefits plan, the panel shall issue its final adverse determination in accordance with this rule.

(5) If the initial adverse determination was based on a determination that the requested service is experimental, investigational or not a medical necessity, the internal review panel shall render an opinion, either after consultation with specialists who are experts in the area that is the subject of review, or after application of uniform standards used by the health care insurer.

(6) Internal review panel members must be physically present or attend the panel by video or telephone conferencing to participate in the decision.

E. Information to grievant. No fewer than three days prior to the internal panel review, the health care insurer shall provide to the grievant copies of all documents that will be considered in reviewing the grievant's request for benefits, including, if applicable:

- (1) the grievant's pertinent medical records;
- (2) the treating provider's recommendation;
- (3) relevant sections of the grievant's health benefits plan;
- (4) the health care insurer's notice of adverse determination;
- (5) uniform standards relevant to the grievant's medical condition that shall be used by the internal panel in reviewing the adverse determination;
- (6) questions sent to or reports received from any

medical consultants retained by the health care insurer; and
(7) all other evidence or documentation relevant to reviewing the adverse determination.

F. Request for postponement. The health care insurer shall not unreasonably deny a request for postponement of the internal panel review for up to 30 days made by the grievant. The timeframes for completing the internal panel review shall be extended during the period of any postponement.

G. Additional requirements for expedited internal panel review of an adverse determination.

(1) In an expedited review, all information required to be exchanged by Section E. of 13.10.17.16 NMAC shall be transmitted between the health care insurer and the grievant by the most expedient method available.

(2) If an expedited review is conducted during a grievant's hospital stay or approved on-going course of treatment, health care services shall be continued without cost (except for applicable co-payments, co-insurance and deductibles) to the grievant until the health care insurer makes a final decision and notifies the grievant.

(3) A health care insurer shall not conduct an expedited internal panel review of post-service claims.

[13.10.17.16 NMAC - Rp, 13.10.17.20 NMAC, 1/1/17]

13.10.17.17 NOTICE OF INTERNAL PANEL REVIEW DECISION:

A. Notice requirements. The health care insurer shall notify the grievant and provider of the internal panel's decision within 24 hours by telephone and in writing by mail or electronic communication sent within one day after the initial attempt to provide telephonic notice, unless earlier notice is required by the medical exigencies of the case.

B. Contents of notice. If the initial decision denying

certification is upheld in whole or in part, then the panel's written notice shall contain:

- (1) the names, titles and qualifying credentials of the persons on the internal review panel;
- (2) a statement of the internal review panel's understanding of the nature of the grievance and all pertinent facts;
- (3) a description of the evidence relied on by the internal review panel in reaching its decision;
- (4) if an adverse determination is upheld based on a determination that the requested service is experimental, investigational or not medically necessary, then:

(a) clearly and completely explain why the requested health care service is not medically necessary, is experimental or investigational; a statement that the health care service is not medically necessary, is experimental or investigational will not be sufficient; and

(b) include a citation to the uniform standards relevant to the grievant's medical condition and an explanation of whether each supported or did not support the decision regarding a determination that the requested service is experimental, investigational, or medically necessary.

(5) if an adverse determination is upheld based on a lack of coverage, identify all health benefits plan provisions relied on in making the adverse determination, and clearly and completely explain why the requested health care service is not covered by any provision of the health benefits plan; a statement that the requested health care service is not covered by the health benefits plan will not be sufficient;

(6) if the service has already been provided, then include the date of service, the provider, the claim amount (if applicable), and a statement describing the availability, upon

request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning;

(7) if the grievant is covered by the New Mexico Health Care Purchasing Act, then advise the grievant of the grievant's right to request review from and in the manner designated by an entity authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act and that the entity must review the grievant's request before grievant can request an external review;

(8) if the adverse determination involved medical judgment, including a determination based on medical necessity, appropriateness, health care setting, level of care, effectiveness or that the requested health care service is experimental or investigational, notice of the grievant's right to request external review by an IRO within four months, including the address and telephone number of the MHCB, a description of all procedures necessary to pursue an IRO external review, copies of any forms required to initiate an IRO external review; or

(9) if the adverse determination did not involve medical judgment, notice of the grievant's right to request external review by the superintendent and copies of any forms required to initiate an external review by the superintendent.

C. Information for requesting an external review.

Notice of the grievant's right to request an external review shall include the address and telephone number of the MHCB, a description of all procedures and time deadlines necessary to pursue an external review, copies of all forms required to initiate an external review and the following language:

"We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed, at no cost to you, by an impartial Independent Review

Organization (IRO) who has no association with us and is appointed by the Office of Superintendent of Insurance (OSI). If our decision involved making a judgment as to the medical necessity, the experimental nature or the investigational nature of the requested service, or the appropriateness, health care setting, or level of care, then the IRO review will be performed by one or more health care professionals. You may also request an external review by OSI for rescission or adverse determinations that do not involve medical judgment. For more information contact OSI by electronic mail at mhcb.grievance@state.nm.us; by telephone at (505) 827-4601; or toll-free at 1-(855)-427-5674. You may also visit the OSI website at <http://www.osi.state.nm.us> for more information."

D. Grievance discontinued. If the grievant informs the health care insurer by telephone that the grievant does not wish to pursue the grievance, the health care insurer's notice shall include written confirmation of the grievant's decision not to pursue the matter further.

E. Grievant's decision unknown. If the health care insurer is unable to contact the grievant by telephone within one day of the panel's decision to uphold the adverse determination, the health care insurer's written notice shall include all information necessary to request an external review.

[13.10.17.17 NMAC - Rp, 13.10.17.22 NMAC, 1/1/17]

13.10.17.18 ADDITIONAL REVIEW BY ENTITIES SUBJECT TO THE NEW MEXICO HEALTH CARE PURCHASING ACT:

A. Applicability. This section applies only to entities and grievants subject to the New Mexico Health Care Purchasing Act (public employees and retirees, public school employees and retirees only).

B. Eligibility for review. A grievant who remains dissatisfied with the decision of the health care insurer after the

completion of the internal panel review must have their claim reviewed in accordance with any review process established by the entity providing their health care benefits pursuant to the New Mexico Health Care Purchasing Act.

C. Decision to uphold.

If the health care insurer has upheld the initial adverse determination to deny the requested health care service at both the first level internal review and the internal panel review, the health care insurer shall notify the grievant that their grievance must be reviewed by their specific review board before their grievance may be eligible for an IRO review, as defined by their policy. The health care insurer shall ascertain whether the grievant wishes to pursue the grievance before the specific review board.

(1) If the grievant does not wish to pursue the grievance, the health care insurer shall include confirmation of the grievant's decision not to pursue the matter further with the written notification of the health care insurer's decision as described in Subsection B of 13.10.17.17 NMAC.

