

# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXX, Issue 1

January 15, 2019

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## Notices of Rulemaking and Proposed Rules

### HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

#### NOTICE OF PUBLIC RULE HEARING

The Human Services Department through the Child Support Enforcement Division (CSED), is proposing amendments to rules: 8.50.100.9 NMAC, 8.50.110.8 NMAC, 8.50.112.8 NMAC, 8.50.112.16 NMAC, 8.50.125.10 NMAC, 8.50.125.11 NMAC, 8.50.130.8 NMAC, and 8.50.130.10 NMAC. The Human Services Department is authorized to propose and adopt rules under the Public Assistance Act, Section 27-2-1 et seq. NMSA 1978 (1992 Repl.).

Changes in the rules are to revise child support program services offered, to state that income withholding will comply with federal regulation and to remove language stating the income withholding is upon request, to revise language to reflect the current procedure for license suspension, to allow for the seizure of administrative offset for child support delinquency, to revise program fees, to clarify the definition of payees, to include income withholding and administrative offset as claims for requesting an administrative hearing, and to include the requirement of due process notice for an administrative offset. The purpose of the proposed rules are to comply with federal child support regulations and to update internal procedures. The register for these proposed amendments to these rules will be available January 15, 2019 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/Default.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting CSED at (505) 476-7186.

A public hearing to receive testimony on these proposed rules will be held at

ASD/HSD Large Conference Room on the 1st floor, 1474 Rodeo Rd, Santa Fe, New Mexico on Thursday, February 21, 2019, from 3:00 p.m. to 4:00 p.m., Mountain Daylight Time (MDT) .

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Child Support Enforcement Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 476-7186. Electronic comments may be submitted to [Jennifer.Salazar-Va@state.nm.us](mailto:Jennifer.Salazar-Va@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. February 21, 2019.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact Kristin Abdill at 505-827-6201. The Department's TDD system may be accessed toll-free at 1-855-227-5485. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the CSED upon request by providing copies directly to a requestor or by making them available on the CSED website or at a location within the county of the requestor.

### WORKFORCE SOLUTIONS, DEPARTMENT OF

#### NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing in the conference room of the Workforce Connection Offices located at 301 W. De Vargas St. in Santa Fe, New Mexico, 87501 on February 18, 2019 from 10:00 am to 12:00 pm. The purpose of the public hearing will be to obtain input and public comment on the amendment to NMAC 11.2.21. The proposed amendment adds a provision outlining the process for filing complaints against local and state Workforce Innovation and Opportunity Act programs and policies.

Under Title I of the Workforce Innovation and Opportunity Act, 29 U.S.C. Chapter 32, Subchapter I, WIOA USDOL Final Rule 20 C.F.R. 683, et al, and NMSA 1978 §§50-14-1 et seq, NMDWS is the agency responsible for the Workforce Innovation and Opportunity Act and the Department has legal authority for rule making.

Interested individuals may testify at the public hearing or submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on February 15, 2019. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to [Andrea.Christman@state.nm.us](mailto:Andrea.Christman@state.nm.us). The proposed rules will be made available at least thirty days prior to the hearing.

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

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**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.

### BOARD OF EXAMINERS FOR ARCHITECTS

#### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 30 ARCHITECTS PART 7 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

##### 16.30.7.1 ISSUING

**AGENCY:** New Mexico Board of Examiners for Architects, 2550 Cerrillos Road - Third Floor, Santa Fe, NM 87505; telephone (505) 476-4830.

[16.30.7.1 NMAC - N, 1/15/2019]

**16.30.7.2 SCOPE:** This part sets forth application procedures to expedite licensure for military service members, their spouses and veterans.  
[16.30.7.2 NMAC - N, 1/15/2019]

##### 16.30.7.3 STATUTORY

**AUTHORITY:** Subsection C of Section 61-15-4 NMSA 1978, prescribes that "The board...may make rules not inconsistent with law."  
[16.30.7.3 NMAC - N, 1/15/2019]

##### 16.30.7.4 DURATION:

Permanent.

[16.30.7.4 NMAC - N, 1/15/2019]

##### 16.30.7.5 EFFECTIVE

**DATE:** January 15, 2019 unless a different date is cited at the end of the section.

[16.30.7.5 NMAC - N, 1/15/2019]

##### 16.30.7.6 OBJECTIVE:

The objective of this part is to expedite licensure for military service members, their spouses and recent veterans pursuant to Subsection C of Section 61-15-4 NMSA 1978.

[16.30.7.6 NMAC - N, 1/15/2019]

##### 16.30.7.7 DEFINITIONS: [RESERVED]

[16.30.7.7 NMAC - N, 1/15/2019]

##### 16.30.7.8 EXPEDITED

**LICENSURE:** The Board complies with the expedited licensure procedures for military service members, spouses and veterans as outlined in the Uniform Licensing Act, Section 61-1-34, NMSA 1978.

[16.30.7.8 NMAC - N, 1/15/2019]

**16.30.7.9 FEES:** Fees for military service members, their spouses and veterans shall be reduced by fifty percent

[16.30.7.9 NMAC - N, 1/15/2019]

##### History of 16.30.7 NMAC: [RESERVED]

### BOARD OF EXAMINERS FOR ARCHITECTS

**This is an amendment to 16.30.3 NMAC, Sections 9, 10, 11 and 18, amending and renumbering Section 12 and renumbering Sections 13 and 14, effective 1/15/2019.**

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

**A.** Registration standards shall be in accordance with those of the national council of architectural registration boards (NCARB) as described under "standards of eligibility for council certification" in the latest editions of the NCARB certification guidelines and the NCARB education standard.

**B.** Training requirements shall satisfy the NCARB standards of training. The applicant shall provide a NCARB architectural experience program AXP record number showing enrollment in AXP.

The education standard shall be in accord with the NCARB guidelines as set forth in the latest edition of the NCARB certification guidelines, the NCARB education standard and AXP guidelines. Copies of the latest editions of the NCARB certification guidelines, the NCARB education standard and the AXP guidelines are available from the board office or NCARB.

**C.** Application for examination:

**(1)**

Individuals applying for registration by examination shall request application forms from the board. The application, together with the application fee, shall be sent to the board office.

**(2)**

Applications will be accepted at any time, for review and approval by the board. Approved examination candidates will schedule examinations with NCARB. The board may require applicants for examination to appear before it for a personal interview.

**(3)**

To pass the architect registration examination (A.R.E.), an applicant must achieve a passing grade on each division. A passing grade for any division of the A.R.E. shall be valid for five years, after which time the division must be retaken unless all divisions have been passed. NCARB, in its discretion, may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, by active duty in military service or by other like causes.

**(4)**

In case an applicant does not qualify for examination, for reason other than failure to submit a valid application, he or she shall be informed of the cause and apprised of his or her rights under the Uniform Licensing



Act, Sections 61-1-1 through 31 NMSA 1978. Should the applicant subsequently meet the requirements for examination, he or she may resubmit the application.

**D.** Examination materials and results shall not be considered public records pursuant to Section 61-15-5 NMSA 1978. Nothing therein shall prevent the board from reporting an applicant's scores to the architectural registration boards in other jurisdictions or to the national council of registration boards (NCARB). The board shall give written notification to an applicant no later than 30 days after the board receives the results from NCARB.

**E.** Special provisions for examinees with disabilities:

**(1)**

Any examinee requiring special examination provisions to accommodate a qualifying temporary or permanent disability as defined by the Americans with Disabilities Act, including any modification of the Architect Registration Examination administration process, must submit a written request for such provisions at least 90 days prior to the exam, including documentation justifying such request.

**(2)**

The board shall have the right to solicit additional information within 30 days of such request. The examinee shall provide such additional information within 10 days following receipt of the board's request.

**F.** [Examination application fee:

~~(1) in-state~~  
\$50.00  
~~(2) out-of-state~~ \$100.00]

Upon receipt of a complete application and fee, board staff are authorized to approve and issue a registration to an applicant for whom no licensing issues are apparent from the application. Board staff shall consult with the enforcement subcommittee if disciplinary issues are present before issuing a registration. The board shall vote to ratify the issuance of all registrations issued by staff at the next regularly

scheduled board meeting. In the event the board votes not to ratify a registration issued by board staff, the board shall pursue disciplinary action as required by the Uniform Licensing Act, and Section 61-15-12 NMAC 1978.

[16.30.3.9 NMAC - Rp, 16 NMAC 30.3.9, 9/6/2001; A, 9/16/2004; A, 9/22/2007; A, 9/15/2016; A, 10/14/2016; A, 1/15/2019]

**16.30.3.10 REGISTRATION THROUGH RECIPROCITY:**

**A.** An individual who holds a current NCARB certificate and is seeking registration through reciprocity shall return a completed application and all fees to the board for processing. The application shall be valid for six months from the time the board receives it.

**B.** ~~[An individual who does not hold an NCARB certificate and is seeking registration through reciprocity as a broadly-experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and have held such registration with no disciplinary action for at least five years. The broadly-experienced-category applicant shall return to the board a completed application, on a form prescribed by the board, along with other pertinent documents and the application fee. The board shall have the right to institute procedures for the broadly-experienced architect process as it deems necessary.~~

Each broadly-experienced-category applicant shall provide the board evidence of academic training and work experience directly related to architecture and demonstrating minimum competencies as described in 16.30.6 NMAC including, but not limited to, evidence of training or experience in the following areas:

~~(1) design and construction documents;  
(2) construction administration;  
(3) management; and  
(4) related activities. This provision, Subsection B of 16.30.3.10 NMAC will expire on January 1, 2018.]~~

An individual currently registered as an architect in another jurisdiction who does not hold a current NCARB certificate may apply for a New Mexico architect license upon receiving an NCARB certification acquired through the alternative path to licensure for experienced professionals.

**C.** An individual who does not hold a current NCARB certificate and is seeking registration through reciprocity as a broadly experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and either: (1) hold a degree accredited by the national architectural accrediting board, pass the necessary examination, and successfully complete the architectural experience program (AXP) offered by NCARB; or (2) hold a position of responsibility for at least the previous five years in the jurisdiction(s) of licensure with no disciplinary action during that five-year period. The term "position of responsibility" shall mean a person in responsible charge as defined in Subsection N of 16.30.1.7 NMAC. The broadly experienced category applicant shall return to the board a completed application, on a form prescribed by the board, along with other pertinent documents and application fee. Each applicant shall provide the board evidence of academic training and work experience directly related to architecture and demonstrating minimum competence as described in 16.30.6 NMAC including but not limited to, evidence of training or experience in the following areas:

~~(1) design and construction documents;  
(2) construction administration;  
(3) project management; and  
(4) architectural related activities~~

[~~C.~~] **D.** Each applicant must attest on an affidavit that the applicant:

~~(1) has not performed or offered to perform, and~~

will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

(2) is in good standing and has disclosed all requested information on disciplinary proceedings in any other jurisdiction; and

(3) has secured a copy and has read the Architectural Act, [Sections 61-15-1 through 13-NMSA 1978] and the New Mexico board of examiners for architects rules and regulations, and agrees to comply with the same.

[D:] E. All applicants must pass a New Mexico architectural jurisprudence exam administered by the board. An applicant who has failed two successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one year from the date of the last jurisprudence exam failed.

[E:] E. Applicants for registration through reciprocity shall present a certificate of good standing from a jurisdiction in which a current and valid registration is held.

[F:] G. Comprehensive design requirements: Applicants for registration through reciprocity shall present evidence satisfactory to the board of their qualification in comprehensive design.

[G:] H. The board may require an applicant for registration through reciprocity to appear before the board for a personal interview and to complete a written or oral examination.

[H:] I. The board shall review all applications on a case-by-case basis.

[I:] — Provisional registration:

(1) An applicant for registration through reciprocity or endorsement may be issued a provisional registration prior to full registration upon satisfaction of the following requirements:

(a) the applicant has complied with all requirements prescribed in these rules;

(b) the board director has certified that the application is complete and there are no apparent disciplinary actions pending or in force in any jurisdiction at the time of the application; and

(c) the exam and reciprocity committee has reviewed the application and will recommend registration at the next board meeting.

(2) The board may issue provisional registration to an applicant upon the review and recommendation of the application by the exam and reciprocity committee.

(3) Any provisional registration shall be valid only from the date of issuance through the date of the next regularly scheduled board meeting.

(4) An applicant for registration through reciprocity who has received provisional registration and who engages in the practice of architecture during the term of provisional registration shall do so under the regulatory authority of the Architectural Act, Sections 61-15-1 through 13 NMSA 1978 and these rules and regulations.]

J. [Upon approval of the board, a new registrant will receive a wall certificate within a reasonable period following the board's decision.]

Upon receipt of a complete reciprocity application and fee, board staff are authorized to approve and issue a registration to an applicant for whom no licensing issues are apparent from the application. Board staff shall consult with the examination and reciprocity committee if licensing issues are present before issuing a registration. When an application has apparent issues, or a denial is recommended, the application should be presented to the board prior to staff approving and issuing a registration. The board shall vote to ratify the issuance of all registrations issue by staff at the next regularly scheduled board meeting. In the event the board votes not to ratify a reciprocity registration issued by board staff, the board shall pursue disciplinary action

as required by the Uniform Licensing Act, Section 61-15-12 NMSA 1978. [16.30.3.10 NMAC - Rp, 16 NMAC 30.3.10, 9/6/2001; A, 9/15/2003; A, 9/16/2004; A, 9/9/2005; A, 12/23/2005; A, 6/1/2009; A, 9/15/2016; A, 10/31/2016; A, 1/15/2019]

### 16.30.3.11 REGISTRATION RENEWAL:

[A:] Fees: Renewal fees are paid biennially. [The number of registrants to renew every two years will be divided to allow half of the registrations to expire each year. Beginning in December 2017,] Registrants whose birth year [ends in] is an even number shall be required to renew their registrations by December 31 of every even-numbered year. [for a single year, expiring in December 2018, and pay half of the two-year registration fee. Thereafter, the registration of those whose birth year ends in an even-numbered year shall renew every two years.] [An individual] Registrants whose birth year [ends in] is an odd numbered year shall be required to renew their registration by December 31st of every [the] odd numbered year. New registrations shall be pro-rated on a yearly basis and shall expire on December 31st of an even or odd [the] year designated by the last digit of the applicant's birth year. The renewal fees for two years are:

[(+)] A. in state \$225.00

[(2)] B. out-of-state \$325.00 [16.30.3.11 NMAC - Rp, 16 NMAC 30.3.11, 9/6/2001; A, 9/15/2003; A, 4/15/2004; A, 9/16/2004; A, 3/12/2006; A, 5/4/2008; A, 6/1/2009; A, 3/13/2013; A, 9/15/2016; A, 1/15/2019]

### [B:] 16.30.3.12 CONTINUING EDUCATION:

Architects registered in New Mexico will be required to show compliance with mandatory education requirements as a condition for renewing registration:

[(+)] A. Purpose and scope:

**[Ⓐ] (1)**

These rules provide for a continuing education program to insure that all architects remain informed of these technical subjects necessary to safeguard life, health, property, and promote the public welfare.

**[Ⓑ] (2)**

Continuing education is post licensure learning that enables a registered architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety and welfare.

**[Ⓒ] (3)**

These rules apply to all architects registered in New Mexico.

**[Ⓓ] B.**

Definitions:

**[Ⓐ] (1)**

"Continuing education hour" is one continuous instructional hour (minimum 50 minutes) spent in structured educational activities intended to increase or update the architect's knowledge and competence in health, safety and welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity, then such prescribed time shall, unless the board finds the prescribed time to be unreasonable, be accepted as the architect's time for continuing education hour purposes irrespective of actual time spent on the activity.

**[Ⓑ] (2)**

"Health, safety and welfare in architecture" is anything that relates to the structure or soundness of a building or site or its role in promoting the health, safety or well-being of its occupants.

**[Ⓒ] (3)**

"Health, safety and welfare subjects" are technical and professional subjects in continuing education that the board deems appropriate to protect the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction and utilization of buildings and the built environment.

**[Ⓓ] (a)**

Building systems: structural,

mechanical, electrical, plumbing, communications, security, fire protection.

**[Ⓔ] (b)**

Construction contract administration: contracts, bidding, contract negotiations.

**[Ⓕ] (c)**

Construction documents: drawings, specifications, delivery methods.

**[Ⓖ] (d)**

Design: urban planning, master planning, building designs, site design, interiors, safety and security measures.

**[Ⓗ] (e)**

Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

**[Ⓙ] (f)**

Legal: laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public.

**[Ⓚ] (g)**

Materials and methods: construction systems, products, finishes, furnishings, equipment.

**[Ⓛ] (h)**

Pre-design: land use analysis, programming, site selection, site and soils analysis, surveying.

**[Ⓜ] (i)**

Preservation: historic, reuse, adaptation.

**[Ⓝ] (4)**

"Structured educational activities" are educational activities in which at least seventy-five percent of an activity's content and instruction time must be devoted to health, safety and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety and welfare subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

**[Ⓞ] C.**

Requirements:

**[Ⓐ] (1)**

In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 continuing education hours each calendar year or be exempt from these

continuing education requirements as provided below. Failure to complete these requirements may result in non-renewal of the architect's registration or other disciplinary action by the board.

**[Ⓑ] (2)**

Continuing education hours must be completed in health, safety and welfare subjects acquired in structured education activities. Continuing education hours may be acquired at any location, whether delivered by direct contact or distant learning methods. Excess continuing education hours may not be credited to a future calendar year.

**[Ⓓ] D. Activities:**

The following list shall be used by all registrants in determining the types of activities that would fulfill continuing education requirements:

**[Ⓐ] (1)**

continuing education hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions;

**[Ⓑ] (2)**

continuing education hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions; such presentations as those sponsored by the American institute of architects, construction specifications institute, construction products manufacturers council or similar organizations devoted to architectural education may qualify;

**[Ⓒ] (3)**

continuing education hours in attendance at short courses or seminars related to new technology and offered by colleges, universities, professional organizations or system suppliers;

**[Ⓓ] (4)**

continuing education hours spent in self-study courses such as those sponsored by the national council of architectural registration boards, American institute of architects or similar organizations;

**[Ⓔ] (5)**

up to three preparation hours may be credited for each class hour spent

teaching architectural courses or seminars; college or university faculty may not claim credit for teaching regular curriculum courses;

**(f) (6)**

up to three continuing education hours spent in architectural research that is published or formally presented to the profession or public;

**(g) (7)**

college or university credit courses dealing with architectural subjects; each semester hour shall equal 15 continuing education hours; a quarter hour shall equal 10 continuing education hours;

**(h) (8)**

up to four continuing education hours in service to the public that is directly related to the practice of architecture in the area of health, safety and welfare.

**(5) E.** Records and record-keeping:

**(a) (1)**

A registered architect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours. Documentation of reported continuing education hours shall be maintained by the architect for three years from the date of award.

**(b) (2)**

One continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

**(c) (3)**

Failure to fulfill the continuing education requirements shall result in non-renewal of an architect's certificate of registration. Certification of fulfillment of continuing education requirements without completion of the continuing education may result in disciplinary action.

**(d) (4)**

Any untrue or false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and may subject the registrant to additional disciplinary action.

**(6) E.** Initial registration: An architect whose initial registration occurs less than 12 months from ~~the~~ December 31st ~~[deadline of the next renewal cycle]~~ shall not be required to report continuing education hours for that calendar year. An architect whose initial registration occurs more than 12 months prior to ~~the~~ December 31st ~~[deadline of the next renewal cycle]~~ shall be required to complete 12 continuing education hours within the final calendar year prior to renewal.