(2) If the health care insurer is unable to contact the grievant by telephone within one day of the panel's decision to uphold the adverse determination, the health care insurer shall send a written inquiry, as described in Subsection D of 13.10.17.17 NMAC.

(3) If the grievant responds affirmatively to the telephone or written inquiry the matter will proceed to a review by the grievant's specific review board, according to the procedures contained in the grievant's policy handbook.

D. Extending the timeframe for review. If the grievant does not make an immediate decision to pursue the grievance, the grievant has requested additional time to supply supporting documents or information, or has asked for postponement, the timeframe shall be extended to include the additional time required by the grievant.

E. Notice following

review by the specific review board.

(1)

Certification. Upon receipt of notice from grievant's specific review board that the requested benefit shall be certified, the health care insurer shall provide coverage in accordance to the review board's decision.

(2) **Adverse**

determination upheld. Upon receipt of notice that grievant's specific review board upholds the decision denying certification, then MHCB shall contact the grievant to determine whether grievant wishes to request an external review. If the MHCB is unable to contact the grievant by telephone within 24 hours, then MHCB will attempt to contact the grievant and the provider in writing by mail or electronically on the following day.

[13.10.17.18 NMAC - N, 1/1/17]

13.10.17.19 IRO REVIEW OF AN ADVERSE DETERMINATION:

A. Right to external

IRO review. Every grievant who is dissatisfied with an adverse determination following internal review of a grievance that involves medical judgment, including a determination based on medical necessity, appropriateness, health care setting, level of care, effectiveness or that the requested health care service is experimental, investigational or unproven for a particular medical condition may request an external review by an impartial IRO appointed by the superintendent at no cost to the grievant.

B. Exhaustion of internal review process. The superintendent may require the grievant to exhaust any required grievance procedures adopted by the health care insurer or the entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act, as appropriate, before accepting a grievance for IRO review.

C. Deemed exhaustion. If exhaustion of internal reviews is required prior to IRO review, exhaustion is unnecessary and

the internal reviews process will be deemed exhausted if:

(1) the health care insurer waives the exhaustion requirement;

(2) the health care insurer is considered to have exhausted the internal review process by failing to comply with the requirements of the internal review process; or

(3) the grievant simultaneously requests an expedited internal review and an expedited IRO review.

D. Exception to exhaustion requirement.

(1) Notwithstanding Subsection C of 13.10.17.19 NMAC, the internal review process will not be deemed exhausted based on violations by the health care insurer that are *de minimus* and do not cause, and are not likely to cause, prejudice or harm to the grievant, so long as the health care insurer demonstrates that the violation was for good cause or due to matters beyond the control of the health care insurer, and that the violation occurred in the context of an on-going, good faith exchange of information between the health care insurer and the grievant. This exception is not available if the violation is part of a pattern or practice of violations by the health care insurer, as determined by the superintendent.

(2) The grievant may request a written explanation of the violation from the health care insurer, and the health care insurer must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the internal review process to be deemed exhausted. If an external reviewer or a court rejects the grievant's request for immediate review on the basis that the health care insurer met the standards for the exception under Paragraph (1) of Subsection D of 13.10.17.19 NMAC, the grievant has the right to re-submit and pursue a request for review of the claim. In such a case, within a reasonable time after the external

reviewer or court rejects the claim for immediate review (not to exceed 10 days), the health care insurer shall provide the grievant with notice of the opportunity to re-submit and pursue the internal review of the claim. Time periods for re-filing the claim shall begin to run upon grievant's receipt of such notice.

E. IRO fees. The health care insurer against which a request for external review has been filed shall be responsible for paying the fees of the IRO. The health care insurer shall remit payment to the IRO within 30 days after its receipt of the invoice.

(1) The superintendent shall determine the reasonable compensation for IROs and shall publish a schedule of IRO compensation by bulletin.

(2) Upon completion of an external review, the IRO shall submit its invoice directly to the health care insurer.

F. In reaching a decision, the assigned IRO is not bound by any decisions or conclusions reached during the health care insurer's utilization review process or the health care insurer's internal grievance process.

G. Nothing in this rule shall preclude the health care insurer and grievant from resolving the matter prior to completion of the IRO review.

H. A grievant may not file a subsequent request for external review by an IRO involving the same adverse determination for which the grievant has already received an external IRO review under this rule. [13.10.17.19 NMAC - Rp, 13.10.17.24 NMAC, 1/1/17]

13.10.17.20 QUALIFICATIONS OF IROs AND APPROVAL BY SUPERINTENDENT:

A. Superintendent's list. The superintendent shall compile and maintain a list of approved IROs.

B. IRO Requirements. To be considered for placement on the list of approved IROs, an IRO shall:

(1) be

accredited by a nationally recognized private accrediting entity;

(2) meet the requirements of this rule; and
 (3) have quality assurance mechanisms that ensure that clinical reviewers assigned to conduct the external review are qualified and impartial physicians or other appropriate health care providers who;

(a) have expertise in the treatment of grievant's medical condition;

(b) hold a non-restricted license in a state of the United States and, for physicians, a current certification by a recognized medical specialty board in the area(s) appropriate to the subject of the IRO review; and

(c) have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise substantial questions about the clinical reviewer's physical, mental or professional competence or moral character.

(4) have written policies and procedures that ensure:

(a) all reviews are conducted within the timeframe specified by this rule and required notices are provided in a timely manner;

(b) the selection of qualified and impartial physicians or other appropriate health care professionals to act as clinical reviewers based on the requirements of specific cases and that the IRO employs or contracts with an adequate number of clinical reviewers to meet this objective;

(c) the confidentiality of medical and treatment records and clinical review criteria; and

(d) that any person employed by or under contract with the IRO adheres to the requirements of this rule.

(5) maintain

a toll-free telephone service to receive information 24 hours a day, seven days per week basis related to external reviews that is capable of accepting, recording or providing appropriate instruction to incoming telephone callers during other than normal business hours.

C. Applicants for the IRO list. An applicant requesting placement on the list of approved IROs shall submit for the superintendent's review:

(1) an IRO application form available on the OSI website;

(2) all documentation and information requested on the application, including proof of being accredited by a nationally recognized private accrediting entity;

(3) any applicable application fee pursuant to § 59A-6-1 (BB); and

(4) completion of a memorandum of understanding, to be supplied by OSI.

D. Termination of IRO. The superintendent shall, in the superintendent's sole discretion, terminate the approval of an IRO if the superintendent determines that the IRO has lost its accreditation or no longer satisfies the minimum requirements for approval.

E. Conflict of interest by an IRO.

(1) An IRO may not own or control, be a subsidiary of or in any way be owned or controlled by, or exercise control with a health care insurer, a national, state or local trade association of health care insurers, or a national, state or local trade association of health care providers.