**(7) G.**

Reinstatement: Pursuant to Section 61-15-7 NMSA 1978, a former registrant may only apply for reinstatement and renewal of an expired certificate under 16.30.3.13 NMAC if delinquent continuing education hours are earned as required by Subparagraph (a) of Paragraph (3) of Subsection B of 16.30.3.11 NMAC, i.e. 12 continuing education hours each calendar year while registration is expired or be exempt from these continuing education requirements as provided below.

**(8) H**

Exemptions: A registrant shall be deemed to have complied with the foregoing continuing education requirements if the architect attests in the required affidavit that for not less than 21 months of the preceding two-year-period of registration, the architect:

**(a) (1)**

has served honorably on active duty in the military service (exceeding 90 consecutive days); or

**(b) (2)**

is a government employee working as an architect and assigned to duty outside the United States, or outside the jurisdiction established by the national council for architectural registration boards.

**(9) I.**

The board may consider a hardship case under extenuating circumstances to modify the requirements established by these rules.

**(10) J.**

Audit: A number of registrants shall be selected at random to submit

substantiating information to support their continuing education claim. If any credits are disallowed by the board, then the registrant shall have 60 calendar days after notification to substantiate the original claim or obtain other continuing education hours to meet the minimum requirements. Such continuing education hours shall not be used again in the next renewal cycle. Additional audits may be conducted at the board's discretion.

**(11) K.**

Non-compliance: Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.

[16.30.3.12 NMAC - A & Rn, 16.30.3.11 NMAC, 1/15/2019]

**~~16.30.3.12~~ 16.30.3.13**

**EXPIRATION OF A CERTIFICATE:**

**A.** Certificates of registration shall expire on December 31<sup>st</sup> as prescribed by these rules.

**B.** A certificate expires upon the death of a registrant. [16.30.3.13 NMAC - Rn, 16.30.3.12 NMAC, 1/15/2019]

**~~16.30.3.13~~ 16.30.3.14**

**RENEWAL OF AN EXPIRED CERTIFICATE:**

**A.** A registrant whose license has expired for no more than one month shall be required to pay the registration fee and a late fee of fifty dollars (\$50).

**B.** A reinstatement applicant whose license has been expired for more than one month shall be required to:

**(1)** pay a registration fee and a penalty equal to one year's registration fee for each year expired but in no case shall the penalty exceed three times the annual registration fee;

**(2)** submit a signed and notarized reinstatement affidavit as provided by the board; and

**(3)** complete continuing education requirements as required by these rules; at the board's discretion, the former registrant may



be required to present evidence to the board of continued proficiency, complete additional requirements, and appear personally before the board in order that the board may determine whether to renew the lapsed certificate.

C. Reinstatement of a certificate that has been lapsed for more than three years requires submittal of an NCARB certificate and required application forms as a new applicant.

[16.30.3.14 NMAC - Rn, 16.30.3.13 NMAC, 1/15/2019]

~~[16.30.3.14 — [RESERVED]~~

~~[16.30.3.14 NMAC - Rp, 16 NMAC-30.3.11.4, 9/6/2001; A, 9/15/2002; Repealed, 9/16/2004]~~

### **16.30.3.18 INDIVIDUAL SEAL AND DOCUMENT IDENTIFICATION:**

A. Registration seal specifications: Each architect registered in the state of New Mexico shall secure a registration seal of the following design: The seal shall have two concentric circles with the outer circle measuring one and three-quarter inches in diameter and the inner circle being one and one-quarter inches in diameter. The upper portion of the annular space between the two circles shall bear the words "STATE OF NEW MEXICO" and the lower portion shall bear the words "REGISTERED ARCHITECT". The space enclosed by the inner circle shall bear the name of the architect and his or her registration number. In no event shall the seal contain more than one name of an architect. By placement of a seal and signature on a drawing, an architect verifies that his or her registration is valid and that he or she is practicing in accordance with the Architectural Act, Sections 61-15-1 through 13 NMSA 1978 and these rules and regulations.

B. Use of registration seal:

(1) Each original sheet of construction drawings and each cover sheet of specifications, submitted for permitting, and reports, prepared

by or under the responsible charge of an individual architect, must bear the imprint of the seal with the signature of that architect and the date of the signature closely aligned to the seal. The name and address of the architect must also appear on the sealed page. A registrant may apply a seal, signature and date of signature by hand. A registrant may affix an electronically-generated seal, signature, and date of signature. An electronic signature may be utilized provided the registrant utilizes a secure method of affixation; the registrant does not authorize any other person to so affix; and the registrant and client have agreed to conduct transactions by electronic means. Drawings, reports or documents that are signed using an electronic signature shall employ an authentication procedure to ensure the validity of the electronic signature. Signature must satisfy requirements defined in 16.30.1.7 NMAC.

(2) As provided in the Architectural Act, Subsection A of Section 61-15-7 NMSA 1978, all plans, specifications, plats and reports prepared by an architect or under the architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by the architect or under the architect's responsible charge on work described in project exemptions, under Section 61-15-9 NMSA 1978.

(3) Placing of multiple architectural seals on plans, specifications or reports shall not be permitted. The architect-of-record must seal, sign and date all construction drawings, specifications, and reports prepared by or under the supervision of that architect. In doing so, the architect-of-record assumes full responsibility for these documents.

(4) Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed knowledge of the content of such submissions

throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible charge by persons not employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. An exception is made for:

(a) architects who review, adapt, and seal prototypical projects provided that the project qualifies as a prototypical project meaning the original plans were designed by other architects, engineers or architects and engineers with the intent of being used in several diverse locations with local adaptations;

(b) a kit-of-parts that is a manufactured item and the New Mexico registered architect is not responsible for the components.

(5) Architectural and engineering seals are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required both seals.

(6) A legally applied seal and signature is a permanent part of construction documents and may not be removed for non-payment of fees or other civil action.

C. Assumption of projects:

(1) Sealed work: Prior to sealing, signing and dating work, a successor registered architect shall be required to notify the original architect, his successors, or assign, by certified letter to the last known address of the original registered architect, of the successor's intention to use or reuse the original registered architect's work. A successor registered

architect must use his or her own title block, seal and signature and must remove the title block, seal and signature of the original architect before sealing, signing and dating any sealed construction drawings and specifications. The successor registered architect shall take full responsibility for the drawings as though they were the successor's original product.

**(2) Unsealed**

work: When an architect assumes responsibility of an incomplete project, the following evaluation must occur before the architect can be said to have exhibited responsible charge over the project:

**(a)**

Program: the architect shall meet with the client to assure that the client's needs are met.

**(b)**

Codes: the architect shall assure that the project is in compliance with all federal, state, and local regulation.

**(c)**

Coordination: the architect shall assure coordination with the other professionals in a [multi-seal] project.

**(d)**

Analysis: the architect shall assure the project meets all technical, aesthetic, and quality requirements and that site and environmental issues have been addressed.

**(e)**

The architect of record who assumes the incomplete project shall be charged with keeping records of the project for five years.

**D. Plan checking:**

Any authorized person checking documents for compliance with any applicable statutes, codes, ordinances, rules or regulations such as building codes, fire codes or zoning ordinances may "red-line" and list changes to meet such applicable statutes, codes, ordinances, rules and regulations, as this is not the practice of the profession. However, a person may not modify a professional document submitted for review unless that modification is supported by reference to an applicable code or standard. A non-registrant shall not modify, in any manner, a document embodying the

discretion or judgment of a registrant without the express permission of the architect who is in responsible charge. [16.30.3.18 NMAC - Rp, 16 NMAC 30.3.14, 9/6/2001; A, 9/15/2002; A, 9/16/2004; A, 9/15/2016; A, 1/15/2019]

## CULTURAL AFFAIRS, DEPARTMENT OF

On December 7, 2018, the Cultural Properties Review Committee repealed 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, filed 10/01/2005, and replaced it with 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, effective January 16, 2019.

On December 7, 2018, the Cultural Properties Review Committee repealed 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation Permits, filed 10/1/2005, and replaced it with 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation Permits, effective January 16, 2019.

## CULTURAL AFFAIRS, DEPARTMENT OF

### TITLE 4 CULTURAL RESOURCES

### CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION

### PART 8 PERMITS TO CONDUCT ARCHAEOLOGICAL INVESTIGATIONS ON STATE LAND

#### 4.10.8.1 ISSUING

**AGENCY:** Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs. [4.10.8.1 NMAC - Rp, 4.10.8.1 NMAC, 01/16/2019]

**4.10.8.2 SCOPE:** This rule applies to all public and private entities conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico. [4.10.8.2 NMAC - Rp, 4.10.8.2 NMAC, 01/16/2019]

**4.10.8.3 STATUTORY AUTHORITY:** Subsection O of Section 18-6-5 (NMSA 1978) of the Cultural Properties Act. [4.10.8.3 NMAC - Rp, 4.10.8.3 NMAC, 01/16/2019]

**4.10.8.4 DURATION:** Permanent. [4.10.8.4 NMAC - Rp, 4.10.8.4 NMAC, 01/16/2019]

**4.10.8.5 EFFECTIVE DATE:** January 16, 2019 unless a later date is cited at the end of a section. [4.10.8.5 NMAC - Rp, 4.10.8.5 NMAC, 01/16/2019]

**4.10.8.6 OBJECTIVE:** This rule describes the procedures used to review and issue a permit for archaeological investigations on state land. Additionally, this rule establishes professional and quality standards for a permittee's performance and sets forth causes for non-renewal of permits. [4.10.8.6 NMAC - Rp, 4.10.8.6 NMAC, 01/16/2019]

**4.10.8.7 DEFINITIONS:**  
**A. "Archaeological investigation"** means the study of archaeological sites, isolates and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

**B. "ARMS"** means the archaeological records management section within the historic preservation division that maintains NMCRIS, associated cultural resource records and the records repository pursuant to 4.10.19 NMAC.

**C. “Archaeological site” or “site”** means a location where there exists material evidence of the past life and culture of human beings in the state and is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. An archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, habitation sites, ruins of buildings or structures, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials.

**D. “Area of potential effect” or “APE”** means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of a cultural property, if any such properties exist. The APE is influenced by the scale and nature of an undertaking, variation in topography and vegetation, and may be different for different kinds of effects caused by the undertaking and may include a buffer area to adequately account for direct and indirect effects.

**E. “Area of historic and scientific interest”** means an area lacking surface evidence of cultural resources but where there is a high probability of finding subsurface material remains and cultural deposits.

**F. “Collection”** means the removal of material remains from state land, whether or not the remains are located within an archaeological site or isolate as defined herein.

**G. “Commissioner of public lands” or “commissioner”** means the executive officer of the state land office, who shall have jurisdiction over all state trust lands and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of state statutes and the

law or laws under which such lands have been or may be acquired.

**H. “Committee” or “CPRC”** means the cultural properties review committee, created pursuant to Section 18-6-4 NMSA 1978 of the Cultural Properties Act.

**I. “Cultural landscape”** means a geographic area including both cultural and natural resources associated with a historic event, activity or person or exhibiting other cultural or aesthetic values. Landscapes include formally designed landscapes, vernacular landscapes, sites and ethnographic landscapes.

**J. “Cultural property”** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

**K. “Cultural resource”** means any archaeological, historic, or architectural sites, districts, landscapes, buildings, structures, objects, and places of traditional cultural or religious importance to specified social or cultural groups. Cultural resources may be significant and eligible for listing in the national register of historic places or state register of cultural properties; they may be insignificant and ineligible for either register; or cultural resources may not have been evaluated to determine their significance and eligibility.

**L. “District”** means a significant concentration, linkage, or continuity of sites, buildings, structures, landscape elements, or objects united historically or aesthetically by plan or physical development.

**M. “Effect”** means any alteration of the cultural property’s physical characteristics, including relevant features of its immediate environment, which may diminish the integrity of the property’s location, design, setting, material, workmanship or association. “Effects” include, but are not limited to, physical destruction, damage or alteration of all or part of the property; alteration of the character of the property’s surrounding environment where the

character contributes to the property’s eligibility; introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting, and neglect of a property resulting in its deterioration or destruction. Effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable.

**N. “Easement”** means a right or privilege granted by the commissioner of public lands or by the state agency on lands under their jurisdiction to use a defined area for a prescribed purpose and time.

**O. “Excavation”** means to systematically dig up artifacts, deposits or material remains within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

**P. “General Permit”** means a permit for survey and inventory and test excavation or monitoring on state land issued by the CPRC with the concurrence of the state archaeologist and the SHPO to a qualified institution. Staff listed on the roster of the permit must be listed in the SHPO directory.

**Q. “Historic preservation division” or “HPD”** means the division within the department of cultural affairs created pursuant to Subsection A of Section 18-6-8 NMSA 1978 of the Cultural Properties Act.

**R. “Historic structures and buildings”** means buildings or structures that are 50 or more years old or properties less than 50 years old that either meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years) or properties that are likely to meet the integrity and significance criteria in 30 CFR 60.4 within five years of the date of recording.

**(1)** A historic structure is a functional construction made usually for purposes other than creating human shelter. Structures

include bridges, dams, canals, wells and other engineering works such as engineered roads and highways, tunnels, turbines, pipelines, refineries, stamp mills, smelters, power plants, silos, grain elevators and locomotives.

(2) A historic building is created principally to shelter any form of human activity. Buildings include but are not limited to houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores and churches. The term building may also be used to refer to a historically and functionally related unit such as a courthouse and jail or a house and barn.

S. **“Human burial”** or **“unmarked human burial”** means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

T. **“Individual unmarked human burial excavation permit”** is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of unmarked human burials on state or private land. Individual unmarked human burial permits are submitted with an application for a project-specific permit for excavation and when unmarked human burials are known to exist within the project area.

U. **“Isolate”** means a single object or artifact, or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

V. **“Limited tests”** means the placement of probes, cores, shovel tests or similar tests using hand tools to augment survey-level information without substantially damaging or diminishing the integrity of an archaeological site or area of historic and scientific

interest. Limited tests are located systematically, randomly, or judgmentally in areas with the highest potential for buried cultural deposits and may also provide information on soils, stratigraphy or depositional context and integrity.

W. **“Material remains”** means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

X. **“Mechanical earth-moving equipment”** means any motorized machine or device

that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

Y. **“Mechanical Excavation Permit”** is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of archaeological sites on private land using mechanical earth-moving equipment by someone other than the landowner or his agent.

Z. **“Monitoring”** means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection and avoidance of sites and may include documentation and excavation of cultural deposits.

AA. **“Museum of Indian arts and culture-laboratory of anthropology”** or **“MIAC”** means the division within the department of cultural affairs, which serves as the collections repository for archaeological materials and associated records and documents taken or collected from state land.

BB. **“New Mexico cultural resource information system”** or **“NMCRIIS”** means the statewide online computer information system that integrates geographic, research, and management data on cultural properties and cultural resource investigations maintained by ARMS.

CC. **“Permit”** means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time.

DD. **“Principal investigator”** means the individual with overall administrative responsibility for the investigation authorized by the permit and who, without limitation, assures compliance with the terms of the permit and conformance with all laws, rules and professional standards.



**EE. “Project area”**  
means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

**FF. “Project director”**  
means the individual who works under the direction of the principal investigator and is responsible for ensuring that the field work, analysis and reporting are consistent with professional standards.

**GG. “Project-specific permit”** means permit issued by the CPRC, with the concurrence of the state archaeologist and the SHPO, to a qualified institution for survey, test excavation or monitoring when the applicant does not hold a general permit or when the applicant proposes excavation project as part of a data recovery program.

**HH. “Qualified institution”** means public and private entities including without limitation individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums, any agency of the federal government, or department, agency, institution, or political subdivisions of the state with staff that include individuals listed in the SHPO directory and who demonstrate capability to accomplish the type and scope of archaeological investigation proposed in the permit application.

**II. “Reconnaissance survey”** means a survey used to characterize the resources of an area. A reconnaissance survey can include a “windshield survey”, a “pedestrian survey,” a study of aerial photographs, historical and recent maps and city plans to gain a general understanding of the community’s layout or a detailed inspection of sample blocks or areas as a basis for extrapolation about the resources of the community as a whole.

**JJ. “Registered cultural property”** means a cultural property that the CPRC placed in the state register of cultural properties individually or as a contributing property within a district on either a permanent or temporary basis or that the keeper of the national register

has placed on the national register of historic places.

**KK. “Right of way”**  
means a right or privilege to pass over, upon, through or across a defined area of state trust lands granted by the commissioner of public lands or by the head of another state agency for lands under its jurisdiction for a prescribed purpose and duration.

**LL. “Sample survey”**  
means a survey that identifies all surface-visible cultural properties within defined sample units of a larger whole.

**MM. “SHPO directory”**  
means the directory of historic preservation professionals maintained by the SHPO and approved by the CPRC. The SHPO directory includes but is not limited to archaeologists who act in the capacity of principal investigator, project director, supervisory archaeologist; cultural anthropologists; historic archaeologists; architectural historians; historic architects; historic landscape architects; historians; and other historic preservation professionals.

**NN. “SOI standards”**  
means the *secretary of interior’s historic preservation professional qualifications standards* as expanded and revised in 1997 (62 FR 33708). The standards specify the academic degrees or comparable training, professional experience and the products and activities that demonstrate that the professional is able to perform competent and professionally credible work in archaeology, architectural history, historic architecture, historic landscape architecture, history, cultural anthropology or one of the other historic preservation disciplines.

**OO. “State agency”**  
means a department, agency, institution or political subdivision of the state.

**PP. “State archaeologist”** means the archaeologist designated pursuant to Section 18-6-15 NMSA 1978 of the Cultural Properties Act.

**QQ. “State historian”**  
means the historian designated

pursuant to Section 18-6-14 NMSA 1978 of the Cultural Properties Act.

**RR. “State historic preservation officer”** or **“SHPO”** means the individual appointed pursuant to Section 18-6-8 NMSA 1978 of the Cultural Properties Act who serves as the director of the HPD.

**SS. “State land”**  
means property owned, controlled, or operated by a state agency. Examples of state land include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way; state parks; state historic sites; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

**TT. “State trust land”**  
means lands, their natural products and all rights, privileges, or assets, which are derived from them, and which are under the care, custody, and control of the commissioner of public lands.

**UU. “Supervisory archaeologist”** means a crew chief, field supervisor or field director who works under the direction of the principal investigator or project director and is physically present for all field investigations. The supervisory archaeologist works independently in the field and may be in direct charge of archaeological field crews.

**VV. “Survey”** means a visual inspection of land to examine, identify, record, evaluate and interpret cultural resources and may include limited tests but shall not include excavation or test excavation. Survey intensity, design and methods are based on management and research objectives.

**WW. “Test excavation”**  
means the systematic placement of probes, cores, shovel tests or test pits using hand tools, and test trenches excavated by hand or with mechanical earth-moving equipment to expose geomorphological soils and buried

cultural deposits. Test excavation is completed under a test excavation plan and is conducted to determine the eligibility of a site or define the nature and extent of cultural deposits.

**XX. “Thematic survey”** means a survey that identifies selected types of cultural properties and may be performed with written concurrence of the state agency.

**YY. “Written and photographic records”** means original or legible duplicate site data, such as site forms, artifact forms, notes, drawings, tables, maps, plans, charts and other written materials, and prints, slides and other photographic records.