(2) Neither an IRO appointed to conduct the independent review nor any clinical reviewer assigned by an IRO to conduct a review may have a material, professional, familial or financial conflict of interest with:

(a) the health care insurer that is the subject of the IRO review;

(b)

an officer, director, manager or management employee of the health care insurer that is the subject of the IRO review;

(c) the health benefits plan;

(d) the plan administrator, plan fiduciaries or plan employees;

(e) the grievant or the grievant's representative;

(f) the grievant's health care provider(s) or the provider's medical group, who is recommending the service or treatment that is the subject of the review;

(g) the health care provider's medical group or independent practice association;

(h) a health care facility where the service would be provided; or

(i) the developer, manufacturer, distributor, or supplier of the principal drug, device, procedure or other service that is the subject of the appeal.

F. Written procedures. An IRO shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this rule.

G. Availability of records. An IRO shall keep and maintain written or electronic records and make available upon request by OSI, any record received or reviewed during an IRO review for a period of six years following the review.

H. IRO's report to OSI. An IRO shall keep and maintain written or electronic records of all IRO reviews it has conducted under this rule and make available to OSI every calendar year on January 15, a report that is organized by health care insurer and which includes:

(1) the total number of reviews conducted;

(2) the number of reviews resolved; and of those resolved, the number resolved upholding the adverse determination

or final adverse determination of the health care insurer;

(3) the total number resolved reversing the adverse determination or final adverse determination of the health care insurer;

(4) the average length of time for the review;

(5) a summary of the types of coverages or cases for which the review was sought, as provided in the format required by the superintendent;

(6) the number of reviews that were terminated as a result of a reconsideration by the health care insurer of its adverse determination after the receipt of additional information from the grievant; and

(7) any other information the superintendent may request or require.

I. Contracts with health care insurers. Nothing in this rule precludes or shall be interpreted to preclude a health care insurer from contracting with an approved IRO to conduct peer or federal external reviews.
[13.10.17.20 NMAC - Rp, 13.10.17.23 NMAC, 1/1/17]

13.10.17.21 INITIATING AN IRO REVIEW OF AN ADVERSE DETERMINATION:

A. Expedited IRO review. If required by the medical exigencies of the case, a grievant or provider may telephonically request an expedited review by an IRO by calling the MHCBS at (505) 827-4601 or 1-(855)-427-5674. A signed medical release must also be provided.

B. Standard IRO review. To initiate an IRO review, a grievant must file a written request for an IRO review within four months from receipt of the written notice of the final internal review decision unless extended by the superintendent for good cause shown. The request shall be:

(1) mailed to the superintendent, attn: managed health care bureau - external review

request, office of superintendent of insurance, P.O. Box 1689, 1120 Paseo de Peralta, Santa Fe, NM 87504-1689; or

(2) e-mailed to mhcb.grievance@state.nm.us, subject: external review request; or

(3) faxed to the superintendent, attn: managed health care bureau - external review request at (505) 827-4734; or

(4) completed on-line with an OSI complaint form available at <http://www.osi.state.nm.us/>.

C. Duty to re-direct request. Any request for external review sent to the health care insurer instead of to OSI shall be forwarded to the OSI by the health care insurer within three days after receipt.

D. Documents required to be filed by the grievant. The grievant shall file the request for IRO review on the forms provided to the grievant by the health care insurer, OSI, or an entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act, and shall also file:

(1) a copy of the notice(s) of all prior review decisions; and

(2) a fully executed release form authorizing the IRO or the superintendent to obtain any necessary medical records from the health care insurer or any other relevant provider.

[13.10.17.21 NMAC - Rp, 13.10.17.18 NMAC, 1/1/17]

13.10.17.22 TIMEFRAMES AND PROCESSES FOR IRO REVIEW:

A. Type of IRO review. The IRO shall conduct either a standard or expedited review of the adverse determination, as required by the medical exigencies of the case.

(1) The IRO shall complete an expedited external review and provide notice of its decision to the grievant, the provider, the health care insurer, and the superintendent as required by the medical exigencies of the case as soon as possible, but in no case later

than 72 hours after appointment by the superintendent. If notice of the IRO's decision is initially provided by telephone, written notice of the decision shall be provided within 48 hours after the telephone notification.

(2) The IRO shall complete a standard external review and provide written notice of its decision to the grievant, the provider, the health care insurer and the superintendent within 20 days after appointment by the superintendent.

B. Expedited IRO review, timeframe and process.

(1) In cases involving an urgent care claim, the superintendent shall immediately upon receipt of a request for an expedited IRO review send the grievant an acknowledgment that the request has been received and send a copy of the request to the health insurer.

(2) Within 24 hours or the time limit set by the superintendent following receipt of a request for an expedited IRO review from the superintendent, the health care insurer shall complete a preliminary review of the matter to determine whether the request is eligible for IRO review, and shall report immediately to OSI upon completion of the preliminary review, as follows:

(a) the grievant is or was a covered person in the health benefit plan at the time the health care service was requested;

(b) the health care service that is the subject of the request for IRO review reasonably appears to be a covered benefit under the grievant's health benefit plan, but for a determination by the health care insurer that the requested service is not covered because it is experimental, investigational, or not medically necessary; and

(c) the grievant has or is not required to exhaust the health carrier's internal grievance process.

(3) If the

request is not complete, the health care insurer shall inform the grievant, provider and the superintendent telephonically and electronically and include in the notice what information or materials are needed to make the request complete.

(4) If the request is not eligible for IRO review, the health care insurer shall inform the grievant, provider and the superintendent telephonically and electronically and include in the notice the reasons for ineligibility and a statement that the health care insurer's determination of ineligibility may be appealed to the superintendent.

(5) MHCBC will confirm or obtain from the grievant all information and forms required to process an expedited IRO review, including the signed release form.

(6) Upon receipt of the health care insurer's notice that a request is complete and eligible for IRO review and the confirmation from MHCBC, the superintendent will immediately randomly assign an IRO from the superintendent's list of approved IROs to conduct an expedited review, and shall:

(a) notify the health care insurer of the name of the assigned IRO; and

(b) notify the grievant and the provider of the name of the assigned IRO, that the health care insurer will provide to the IRO all of the documents and information considered in making the adverse determination, and that the grievant and provider may provide additional information.

(7) The superintendent may determine that a request is eligible for an expedited IRO review notwithstanding a health care insurer's initial determination that the request is incomplete or ineligible. In making an eligibility determination, the superintendent's decision shall be made in accordance with the terms of the grievant's health benefit plan.

(8) MHCBC

will immediately provide to the assigned IRO and to the health care insurer all information and forms obtained from the grievant, including a signed release form.

(9) Within 24 hours from the date of the notice from the superintendent that the IRO has been appointed, the grievant or the provider may also submit additional documentation or information to the IRO; the IRO shall immediately forward any documentation or information received from the grievant to the health care insurer.

(10) Upon receipt of the superintendent's notice that an IRO has been appointed, the health care insurer shall within 24 hours provide to the assigned IRO, any information considered in making the adverse determination, including, but not limited to:

(a) the summary of benefits;

(b) the complete health benefits plan, which may be in the form of a member handbook/evidence of coverage;

(c) all pertinent medical records, internal review decisions and rationales, consulting physician reports, and documents and information submitted by the grievant and health care insurer;

(d) uniform standards relevant to the grievant's medical condition that were used by the internal panel in reviewing the adverse determination; and

(e) any other documents, records, and information relevant to the adverse determination and the internal review decision(s).

(11) Failure by the health care insurer to provide the documents and information required by this rule within the time specified shall not delay the conduct of the IRO external review. If the health care insurer fails to provide the documents and information within the time specified, the assigned IRO may terminate the review and make

a decision to reverse the adverse determination.

C. Standard IRO review, timeframe and process.

(1) Within one day after the date of receipt of a request for an IRO review, the superintendent shall send the grievant an acknowledgment that the request has been received and send a copy of the request to the health insurer.

(2) Within five days following the receipt of the IRO review request from the superintendent, the health insurer shall complete a preliminary review of the request to determine whether the request is eligible for IRO review, as follows:

(a) the grievant is or was a covered person in the health benefit plan at the time the health care service was requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time the health care service was provided;

(b) the health care service that is the subject of the request for IRO review reasonably appears to be a covered service under the grievant's health benefit plan, but for a determination by the health care insurer that the requested health care service is not covered because it is experimental, investigational, or not medically necessary;

(c) for experimental or investigational adverse determinations, the grievant's treating physician certified, in writing, that one of the following applies:

(i) standard health care services or treatments have not been effective in improving the condition of the grievant;

(ii) standard health care services or treatments are not medically appropriate for the grievant;

(iii) there is no available standard health care service or treatment covered by the health benefits plan that is more beneficial than the recommended

or requested health care service or treatment;

(iv) the health care service or treatment requested is likely to be more beneficial to the grievant, in the physician's opinion, than any available standard health care services or treatments; or

(v) the grievant's treating physician, who is licensed, board certified or board eligible to practice in the area of medicine appropriate to treat the grievant's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment requested is likely to be more beneficial to the grievant than any available standard health care services or treatments.

(d) the grievant has exhausted or is not required to exhaust the health care insurer's internal grievance process; and

(e) the grievant has provided all the information and forms required to process an IRO review, including the signed release form.

(3) Upon completion of the preliminary review, the health care insurer shall notify the superintendent and grievant in writing within one day whether:

(a) the request is complete; and

(b) the request is eligible for IRO review.

(4) If the request:

(a) is not complete, the health care insurer shall inform the grievant and the superintendent in writing and include in the notice what information or material are needed to make the request complete; or

(b) is not eligible for an IRO review, the health care insurer shall inform the grievant and the superintendent in writing and include in the notice the reasons for its ineligibility.

(5) The notice of initial determination shall include

a statement informing the grievant that a health care insurer's initial determination of ineligibility for IRO review may be appealed to the superintendent.

(6) The superintendent may determine that a request is eligible for an IRO review notwithstanding a health care insurer's initial determination that the request is ineligible and require that it be referred to an IRO. In making an eligibility determination, the superintendent's decision shall be made in accordance with the terms of the grievant's health benefit plan.

(7) Even after the superintendent assigns a grievance to an IRO for review, the MHCB may attempt to resolve the grievance between the health care insurer and the grievant. If the matter is successfully resolved, OSI will immediately notify the IRO to terminate work.

D. Assignment of IRO by superintendent.

(1) Within one day of receipt of a notice that the health care insurer has determined a request is eligible for an IRO review, the superintendent shall:

(a) randomly assign an IRO from the superintendent's list of approved IROs to conduct the review;

(b) notify the health care insurer of the name of the assigned IRO;

(c) notify the grievant in writing that the request is eligible for an IRO external review, the name of the assigned IRO, and that the health care insurer will provide all of the documents and information considered by the health care insurer in making the adverse determination; and

(d) notify the grievant that the grievant may submit in writing to the assigned IRO within five days following the date of receipt of the notice, any additional information that the IRO shall consider when conducting the review. The IRO is not required to, but may, accept and consider additional information submitted after

five days.

(2) If the adverse determination is based on a determination that the requested service is experimental, investigational, or not medically necessary, then the superintendent shall direct the IRO to utilize a panel of appropriate clinical peer(s) of the same or similar specialty as would typically manage the case being reviewed.

(3) Within one day after the receipt of the notice of assignment by the superintendent to conduct the external review, the assigned IRO shall select one clinical reviewer or for experimental or investigational adverse determinations, three clinical reviewers to conduct the external review.

(4) Within five days following the notice of the assigned IRO, the health care insurer shall provide to the assigned IRO all documents and any information considered in making the adverse determination, including, but not limited to:

(a) the summary of benefits;

(b) the complete health benefits plan, which may be in the form of a member handbook/evidence of coverage;

(c) all pertinent medical records, internal review decisions and rationales, consulting physician reports, and documents and information submitted by the grievant and health care insurer;

(d) uniform standards relevant to the grievant's medical condition that were used by the internal panel in reviewing the adverse determination; and

(e) any other documents, records, and information relevant to the adverse determination and the internal review decision(s).

(5) Failure by the health care insurer to provide the documents and information

required by this rule within the time specified shall not delay the conduct of the external review. If the health care insurer fails to provide the documents and information within the time specified, the assigned IRO may terminate the review and make a decision to reverse the adverse determination. Within one day after making such a decision, the IRO shall notify the grievant, the provider, the health care insurer, and the superintendent.

(6) If the grievant provides additional supporting documents or information to the IRO:

(a) The IRO shall send any information received from grievant to the health care insurer within one day.

(b) Upon receipt of such information, the health care insurer may reconsider its adverse determination.

(7) If, upon such review, the health care insurer reverses its prior decision, it shall within one day provide written notification of its decision to the grievant, the provider, the assigned IRO and the superintendent.

(a) If the health care insurer reverses its prior decision, the assigned IRO shall terminate its review upon receipt of the notice from the health care insurer.

(b) Upon reversing its prior decision, the health care insurer shall approve coverage for the health care service subject to any applicable cost sharing including co-payments, co-insurance and deductible amounts for which the grievant is responsible.

(c) The health care insurer shall compensate the IRO according to the published fee schedule whenever the IRO review is terminated prior to completion.