[4.10.8.7 NMAC - Rp, 4.10.8.7 NMAC, 01/16/2019]

#### 4.10.8.8

**ARCHAEOLOGICAL INVESTIGATIONS UNDER A GENERAL PERMIT:** The CPRC issues, with the concurrence of the state archaeologist and the SHPO, a general permit to qualified institutions to conduct archaeological investigations on state land. Three types of investigations may be performed under a general permit: survey, test excavation, and monitoring. The applicant indicates on the application form the type or types of archaeological investigations requested at the time of the application. Archaeological investigations conducted under a general permit on state trust land are limited to investigations conducted under contract to an individual, organization or company undertaking exploration, construction, development or other ground-disturbing activities authorized by rights of way, easements, leases or other written permission to enter state trust land issued by the commissioner of public lands.

**A. Survey.** Surveys may be conducted under a general permit when applicants propose to identify, record, evaluate and interpret cultural resources and relocate, update records and evaluate previously identified cultural resources in accordance with the standards for survey in 4.10.15 NMAC.

#### **B. Test excavation.**

Test excavation may be conducted under a general permit when the applicant proposes to implement the test excavations in accordance with a test excavation plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.16 NMAC.

#### **C. Monitoring.**

Monitoring may be conducted under a general permit when applicants propose to:

(1) supervise implementation of site avoidance or protection measures pursuant to 4.10.17 NMAC; or

(2) oversee land-disturbing projects though a site or area of historic and scientific interest following a monitoring plan approved by HPD and the state agency archaeologist, if applicable, and prepared in conformance with 4.10.17 NMAC.

[4.10.8.8 NMAC - Rp, 4.10.8.8 NMAC, 01/16/2019]

**4.10.8.9 GENERAL PERMIT APPLICATION:** General permits are issued for a three-year cycle. The applicant may obtain a general permit application form and instructions from HPD’s website or may request them from HPD. The applicant shall complete the application consistent with this rule, provide the attachments described in this section and on the application form and maintain current agreements with ARMS and MIAC.

**A.** A general permit application for archaeological investigations on state land shall include the following information:

(1) applicant name, mailing address, telephone number and email address;

(2) the type(s) of archaeological investigations proposed to be performed under the permit (survey, test excavations, monitoring, or any combination thereof);

(3) a staff roster indicating the following information:

#### **(a)**

individuals currently listed in the SHPO directory that the applicant proposes to use in a supervisory capacity such as principal investigator, project director, supervisory archaeologist, and historic archaeologist during permitted archaeological investigations;

#### **(b)**

other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists;

#### **(4)** individuals

who are not in the SHPO directory shall submit SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas;

#### **(5)** continuing

education credit documentation and updated curriculum vitae for individuals on the staff roster who are listed in the SHPO directory and who elect to report their continuing education credits along with their principal employer’s permit (see Subsection B of 4.10.8.15 NMAC); and

#### **(6)** applicant’s

signature, title and date, which may be submitted with original signature or signature transmitted by facsimile; or a scanned applications with the original signature transmitted by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

**B. Attachments.** The applicant shall include the following attachments with each application submittal. A hard copy of the attachments must be provided with the first three-year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

#### **(1)**

**A summary of organizational experience.** This summary shall demonstrate the applicant’s capability to accomplish the type and scope of archaeological investigations to be conducted under the permit and shall include but not be limited

to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects.

**(2) Forms.**

Copies of field recording, laboratory and in-field artifact analysis forms to be used during surveys and inventories.

**(3) Test**

**excavation standards.** Applicants that request authorization to conduct test excavations shall include discussion of standard field and laboratory procedures consistent with the standards in 4.10.16 NMAC and submit copies of field forms to be used during the test excavations.

**(4) Current**

**permits.** The applicant shall provide a list of permits for archaeological investigations currently held by the applicant including permit number and agency. A hard copy of the attachments must be provided with the first three -year permit application. Thereafter, attachments can be provided electronically to HPD. Any changes from what is on file must be clearly noted in the application.

**C. Agreements.** The following agreements shall be in place prior to issuance of a general archaeological investigation permit.

**(1) ARMS**

**agreement.** The applicant shall have an account in good standing with ARMS for access to NMCRIS on or before submittal of the permit application. HPD shall verify the status of the account with ARMS.

**(2) Curation**

**agreement.** The applicant shall provide a current curation agreement, if one is not already on file with MIAC. HPD shall verify the status of the account with MIAC.

**D. General permit term.**

**(1)** The term for a general permit is three calendar years, beginning on the date of approval by the CPRC to December 31 of the same year, continuing through the two next calendar years and concluding on December 31 of the third year.

**(2)** During the transition from annual to three-year general permits, applicants will be separated into groups to facilitate HPD's administration of the program. In the first year, all applicants will be assigned to one of three groups based on the permit number assigned during the initial application. The first group will comprise permit numbers 001-100. The second group will comprise permit numbers 101-200 and the third group will comprise the remaining permits beginning with number 201. Applicants in the first group will be eligible for three-year general permits starting 2020; applicants in the other two groups will be eligible for annual permits. First time applicants will be eligible for a three-year permit after the effective date of this rule. In 2021, the second group and first-time applicants will be eligible for three-year general permits; the third group will be eligible for annual permits. In 2022, the third group and all other applicants will be eligible for three-year general permits. Thereafter, all general permit applicants will be eligible for three-year general permits. For applicants issued an annual permit in 2020 or 2021, the CPRC waives the requirement to submit the attachments in Subsection B of this section during this transition period as long as HPD has an organizational summary on file.

**E.** An approved application may have special stipulations imposed by the CPRC, taking into consideration comments from committee members, the state archaeologist and the SHPO.

**F.** An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the

SHPO indicating their concurrence with the issuance of the permit. [4.10.8.9 NMAC - Rp, 4.10.8.12 NMAC, 01/16/2019]

**4.10.8.10 ARCHAEOLOGICAL INVESTIGATIONS UNDER A PROJECT-SPECIFIC PERMIT:**

The CPRC issues project-specific permits, with the concurrence of the state archaeologist and the SHPO, and the commissioner of public lands for archaeological investigations on state trust lands or the representative of the state agency with jurisdiction for other state lands. The applicant indicates on the project-specific application form the type or types of archaeological investigations proposed and submits a research design or monitoring plan approved by the state agency archaeologist or HPD, as applicable, and prepared in conformance with 4.10.15 NMAC, 4.10.16 NMAC, or 4.10.17 NMAC, as appropriate.

**A. Survey.** Project-specific permits are required for applicants who propose to:

- (1)** conduct sample, thematic or other research surveys;
- (2)** substitute alternate field methods for the standards in 4.10.15 NMAC; or
- (3)** perform surveys of state trust land undertaken independent of an activity authorized by rights-of-way, easements, leases or other authority to enter state trust land.

**B. Test excavation.** Project-specific permits are required when applicants:

- (1)** propose to substitute alternate test excavation methods for the standards in 4.10.16 NMAC including metal detection and collection of artifacts or ground penetrating radar and verification tests, or other technologies;
- (2)** propose research-driven test excavation on state trust land undertaken independent of an activity authorized by rights-of-way, easements, leases or other authority to enter state trust land;

(3) propose research-driven test excavation conducted over multiple years; or

(4) do not have a general permit that includes authorization for test excavation.

**C. Excavation.**

Project-specific permits and individual unmarked human burial permits are required for all excavation projects unless the site to be excavated is historic and burials are unlikely. Excavation involves disturbance of the ground within an archaeological site in excess of limited tests and test excavation or may be performed as part of a data recovery program designed to mitigate adverse effects of projects, as part of an academic program to train students in a field school, field studies for a thesis or dissertation, or other research involving the excavation of a site or area of historic and scientific interest.

**D. Monitoring.**

Project-specific permits are required for monitoring when applicants:

(1) do not have a general permit that includes authorization for monitoring; or

(2) propose to substitute alternate methods for the standards in 4.10.17 NMAC.

**E. Unmarked human burial excavation.** The CPRC issues individual permits to applicants who propose to excavate unmarked human burials on state or private land. An individual permit must be obtained concurrently with a project specific permit for excavation unless the site to be excavated is historic and burials are unlikely. Unmarked human burial permits are issued pursuant to rule 4.10.11 NMAC.

**F. Mechanical excavation of archaeological sites on private land.** The CPRC issues mechanical excavation permits to applicants who propose to conduct archaeological test excavation or excavation at a site on private land using mechanical earth-moving equipment. An individual unmarked human burial excavation permit must be obtained concurrently with a mechanical excavation permit

unless the site is historic and burials are unlikely. Individual unmarked human burial permits are issued under rule 4.10.11 NMAC. Mechanical excavation permits are issued under rule 4.10.14 NMAC.

[4.10.8.10 NMAC - Rp, 4.10.8.9 NMAC, 01/16/2019]

**4.10.8.11 PROJECT-SPECIFIC PERMIT APPLICATION:**

The applicant may obtain project-specific permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. Each archaeological investigation conducted for a different firm or for a different research project requires a separate project-specific permit.

**A.** The project-specific permit application shall include the following information:

(1) applicant name, mailing address, telephone number and email address;

(2) the type(s) of archaeological investigations requested (sample, thematic or other surveys, test excavation, excavation, monitoring, or any combination thereof);

(3) a staff roster indicating the following information:

(a) supervisory personnel who will be acting or expected to act in the capacity of principal investigator, project director, supervisory archaeologist, or biological archaeologist during permitted archaeological investigations and who are listed in the SHPO directory;

(b) other staff, such as crew members and laboratory personnel, cultural anthropologists, historians and other historic preservation specialists; and

(4) individuals who are not listed in the SHPO directory that the applicant proposes to employ in a supervisory capacity during the permitted archaeological investigations along with SHPO directory application forms, curriculum vitae, charts of experience and official transcripts or notarized diplomas; and

(5) the applicant's signature, title and date, which may be submitted with original signature, or signature transmitted by facsimile, or a scanned application with the original signature transmitted by electronic mail; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

**B.** The applicant shall complete the application consistent with this rule and include the attachments required for the project-specific permit as specified below and on the application.

**(1) Surveys.**

Prepare a research design that adheres to 4.10.15 NMAC. The research design may adopt the survey standards detailed in 4.10.15 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design. For thematic, reconnaissance, sample, or other types of research surveys, the research design shall specify the purpose and rationale supporting the survey strategy and approach.

**(2) Test**

**excavation.** Prepare a research design that adheres to 4.10.16 NMAC. The research design may adopt the excavation standards detailed in 4.10.16 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design. Excavation of unmarked human burials is prohibited during testing.

**(3)**

**Excavation.** Prepare a research design that adheres to 4.10.16 NMAC and apply for an individual unmarked human burial excavation permit for all excavation projects (4.10.11 NMAC) unless the site(s) to be excavated is historic and unmarked human burials are unlikely. The research design may adopt the excavation standards detailed in 4.10.16 NMAC or may propose alternate standards that shall be fully detailed, discussed and justified in the research design.



(4)  
**Monitoring.** Prepare a monitoring plan that adheres to 4.10.17 NMAC.

(5)  
**A summary of organizational experience.** If a current organizational summary is not already on file at HPD, the applicant shall provide a discussion that demonstrates the applicant's capability to accomplish the type and scope of archaeological investigations proposed to be completed under the permit and shall include but not be limited to: descriptions of organizational structure and staffing; the location(s) and descriptions of facilities and equipment; specifications of which and to what extent, facilities, equipment and staff listed in the application will be involved in the proposed work; demonstrated ability to complete similar projects as evidenced by the timely completion of reports or other documents; a list of projects, contract reports and publications resulting from similar past projects; and a list of permits currently held by the applicant including permit number and agency.

(6) **Forms.**  
Copies of field, laboratory and analysis forms or examples of data tables expected to be used during the permitted work.

**C. ARMS agreement.**  
The applicant shall have an account with ARMS for access to NMCRIS on or before submittal of the permit application. HPD shall verify the status of the account with ARMS.

**D. Curation agreement.** The applicant shall obtain a current curation agreement from MIAC if a current agreement is not on file. HPD shall verify the status of the account with MIAC. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility pursuant to 4.10.8.19 NMAC and provide a justification for using a facility other than MIAC as a repository.

**E. Project-specific permit term.**

(1) The term of a project-specific permit is usually for one year from the date of approval by the CPRC unless state trust lands are involved, in which case the term of the permit is from the date of approval by the commissioner of public lands. The applicant may request a longer term. The CPRC may approve a longer term based on the nature or complexity of the proposed work and sufficiency to complete the field studies, analyses and report as determined by the CPRC. The term shall not exceed three years including extensions.

(2) For project-specific permits with a term longer than one year, the permittee shall submit an annual progress report to the CPRC that summarizes the permitted work, even if no progress has been made, for each year for the term of the permit, excluding the year in which the final report is submitted. Failure by a permittee to submit an annual progress report may result in suspension of the permit and may be cause for the CPRC's denial of future permits in conformance with 4.10.8.23 NMAC.

**F.** An approved application may have special stipulations imposed by the CPRC, taking into consideration comments by committee members, the state archaeologist, the SHPO and the commissioner of public lands or the representative of the state agency with jurisdiction, as appropriate to the success of the project.

**G.** An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating concurrence with the issuance of the permit and signature of the commissioner of public lands if state trust lands are involved. If the application for a project-specific permit involves state agency lands other than state trust lands, the state agency may concur by signing the permit but the state agency's signature is not required.

[4.10.8.11 NMAC - Rp, 4.10.8.13 NMAC, 01/16/2019]

#### 4.10.8.12 PERMIT STIPULATIONS:

**A.** Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO and the commissioner of public lands or the state agency as appropriate. These additional stipulations shall be set out in writing on the permit, or as an attachment to the permit.

**B.** Stipulations for all permits issued by the CPRC are described below.

(1) Permittees shall determine the land status of the archaeological investigation to ensure the work will not be in trespass and that they are in compliance with local, state or federal laws. The permittee is responsible for obtaining an easement or other written permission from the commissioner of public lands for archaeological investigations on state trust land and complying with all rules and regulations of the state land office relating to such easement or other permission.

(2) Permits are not exclusive in character. The state land office or the state agency reserves the right to use the subject tracts of land, or any part thereof, for any purpose within the administrative and legal jurisdiction of the state agency or state land office. The CPRC, in cooperation with the state agency and state land office, reserves the right to permit other archaeological investigations within the permit or easement area.

(3) All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or the permittee's client or sponsor.

(4) The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

(5) All activities conducted under the permit shall be carried out so as to prevent

erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations that are disturbed in the course of the archaeological investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically approved in the permit.

**(6)**

If unmarked human burials are discovered during the archaeological investigations, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

**(7)** Title to any

mined or processed precious metals or treasure trove found on state trust land and in the area covered by the permit or easement is held by the commissioner of public lands and such materials shall not be disturbed or removed without specific written permission from the CPRC and the state land office. Such authorized removal shall be recorded and undertaken in the presence of the state archaeologist, the state historian or their designees.

**C.** Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit shall be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.23 NMAC. [4.10.8.12 NMAC - Rp, 4.10.8.14 NMAC, 01/16/2019]

**4.10.8.13 PROFESSIONAL QUALIFICATIONS STANDARDS:**

Investigations on state land shall be performed by historic preservation professionals who have the academic background and professional

experience to apply the theories, methods and practices of the discipline to enable independent, professional judgments to be made about the identification, evaluation, documentation, registration and treatment of cultural properties in New Mexico. Except as provided otherwise in this section, the CPRC adopts and applies the SOI standards when determining whether an applicant is able to perform competent, professional work in one or more of the historic preservation disciplines in New Mexico. The SOI standards define the academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in the discipline. In addition, the CPRC requires that the total professional experience include a minimum of 12 months of professional experience with cultural resources in New Mexico.

**A. Archaeology.**

Archaeology is the study of past human lifeways through the systematic observation, analysis and protection of the material remains of human activities. The CPRC combines professional experience with archaeological resources of the prehistoric and historic periods when determining whether an individual meets the minimum professional experience requirements for listing in the SHPO directory as principal investigator, project director or supervisory archaeologist.

**(1) Principal investigator and project director.**

Archaeologists serving as principal investigators or project directors shall meet the SOI standards for academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in prehistoric archaeology. The total professional experience shall include at least 12 months experience with archaeological resources in New Mexico at the supervisory level. The 12 months of experience shall demonstrate a relatively equal combination of archaeological fieldwork, laboratory analysis, report

writing, as well as administrative or management experience. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

**(2)**

**Supervisory archaeologist.**

Archaeologists serving as crew chiefs, field supervisors or field directors shall have a bachelor's degree in anthropology or archaeology or a degree in a closely related field as determined by the CPRC; at least one archaeological field school or 30 days of full-time excavation experience in lieu of the field school; and 12 months of professional experience with archaeological resources in New Mexico. The 12 months of experience shall demonstrate relatively equal combination of archaeological fieldwork, laboratory analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the archaeological resources of New Mexico.

**(3) Field crew.**

Archaeologists serving as field crew including assistant archaeologists and archaeological technicians shall work at all times under the direct, physical supervision of a principal investigator, project director or supervisory archaeologist.

**(4) Historic**

**archaeology.** Historic archaeology is a specialization in archaeology that requires expertise in historic period sites and techniques of archival research. Historic archaeologists shall meet the SOI standards for academic degrees or comparable training, professional experience and the products and activities that together demonstrate proficiency in historic archaeology. The total professional experience shall include at least 12 months working with

historic period archaeological sites and related resources in New Mexico. The experience in New Mexico shall include field and archival research, analysis and report writing. The CPRC may consider other experience to satisfy, in part, the 12-month New Mexico experience requirement on a case-by-case basis when the individual demonstrates that the experience is directly relevant to understanding the historic period resources in New Mexico.

**(5) Biological**

**archaeology.** Biological archaeology is a specialization in archaeology that requires expertise to record and interpret observations on human skeletal and dental remains to provide information on the biology and health of the people of New Mexico. Biological archaeologists shall meet the standards in 4.10.11 NMAC for academic degrees or comparable training and professional experience. Biological archaeologists shall have advanced training in human osteology or equivalent experience and a demonstrated ability to collect and record observations systematically on human skeletal and dental remains, including fragmentary remains, analyze the remains, and prepare reports.

**B. Architectural**

**history.** Architectural history is the study of the development of building practices through written records and design and the examination of structures, sites and objects in order to determine their relationship to preceding, contemporary and subsequent architecture and events. Architectural historians shall meet the SOI standards and shall include at least 12 months of experience in documenting the historic resources of New Mexico. Experience shall include research, writing, or teaching in New Mexico architectural history or restoration architecture.

**C. Historic**

**architecture.** Historic architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction management of the built environment with specialized

training in the principles, theories, concepts, methods and techniques of preserving historic buildings and structures. Professionals in historic architecture shall meet the SOI standards and shall include at least 12 months experience in New Mexico. Experience shall include detailed investigations of historic structures, preparation of historic structure research reports and preparation of plans and specifications for preservation projects.

**D. Historic landscape**

**architecture.** Historic landscape architecture is the practice of applying artistic and scientific principles to the research, planning, design and construction administration of cultural landscapes and built environment landscapes with specialized training in the concepts, principles, theories, methods and techniques of preserving cultural landscapes. Professionals in historic landscape architecture shall meet the SOI standards and shall include at least 12 months in research, documenting and analysis of the historic and cultural landscapes of New Mexico and the development of landscape plans and specifications for landscape preservation projects.