[13.10.17.22 NMAC - Rp,
13.10.17.27 NMAC, 1/1/17]

13.10.17.23 THE FINAL DECISION OF THE IRO AND GRIEVANT'S RIGHT TO HEARING AFTER FINAL IRO DECISION:

A. Independent decision. In reaching its decision, the IRO is not bound by the prior decision of the health care insurer. In addition to the documents and information provided to the IRO by the health care insurer and the grievant and to the extent such documents are available, each reviewer shall consider the following in reaching its decision:

- (1) the grievant's medical records;
- (2) the attending health care professional's recommendation;
- (3) consulting reports from appropriate health care professionals and other documents submitted by the health care insurer, the grievant, or the treating health care professional;
- (4) the terms of coverage under the applicable health benefit plan to ensure that the IRO's decision is not contrary to the terms of coverage;
- (5) the most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards and associations;
- (6) any applicable clinical review criteria and policies developed and used by the health care insurer; and
- (7) the opinion of the IRO's clinical reviewer(s) after considering the information received.

B. Opinion of clinical reviewer. Each clinical reviewer selected shall provide an opinion to the assigned IRO as to whether the recommended or requested health care service should be covered as follows:

- (1) for a standard external review, each clinical reviewer shall provide a written opinion to the IRO within the time constraints set by this rule;
- (2) for an expedited external review, each clinical reviewer shall provide an opinion orally or in writing to the IRO as expeditiously as the covered

person's medical condition or circumstances requires. If the opinion is provided orally, each clinical reviewer shall provide a written opinion to the IRO within 48 hours after providing the oral opinion; and

(3) each clinical reviewer's written opinion shall include the following information:

- (a) a description of the covered person's medical condition;
- (b) whether there is sufficient evidence to demonstrate that the requested health care service is more likely than not to be more beneficial to the covered person than any available standard health care services and that the adverse risks of the requested health care service would not be substantially increased over those of available standard health care services;
- (c) a description and analysis of any medical or scientific evidence considered in reaching the opinion;
- (d) a description and analysis of any evidence-based standards;
- (e) the reviewer's rationale for the opinion; and
- (f) whether the recommended or requested health care service has been approved by the federal food and drug administration, if applicable, for the condition.

C. Decision of the IRO. Based upon the opinion of each clinical reviewer, the IRO shall issue notice of its decision in the manner set forth in this rule.

- (1) If a majority of clinical reviewers recommend that the requested health care service should be covered, the IRO shall reverse the health care insurer's adverse determination.
- (2) If a majority of clinical reviewers recommend that the requested health care service should not be covered, the IRO shall uphold the health care insurer's adverse determination.

D. Content of IRO's notice. Notice of the IRO's decision shall be sent to the grievant, the provider, the health care insurer, and the superintendent and shall include:

- (1) a general description of the reason for the request for external review;
- (2) the date the IRO was appointed;
- (3) the date the review by the IRO was completed;
- (4) the principal reason(s) for its decision, including any applicable evidence-based standards that were the basis for the decision;
- (5) reference to the evidence or documentation that was considered in reaching the decisions;
- (6) the rationale for the decision; and
- (7) the written opinion of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for each reviewer's recommendation.

E. Binding decision. The decision of the IRO is binding upon the health care insurer except to the extent that the health care insurer may pursue other remedies under applicable state and federal law. The decision is also binding upon the grievant except to the extent that the grievant may pursue other remedies under applicable state and federal law, including the grievant's right to appeal to the superintendent for a hearing.

- (1) This requirement that the decision is binding shall not preclude the health care insurer from making payment on the claim or otherwise providing benefits at any time, including after an IRO's decision or following an external review by the superintendent that denies the claim or otherwise fails to require such payment or benefits.

- (2) Upon receipt of a decision by an IRO reversing an adverse determination, the health care insurer shall approve

coverage for the health care service for which the IRO review was conducted, subject to any applicable co-payment, co-insurance and deductible amounts for which the grievant is responsible without delay, regardless of whether the health care insurer intends to seek judicial review of the external review decision and unless or until there is a final judicial decision otherwise.
[13.10.17.23 NMAC - Rp, 13.10.17.30 NMAC, 1/1/17]

13.10.17.24 SUPERINTENDENT'S HEARING PROCEDURES FOR ADVERSE DETERMINATIONS:

A. Grievant's rights.
(1) Following the IRO's decision, the MHCBS shall notify the grievant that if the grievant is dissatisfied with the IRO's decision, the grievant may request a hearing from the superintendent within 20 days of the IRO decision. MHCBS will provide the grievant with all forms necessary to request a hearing by the superintendent.

- (2) Any grievant whose adverse determination grievance involved a rescission of coverage or did not involve medical judgment may request a hearing by the superintendent within four months of receiving the health care insurer's internal decision. The health care insurer will provide the grievant will all forms necessary to request a hearing by the superintendent.

B. Review of request for hearing. Upon receipt of a request for a hearing, the superintendent will review the request and may grant a hearing if the following criteria are met:

- (1) the grievant has exhausted the internal review process or is not required to exhaust the internal review process and, if applicable, the external IRO review process;

- (2) the grievant has timely requested review by the superintendent;

- (3) the grievant has provided a signed release and all forms and documents required

to process the request, and
(4) the health care service that is the subject of the request reasonably appears to be a covered benefit under the applicable health benefits plan.

C. Request incomplete. If the request for an external hearing is incomplete, MHCBS staff shall immediately notify the grievant and request that the grievant submit the information required to complete the request for external review within a specified period of time. If the grievant fails to provide the required information within the specified time, the request will be deemed to not meet the criteria prescribed by this rule.

D. Request does not meet criteria. If the request for an external hearing does not meet the criteria prescribed by this rule, MHCBS staff shall so inform the superintendent. The superintendent shall notify the grievant and the health care insurer that the request does not meet the criteria for external hearing and is thereby denied.

E. Request meets criteria. If the request for external review is complete and meets the criteria prescribed by this rule, MHCBS staff shall so inform the superintendent. The superintendent shall notify the grievant and the health care insurer that the request meets the criteria for external review and that an informal hearing pursuant to Section 59A-4-18 NMSA 1978 and this rule has been set to consider the request. Prior to the hearing, insurance division staff shall attempt to informally resolve the grievance in accordance with Section 12-8-10 NMSA 1978.

F. Notice of hearing. For an expedited review, the notice of hearing shall be given to the grievant, the provider and the health care insurer telephonically. For a standard review, notice of the hearing shall be provided telephonically, and in writing by mail or electronically no less than 10 days prior to the hearing date. The notice shall state the date, time, and place of the hearing and the matters to be considered and shall

advise the parties of their respective rights. The superintendent shall not unreasonably deny a request for postponement of the hearing made by the grievant or the health care insurer. If the grievant wishes to supply supporting documents or information subsequent to the filing of the request for a hearing with the superintendent, the timeframes for the hearing shall be extended up to 90 days from the receipt of the request or until the grievant submits all supporting documents, whichever occurs first.