**E. History.** History is the study of the past through written records, oral history and material culture and the examination of that evidence within a chronological or topical sequence in order to interpret its relationship to preceding, contemporary and subsequent events. Historians shall meet the SOI standards and shall include at least 12 months in documenting the historic resources of New Mexico. Experience shall be demonstrated through research, writing, teaching, and interpretation of documents.

**F. Cultural**

**anthropology.** Cultural anthropology is the description and analysis of cultural systems, which include systems of behaviors (economic, religious and social), values, ideologies and social arrangements. Cultural anthropologists shall meet the SOI standards and shall include at least 12 months of experience relevant to the understanding of

ethnographic resources of New Mexico. Professional experience shall include experience in the use of ethnohistoric and ethnographic techniques including participant observation fieldwork among one or more contemporary ethnic groups and field surveys to identify and assess ethnographic resources that include historic and cultural places, and environmental features and places of value to Native American or other ethnic communities.

**G. Exceptions.**

**(1) The CPRC**

reserves the right to consider the education, training and professional experience of any individual in exceptional situations and on a case-by-case basis when the individual's academic degrees or comparable training, professional experience and their products and activities together demonstrate exceptional proficiency in the appropriate discipline or position.

**(2) The CPRC**

may approve the participation of individuals to conduct field studies on state land without the direct supervision of a principal investigator, project director or supervisory archaeologist in exceptional situations and on a case-by-case basis when the studies are performed under a project-specific permit. Graduate students completing field work for a dissertation or thesis or volunteers documenting rock art under the aegis of an archaeological society may qualify for this exception. Individuals qualifying for the exception are not listed in the SHPO directory.

[4.10.8.13 NMAC - Rp, 4.10.8.10 NMAC, 01/16/2019]

**4.10.8.14 SHPO**

**DIRECTORY:** The SHPO shall maintain a directory of historic preservation professionals including but not limited to individuals who act in the capacity of principal investigator, project director, supervisory archaeologist, historic archaeologist, biological archaeologist, architectural historian, historic architect, historic landscape architect, historian, or cultural

anthropologist, or who meet the SOI standards in another historic preservation discipline. The CPRC reviews the SHPO directory application form and materials specified in this section to determine whether an applicant meets the standards in 4.10.8.13 NMAC.

**A.** In order to be listed in the SHPO directory, individuals shall submit a SHPO directory application form, curriculum vitae, chart of experience for archaeological, cultural anthropology and historic architecture positions, transcripts or copy of diploma, and work samples as specified below to HPD. A chart is not required for all disciplines but shall be prepared to supplement an application when requested by the CPRC.

**(1) SHPO**

**Directory Application form.** The applicant shall complete a SHPO directory application form for each discipline for which an individual requests listing. The application form can be downloaded from HPD's website or obtained from HPD upon request and shall include but not be limited to the following information:

- (a)** applicant name, address and telephone number, email;
- (b)** employer name, employer address, employer phone number, employer email;
- (c)** highest degree obtained, field of study, institution, year of degree;
- (d)** license number and date of New Mexico architectural license for historic architects;
- (e)** for archaeology, the position for which the applicant is applying;
- (f)** number of years full-time professional experience
- (g)** number months of New Mexico experience; and
- (h)** short statement of qualifications (for guidance see SOI standards);
- (i)** signature.

The applicant shall certify that the information contained in the application form is true and complete through an original signature on the application submitted by mail, an application with original signature transmitted by fax or a scanned application with the original signature transmitted by email. Applications lacking a signature shall be considered incomplete.

**(2)**

**Curriculum vitae.** Curriculum vitae shall demonstrate the qualifications and professional experience following the guidance provided in the SOI standards. Curriculum vitae shall contain, at a minimum, the following information:

- (a)** name, address, telephone number, and email;
- (b)** education (date of degree, degree held, institution issuing the degree, and major and minor fields of study);
- (c)** professional experience by month and year with exact dates, if possible; list experience by employer and include position held and responsibilities, project name and location, types of resources documented and types of activities including but not limited to types of archaeological investigations (survey, testing, excavation, monitoring, excavation of burials), historic building survey, preparation of plans and reports, historic structure reports, and register nominations;
- (d)** publications and unpublished reports;
- (e)** papers presented;
- (f)** training; and
- (g)** references.

**(3) Chart**

**of experience for archaeology and cultural anthropology.** Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application. Experience shall be demonstrated in number of days, with one day equaling a minimum

of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for archaeology and cultural anthropology shall contain the following columns of information:

- (a)** project name;
- (b)** location by county and state;
- (c)** position held (principal investigator, supervisory archaeologist, crew member, analyst, etc.);
- (d)** specific type of experience (survey, field research, archival research, excavation of archaeological sites or burials, oral history, laboratory work, and report writing);
- (e)** total number of months experience listed by project; and
- (f)** total number of months at the bottom of the chart for each type of experience.

**(4) Chart of**

**experience for historic architecture.** Charts shall summarize experience and shall be on file at HPD. It shall be the responsibility of the individual to provide an updated chart with each new application. Experience shall be demonstrated in number of days, with one day equaling a minimum of 6 hours within a 24-hour work period or months; with one month equaling 20 days. Separate charts shall be prepared for experience in New Mexico, experience relevant to the cultural resources of New Mexico, and other experience. Charts can be downloaded from HPD's website or obtained upon request. Charts for historic architecture shall contain the following columns of information:

- (a)** project name and owner;
- (b)** location by county and state;



(c)  
employer and position held on the architectural and engineering (AE) team;

(d)  
specific type of experience (project or report description, design and construction);

(e)  
total number of months experience listed by project; and

(f)  
total number of months experience at the bottom of the chart for each activity and project.

(5)  
**Transcripts and diplomas.** An official university or college transcript or a notarized copy of the diploma for the highest degree in the appropriate discipline shall be submitted with the SHPO directory application. Transcripts shall be submitted only once and at the time of the initial application under this rule, unless an individual is updating their educational experience and degrees obtained. It shall be the responsibility of the individual to provide an official transcript or notarized copy of the diploma if a higher degree is obtained after the initial application. HPD shall retain all submittals in the SHPO directory files.

(6)  
**Work Samples for history and architectural history.** Provide the following work samples of your experience documenting cultural resources in New Mexico for history and architectural history.

(a) at  
least three HCPI forms;

(b)  
detailed architectural description; submit no more than 10 pages as a sample of work; and

(c)  
contextual history based on primary sources for an architectural or historic resource taken from a cultural resources report, state or national register nomination, professional paper or other related document where you were the principal author; submit no more than 10 pages as a sample of work.

(7) **Work Samples for Historic Architecture.**

(a)  
site plans, plans, and elevations prepared for a historic restoration or rehabilitation project; submit three sheets for review; and

(b)  
historic structure report or similar document assessing the historical significance of a structure and providing recommendations for treatment; submit no more than 10 pages of each document, to demonstrate a representative sample of work; include a table of contents if applicable.

**B.** Submit all documentation electronically to nm.shpo@state.nm.us. HPD shall review the SHPO directory application and documentation for sufficiency, accuracy and consistency with the minimum standards in this section and in 4.10.8.13 NMAC. A submission that does not contain the required documentation or lacks signatures will be considered incomplete. HPD shall inform the applicant of omissions or clarifications necessary to complete the application.

**C.** If the documentation is sufficient, accurate and consistent with the minimum standards, HPD shall forward the request to the CPRC at the next meeting for approval or denial. If approved, the individual's name will be listed in the SHPO directory for the discipline and position or positions approved for which the individual applied.

**D.** Listing in the SHPO directory demonstrates that the individual meets the standards for the discipline set forth in 4.10.8.13 NMAC. Listing does not authorize an archaeologist to work on state land unless the individual is listed on a staff roster of a current general or project-specific permit.

**E.** Once an individual has been approved for listing in the SHPO directory, they may be listed on the staff roster for a new general or project-specific permit or may be added to an existing permit

without additional CPRC review by requesting a permit modification. To be added to an existing permit, an authorized representative of the permittee such as the permit coordinator, principal investigator or signatory on the general permit or project-specific permit, shall request the addition from HPD. HPD will confirm that the individual is listed in the SHPO directory and add the individual's name to the staff roster. An updated permit will be sent to the permittee via email to show the personnel addition.  
[4.10.8.14 NMAC - Rp, 4.10.8.11 NMAC, 01/16/2019]

#### **4.10.8.15 CONTINUING EDUCATION CREDITS; UPDATED CURRICULUM VITAE:**

**A.** Individuals listed in the SHPO directory must continue to develop their professional knowledge and technical skills to maintain their listing in the SHPO directory. Individuals shall complete a minimum of 24 hours of professional development or training every three years for each discipline group: archaeology, cultural anthropology, and historic preservation (history, architectural history, historic architecture, historic landscape architecture and other historic preservation disciplines). The reporting period for continuing education credits starts in the calendar year the CPRC approves the SHPO directory listing and concludes on December 31 of the third year, continuing every three-year period thereafter.

**B.** Archaeologists with a principal employer and listed on the employer's general permit staff roster may elect to submit their continuing education credit documentation along with their employer's general permit application. If necessary, the individual's continuing education credit hours will be increased or decreased to fit the employer's three-year permit cycle administratively by HPD.

**C.** Individuals listed in more than one discipline group

may elect to submit their continuing education credit documentation separately by discipline in different three-year cycles or together in one three-year cycle. If necessary, the individual's continuing education credit hours for one or more disciplines will be increased or decreased as needed administratively by HPD.

**D.** Individuals may obtain professional training and development through courses and workshops offered by the CPRC, HPD, professional archaeological and historical societies or associations, museums and other entities including classes at universities and colleges or through presentations or attendance at national, regional or local conferences. The CPRC's continuing education credit guidelines are available on HPD's website at <http://nmhistoricpreservation.org> or its successor site.

**E.** Individuals listed in the SHPO directory shall submit a continuing education cover sheet, updated curriculum vitae, and documentation of professional development to HPD every three-year cycle consistent with the requirements of this section.

**(1)**

Evidence of training or professional development shall be summarized on the continuing education cover sheet for each discipline group. The cover sheet includes the individual's name, address, phone number, email, brief description of the activity, vendor, date, location, number of hours and a justification if the activity is not specifically listed in the CPRC's guidelines. Individuals shall document the professional development by including proof of registration, attendance or participation for each activity listed to the extent possible. The individual shall certify the information is true and complete by signing and dating the cover sheet.

**(2)**

The updated curriculum vitae shall present a listing of professional experience, professional training and development, publications,

unpublished reports and papers presented since the last submittal. A new, comprehensive curriculum vitae to replace the curriculum vitae on file with HPD may be submitted in lieu of an updated curriculum vitae.

**F.** Individuals shall continue to be listed in the SHPO directory as long as the individual documents the minimum 24 hours of professional development for every three-year cycle for each discipline group, provides the updated or new curriculum vitae every three years, and has not been removed from the SHPO directory. Individuals may request that their name be removed from the SHPO directory at any time.

**G.** Individuals who do not complete the minimum 24 hours of continuing education credits or provide an updated curriculum vitae for each listed discipline group every three years shall be removed from the SHPO directory at a CPRC meeting. The individual may reapply for listing on the SHPO directory by submitting a new SHPO directory application and materials consistent with 4.10.8.14 NMAC and providing documentation of 24 hours of continuing education credits. Prior approval for listing on the SHPO directory does not guarantee CPRC approval of a new application.

**H.** HPD shall review all continuing education credit documentation and updated or new curriculum vitae for conformance with the CPRC's guidelines. Any questions or concerns regarding an individual's continuing education credits or curriculum vitae shall be presented to the CPRC at the next regularly scheduled meeting.  
[4.10.8.15 NMAC - N, 01/16/2019]

**4.10.8.16 REVIEW AND APPROVAL OF PERMIT AND SHPO DIRECTORY APPLICATIONS:**

**A.** HPD shall receive permit and SHPO directory applications including attachments and maintain current files for each permittee and individual listed in the SHPO directory.

**B.** HPD shall review all information submitted in support of the permit or SHPO directory application for completeness, accuracy and conformance with all requirements. HPD shall attempt to contact the applicant to remedy any inaccuracies or inadequacies before further review or processing of the application. HPD shall submit all complete applications for consideration by the CPRC at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the application fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information or correction of inaccuracies. When applicable and for project-specific permit applications only, HPD shall advise the CPRC on whether agency consultation with SHPO under federal or state law is complete or nearly complete.

**C.** The CPRC shall review and consider all applications for approval, approval with special stipulations or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the application or, for project-specific permit applications, when consultation with SHPO under federal or state law is not substantially complete.

**D.** Any special stipulations attached to a permit by the CPRC, the state archaeologist or the SHPO shall be specified in writing on or in an attachment to the permit. The CPRC may include special stipulations at the written request of a state agency or commissioner of public lands if received prior to the CPRC's decision to approve the permit.

**E.** Signature of the chair of the CPRC indicates approval of the permit by the CPRC. Signatures of the state archaeologist and the SHPO indicate concurrence with the approval of the permit.

**F.** If the application for a project-specific permit involves state trust lands and the permit application has been signed by the CPRC, the state archaeologist and the SHPO, HPD shall forward the permit application to the commissioner of public lands for approval or denial. The applicant shall be required to obtain an easement or other written permission from the state land office as a condition of the commissioner of public lands approving the permit. The state land office shall forward to HPD the permit with any additional stipulations, once the application has been approved by the commissioner of public lands. Signature of the commissioner of public lands indicates approval of the permit. The permit is not valid without the signature of the commissioner of public lands. If either the permit or an application for an easement or other written permission to enter state trust lands has been denied by the commissioner of public lands, the state land office shall inform HPD of this fact in writing, and HPD shall notify the CPRC of the commissioner's decision.

**G.** The CPRC may deny a permit or SHPO directory application for any reason, including but not limited to, incomplete applications, insufficient experience, the lack of at least one principal investigator on the staff roster of the permit, or failure to demonstrate that a permit applicant is a qualified institution.

**H.** HPD shall notify the applicant in writing of the approval, approval with conditions or stipulations, or denial by the CPRC.

**I.** Any applicant who has been denied approval shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC. [4.10.8.16 NMAC - Rp, 4.10.8.15, 01/16/2019]

#### **4.10.8.17 MODIFICATION OF PERMITS:**

**A.** A permittee may request a modification to a permit at any time. The permittee shall submit a written request of the

proposed permit modification to HPD and concurrently to the state agency archaeologist, if the state agency has one and the modification affects permit activities on state land under their jurisdiction. The request shall be approved or denied by the CPRC or HPD as specified in this section, taking into consideration comments provided by the state trust archaeologist or state agency archaeologist.

**B.** The CPRC shall review requests for a permit modification that propose a significant or substantive change in the scope of work, a change in the curatorial facility to a facility other than MIAC, and all other modifications that are not subject to administrative action by HPD as specified below in Subsection C of 4.10.8.17 NMAC.

**C.** HPD shall review and may approve requests for a permit modification for the following situations.

**(1)** If the modification to the permit involves adding individuals who are listed in the SHPO directory in the same position or deleting individuals from the permit staff roster, HPD shall review and approve the request within five working days of receipt of the request.

**(2)** If the archaeological investigation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period specified on the permit, the permittee shall write HPD and request an extension of the term of the permit. This request shall be received by HPD at least 10 working days prior to the expiration date of the permit to be considered. The request for the extension shall be accompanied by an interim report summarizing the excavations completed at that date and a proposed date when the excavations will be completed and when the final report will be submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.

**(3)** When a permittee notifies HPD of a change in a permittee's business address or facilities, HPD shall acknowledge receipt of the change within five working days and update the permittee's records.

**(4)** HPD may approve minor adjustments to the investigation that do not result in a reduction of the scope of work. HPD shall notify the permittee of its decision within 10 working days of receipt.

**(5)** If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation shall be in accordance with 4.10.8.19 NMAC and the provisions of this section. The permittee shall obtain a receipt showing that the collections and records have been submitted to the repository and shall upload a copy of the receipt in NMCRIS. HPD shall document the cancellation in the permit files.

**D.** If fieldwork has not been initiated within the permit period or an extension has not been requested before the expiration of the permit, the permit shall become void at the end of the permit period. [4.10.8.17 NMAC - Rp, 4.10.8.16 NMAC, 01/16/2019]

**4.10.8.18 REVIEW OF REPORTS.** All permittees are required to submit a final written report. In all cases the reports shall be submitted to the state agency or agencies and HPD for review and comment as specified in this section. For archaeological investigations conducted on state trust lands, the commissioner of public lands may condition release of the permittee's bond upon the commissioner's approval of the final report.

**A.** Reports on the archaeological investigations shall be prepared and submitted consistent with the standards set forth as appropriate in 4.10.15 NMAC, 4.10.16 NMAC, and 4.10.17 NMAC. The state agency may establish additional reporting requirements and may request additional copies of the reports, forms, appendices and attachments. Reports shall be submitted simultaneously to HPD and the state agency when the agency does not have a staff archaeologist or a historic preservation professional.

**(1)**

**Preliminary reports.** If required by the state agency, the permittee may prepare a preliminary report and submit one copy to the state agency archaeologist or historic preservation professional within 60 days of completing the field studies. The state agency archaeologist or historic preservation professional shall forward a copy of the preliminary report to HPD. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit one copy of the preliminary report to the HPD for review and comment. The permittee shall make a good faith effort to address any comments from the state agency and HPD and shall revise and resubmit the report to the state agency or HPD, as appropriate.

**(2) Final**

**reports.** The permittee shall prepare and submit at least one copy of the draft and final report including site forms, appendices and attachments to the state agency archaeologist or historic preservation professional for review and acceptance with recommendations of eligibility and effect if applicable. If the state agency does not have an archaeologist or historic preservation professional on staff, the permittee shall submit the draft final report, appendices and attachments simultaneously to HPD and the state agency for review and acceptance with recommendations of eligibility and effect if applicable. The permittee shall make a good faith effort to address agency and HPD comments and shall revise and

resubmit the report to the state agency or HPD, as appropriate.

**(3)** If HPD

has not received a copy of the final report within 12 months of the permittee obtaining the NMCRIS investigation number, HPD may contact the permittee to determine the status of the report and project. HPD may request the permittee to submit one copy of the final report to HPD, or if the final report cannot be submitted within this time period, the permittee shall propose a new completion date for the final report. HPD, in consultation with the state agency, shall establish a new deadline for submittal. If agreement cannot be reached, the CPRC will consider the matter.

**B.** All reports, forms, appendices and attachments shall be reviewed by HPD for technical accuracy and completeness and concurrence with eligibility and effect if applicable. Upon concurrence or acceptance, HPD will direct the permittee to submit the collections, original records associated with the collections, and a copy of the approved final report to the repository within a specified time frame, if applicable. The repository will provide the permittee with a receipt showing that the collections have been submitted. The permittee shall then scan and upload a copy of the receipt and the final report in NMCRIS.

**(1)** If HPD

review identifies that the proposed investigations were not completed according to the standards contained in 4.10.15 NMAC, 4.10.16 NMAC, or 4.10.17 NMAC, as appropriate, or not completed consistent with the stipulations contained on the approved permit, HPD will notify the state agency and permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report to the state agency and HPD.

**(3)** Failure by

the permittee to conduct the permitted investigation according to standards or stipulations shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

**C.** Repeated failure by a permittee to submit required reports in a timely manner or in conformance with 4.10.15 NMAC, 4.10.16 NMAC, or 4.10.17 NMAC shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.  
[4.10.8.18 NMAC - Rp, 4.10.8.18 NMAC, 01/16/2019]

**4.10.8.19 CURATION OF COLLECTIONS AND RECORDS:**

All material remains collected during archaeological investigations conducted under a permit and written and photographic records resulting from an archaeological investigation, regardless of whether or not all of the work specified in the permit was completed, shall be curated consistent with this section.