G. Timeframe for completion of hearing. The superintendent shall complete the review within the following timeframes:

(1) an expedited review shall be completed no later than 72 hours after receipt of the complete request, or as required by the exigencies of the matter under review; and

(2) a standard review shall be completed within 45 days after receipt of the complete request.

H. Conduct of hearing. The superintendent may designate a hearing officer who shall be an attorney licensed to practice in New Mexico. The hearing may be conducted by telephone conference call, video conferencing, or other appropriate technology at OSI's expense.

(1) **Co-hearing officers.** The superintendent may designate two ICOs who shall be licensed health care professionals and who shall maintain independence and impartiality in the process. If the superintendent designates two ICOs, at least one of them shall practice in a specialty that would typically manage the case that is the subject of the grievance.

(2) **Powers.** The superintendent or attorney hearing officer shall regulate the proceedings and perform all acts and take all measures necessary or proper for the efficient conduct of the hearing. The superintendent or attorney hearing officer may:

(a)

require the production of additional records, documents and writings relevant to the subject of the grievance;

(b)

exclude any irrelevant, immaterial or unduly repetitious evidence; and

(c)

if the grievant or health care insurer fails to appear, proceed with the hearing or adjourn the proceedings to a future date, giving notice of the adjournment to the absent party.

(3) **Staff**

participation. Staff may attend the hearing, ask questions and otherwise solicit evidence from the parties, but shall not be present during deliberations among the superintendent or his designated hearing officer, and any ICOs.

(4) **Testimony.**

Testimony at the hearing shall be taken under oath. The superintendent or hearing officers may call and examine the grievant, the health care insurer and other witnesses.

(5) **Hearing**

recorded. The hearing shall be stenographically recorded at OSI's expense.

(6) **Rights of**

parties. Both the grievant and the health care insurer have the right to:

(a)

attend the hearing; the health care insurer shall designate a person to attend on its behalf, and the grievant may designate a person to attend on grievant's behalf if the grievant chooses not to attend personally;

(b) be

assisted or represented by an attorney or other person;

(c)

call, examine and cross-examine witnesses; and

(d)

submit to the ICO, prior to the scheduled hearing, in writing, additional information that the ICO must consider when conducting the internal review hearing, and require that the information be submitted to the health care insurer and the MHCBS staff.

(7)

Stipulation. The grievant and the

health care insurer shall each stipulate on the record that the hearing officers shall be released from civil liability for all communications, findings, opinions and conclusions made in the course and scope of the external review.

I. New Mexico

health care plan representative. If a grievant is insured pursuant to the New Mexico Health Care Purchasing Act and the grievant requests a hearing, if a representative from the self-insured plan is not present at any pre-hearing conference or at the hearing required by OSI, the health care insurer will be deemed to speak on behalf of the self-insured plan. [13.10.17.24 NMAC - N, 1/1/17]

13.10.17.25 INDEPENDENT CO-HEARING OFFICERS (ICOS):

A. Identification

of ICOs. The superintendent shall provide for maintenance of a list of licensed professionals qualified to serve as ICOs. The superintendent shall select appropriate professional societies, organizations or associations to identify licensed health care and other professionals who are willing to serve as ICOs in external reviews who maintain independence and impartiality of the process.

B. Disclosure

of interests. Prior to accepting designation as an ICO, each potential ICO shall provide to the superintendent a list identifying all health care insurers and providers with whom the potential ICO maintains any health care related or other professional business arrangements and briefly describe the nature of each arrangement. Each potential ICO shall disclose to the superintendent any other potential conflict of interest that may arise in hearing a particular case, including any personal or professional relationship to the grievant, or to the health care insurer, or providers involved in a particular external review.

C. Compensation of ICOs.

(1)
Compensation schedule. The superintendent shall determine reasonable compensation for health care and other professionals who are appointed as ICOs for external grievance reviews and shall annually publish a schedule of ICO compensation in a bulletin.

(2) **Statement of ICO compensation.** Upon completion of an external review, the attorney and co-hearing officers shall each complete a statement of ICO compensation form prescribed by the superintendent; detailing the amount of time spent participating in the external review, and submit it to the superintendent for approval. The superintendent shall send the approved statement of ICO compensation to the grievant's health care insurer.

(3) **Direct payment to ICOs.** Within 30 days of receipt of the statement of ICO compensation, the grievant's health care insurer shall remit the approved compensation directly to the ICO.

(4) **No compensation with early settlement.** If the parties provide written notice of a settlement up to three days prior to the date set for external review hearing, compensation will be unavailable to the hearing officers or ICOs.

D. Record retention. The hearing officer and ICOs must maintain written records for a period of three years and make them available upon request to the state. [13.10.17.25 NMAC - Rp, 13.10.17.32 NMAC, 1/1/17]

13.10.17.26 SUPERINTENDENT'S DECISION ON EXTERNAL REVIEW OF ADVERSE DETERMINATION:

A. Deliberation. At the close of the hearing, the hearing officers shall review and consider the entire record and prepare findings of fact, conclusions of law and a recommended decision within 30 days for a standard review. Any hearing officers may submit a supplementary or dissenting opinion to the

recommended decision.
B. Order. Within 10 days after receiving the recommendation of the ICOs, the superintendent will issue an appropriate order. If the order requires action on the part of the health care insurer, the order shall specify the timeframe for compliance:

(1) The order shall be binding on the grievant and health care insurer and shall state that the grievant and the health care insurer have the right to judicial review pursuant to Section 59A-4-20 NMSA 1978 and that state and federal law may provide other remedies.

(2) Neither the grievant nor the health care insurer may file a subsequent request for external review of the same adverse determination that was the subject of the superintendent's order. [13.10.17.26 NMAC - Rp, 13.10.17.33 NMAC, 1/1/17]

13.10.17.27 INTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCES:

A. Request for internal review of administrative decision. Any covered person dissatisfied with an administrative decision, action or inaction of a health care insurer, including termination of coverage, has the right to request internal review of an administrative decision orally or in writing within 180 days after receiving the administrative decision.

B. Acknowledgement of grievance. Within three days after receipt of an administrative grievance, the health care insurer shall send the grievant a written acknowledgment that it has received the administrative grievance. The acknowledgment shall contain the name, address and direct telephone number of an individual representative of the health care insurer who may be contacted regarding the administrative grievance.

C. Initial review. The initial review shall:

(1) be conducted by a health care insurer representative authorized to take

corrective action on the administrative grievance; and

(2) allow the grievant to present any information pertinent to the administrative grievance.