**A. Collections.** Title

to all material remains recovered from state land is held by the state of New Mexico unless the material remains are recovered from state trust land. The commissioner of public lands holds title in trust to all material remains located on state trust lands for the designated beneficiaries of the land.

**(1)** The

museum of New Mexico is the custodian of material remains and associated records and documents recovered as a result of archaeological investigations on state land unless the CPRC designates another institution as the alternate, approved collection repository in consultation with the museum.

**(2)** The

MIAC serves as the repository for the museum of New Mexico. If the applicant proposes another repository, the applicant shall append a copy of the curation agreement with that facility to the application along with an explanation of the purpose of using a facility other than MIAC as a repository. This request shall be reviewed by the CPRC and if approved by the CPRC and the commissioner of public lands if state trust lands are involved, shall be specified in writing on the permit as a stipulation.



(3) The commissioner has designated the museum of New Mexico as the custodian of all material remains found on lands under the jurisdiction of the state land office unless the CPRC and the commissioner of public lands approves another institution as the collections repository.

(4) In order to qualify as a custodian of material remains and associated records and documents, the repository shall meet the U.S. secretary of interior standards in 36 CFR 79.

(5) If an alternate approved collection repository with material remains and associated records from state land ceases to exist, the material remains and associated records shall be delivered to the MIAC for curation.

(6) All material remains and records pertaining to the collections to be received by the MIAC or an alternate approved repository shall be submitted in accordance with the conditions stipulated by the permittee's current curation agreement with that facility. If the collections are not submitted in accordance with the curation agreement or an account is in arrears with the repository, the repository may notify the CPRC. This failure shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

**B. Written and photographic records.** ARMS manages NMCRIS and the records repository on behalf of HPD including all NMCRIS investigation records, LA archaeological site records, including site updates resulting from survey, excavation, test excavation or monitoring and associated reporting, HCPI forms, and photographic materials. These records shall be prepared consistent with the standards in the NMCRIS user's guide and submitted in accordance with 4.10.19.9 NMAC.

[4.10.8.19 NMAC - Rp 4.10.8.19 NMAC, 01/16/2019]

#### 4.10.8.20 UNANTICIPATED

**DISCOVERIES:** If cultural resources are discovered after the permitted field investigations have concluded or unanticipated effects on cultural properties occur during construction or other ground-disturbing activities, all construction or other ground-disturbing activities in the vicinity of the discovery shall immediately cease and a buffer of at least 50 feet shall be established around the discovery. The state agency shall notify HPD within 24 hours of the discovery.

**A.** The agency, in consultation with HPD, shall evaluate the property's significance and determine appropriate actions to avoid the cultural property or recover significant information.

(1) If the discovery is in an area covered under a current permit that authorizes excavation of similar types of cultural properties, the discovery may be treated in accordance with the standards and methods outlined in the research design for the permit and the results shall either be included in the report for the permitted activity as an addendum to the report or as a separate report.

(2) For all other discoveries the state agency may request that a permittee with a valid general permit that authorizes test excavation develop a plan to protect or minimize damage to the discoveries or to excavate the features or cultural deposits that will be affected by the construction. Plans proposing excavation shall be consistent with the excavation standards in 4.10.16 NMAC and appropriate to the scale and complexity of the discoveries. Alternatively, the state agency may request that a qualified institution submit a project-specific excavation permit application and research design to HPD pursuant to Section 4.10.8.11 NMAC.

**B.** The state agency will review the plan and when approved shall forward it to HPD. HPD shall review the plan within 48 hours of receipt, excluding weekends and holidays. If there are any

questions or concerns, HPD will work closely with the state agency and permittee to develop a plan acceptable to the state agency and HPD. HPD shall notify the state agency and the permittee in writing when it has accepted the plan.

**C.** If human burials are discovered, the permittee shall notify local law enforcement pursuant to 4.10.11 NMAC. If the unmarked human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC. [4.10.8.20 NMAC - Rp, 4.10.8.20 NMAC, 01/16/2019]

#### 4.10.8.21 PERMITTEE PERFORMANCE:

**A.** The CPRC, the state archaeologist, the SHPO and the state agency may assess the quality of archaeological or research work conducted or completed by a permittee at any time by conducting field visits or by reviewing reports, site forms and related materials for compliance with survey, test excavation, excavation and monitoring standards or for compliance with terms and conditions of the permit.

**B.** Unacceptable or substandard performance may be considered as either a minor or major deficiency and shall be documented in writing consistent with this section.

(1) **Minor deficiencies.** Minor deficiencies in the report or site documentation are errors that do not cause the basic findings of the report or site documentation to be questioned but indicate that the permittee was careless in assembling the report and site documentation. Minor deficiencies include, but are not limited to, minor or typographical mistakes in legal descriptions, inconsequential mistakes regarding land ownership status, improperly labeled maps, poor quality control in report preparation or preparation of NMCRIS forms, failure to submit required reports in a timely manner or in conformance with this rule, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16, NMAC, or 4.10.17 NMAC,

and mistakes in the pre-field check resulting in sites or registered cultural properties not being reported within 500 m of the APE.

**(2) Major deficiencies.** Major deficiencies in reporting or fieldwork include but are not limited to:

**(a)** failure to identify registered cultural properties and previously recorded archaeological sites, historic structures and buildings and other cultural properties in the APE or project area during the pre-field records check;

**(b)** a pattern of failure to identify or recognize site(s) and registered cultural properties during survey;

**(c)** a pattern of recording a site as an isolate or a collection of isolates;

**(d)** a pattern of incompletely recording a site or drawing inaccurate site boundaries;

**(e)** actual on-the-ground survey coverage varying from what is reported;

**(f)** use of unauthorized personnel to perform fieldwork or prepare NMCRIS documentation;

**(g)** providing false information;

**(h)** conducting fieldwork without obtaining the appropriate permit;

**(i)** a pattern of failures to submit required reports in a timely manner or in conformance with 4.10.8 NMAC;

**(j)** failure to make scheduled payments to ARMS for access to NMCRIS and survey registration fees; the registrar at ARMS shall notify HPD of accounts in arrears;

**(k)** failure to make payments to the curatorial facility for collections that were accepted by the repository, a pattern of submitting collections that are not accepted owing to insufficient preparation, or causing undue problems for the repository in processing the collections for curation;

**(l)** failure to notify the state agency of the archaeological investigation, or not obtaining an easement or other written permission to enter state land trust lands; and

**(m)** substantial or material mistakes in legal descriptions or regarding land ownership status.

**(n)** failure to register the project in NMCRIS or submit digital and paper records in conformance with 4.10.19.9 NMAC.

**C.** HPD shall document unacceptable permittee performance by maintaining files containing, but not limited to, the following kinds of documentation:

**(1)** written correspondence between HPD and the permittee documenting deficiencies in fieldwork based on field visits; deficiencies in reports, NMCRIS forms and related materials that do not adhere to the applicable standards in 4.10.8 NMAC, 4.10.14 NMAC, 4.10.15 NMAC, 4.10.16 NMAC, 4.10.17 NMAC, and 4.10.19 NMAC; or deficiencies in complying with permit terms and conditions;

**(2)** written correspondence between the permittee and the state or federal agency documenting deficiencies based on field visits and reviews of reports and associated records;

**(3)** written documentation of deficiencies in complying with permit terms and conditions;

**(4)** copies of reports, site records and other site documentation, such as maps and photographs, that contain significant errors; and

**(5)** written documentation by a federal agency revoking an archaeological permit.

**D.** HPD or the state agency may request revisions to the report and site documentation to address minor or major deficiencies and shall document such requests in writing. The permittee shall submit the revised report or site documentation to HPD or the state

agency. If the permittee does not provide the requested revisions, the failure shall be documented in the permittee file.

**(1)** If the permittee's reports and other documentation continue to contain inaccuracies, HPD and the state agency shall provide technical assistance to help the permittee correct the deficiencies by telephone call, letter, email, meetings, NMCRIS training or site visits. HPD shall attend such meetings or participate in conference calls and shall prepare a follow-up letter, addressed to the permittee and the state agency, documenting what was discussed and the actions the parties agreed are appropriate to correct the deficiencies.

**(2)** If the permittee continues to make the same errors after assistance provided by HPD and the state agency, the failure to improve shall be documented in the permittee's file and HPD may notify the CPRC and the permittee.

**(3)** The CPRC may place the permittee on probation in accordance with 4.10.8.22 NMAC.

**(4)** Upon successful completion of probation, the permittee shall be added to the list of permittees maintained by HPD.

**E.** The permittee may write to the CPRC or request a meeting with the CPRC to discuss concerns relating to HPD's documentation of the permittee's performance at any time.

[4.10.8.21 NMAC - Rp, 4.10.8.21 NMAC and 4.10.8.22 NMAC, 01/16/2019]

**4.10.8.22 PROBATION:** Permits may be issued for less than three years on a probationary basis when the CPRC determines that a permittee's performance requires evaluation based on documented performance problems.

**A.** The permittee shall take immediate steps to correct the deficiencies. The permittee may continue to work on state land but the permittee's name shall be removed from the list of permittees maintained by HPD while on probation.

**B.** The CPRC, state archaeologist and the SHPO shall evaluate the performance of the permittee closely during the time the permit is in effect and document performance accurately through site recording, mapping, photography and written reports of observations. Documentation of performance monitoring shall be entered into the permittee's permanent file and may be taken into account by the CPRC when considering whether to issue permits to that permittee in the future.

**C.** The state agency archaeologist may assist in evaluating the performance of the permittee and provide documentation to the CPRC for consideration.

**D.** Following expiration of the probationary period and based upon performance during that period, a new permit or a new probationary period may be issued. [4.10.8.22 NMAC - Rp, 4.10.23 NMAC, 01/16/2019]

**4.10.8.23 DENIAL OF A PERMIT BASED ON PERFORMANCE:** The CPRC may deny an application for a permit based on unacceptable performance.

**A.** The decision to deny a permit application may be based upon factors such as:

- (1) a pattern of unacceptable performance by the applicant;
- (2) failure of the applicant to improve performance while on probation;
- (3) failure of the applicant to obtain the necessary permits or approvals for archaeological investigations on state land;
- (4) documentation of the applicant's work on state land while on probation;
- (5) failure of the applicant to comply with applicable rules or additional stipulations set forth on the permit, or
- (6) falsification by the applicant of information pertaining to qualifications or performance.

**B.** The CPRC shall inform the applicant, in writing, that a permit application has been denied and shall specify the reason for the denial and shall invite the applicant to attend the next scheduled CPRC meeting to discuss the reasons for denial. If the CPRC denies a project-specific permit, the CPRC shall notify the state agency of its decision.

**C.** Any applicant who has been denied a permit by the CPRC shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC. [4.10.8.23 NMAC - Rp, 4.10.8.24 NMAC, 01/16/2019]

#### **4.10.8.24 PROCEDURES FOR APPEALING A DECISION:**

Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO or who has been denied for listing on the SHPO directory shall have the right to appeal the decision.

**A.** All requests for an appeal shall include a statement of the applicant's reason for requesting an appeal and contain any additional information that the applicant believes will support the appeal.

**B.** Upon receipt of a written request for a hearing, the chairman of the CPRC shall convene the CPRC as the hearing panel.

**C.** Within two weeks of receipt of a written request for a hearing, HPD shall inform the applicant in writing of the date, time and place of the hearing at which the appeal will be heard. The notice of public hearing shall be published pursuant to Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act.

(1) The chairman of the CPRC or his designee shall serve as the chair of the hearing panel. Hearings will be conducted in accordance with the committee's rules of procedure.

(2) The state archaeologist and the SHPO may provide testimony at the hearing. A written record shall be kept of the proceedings.

**D.** Decisions of the hearing panel shall be based on a simple majority vote of the members of the panel.

**E.** The chair of the hearing panel shall inform the applicant in writing of the decision of the hearing panel. Decisions of the hearing panel shall be final. [4.10.8.24 NMAC - Rp, 4.10.8.25 NMAC, 01/16/2019]

#### **4.10.8.25 DEVIATIONS:**

The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act. [4.10.8.25 NMAC - Rp, 4.10.8.26 NMAC, 01/16/2019]

#### **HISTORY OF 4.10.8 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives under: CPRC 82-R1, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 5-28-82. CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 3-26-87.

**History of Repealed Material:** 4 NMAC 10.8, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 10/01/05. 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, filed 10/01/05, repealed 01/16/2019.

#### **Other History:**

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 3-26-87) was renumbered and reformatted to 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct

Archaeological Investigations, effective 11/15/97.  
4 NMAC 10.8, Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97) was renumbered, reformatted and replaced by 4.10.8 NMAC, Permits to Conduct Archaeological Investigations on State Land, effective 10/01/05.

## CULTURAL AFFAIRS, DEPARTMENT OF

### TITLE 4        CULTURAL RESOURCES CHAPTER 10   CULTURAL PROPERTIES AND HISTORIC PRESERVATION PART 14        CULTURAL PROPERTIES ON PRIVATE LAND AND MECHANICAL EXCAVATION PERMITS

**4.10.14.1        ISSUING**  
**AGENCY:** Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.  
[4.10.14.1 NMAC - Rp, 4.10.14.1 NMAC, 01/16/2019]

**4.10.14.2        SCOPE:** This rule applies to all public and private entities proposing to excavate, with the aid of mechanical earth-moving equipment, an archaeological site on private land. This rule does not apply to state or federal lands or to lands held in trust for an Indian tribe by the federal government.  
[4.10.14.2 NMAC – Rp, 4.10.14.2 NMAC, 01/16/2019]

**4.10.14.3        STATUTORY**  
**AUTHORITY:** Section 18-6-10 NMSA 1978 and Section 18-6-11 NMSA 1978 of the Cultural Properties Act.  
[4.10.14.3 NMAC – Rp, 4.10.14.3 NMAC, 01/16/2019]

**4.10.14.4        DURATION:**  
Permanent.  
[4.10.14.4 NMAC – Rp, 4.10.14.4 NMAC, 01/16/2019]

**4.10.14.5        EFFECTIVE**  
**DATE:** January 16, 2019, unless a later date is cited at the end of a section.  
[4.10.14.5 NMAC – Rp, 4.10.14.4 NMAC, 01/16/2019]

**4.10.14.6        OBJECTIVE:**  
This rule describes procedures used to assist owners to preserve cultural properties situated on privately owned land and the procedures and standards to excavate an archaeological site on private land using mechanical earth-moving equipment.  
[4.10.14.6 NMAC – Rp, 4.10.14.4 NMAC, 01/16/2019]

**4.10.14.7        DEFINITIONS:**

**A.        “Agent”** means an individual who is authorized by a written agreement with a private landowner to act on behalf of the landowner and who works under the landowner’s personal and direct supervision.

**B.        “Archaeological investigation”** means the study of archaeological sites, isolates and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation and monitoring.

**C.        “Archaeological site” or “site”** means a location where there exists material evidence of the past life and culture of human beings in the state and is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure. An archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, habitation sites, ruins of buildings and structures, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials.

**D.        “Committee”** or “CPRC” means the cultural properties review committee, created pursuant to Section 18-6-4 NMSA 1978 of the Cultural Properties Act.

**E.        “Cultural property”** means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

**F.        “Excavation”** means to systematically dig up artifacts, deposits or material remains within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

**G.        “Historic preservation division” or “HPD”** means the division within the department of cultural affairs created pursuant to Subsection A of Section 18-6-8 NMSA 1978 of the Cultural Properties Act.

**H.        “Human burial” or “unmarked human burial”** means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

**I.        “Individual unmarked human burial excavation permit”** is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of unmarked human burials on state or private land. Individual unmarked human burial permits are submitted with an application for a project-specific permit for excavation and when unmarked human burials are known to exist within the project area.

**J.        “Material remains”** means any tangible evidence of past human life or activities. Such evidence includes without limitation:

**(1)** naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;



(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

**K. “Mechanical earth-moving equipment”** means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials from including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

**L. “Mechanical Excavation Permit”** is a permit issued by the CPRC with the concurrence of the state archaeologist and the SHPO for the excavation of archaeological sites on private land using mechanical earth-moving equipment by someone other than the landowner or his agent.

**M. “Permit”** means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined

geographic location and for a specified period of time.

**N. “Preservation”**

means sustaining the existing form, integrity, material or vegetative cover of a cultural property and includes protective maintenance or stabilization.

**O. “Protection”** means safeguarding the physical condition or environment of an archaeological site or historic structure or building from deterioration or damage caused by weather or other natural, animal or human intrusions.

**P. “Restoration”** means recovering the general historic appearance of a cultural property or the form and details of an object or structure by removing incompatible natural or human-caused accretions and replacing missing elements as appropriate.

**Q. “State archaeologist”** means the archaeologist designated pursuant to Section 18-6-15 NMSA 1978 of the Cultural Properties Act.

**R. “State historic preservation officer” or “SHPO”** means the individual appointed pursuant to Section 18-6-8 NMSA 1978 of the Cultural Properties Act who serves as the director of the HPD.

**S. “State register”** means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

**T. “Unmarked burial ground”** means a location where there exists a burial or burials of any human beings that are not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials. [4.10.14.7 NMAC – Rp, 4.10.14.7 NMAC, 01/16/2019]

**4.10.14.8 PRESERVATION OF CULTURAL PROPERTIES ON PRIVATE LAND:**

**A.** The CPRC and the SHPO offer technical assistance

to owners of cultural properties on private land with the purpose to:

(1) identify and register cultural properties worthy of preservation on the state register;

(2) provide advice to owners interested in the protection, rehabilitation, restoration or maintenance of cultural properties on private land, including but not limited to, state and federal income tax credit programs, the state historic preservation loan fund and conservation easement programs; and

(3) ensure that archaeological investigations on private land meet the highest professional standards; when requested by an owner, the CPRC or the SHPO will review a proposal to conduct archaeological investigations on private land and offer written comments.

**B.** If evidence of a human burial or unmarked burial ground is discovered on private land, local law enforcement shall be notified pursuant to 4.10.11 NMAC. The state archaeologist provides technical assistance to landowners on notification and protection. [4.10.14.8 NMAC – Rp, 4.10.14.8 NMAC, 01/16/2019]

**4.10.14.9 PROCEDURES FOR A MECHANICAL EXCAVATION PERMIT:**

The CPRC issues, with the concurrence of the state archaeologist and the SHPO, permits to use mechanical earth-moving equipment in the excavation of an archaeological site on private land when a public or private entity other than the landowner or the agent of the landowner proposes to conduct excavation. An individual unmarked human burial excavation permit shall be obtained concurrently with a mechanical excavation permit unless the site is historic and burials are unlikely. Individual unmarked human burial permits are issued under 4.10.11 NMAC.

**A.** For purposes of this rule, the CPRC or the SHPO may require an individual who purports to be a landowner’s agent to provide a copy of the written agreement with

the landowner indicating that the individual is authorized to act on the behalf of the landowner, and that the individual works or will work under the landowner's personal and direct supervision. The CPRC or the SHPO may request additional information from the landowner or the individual regarding the individual's authority and the landowner's right to control the individual's activities. The CPRC and the SHPO will use all this information to determine whether the relationship between the landowner and the individual who is using or will be using mechanical earth-moving equipment to excavate on private land, is one of principal and agent.