D. Time for decision. The health care insurer shall mail a written decision to the grievant within 30 days of receipt of the administrative grievance.

E. Contents of notice of decision. The written decision shall contain:

(1) the name, title and qualifications of the person conducting the initial review;

(2) a statement of the reviewer's understanding of the nature of the administrative grievance and all pertinent facts;

(3) a clear and complete explanation of the rationale for the reviewer's decision;

(4) identification of the health benefits plan provisions relied upon in reaching the decision;

(5) reference to evidence or documentation considered by the reviewer in making the decision;

(6) a statement that the initial decision will be binding unless the grievant submits a request for reconsideration within 20 days after receipt of the initial decision; and

(7) a description of the procedures and deadlines for requesting reconsideration of the initial decision, including any necessary forms. [13.10.17.27 NMAC - Rp, 13.10.17.35 NMAC, 1/1/17]

13.10.17.28 RECONSIDERATION OF INTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE:

A. Reconsideration committee. Upon receipt of a request for reconsideration, the health care insurer shall appoint a reconsideration committee consisting of two or more representatives of the health care insurer who did not participate

in the initial decision and who are authorized to take corrective action on the grievance.

B. Hearing. The reconsideration committee shall schedule and hold a hearing within 15 days after receipt of a request for reconsideration. The hearing shall be held during regular business hours at a location reasonably accessible to the grievant, and the health care insurer shall offer the grievant the opportunity to communicate with the committee at the health care insurer's expense by conference call, video conferencing or other appropriate technology. The health care insurer shall not unreasonably deny a request for postponement of the hearing for up to 30 days made by a grievant.

C. Notice. The health care insurer shall notify the grievant in writing of the hearing date, time and place at least five days in advance. The notice shall advise the grievant of the rights specified in Subsection E of 13.10.17.28 NMAC. If the health care insurer will have an attorney represent its interests, the notice shall advise the grievant that the health care insurer will be represented by an attorney and that the grievant may wish to obtain legal representation at grievant's own expense.

D. Information to grievant. No fewer than three days prior to the hearing, the health care insurer shall provide to the grievant all documents and information that the reconsideration committee will rely on in reviewing the case.

E. Rights of grievant. A grievant has the right to:

- (1) attend the reconsideration committee hearing;
- (2) present the grievant's case to the reconsideration committee;
- (3) submit supporting material both before and at the reconsideration committee hearing;
- (4) ask questions of any reconsideration committee member; and
- (5) be assisted or represented by a person of their

choice.
[13.10.17.28 NMAC - Rp,
13.10.17.36 NMAC, 1/1/17]

13.10.17.29 DECISION OF RECONSIDERATION COMMITTEE:

A. Committee Decision.

(1) Denial of payment of post-service claim in whole or in part. If the initial administrative decision involved a failure to make payment in whole or in part for a post-service claim for a covered benefit, the reconsideration committee shall review the claim to determine whether the claim was paid in accordance with the terms of the health benefits plan.

(2) Rescission. If the initial administrative decision involved rescission, the reconsideration committee shall review the request to determine whether the grievant or a person seeking coverage on behalf of the grievant performed an act, practice or omission that constitutes fraud, or made an intentional misrepresentation of material fact, as prohibited by the terms of the health benefits plan.

B. Written decision. The health care insurer shall mail a written decision to the grievant within seven days after the reconsideration committee hearing.

C. Contents. The written decision shall include:

- (1) the names, titles and qualifications of the persons on the reconsideration committee;
- (2) the reconsideration committee's statement of the issues involved in the administrative grievance;
- (3) a clear and complete explanation of the rationale for the reconsideration committee's decision;
- (4) the health benefits plan provision(s) relied on in reaching the decision;
- (5) references to the evidence or documentation relied on in reaching the decision;
- (6) a statement that the initial decision will be

binding unless the grievant submits a request for external review by the superintendent within 20 days after receipt of the reconsideration decision;

(7) if applicable, notice of the grievant's right to request review from and in the manner designated by the entity that is providing the health benefits plan to the grievant pursuant to the New Mexico Health Care Purchasing Act; and

(8) a description of the procedures and deadlines for requesting external review by the superintendent, including any necessary forms; the notice shall contain the toll-free telephone number and address of the superintendent's office.

[13.10.17.29 NMAC - Rp,
13.10.17.37 NMAC, 1/1/17]

13.10.17.30 EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCES BY SUPERINTENDENT:

A. Right to external review and scope. Every grievant who is dissatisfied with the results of the internal review and reconsideration committee hearing of an administrative decision shall have the right to request external review by the superintendent.

B. Exhaustion of remedies. The superintendent may require the grievant to exhaust any grievance procedures adopted by the health care insurer or an entity that purchases health care benefits pursuant to the New Mexico Health Care Purchasing Act, as appropriate, before accepting a grievance for external review.

C. Deemed exhaustion. If exhaustion of internal reviews is required prior to external review, exhaustion must be unnecessary and the internal reviews process will be deemed exhausted if:

- (1) the health care insurer waives the exhaustion requirement; or
- (2) the health care insurer is considered to have exhausted the internal reviews

process by failing to comply with the requirements of the internal reviews process.

D. Exception to exhaustion requirement.

(1)

Notwithstanding Subsection C of 13.10.17.30 NMAC, the internal claims and reviews process will not be deemed exhausted based on violations by the health care insurer that are *de minimus* and do not cause, and are not likely to cause prejudice or harm to the grievant, so long as the health care insurer demonstrates that the violation was for good cause or due to matters beyond the control of the health care insurer, and that the violation occurred in the context of an on-going, good faith exchange of information between the plan and the grievant. This exception is not available if the violation is part of a pattern or practice of violations by the health care insurer.

(2)

The grievant may request a written explanation of the violation from the health care insurer, and the health care insurer must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the internal claims and reviews process to be deemed exhausted. If an external reviewer or a court rejects the grievant's request for immediate review on the basis that the health care insurer met the standards for the exception under Paragraph (1) of Subsection D of 13.10.17.30 NMAC, the grievant has the right to re-submit and pursue the internal review of the claim. In such a case, within a reasonable time after the external reviewer or court rejects the claim for immediate review (not to exceed 10 days), the health care insurer shall provide the grievant with notice of the opportunity to re-submit and pursue the internal review of the claim. Time periods for re-filing the claim shall begin to run upon grievant's receipt of such notice.