**B.** Any public or private entity may obtain mechanical excavation permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. The application shall contain the following information:

(1) applicant name, mailing address, telephone number and email address; and

(2) signature of the applicant, title of the applicant and date, which may be submitted with original signature, signature transmitted by facsimile, or a scanned application with the original signature transmitted by email; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit. Applications lacking a signature shall be considered incomplete.

**C.** The applicant shall complete the application and attachments and provide the following items consistent with the instructions provided by HPD:

(1) written authorization for the proposed excavation from the owner of the land on which the archaeological site is located;

(2) a research design consistent with the standards in 4.10.21 NMAC and the methods to be used during the mechanical excavation consistent with 4.10.14.12 NMAC.;

(3) a staff roster that lists the names of the principal investigator, project director, field supervisor and crew chief who are listed in the SHPO directory and will be working in the field during the permitted excavation;

(4) a written acknowledgment by the applicant that a final report on the results of the excavation shall be submitted to HPD; and

(5) an estimated date of completion for a final report on the results of the excavation.

**D.** An approved application shall list special stipulations imposed by the CPRC, if any, and shall list the term of the permit and the permit number; the term of the permit shall be one year from the date of approval by the CPRC unless the applicant proposes a later date that is approved by the CPRC.

**E.** An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit. [4.10.14.9 NMAC – Rp, 4.10.14.9 NMAC, 01/16/2019]

#### **4.10.14.10 REVIEW AND APPROVAL OF APPLICATIONS:**

**A.** HPD shall receive permit applications including attachments and maintain current files for each individual or firm who has a mechanical excavation permit.

**B.** HPD shall review all information submitted in support of the application for completeness, accuracy, and conformance with all qualifying requirements. When requested, the applicant shall remedy any inaccuracies or inadequacies specified by HPD before further review or processing of the permit application proceeds. HPD shall submit all completed applications for consideration at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if

the applicant fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information.

**C.** The CPRC shall review and consider all completed applications for approval, approval with special stipulations, or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the permit.

**D.** Any special stipulations attached to a permit by the CPRC, the state archaeologist, or the SHPO shall be specified in writing on the permit.

**E.** HPD shall notify the applicant in writing of the approval, approval with stipulations or denial of the permit by CPRC, with the concurrence of the state archaeologist and the SHPO.

**F.** Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO shall have the right to appeal the decision pursuant to 4.10.8.24 NMAC. [4.10.14.10 NMAC – Rp, 4.10.14.10 NMAC, 01/16/2019]

#### **4.10.14.11 MECHANICAL EXCAVATION PERMIT STIPULATIONS:**

**A.** Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO or the owner of the land on which the site is located. These additional stipulations shall be set out in writing on the permit.

**B.** Permittees shall determine the land status and ownership of the land on which the archaeological investigation will occur to insure the work will not be in trespass and that they are in compliance with local, state or federal laws.

**C.** All costs incurred in the execution of the activities

conducted under a permit shall be borne by the permittee or its client.

**D.** The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

**E.** All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations, disturbed in the course of the archaeological investigations conducted under the permit shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically arranged in the permit application.

**F.** If human burials are discovered during the excavation, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

**G.** All material remains collected or removed from the site as a result of the excavation conducted under the permit shall be the property of the owner of the land on which the site is located, with the exception of unmarked human burials and any funerary object, material object or artifact buried, entombed or sepulchered with the human burial or burials, which shall be the subject of consultation in accordance with 4.10.11 NMAC. The permittee may encourage the landowner to donate the material remains to a public institution that curates such material.

**H.** If the excavation is delayed as a result of unforeseen circumstances and cannot be

completed within the permit period, the permittee shall notify HPD in writing to request an extension to the term of the permit. This request shall be received by HPD within 10 working days prior to the expiration date of the permit in order to be considered. The request for the extension shall be accompanied by an interim report summarizing the status of the excavations, a proposed date for when the excavations will be completed and proposed date for when the final report will be submitted. HPD may approve one extension of the permit term not to exceed one year from the expiration date of the original permit. Additional requests for an extension will be reviewed by the CPRC.

**I.** If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation will be in accordance with the provisions of this section.

**J.** If fieldwork has not been initiated within the permit period or an extension has not been requested, the permit shall become void at the end of the permit period.

**K.** Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit may be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.23 NMAC. [4.10.14.11 NMAC – Rp, 4.10.14.11 NMAC, 01/16/2019]

#### **4.10.14.12 STANDARDS FOR THE USE OF MECHANICAL EQUIPMENT:**

All permitted excavations using mechanical equipment shall conform to the following standards.

**A.** Mechanical excavation may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden.

**B.** Controlled surface collection of artifacts shall be accomplished using a grid system or by point provenience prior to excavation of trenches or stripping or scraping areas with mechanical earth-moving equipment.

**C.** For each trench:

(1) document the location, depth, soil profile, artifact yield and other pertinent information;

(2) clean at least one complete profile with a shovel or trowel and inspect the profile for material remains;

(3) document the cleaned profile in narrative, profile drawing and photographs;

(4) examine the excavated area after the removal of each extracted bucket load;

(5) examine back dirt for the presence of artifacts; and

(6) conform depths and configurations of mechanical excavation trenches to OSHA standards for excavation safety (29 CFR 1926, Subpart P).

**D.** Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. Deposit descriptions include but are not limited to sediment color, texture, moisture, content, nature of inclusions, organic content and an inventory of cultural material. The color shall be described using Munsell terminology.

**E.** Mechanical stripping or scraping may be employed following hand excavations or mechanical trenching unless depth of cultural deposits has been determined from surface observations. The stripping serves the purpose of revealing features that were not previously identified and provides a check on the reliability of the excavation sampling design. Features exposed during the mechanical stripping shall be mapped in relation to the site datum. All features shall be fully excavated unless a sampling strategy is included in the approved research design and excavation plan. [4.10.14.12 NMAC – Rp, 4.10.14.12 NMAC, 01/16/2019]

**4.10.14.13 REPORTING STANDARDS:**

**A.** The permittee may submit to HPD one copy of a preliminary report on the results of the excavation including relevant maps, drawings, photographs and other documents for review and acceptance by HPD prior to construction and when a final report cannot be completed before construction.

**B.** A final report and associated records, including but not limited to archaeological site records, list of collections, and photographs, on the excavations shall be submitted to HPD within one year of the completion of the excavations or the date approved by the CPRC. If HPD has not received a copy of the report within the permit period, HPD shall contact the permittee. If the excavations are part of a larger project that includes sites on state land, the final report shall be prepared consistent with 4.10.16.14 NMAC for test excavation projects or 4.10.21.12 NMAC for excavation projects.

**C.** All reports shall be reviewed by HPD for technical accuracy and completeness.

**(1)** If HPD review reveals that the proposed investigations were not completed consistent with the application and stipulations contained on the approved permit, HPD will notify the permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report.

**(2)** Failure by the permittee to conduct the permitted investigation according to standards or stipulations or to submit required reports in a timely manner or to amend report deficiencies as identified by HPD shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

[4.10.14.13 NMAC – Rp, 4.10.14.13 NMAC, 01/16/2019]

**4.10.14.14 DEVIATIONS:**

The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances

deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.14.14 NMAC – Rp, 4.10.14.14 NMAC, 01/16/2019]

**HISTORY OF 4.10.14 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives under:

CPRC 82-R1, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 5-28-82.

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 3-26-87.

**History of Repealed Material:** Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 10/01/05. 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation Permits, filed 10/01/05, repealed 01/16/2019.

**Other History:**

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 3-26-87) was renumbered and reformatted to 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, effective 11/15/97.

That applicable portion of Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97) was renumbered, reformatted and replaced by 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation, effective 1/01/06.

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**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
FORESTRY DIVISION**

**This is an amendment to 19.21.2 NMAC, Section 9, effective 01/15/2019.**

**19.21.2.9 LIST OF NEW MEXICO STATE ENDANGERED PLANT SPECIES:** The following list of plants constitutes the New Mexico state endangered plant species list. Listed are the plant's scientific name, its common name, and the criterion for inclusion by the subsection in 19.21.2.8 NMAC:

<i>Aliciella formosa</i> (Aztec gilia)	Subsection B of 19.21.2.8 NMAC
<i>Allium gooddingii</i> (Goodding's onion)	Subsection B of 19.21.2.8 NMAC
<i>Amsonia tharpai</i> (Tharp's bluestar)	Subsection B of 19.21.2.8 NMAC
<i>Argemone pleiacantha</i> subsp. <i>pinnatisecta</i> (Sacramento prickle-poppy)	Subsection A of 19.21.2.8 NMAC
<i>Astragalus humillimus</i> (Mancos milkvetch)	Subsection A of 19.21.2.8 NMAC
<i>Peniocereus greggii</i> (night-blooming cereus)	Subsection B of 19.21.2.8 NMAC
<i>Cirsium vinaceum</i> (Sacramento Mountains thistle)	Subsection A of 19.21.2.8 NMAC
<i>Cirsium wrightii</i> (Wright's marsh thistle)	Subsection B of 19.21.2.8 NMAC
<i>Cleome multicaulis</i> (slender spiderflower)	Subsection B of 19.21.2.8 NMAC
<i>Coryphantha scheeri</i> var. <i>scheeri</i> (Scheer's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Cylindropuntia viridiflora</i> (Santa Fe cholla)	Subsection B of 19.21.2.8 NMAC
<i>Cypripedium parviflorum</i> var. <i>pubescens</i> (golden lady's slipper)	Subsection B of 19.21.2.8 NMAC
<i>Echinocereus fendleri</i> var. <i>kuenzleri</i> (Kuenzler's hedgehog cactus)	Subsection A of 19.21.2.8 NMAC
<i>Erigeron hessii</i> (Hess' fleabane)	Subsection B of 19.21.2.8 NMAC
<i>Erigeron rhizomatus</i> (Zuni fleabane)	Subsection A of 19.21.2.8 NMAC
<i>Eriogonum gypsophilum</i> (gypsum wild buckwheat)	Subsection A of 19.21.2.8 NMAC
<i>Escobaria duncanii</i> (Duncan's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Escobaria organensis</i> (Organ Mountain pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Escobaria sneedii</i> var. <i>leei</i> (Lee's pincushion cactus)	Subsection A of 19.21.2.8 NMAC
<i>Escobaria sneedii</i> var. <i>sneedii</i> (Sneed's pincushion cactus)	Subsection A of 19.21.2.8 NMAC
<i>Escobaria villardii</i> (Villard's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Hedeoma todsenii</i> (Todsens pennyroyal)	Subsection A of 19.21.2.8 NMAC
<i>Helianthus paradoxus</i> (Pecos sunflower)	Subsection A of 19.21.2.8 NMAC
<i>Hexalectris nitida</i> (shining coralroot)	Subsection B of 19.21.2.8 NMAC
<i>Hexalectris spicata</i> (crested coralroot)	Subsection B of 19.21.2.8 NMAC
<i>Ipomopsis sancti-spiritus</i> (Holy Ghost ipomopsis)	Subsection A of 19.21.2.8 NMAC
<i>Lepidospartum burgessii</i> (gypsum scalebroom)	Subsection B of 19.21.2.8 NMAC
<i>Lilium philadelphicum</i> (wood lily)	Subsection B of 19.21.2.8 NMAC
<i>Mammillaria wrightii</i> var. <i>wilcoxii</i> (Wilcox pincushion cactus)	Subsection B of 19.21.2.8 NMAC
<i>Opuntia arenaria</i> (sand prickly pear)	Subsection B of 19.21.2.8 NMAC
<i>Pediocactus knowltonii</i> (Knowlton's cactus)	Subsection A of 19.21.2.8 NMAC
<i>Pediomelum pentaphyllum</i> (Chihuahua scurfpea)	Subsection B of 19.21.2.8 NMAC
<i>Polygala rimulicola</i> var. <i>mescalerorum</i> (San Andres milkwort)	Subsection B of 19.21.2.8 NMAC
<i>Puccinellia parishii</i> (Parish's alkali grass)	Subsection B of 19.21.2.8 NMAC
[ <i>Sclerocactus cloveriae</i> subsp. <i>braeckii</i> (Braeck's cactus)]	Subsection B of 19.21.2.8 NMAC]
<i>Sclerocactus mesae-verdae</i> (Mesa Verde cactus)	Subsection A of 19.21.2.8 NMAC
<i>Spiranthes magnicamporum</i> (lady tresses orchid)	Subsection B of 19.21.2.8 NMAC

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.9 NMAC - Rn & A, 19 NMAC 21.2.9, 11/30/2006; A, 01/15/2019]

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
OIL CONSERVATION  
COMMISSION**

**This is an amendment to 19.15.2 NMAC, amending Section 7, effective 1/15/2019.**

**19.15.2.7 DEFINITIONS:**

These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

**A. Definitions**

**beginning with the letter "A".**

**(1) "Abate"**

means to investigate, contain, remove or mitigate water pollution.

**(2) "Abatement"**

means the investigation, containment, removal or other mitigation of water pollution.

**(3) "Abatement**

**plan"** means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.

**(4) "ACT"**

means automatic custody transfer.

**(5) "Adjoining**

**spacing units"** mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.

**(6) "Adjusted**

**allowable"** means the allowable production a well or proration unit receives after all adjustments are made.

**(7) "AFE"**

means authorization for expenditure.

**(8) "Affected**

**persons"** means the following persons owning interests in a spacing unit or other identified tract:

**(a)**

the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;

**(b)**

in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each

working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

**(c)**

as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

**(d)**

if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

**(e)**

if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

**(9) "Allocated**

**pool"** means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

**(10)**

**"Allowable production"** means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

**(11) "APD"**

means application for permit to drill.

**(12) "API"**

means the American petroleum institute.

**(13) "Approved**

**temporary abandonment"** means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

**(14) "Aquifer"**

means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

**(15) "ASTM"**

means ASTM International - an international standards developing

organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

**B. Definitions**

**beginning with the letter "B".**

**(1) "Back**

**allowable"** means the authorization for production of an underproduction resulting from pipeline proration.

**(2)**

**"Background"** means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

**(3) "Barrel"**

means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

**(4) "Barrel of**

**oil"** means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

**(5) "Below-**

**grade tank"** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

**(6) "Berm"**

means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

(7) **“Biopile”**

also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or “cells” and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

(8) **“BLM”**

means the United States department of the interior, bureau of land management.

(9) **“Bottom**

**hole pressure”** means the gauge pressure in psi under conditions existing at or near the producing horizon.

## (10)

**“Bradenhead gas well”** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

(11) **“BS&W”**

means basic sediments and water.

(12) **“BTEX”**

means benzene, toluene, ethylbenzene and xylene.

**C. Definitions**

**beginning with the letter “C”.**

(1) **“Carbon**

**dioxide gas”** means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

## (2)

**“Casinghead gas”** means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) **“Cm/sec”**

means centimeters per second.

(4) **“CPD”**

means central point delivery.

## (5)

**“Combination multiple completion”** means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings

cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

## (6)

**“Commission”** means the oil conservation commission.

## (7)

**“Commission clerk”** means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(8) **“Common**

**purchaser for gas”** means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

## (9)

**“Common purchaser for oil”** means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(10) **“Common**

**source of supply”.** See pool.

## (11)

**“Condensate”** means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

## (12)

**“Contiguous”** means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

## (13)

**“Conventional completion”** means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

## (14)

**“Conventional multiple completion”** means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production

from each common source of supply completely segregated by means of packers.

## (15)

**“Correlative rights”** means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner’s just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner’s just and equitable share of the reservoir energy.

(16) **“Cubic**

**feet of gas or cubic foot of gas”** means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

**D. Definitions**

**beginning with the letter “D”.**

(1) **“Deep**

**pool”** means a common source of supply that is situated 5000 feet or more below the surface.

(2) **“Depth**

**bracket allowable”** means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool’s top proration unit allowable.

(3) **“Director”**

means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) **“Division”**

means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) **“Division**

**clerk”** means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6)  
**“Downstream facility”** means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) **“DRO”**  
 means diesel range organics.

**E. Definitions beginning with the letter “E”.**

(1) **“EC”**  
 means electrical conductivity.

(2)  
**“Enhanced oil recovery project”** means the use or the expanded use of a process for the displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) **“EOR project”** means an enhanced oil recovery project.

(4) **“EPA”**  
 means the United States environmental protection agency.

(5)  
**“Exempted aquifer”** means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it  
 is hydrocarbon producing;

(b)  
 it is situated at a depth or location that makes the recovery of water for drinking water purposes economically or technologically impractical; or

(c)  
 it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6)  
**“Exempt waste”** means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) **“Existing spacing unit”** means a spacing unit containing a producing well.

**F. Definitions beginning with the letter “F”.**

(1) **“Facility”**  
 means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) **“Field”**  
 means the general area that at least one pool underlies or appears to underlie; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) **“Fresh water”** to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

**G. Definitions beginning with the letter “G”.**

(1) **“Gas”**,  
 also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.

(2) **“Gas lift”**  
 means a method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(3) **“Gas-oil ratio”** means the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(4) **“Gas-oil ratio adjustment”** means the

reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(5) **“Gas transportation facility”** means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.

(6) **“Gas well”** means a well producing gas from a gas pool, or a well with a gas-oil ratio exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(7)  
**“Geomembrane”** means an impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(8)  
**“Geotextile”** means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(9) **“GRO”**  
 means gasoline range organics.

(10) **“Ground water”** means interstitial water that occurs in saturated earth material and can enter a well in sufficient amounts to be used as a water supply.

(11) **“Ground water sensitive area”** means an area the division specifically designates after evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if contaminants were introduced into the environment.



## H. Definitions beginning with the letter "H".

(1) **"Hardship gas well"** means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

(2) **"Hazard to public health"** exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(3) **"Hazardous waste"** means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) **"HDPE"** means high-density polyethylene.

(5) **"High gas-oil ratio proration unit"** means a unit with at least one producing oil well with a gas-oil ratio exceeding the limiting gas-oil ratio for the pool in which the unit is located.

(6) **"H<sub>2</sub>S"** means hydrogen sulfide.

## I. Definitions beginning with the letter "I".

(1) **"Illegal gas"** means gas produced from a gas well exceeding the division-determined allowable.

(2) **"Illegal oil"** means oil produced exceeding the allowable the division fixes.

(3) **"Illegal product"** means a product of illegal gas or illegal oil.

(4) **"Inactive well"** means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) **"Injection well"** means a well used for the injection of air, gas, water or other fluids into an underground stratum.

## J. Definitions beginning with the letter "J".

[RESERVED]

K. Definitions  
beginning with the letter "K".  
**"Knowingly and willfully"**, for assessing civil penalties, means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of statutes, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

## L. Definitions beginning with the letter "L".

(1) **"Limiting gas-oil ratio"** means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

(2) **"Liner"** means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) **"LLDPE"** means linear low-density polyethylene.

(4) **"Load oil"** means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) **"Log"** means a systematic detailed and correct record of formations encountered in drilling a well.

## M. Definitions beginning with the letter "M".

(1) **"Marginal unit"** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) **"Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

(3) **"MCF"** means 1000 cubic feet.

(4) **"MCFD"** means 1000 cubic feet per day.

(5) **"MCFGPD"** means 1000 cubic feet of gas per day.

(6) **"Measured depth"** means the total length of the well bore.

~~[(6)]~~ (7) **"Mg/l"** means milligrams per liter.

~~[(7)]~~ (8) **"Mg/kg"** means milligrams per kilogram.

~~[(8)]~~ (9) **"Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

~~[(9)]~~ (10) **"Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

**(11)**

**“Minimum allowable”** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

**(12)**

**“Miscellaneous hydrocarbons”** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

**N. Definitions**

**beginning with the letter “N”.**

**(1) “Non- aqueous phase liquid”**

means an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

**(2) “Non- exempt waste”**

means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

**(3) “Non- hazardous waste”**

means non-exempt oil field waste that is not hazardous waste.

**(4) “Non- marginal unit”**

means a proration unit that can produce the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable.

**(5) “NORM”**

means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

**O. Definitions**

**beginning with the letter “O”.**

**(1) “Official gas-oil ratio test”**

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

**(2) “Oil”**

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

**(3) “Oil field waste”**

means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

**(4) “Oil well”**

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

**(5)**

**“Operator”** means a person who, duly authorized, manages a lease’s development or a producing property’s operation, or who manages a facility’s operation.

**(6)**

**“Overproduction”** means the amount of oil or gas produced during a proration period exceeding the amount authorized on the proration schedule.

**(7) “Owner”**

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

**P. Definitions**

**beginning with the letter “P”.**

**(1) “Penalized unit”**

means a proration unit to which, because of an excessive gas-oil ratio,

the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

**(2) “Person”**

means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

**(3) “Pit”**

means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

**(4) “Playa lake”**

means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

**(5) “Pool”**

means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. “Pool” is synonymous with “common source of supply” and with “common reservoir”.

**(6) “Potential”**

means a well’s properly determined capacity to produce oil or gas under division-prescribed conditions.

**(7) “Ppm”**

means parts per million by volume.

**(8) “PQL”**

means practical quantitation limit.

**(9) “Pressure maintenance”**

means the injection of gas or other fluid into a reservoir, either to maintain the reservoir’s existing pressure or to retard the reservoir pressure’s natural decline.

(10) **“Produced water”** means water that is an incidental byproduct from drilling for or the production of oil and gas.

(11) **“Producer”** means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

(12) **“Product”** means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) **“Proration day”** consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) **“Proration month”** means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) **“Proration period”** means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) **“Proration schedule”** means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

(17) **“Proration unit”** means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

(18) **“Prospective spacing unit”** means a hypothetical spacing unit that does not yet have a producing well.

(19) **“PVC”** means poly vinyl chloride.

(20) **“Psi”** means pounds per square inch.

**Q. Definitions beginning with the letter “Q”.**  
[RESERVED]

**R. Definitions beginning with the letter “R”.**  
(1) **“RCRA”** means the federal Resource Recovery and Conservation Act.

(2) **“Recomplete”** means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(3) **“Regulated NORM”** means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(4) **“Release”** means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.

(5) **“Remediation plan”** means a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report’s submittal.

(6) **“Responsible person”** means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

(7) **“Royalty interest owner”** means the owner of an interest in oil and gas that does not presently entitle the owner to explore, drill or otherwise develop those minerals, including lessors, royalty interest owners and overriding royalty

interest owners. Royalty interests are non-cost bearing.

(8) **“Run-on”** means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.

**S. Definitions beginning with the letter “S”.**

(1) **“SAR”** means the sodium adsorption ratio.

(2) **“Secondary recovery”** means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(3) **“Sediment oil”** means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.

(4) **“Shallow pool”** means a pool that has a depth range from zero to 5000 feet.

(5) **“Shut-in”** means the status of a production well or an injection well that is temporarily closed, whether by closing a valve or disconnection or other physical means.

(6) **“Shut-in pressure”** means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.

(7) **“Significant modification of an abatement plan”** means a change in the abatement technology used excluding design and operational parameters, or relocation of twenty-five percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.

(8) **“Soil”** means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.

(9) **“Spacing unit”** means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, Paragraph (10) of Subsection B of Section 70-2-12 NMSA 1978, the commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil conservation comm’n*, 87 NM 286 (1975). This is the area designated on form C-102.

(10) **“Subsurface water”** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) **“Surface waste management facility”** means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c) a temporary pit as defined in 19.15.17 NMAC;

(d) a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a

corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to a division emergency order;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

#### **T. Definitions beginning with the letter “T”.**

(1) **“Tank bottoms”** means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil’s handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) **“TDS”** means total dissolved solids.

(3) **“Temporary abandonment” or “temporarily abandoned status”** means the status of a well that is inactive.

(4) **“Top proration unit allowable for gas”** means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

(5) **“Top proration unit allowable for oil”** means the maximum number of barrels for oil daily for each calendar month the division allocates on a

proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(6) **“TPH”** means total petroleum hydrocarbons.

(7) **“Treating plant”** means a plant constructed for wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

(8) **“Tribal lands”** means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

(9) **“Tribal leases”** means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(10) **“Tribal minerals”** means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(11) **“True vertical depth”** means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

~~(11)~~ (12) **“Tubingless completion”** means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

~~(12)~~ (13) **“Tubingless multiple completion”** means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.



**U. Definitions  
beginning with the letter “U”.**

**(1)**

**“Underground source of drinking water”** means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

**(2)**

**“Underproduction”** means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

**(3) “Unit**

**of proration for gas”** consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

**(4) “Unit of**

**proration for oil”** consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

**(5)**

**“Unorthodox well location”** means a location that does not conform to the spacing requirements division rules establish.

**(6) “Unstable**

**area”** means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all a division-approved facility’s structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

**(7)**

**“Upstream facility”** means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

**V. Definitions  
beginning with the letter “V”.**

**“Vadose zone”** means unsaturated earth material below the land surface

and above ground water, or in between bodies of ground water.

**W. Definitions  
beginning with the letter “W”.**

**(1) “Waste”,**

in addition to its ordinary meaning, includes:

**(a)**

underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

**(b)**

surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

**(c)**

oil production in this state in excess of the reasonable market demand for the oil; the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

**(d)**

the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

**(e)**

the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words “reasonable market demand”, as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

**(2) “Water”**

means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

**(3) “Water**

**contaminant”** means a substance that could alter if released or spilled water’s physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

**(4)**

**“Watercourse”** means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

**(5) “Water**

**pollution”** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may

with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **“Well blowout”** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **“Well bore”** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **“Wellhead protection area”** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) **“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) **“Working interest owner”** means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) **“WQCC”** means the New Mexico water quality control commission.

[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019]

## ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

**This is an amendment to 19.15.8 NMAC, amending Sections 1, 3, 9 and 14 effective, 1/15/2019.**

### 19.15.8.1 ISSUING

**AGENCY:** [Energy, Minerals and Natural Resources Department, Oil Conservation Division] Oil Conservation Commission.

[19.15.8.1 NMAC - N, 12/1/2008; A, 1/15/2019]

### 19.15.8.3 STATUTORY

**AUTHORITY:** 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, [NMSA 1978,] Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14 NMSA 1978.

[19.15.8.3 NMAC - N, 12/1/2008; A, 1/15/2019]

### 19.15.8.9 ~~[FINANCIAL ASSURANCE FOR WELL PLUGGING]~~ CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

**A. Applicability.** [A person] An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well [on privately-owned or state-owned lands] within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with [division] commission rules, unless the well is covered by federally required financial assurance.

**B.** A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for

damages to livestock, range, crops or tangible improvements or any other purpose.

~~[C. The division accepts three forms of financial assurance: a one-well financial assurance that covers a single well, a blanket financial assurance that covers multiple wells, and a blanket plugging financial assurance for wells in temporarily abandoned status.~~

The operator shall cover a well that has been in temporary abandonment for more than two years by either a one-well financial assurance or a blanket plugging financial assurance for wells in temporarily abandoned status, except that the division may waive the requirement of a one-well financial assurance for a well that is shut-in because of the lack of a pipeline connection. The division may release the one-well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well. The division may release a blanket plugging financial assurance for wells in temporarily abandoned status upon the operator's or surety's written request after the wells are plugged and abandoned in accordance with 19.15.25 NMAC or are returned to production if a blanket financial assurance covers the wells or if the operator files a one-well financial assurance for each well of the operator's wells in temporarily abandoned status; upon the operator's or surety's written request, the amount of the operator's blanket financial assurance for wells held in temporarily abandoned status may be reduced in accordance with the number of wells the operator elects to cover by said financial assurance.

~~**D. Amounts:**~~

~~**(1)** A blanket financial assurance shall be in the amount of \$50,000 covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond.~~

~~**(2)** A one-well financial assurance shall be in the amounts stated below in accordance with the well's depth and location:~~

(a)

Chaves, Eddy, Lea, McKinley, Rio Arriba, Roosevelt, Sandoval and San Juan counties, New Mexico: \$5000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(b)

All other counties in the state: \$10,000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.

(3)

The appropriate division district office may approve revised plans for an actively drilling well for drilling as much as 500 feet deeper than the depth stated on the well's financial assurance. A well to be drilled more than 500 feet deeper than the depth stated on the well's financial assurance shall be covered by a new financial assurance in the amount prescribed for the new projected depth.

(4)

The amount of the one-well financial assurance required for an intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.

(5)

If an operator elects to cover wells held, or which may be held, in temporary abandonment by a blanket plugging financial assurance for wells in temporarily abandoned status, the operator shall do so in the amounts stated below in accordance with the number of wells covered by the blanket plugging financial assurance for wells in temporarily abandoned status:

(a)

A blanket financial assurance for the first five wells shall be in the amount of \$150,000.

(b)

A blanket financial assurance for the six to 10 wells shall be in the amount of \$300,000.

(c)

A blanket financial assurance for the 11 to 25 wells shall be in the amount of \$500,000.

(d)

A blanket financial assurance for more than 25 wells shall be in the amount

of \$1,000,000.]

**C. Active wells.**

An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and are not subject to Subsection D of 19.15.8.9 NMAC in one of the following categories:

(1) a one well

financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket

plugging financial assurance in the following amounts covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC:

(a)

\$50,000 for one to 10 wells;

(b)

\$75,000 for 11 to 50 wells;

(c)

\$125,000 for 51 to 100 wells; and

(d)

\$250,000 for more than 100 wells.

**D. Inactive wells.**

An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well

financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket

plugging financial assurance covering all wells of the operator subject to Subsection D of 19.15.8.9 NMAC:

(a)

\$150,000 for one to five wells;

(b)

\$300,000 for six to 10 wells;

(c)

\$500,000 for 11 to 25 wells; and

(d)

\$1,000,000 for more than 25 wells.

**E. Operators who**

have on file with the division a blanket financial assurance that does not cover additional wells shall file additional single well bond financial assurance for any wells not covered by the existing blanket bond or, in the alternative, may file a replacement blanket bond.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

**19.15.8.14 EFFECTIVE DATES.****A. 19.15.8 NMAC**

applies to wells drilled or acquired after December 15, 2005.

**B. As to all other**

wells, 19.15.8 NMAC is effective January 1, 2008.

**C. The 2018**

amendments to 19.15.8.9 NMAC apply to applications for permits to drill, deepen or plug back and applications for approved temporary abandonment filed on or after January 15, 2019, and for all other wells on April 15, 2019.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/15/2019]

## ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

This is an amendment to 19.15.25 NMAC, amending Sections 1, 12 and 13, effective 1/15/2019.

**19.15.25.1 ISSUING**

**AGENCY:** [Energy, Minerals and Natural Resources Department, Oil Conservation Division] Oil Conservation Commission.

[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, 1/15/2019]

**19.15.25.12 APPROVED TEMPORARY ABANDONMENT:**

The division may place a well in approved temporary abandonment



for a period of up to five years. Prior to the expiration of an approved temporary abandonment the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location or apply for a new approval to temporarily abandon the well.

An operator is limited to placing the following numbers of wells in approved temporary abandonment:

A. one well, if the operator operates between one and five wells; or

B. one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

#### **19.15.25.13 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:**

**A.** An operator seeking approval for approved temporary abandonment shall submit on form C-103 a notice of intent to seek approved temporary abandonment for the well describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

**B.** The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

- (1) damage to the producing zone;
- (2) migration of hydrocarbons or water;
- (3) the contamination of fresh water or other natural resources; and
- (4) the leakage of a substance at the surface.

**C.** The operator shall

demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.14 NMAC.

**D.** Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.14 NMAC requires.

**E.** The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

~~[E:]~~ **F.** The division shall specify the permit's expiration date, which shall be not more than five years from the date of approval. [19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

### **PUBLIC REGULATION COMMISSION**

The Public Regulation Commission approved, at its 12/19/2018 hearing, to repeal its rule 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention (filed 12/15/2014) and replace it with 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, adopted on 12/19/2018 and effective 1/15/2019.

### **PUBLIC REGULATION COMMISSION**

#### **TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 60 PIPELINE CONSTRUCTION AND MAINTENANCE PART 5 PIPELINE SAFETY EXCAVATION DAMAGE PREVENTION**

**18.60.5.1 ISSUING AGENCY:** New Mexico Public Regulation Commission. [18.60.5.1 NMAC - Rp, 18.60.5.1 NMAC, 1/15/19]

**18.60.5.2 SCOPE:** This rule applies to all one-call notification systems, excavators, and owners and operators of pipelines and other underground facilities in New Mexico with the exemption of those preempted by federal law. [18.60.5.2 NMAC - Rp, 18.60.5.2 NMAC, 1/15/19]

**18.60.5.3 STATUTORY AUTHORITY:** Sections 8-8-4, 62-14-7.1, 62-14-10, 70-3-4, and 70-3-13 NMSA 1978. [18.60.5.3 NMAC - Rp, 18.60.5.3 NMAC, 1/15/19]

**18.60.5.4 DURATION:** Permanent. [18.60.5.4 NMAC - Rp, 18.60.5.4 NMAC, 1/15/19]

**18.60.5.5 EFFECTIVE DATE:** January 15, 2019, unless a later date is cited at the end of a section. [18.60.5.5 NMAC - Rp, 18.60.5.5 NMAC, 1/15/19]

**18.60.5.6 OBJECTIVE:** The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing damage to underground utilities and for dealing with damage when it occurs during excavation activities. [18.60.5.6 NMAC - Rp, 18.60.5.6 NMAC, 1/15/19]

**18.60.5.7 DEFINITIONS:** In addition to the definitions in Section 62-14-2 NMSA 1978, 18.60.2.7 NMAC and 18.60.4.7 NMAC, as used in this rule:

**A. access information** means a telephone number, a facsimile number, an email address, and, if available, a web site address;

**B. bid locate** means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons bidding on a project;

**C. design locate** means the marking of underground facilities at the request of a project owner or project engineer for the



purpose of providing information to persons designing a project;

**D. emergency locate** means the marking of underground facilities at the request of a person for an underground facility owner as soon as practical, ideally within 2 hours for the purpose of an emergency excavation;

**E. excavation locate** means the marking of underground facilities for the purpose of providing information at the request of an excavator planning to commence excavation for the excavator's project;

**F. holiday** means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr.'s, Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;

**G. mechanical vacuum excavation** is deemed an appropriate non-mechanical method of excavating safely around underground facilities provided that the equipment has been specifically designed and built for this purpose and is operated in accordance with practices that provide appropriate levels of worker and public safety and prevent damage to buried facilities.

**H. non-member UFO** means a private underground facility owned by a homeowner and operated and located on a residential property or not subject to the jurisdiction of the commission;

**I. project owner or project engineer** means the owner of a project involving excavation or the person designated by the owner to be in charge of the project involving excavation;

**J. road maintenance** means routine grading and resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four inches of earth; road maintenance does not include street sweeping or

road milling and resurfacing as long as the subsurface is not disturbed;

**K. underground facility operator (UFO)** means a person who operates an underground facility; **L. working day** means a 24 hour period excluding weekends and holidays and; [18.60.5.7 NMAC - Rp, 18.60.5.7 NMAC, 1/15/19]

#### **18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS:** A one-call notification system shall:

**A.** provide toll-free access;

**B.** provide to the commission quarterly the name, contact person, and access information for each member of the one-call notification system;

**C.** notify the commission of the service area in which the one-call notification system operates;

**D.** have a written coordination agreement with other one-call notification systems operating in New Mexico;

**E.** keep a record of all locate requests, tickets, and clears for five years and make such records available to the commission upon request;

**F.** provide monthly reports to the commission, no later than the tenth of each month, with the following information:

**(1)** average wait time for answered calls for the previous month;

**(2)** number of calls received for the previous month;

**(3)** number of tickets generated for the previous month;

**(4)** number of requests by type (regular, priority, emergency) for the previous month.

**G.** report any changes in access information to the commission on or before the date the information will change;

**H.** establish a registry of non-member UFOs that voluntarily provide their contact and underground facility information for excavation purposes;

**I.** establish a positive response registry system; and

**J.** inform any person who calls with a complaint that he or she may file a complaint with the commission's pipeline safety bureau, and provide the commission's pipeline safety bureau access information, if the one-call system is unable to satisfactorily resolve the matter.

**K.** processing locate requests;

**(1)** A one-call notification system may hold a locate request in suspension until it is complete. The one-call notification system shall contact an excavator within three hours to request any missing information that prevents the one-call notification system or non-member UFO from processing the request.

**(2)** A one-call notification system shall process all complete locate requests within three hours of receipt. A one-call notification system shall deem locate requests received on a weekend or holiday, or after 4:00 p.m. on a working day, to have been received at 7:00 a.m. on the next working day and shall deem locate requests received before 7:00 a.m. on a working day to have been received at 7:00 a.m. on that working day.

**(3)** Upon receipt of a complete conference or locate request, a one-call notification system shall issue a ticket with a unique number to the requesting person as confirmation, and shall send a ticket to all members of the system that have underground facilities in the excavation area, or notify the members by telephone. A ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked "wide area conference," "bid conference," or "design conference," as appropriate.

**(4)** Any person may contact the one-call notification system and request confirmation of damage reports, conferences, and locate requests.

[18.60.5.8 NMAC - Rp, 18.60.5.8 NMAC, 1/15/19]

**18.60.5.9 RESPONSIBILITIES OF UFOs:**

**A.** A UFO shall report any changes to the information required by Subsection B of 18.60.5.8 NMAC to the one-call notification system(s) at least seven days prior to the effective date.

**B.** A UFO shall retain records of locate requests, excavation notices and underground facility damage information for a period of five years and make such records available to the commission upon request.

**C.** A UFO that utilizes contractors to perform locate and excavation activities or damage investigations on its behalf shall be responsible for compliance with Chapter 62, Article 14 NMSA 1978 and these rules.  
[18.60.5.9 NMAC - Rp, 18.60.5.9 NMAC, 1/15/19]

**18.60.5.10 LOCATE**

**REQUESTS:** An excavator shall make an excavation locate request for all projects involving excavation, including road maintenance, with the exception of subsurface potholing or vacuum excavation activities conducted solely for the purpose of physically exposing or locating underground facilities. However, this exception does not preclude compliance with 18.60.5.18 NMAC. Although not required under the Excavation Damage to Pipelines and Underground Utility Lines Law, Sections 62-14-1, *et seq.* NMSA 1978, or this rule, locate requests are encouraged for excavation projects involving purely non-mechanical means.

**A. Submittal.**

**(1)** An excavator shall submit an excavation locate request to each one-call notification system:

**(a)** by telephone or in person during normal business hours Monday to Friday, excluding holidays; or

**(b)** by facsimile or electronically via online web portal with appropriate one-call notification center twenty-four hours a day, seven days a week.