[13.10.17.30 NMAC - Rp, 13.10.17.38 NMAC, 1/1/17]

13.10.17.31 REQUIREMENTS FOR EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE:

A. Deadline for filing request.

To initiate an external review, a grievant must file a written request for external review with the superintendent within 20 days after receipt of the written notice of the reconsideration committee's decision. The grievant shall file the request for external review on the forms provided by the health care insurer, and submitted as follows:

(1) mailed to the superintendent, attn: managed health care bureau - external review request, office of superintendent of insurance, P.O. Box 1689, 1120 Paseo de Peralta, Santa Fe, NM 87504-1689;

(2) e-mailed to mhcb.grievance@state.nm.us, subject: external review request;

(3) faxed to the superintendent, attn: managed health care bureau - external review request at (505) 827-4734; or

(4) completed on-line using an OSI complaint form available on website of the OSI.

B. Other filings.

The grievant may also file any other supporting documents or information the grievant wishes to submit to the superintendent for review.

C. Extending

timeframes for external review. If grievant wishes to supply supporting documents or information subsequent to the filing of the request for external review, the timeframes for external review shall be extended up to 90 days from the receipt of the complaint form, or until the grievant submits all supporting documents, whichever occurs first.

[13.10.17.31 NMAC - Rp, 13.10.17.39 NMAC, 1/1/17]

13.10.17.32 ACKNOWLEDGEMENT OF REQUEST FOR EXTERNAL REVIEW OF ADMINISTRATIVE GRIEVANCE BY SUPERINTEDENT:

A. Acknowledgement.

Upon receipt of a completed request

for external review, the superintendent shall immediately send:

(1) the grievant an acknowledgment that the request has been received; and

(2) the health care insurer a copy of the request for external review along with all documents submitted by or on behalf of the grievant with the request.

B. Items provided by health care insurer. Upon receipt of the copy of the request for external review, the health care insurer shall provide to the superintendent and the grievant by any available expeditious method within five days all necessary documents and information considered in arriving at the administrative grievance decision and reconsideration committee's decision. The health care insurer may also provide any documents or information it determines are necessary to respond to additional documents or information that have been provided by or on behalf of the grievant.

[13.10.17.32 NMAC - Rp, 13.10.17.40 NMAC, 1/1/17]

13.10.17.33 REVIEW OF ADMINISTRATIVE GRIEVANCE BY SUPERINTENDENT:

The superintendent shall review the documents submitted by the health care insurer and the grievant, and may conduct an investigation, or inquiry, or consult with the grievant, and the health care insurer, as appropriate. The superintendent shall issue a written decision on the administrative grievance within 45 days after receipt of the complete request for external review.

[13.10.17.33 NMAC - Rp, 13.10.17.41 NMAC, 1/1/17]

13.10.17.34 CONFIDENTIALITY OF A GRIEVANT'S RECORDS AND MEDICAL INFORMATION:

A. Confidentiality.

Health care insurers, the superintendent, ICOs, IROs and their reviewers, and all others who acquire access to identifiable medical records and information of grievants

when reviewing grievances shall treat and maintain such records and information as confidential except as otherwise provided by federal and New Mexico law.

B. Procedures

required. The superintendent, IROs, and health care insurers shall establish procedures to ensure the confidential treatment and maintenance of identifiable medical records and information of grievants that are submitted as part of any grievance. [13.10.17.34 NMAC - Rp, 13.10.17.11 NMAC, 1/1/17]

13.10.17.35 RECORD OF GRIEVANCES:

A. Record required.

The health care insurer shall maintain a grievance register to record all grievances received and handled during the calendar year. The register shall be maintained in a manner that is reasonably clear and accessible to the superintendent.

B. Contents. For each grievance received, the grievance register shall:

- (1) assign a grievance number;
- (2) indicate whether the grievance is an adverse determination or administrative grievance, or a combination of both;
- (3) state the date, and for an expedited review, the time the grievance was received;
- (4) state the name and address of the grievant, if different from the covered person for whom the grievance was made;
- (5) identify by name and member number the covered person making the grievance or for whom the grievance was made;
- (6) indicate whether the grievant's coverage is provided by an entity that purchases or is authorized to purchase health care benefits pursuant to the New Mexico Health Care Purchasing Act, the medicaid program, or a commercial health care insurer;
- (7) identify the health insurance policy number and the group if the policy is a group policy;

(8) identify the individual employee of the health care insurer to whom the grievance was made;

(9) describe the grievance;

(10) for adverse determination grievances, indicate whether the grievance received was an expedited or a standard review;

(11) indicate at what level the grievance was resolved and what the actual outcome was; and

(12) state the date the grievance was resolved and the date the grievant was notified of the outcome.

C. Annual report.

Health care insurers shall annually submit to the superintendent a compilation of data extracted from the grievance register on or before March 1. The specific data to be submitted will be listed in the MHCBS's section of the website of the OSI.

D. Retention. The health care insurer shall maintain such records for at least six years.

E. Submittal. The health care insurer shall submit information regarding all grievances involving quality of care issues to the health care insurer's continuous quality improvement committee and to the superintendent; and shall document the qualifications and background of the continuous quality improvement committee members.

F. Examination. The health care insurer shall make such record available for examination upon request and provide such documents free of charge to a grievant, or to state or federal agency officials subject to any applicable federal or state patient confidentiality laws regarding disclosure of personally identifiable health information.

[13.10.17.34 NMAC - Rp, 13.10.17.12 NMAC, 1/1/17]

HISTORY OF 13.10.17 NMAC: NMAC history:

13.10.17 NMAC, Grievance Procedures, effective 7/1/2000.
13.10.17 NMAC, Grievance Procedures, effective 5/3/2004.
13.10.17 NMAC, Grievance

Procedures, effective 1/1/2016.
13.10.17 NMAC, Grievance Procedures, effective 1/1/2017.

History of repealed material:

13 NMAC 10.17, Grievance Procedure for Enrollees Covered by Risk Management Division, filed 11/02/98 - Repealed effective 7/1/2000.
13.10.17 NMAC, Grievance Procedures, filed 6/14/2000 - Repealed effective 5/3/2004.
13.10.17 NMAC, Grievance Procedures, filed 3/12/2004 - Repealed effective 1/1/2016.
13.10.17 NMAC, Grievance Procedures, filed 11/17/2015 - Repealed effective 1/1/2017.

End Of Adopted Rules

Other Material Related To Administrative Law

**PUBLIC RECORDS,
COMMISSION OF**

The Administrative Law Division, on behalf of the State Records Administrator, hereby gives notice that, effective January 1, 2017 and pursuant to amendments to 1.13.2 and 1.24.15 NMAC, the cost of publishing in the New Mexico Register increases from **\$2.50 per columnar inch** to **\$3.00 per columnar inch**.

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**End Of Other
Material Related To
Administrative Law**

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Submittal Deadlines and Publication Dates

Volume XXVII, Issues 1-24

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

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Issue 9	April 27	May 16
Issue 10	May 18	May 30
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Issue 12	June 15	June 27
Issue 13	June 29	July 11
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Issue 17	August 31	September 12
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