**(2)** An excavator shall also submit an excavation locate request to each non-member UFO.

**B. Size of locate requests.**

**(1)** An excavator shall determine the maximum area that the excavator can reasonably expect to excavate within a 15 working day period and shall request an excavation locate for that area only. The excavator shall pre-mark the actual intended excavation route or site(s) for any incorporated city, town, or village including extra-territorial zone(s) in accordance with American public works association (APWA) marking guidelines to communicate to facility owners where the actual excavation will take place for standard 15 working day ticket requests only. Outside these incorporated areas, excavators shall provide clear and accurate driving and marking instructions, and either GPS coordinates or pre-marks, as described above, which define the parameters of the proposed excavation. The pre-marked excavation shall encompass locations(s) where excavation equipment that may penetrate the surface will be setup, such as directional boring equipment. If the location markings have been removed, or are no longer visible, and there are no marking offsets, the person engaging in the excavation activity shall suspend excavation activities and reinitiate a locate request set forth in this section. Such relocate request shall be limited to the area yet to be excavated only.

**(2)** An excavator may request relocates for the same area only if justified by the circumstances and nature of the work; such justification shall be made part of the relocate request.

**C. Minimum information required.** When requesting an excavation locate or a locate conference, an excavator shall comply with the requirements of the one-call notification system or non-member UFO operating in the intended excavation area and shall provide accurate and truthful

information. A locate request shall be deemed incomplete if it does not contain, at a minimum:

**(1)** the name and contact information of the excavator personnel directly involved with or conducting the excavation at the actual excavation site;

**(2)** if available, an alternate name and contact information of the excavator;

**(3)** a description and the purpose of the type of work to be done;

**(4)** the name of the person for whom the work is being done;

**(5)** whether or not the excavation site is pre-marked in white;

**(6)** an accurate physical description of the location and size of the excavation site; reference to a plat of a subdivision shall not by itself be sufficient description;

**(7)** driving instructions to a rural excavation site;

**(8)** spotting instructions;

**(9)** any appropriate remarks regarding access to or hazards at the site;

**(10)** if available, GPS coordinates which define the parameters or start and end points of the actual excavation.

[18.60.5.10 NMAC - Rp, 18.60.5.10 NMAC, 1/15/19]

**18.60.5.11 WIDE AREA LOCATE REQUESTS:**

An excavator who expects a project to take more than 15 working days to complete shall either request separate locates which meet the requirements of Subsection B of 18.60.5.10 NMAC or follow the conference procedure set forth in this section.

**A.** If an excavator expects that an excavation will take more than 15 working days to complete, the excavator shall contact the one-call notification system to request a wide area conference a minimum of two working days prior to the wide area conference and provide the proposed date, time, and

location for the conference. The one-call notification system shall process the request as provided in Subsection K of 18.60.5.8 NMAC.

**B.** A UFO shall contact an excavator who requests a wide area conference within two working days of the issuance of the conference ticket and confirm proposed conference schedule. A UFO shall be physically represented at a scheduled wide area conference. If a UFO cannot attend the scheduled wide area conference, it shall make arrangements to meet with the excavator who requested the wide area conference not to exceed five working days of the scheduled wide area conference.

**C.** At the conference, the excavator shall develop a written work plan that includes the minimum information required under Subsection C of 18.60.5.10 NMAC in consensus with each UFO, which shall be signed by all parties. Updates or revisions to the work plan shall also be in writing and signed by all parties.

**D.** After the work plan has been signed by all parties, an excavator shall request a wide area excavation locate. The one-call notification system shall process the request as provided in Subsection K of 18.60.5.8 NMAC. The excavation ticket shall reference the wide area conference ticket number and cite the work plan as the description of the work to be performed.

**E.** An excavator working pursuant to a wide area excavation locate ticket shall request reaffirmation of the wide area locate ticket every 15 working days. For the purpose of reaffirmation, a working day begins on the date and time stamped on the ticket and ends 15 working days from such date and time. The excavator and UFO(s) shall continue to comply with the approved work plan established per Subsection C of 18.60.5.11 NMAC.

[18.60.5.11 NMAC - Rp, 18.60.5.11 NMAC, 1/15/19]

#### **18.60.5.12 DESIGN AND BID**

**LOCATE REQUESTS:** A project owner or project engineer shall request information regarding the location of underground facilities for design projects or bids in accordance with either Subsection A or B of this section, but may not switch methods once having made an election.

##### **A. Physical locates.**

**(1)** A project owner or project engineer may request a design or bid locate from one-call notification systems and non-member UFOs.

**(2)** The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

**(3)** UFOs shall physically mark the location of underground facilities on the site within two working days from the date of the ticket.

**(4)** Designers or bidders, as appropriate, shall capture data from the site within 10 working days from the end of the two day marking period.

**(5)** A project owner or project engineer shall not request relocates or time extensions.

##### **B. Conferences.**

**(1)** A project owner or project engineer may request a design or bid conference a minimum of two working days prior to conference from the one-call notification system and non-member UFOs for the intended excavation area and provide the proposed date, time, and location for the conference.

**(2)** A UFO shall contact the project owner or project engineer within two working days of the issuance of the conference ticket and confirm the proposed conference schedule, and if necessary, make arrangements to reschedule the conference not to exceed five working days from the proposed conference schedule on the conference ticket. A UFO shall be physically represented at the scheduled design or bid conference.

**(3)** The one-call notification system for the intended excavation area shall process the request as provided in Subsection K of 18.60.5.8 NMAC.

**(4)** UFOs shall arrange to provide information to designers or bidders within a reasonable time following the conference.

**(5)** A project owner or project engineer and UFOs shall continue with utility coordination until the design is complete or bid for the project has been awarded and an excavator requests an excavation locate. [18.60.5.12 NMAC - Rp, 18.60.5.12 NMAC, 1/15/19]

#### **18.60.5.13 MARKING EXCAVATION SITES:**

**A. Excavators.** As provided under Subsection B of 18.60.5.10 NMAC, excavators shall mark all proposed excavation sites in accordance with American public works association (APWA) standards to improve communication between the excavator and UFO. In assessing administrative penalties for violation of the Excavation Damage to Pipelines and Underground Utility Lines Law, Section 62-14-1 *et seq.* NMSA 1978 and this rule, the commission may consider whether and how well an excavator marked a proposed excavation site. Pre-marking a site in white indicates the actual excavation site (not limits of construction) and, therefore, will supersede marking instructions provided on locate requests and be used to determine alleged violations during staff investigations. When an excavator fails to pre-mark the actual excavation site, UFOs shall mark per the spotting instructions provided on the locate request and register a positive response indicating the site was not pre-marked.

##### **B. UFOs.**

**(1)** A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

**(2)** A UFO shall locate and mark its underground

facilities within two working days from the effective date of the ticket in accordance with Subsection A of 62-14-5 NMSA 1978.

(3) If a UFO determines it does not have underground facilities within the proposed limits of the excavation site, a UFO shall provide positive response to the one-call notification's positive response registry system and may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color.

(4) The locate markings shall be valid for 15 working days from the end of the two day marking period. For the purpose of excavation, a working day begins on the work to begin date and time stamped on the ticket and ends 15 working days from such date and time.

(5) A UFO shall provide appropriate positive response to the one-call notification's positive response registry system for all advance notifications, including wide area, design, bid, standard, and road maintenance locate requests or conferences.

(6) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator in accordance with Subsection C of 62-14-5 NMSA 1978.  
[18.60.5.13 NMAC - Rp, 18.60.5.13 NMAC, 1/15/19]

#### **18.60.5.14 IDENTIFYING UNDERGROUND FACILITIES FOR ROAD MAINTENANCE:**

In response to an excavation locate request for road maintenance, a UFO shall physically mark or locate by marker its underground facilities that are parallel or cross the road, as provided in Subsection A.

**A.** Underground facilities that parallel or cross the road.

(1) **Physical locate.** A UFO may physically mark the location of all underground facilities that are parallel or cross the road to be maintained if the UFO

deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure for positive response set forth in 18.60.5.13 NMAC.

(2) **Locate by permanent marker.** Alternatively, a UFO may use a system of permanent markers to indicate the location of underground facilities that parallel or cross the road to be maintained. Such markers shall:

(a) only be used for the purposes of road maintenance;

(b) be durable enough to withstand normal weathering;

(c) be the same APWA color as is designated for marking the UFO's type of underground facility; and

(d) have a decal on the marker specifying the depth of the underground facility at the marker.

**B.** A UFO shall be deemed to have failed to correctly locate or mark its underground facility that is parallel or crosses a road to be maintained unless it:

(1) maintains a minimum 18 inches of coverage over the underground facility;

(2) ensures that the permanent markers are in place;

(3) verifies the depth of its underground facilities at the permanent marker locations at least annually; and

(4) ensures that the decal is visible and the information on it is readable.  
[18.60.5.14 NMAC - Rp, 18.60.5.14 NMAC, 1/15/19]

#### **18.60.5.15 EXCAVATION PROCEDURES:**

**A. Pre-excavation.**

Before excavating, an excavator shall determine whether all underground facilities have been marked.

(1) If all underground facilities have been marked or cleared through a positive response system and the two working day marking period has expired, the excavator may begin excavating.

(2) If one or more underground facilities have not been marked and positive response has not been provided, an excavator shall, prior to commencing excavation, call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared via a warning locate request. UFOs shall promptly respond to warning locate requests ideally within two hours.

#### **B. Excavation.**

(1) If, while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence:

(a) make a reasonable effort to identify and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; the UFO shall mark or clear the area within two hours of contact or as expeditiously as possible if the excavation site is in a rural area;

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity encroaches within 18 inches either side of a marking made by a UFO, an excavator shall, prior to excavating, expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(3) If the exact subsurface location of the underground facility or utility cannot be determined by non-mechanical means or mechanical vacuum excavation methods as required in Subparagraph (a) of Paragraph (1) and Paragraph (2) of this Subsection above, the excavator shall contact the UFO directly and UFO shall



work with the excavator to locate and expose the actual subsurface location of the underground facility or utility. If the UFO must resort to performing excavation to locate the facility, the UFO shall perform such excavation within five working days of notice from the excavator. If requested, the local one-call notification center shall provide the excavator with the contact telephone number of the UFO.

(4) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities.

(5) The requirement to provide positive response for a facility does not apply to the homeowner of a residential property.

(6) The commission encourages excavators to notify the UFO when excavation activity will be within twenty-five feet of the actual utility marking provided or as agreed upon by a right of way encroachment agreement or permit for infrastructure identified by the UFO as critical (i.e., transmission and trunk line pipelines, fiber optic, power, 911, etc.).

#### **C. Temporary suspension of excavation activity.**

If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.

[18.60.5.15 NMAC - Rp, 18.60.5.15 NMAC, 1/15/19]

**18.60.5.16 EMERGENCY EXCAVATION AND DAMAGE REPORTING PROCEDURE:** This section applies whenever failure of or damage to underground facilities or public infrastructure requires emergency excavation as defined in

Subsection E of 62-14-2 NMSA 1978 and excavation shall be promptly commenced, ideally within 24 hours.

#### **A. Excavators.**

An excavator who damages an underground facility while excavating shall exercise prudence and shall:

(1) stop excavating immediately;  
(2) call 911 if appropriate and the operator of the damaged underground facility and 811 to report the damaged facility;  
(3) secure the site and direct people and traffic a safe distance away from the site of the damage;

(4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;

(5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

#### **B. Operators of failed or damaged underground facilities.**

The operator of a failed or damaged underground facility shall exercise prudence and shall:

(1) immediately respond to a report of damage or failure to its underground facilities and travel to the site;

(2) prior to traveling to the site or upon arrival, call the one-call notification system for the excavation area to request an emergency locate;

(3) make the site safe and get the emergency situation under control;

(4) locate its own underground facilities as soon as practical, ideally within two hours;

(5) begin remedial action to restore service as soon as practical, ideally within 24 hours; and

(6) obtain a standard excavation locate ticket for

repair work beyond resolution of the emergency situation.

#### **C. Operators of failed or damaged public infrastructure.**

The entity responsible for the failed or damaged public infrastructure shall:

(1) call the one-call notification system for the excavation area to request an emergency locate;

(2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

**D. One-call notification system.** A one-call notification system shall upon request:

(1) issue an emergency excavation notice which shall be valid until the emergency is resolved, or for 48 hours, whichever is longer;

(2) issue a notice of a reported damage to each affected UFO.

[18.60.5.16 NMAC - Rp, 18.60.5.16 NMAC, 1/15/19]

**18.60.5.17 ABUSE OF THE LAW:** A person shall be deemed to have willfully failed to comply with this rule or Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8 NMSA 1978 if the person:

**A.** requests a locate for an area that cannot reasonably be excavated in 15 working days;

**B.** provides misinformation or withholds information regarding the size of an excavation area;

**C.** requests locates that unduly burden a one-call notification system or UFO;

**D.** requests a locate for fraudulent reasons;

**E.** fails to process locate requests within the requisite timeframe;

**F.** fails to mark, or provide positive response for its underground facilities within the requisite timeframe;

**G.** fails to determine if all underground facilities have been marked or cleared;

**H.** commences excavation prior to the expiration of the two day notice period;

**I.** obliterates markings at an excavation site without providing temporary offset marks or stakes;

**J.** alters any record relating to excavation activity;

**K.** fails to pre-mark the actual intended excavation route or site(s) as required;

**L.** fails to report or file a report of damage within requisite time frame; or

**M.** commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - Rp, 18.60.5.17 NMAC, 1/15/19]

#### **18.60.5.18 REPORTS OF THIRD PARTY DAMAGE:**

**A.** A UFO shall report to the director or pipeline safety bureau any incident in which the owner or operator's underground facility is damaged by excavation activities. Such report, where practicable, shall be submitted using the commission's website at: <http://nmprc.state.nm.us/transportation/pipeline-safety.html>. For purposes of this subsection, incident is to be taken in its general sense and is not to be restricted to the definition given in 49 CFR 191.3.

**B.** The report shall be filled out in its entirety and should include any and all information, such as pre-dig and post-damage photos, the UFO used to determine probable cause and support or justifies its position.

**C.** The report shall be submitted within 30 calendar days of occurrence. Any additional information provided after the 30 day deadline may be considered on a case by case basis.

**D.** The UFO shall make available to the director or staff, within a reasonable time, such other information or documentation as the director or staff may require regarding any damage reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.5.18 NMAC, 1/15/19]

#### **18.60.5.19 ALTERNATIVE DISPUTE RESOLUTION:**

**A.** The commission encourages owners and operators of underground facilities and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities.

**B.** In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities or any excavator may request mediation or arbitration from the commission.

**C.** Staff may participate in mediation or arbitration proceedings.

**D.** In mediation and arbitration proceedings, persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC.

[18.60.5.19 NMAC - Rp, 18.60.5.19 NMAC, 1/15/19]

#### **18.60.5.20 MEDIATION OF EXCAVATION DAMAGE DISPUTES:**

**A. Designation of mediator.** If any of the parties request mediation, the commission shall designate a mediator. The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual acceptable to the parties. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

#### **B. Duties of mediator.**

The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or accessible by telephone. The mediation conference shall be held within 20 days of the date of the notice unless good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

**C. Inadmissibility of settlement offers.** Offers of settlement and statements in furtherance of settlement made in the course of mediation are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the commission nor disclosed by the mediator voluntarily or through discovery or compulsory process.

[18.60.5.20 NMAC - Rp, 18.60.5.20 NMAC, 1/15/19]

#### **18.60.5.21 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:**

**A. Request for arbitration.** Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the

requesting party agrees to be bound by the decision of the arbitrator. The commission shall forward the request for arbitration to all other parties and require that they submit a written response within 10 days of receipt of the commission's letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the commission a concise statement of their position with regard to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

**B. Designation of arbitrator.** If all parties agree to arbitration, the commission shall designate an arbitrator. The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten days of the date of the commission's letter of designation. If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the arbitrator's services. Any employee of the commission designated to arbitrate a dispute under these provisions shall not participate in any

subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

**C. Duties of arbitrator.**

(1) The arbitrator shall render a decision in the arbitration proceeding within 60 days of the date the parties approved the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least ten days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico rules of evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law. The arbitrator's decision will be binding on the parties, but will not be deemed a decision of the commission and shall have no precedential effect.

**D. Inadmissibility of settlement offers.** Unless agreed to by all the parties, no statements, admissions, or offers of settlement

made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them. [18.60.5.21 NMAC - Rp, 18.60.5.21 NMAC, 1/15/19]

**18.60.5.22 WAIVER OR VARIANCE FROM RULE REQUIREMENTS:**

**A.** The commission may, in its discretion, waive or vary any requirement of this rule whenever the commission finds that such waiver or variance would be in the public interest.

**B.** An excavator, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those requirements which the excavator, one-call notification system, or UFO wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

**C.** The commission may order a hearing on the merits of the petition.

**D.** An excavator, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition.

[18.60.5.22 NMAC - Rp, 18.60.5.22 NMAC, 1/15/19]



**HISTORY OF 18.60.5 NMAC:**

**Pre-NMAC History:** The material in this rule was derived from that previously filed with the State Records Center.  
 SCC 69-29, Order No. 2966, Cause No.516, filed 9/24/1969.  
 SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3/18/1971.  
 SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1/2/1972.  
 SCC 77-2, Order No. 3096-C, Docket No.750, filed 3/4/1977.  
 SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6/27/1979.  
 SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11/26/1984.

**History of Repealed Material:** 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5/1/1996) repealed 7/1/2003.  
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 6/27/2006 - Repealed effective 8/15/2012.  
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 8/15/2012- Repealed effective 12/30/2014.  
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 12/15/2014- Repealed effective 1/15/2019.

**Other History:**

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11/26/1984, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6/5/1996.  
 18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5/1/1996), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7/1/2003.  
 Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6/16/2003) replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, effective 7/17/2006.  
 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, filed 12/15/2014 was replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention effective 1/15/2019.

## REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

**This is an amendment to 16.48.1 NMAC, Sections 7, 10 and 14, effective 1/15/2019.**

**16.48.1.7 DEFINITIONS:**

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

- A. “act”** means the New Mexico Private Investigations Act;
- B. “alarm company”** means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;
- C. “applicant”** means any natural person who is applying for registration or licensure pursuant to the private investigations act;
- D. “armored car company”** means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;

**E. “board”** means the New Mexico private investigations advisory board;

**F. “bodyguard”** means an individual who physically performs the mission of personal security for another individual;

**G. “branch office”** means an office of a private investigation company or a private patrol company physically located in New Mexico and managed, controlled or directed by a private investigations manager or private patrol operations manager;

**H. “charts”** means a continuous recording of the physiological changes in human respiration, cardiovascular activity and skin resistance or conductance;

**I. “client”** means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;

**J. “conviction”** means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

**K. “department”** means the regulation and licensing department;

**L. “good moral character”** means a personal history characterized by honesty, fairness and respect for the rights of others and for state and federal law;

**[H] M. “individual”** means a single human being;

**[M] N. “legal business entity”** means a sole proprietorship, corporation, partnership, limited liability company, limited liability partnership or other entity formed for business purposes;

**[N] O. “licensee”** means a person licensed pursuant to the Private Investigations Act;

**[O] P. “polygraph examiner”** means an individual licensed by the department to engage in the practice of polygraphy;

**[P] Q. “polygraph examination”** also referred to as a psychophysiological detection of deception (PDD) means a test or



series of tests designed to assess the truthfulness of an examinee to an issue or issues of concern and includes all charts, reports, allied documents and recordings generated or received regarding the testing procedures;

[Q] R. “**polygraph instrument**” means a mechanical or digital computer instrument that, at a minimum, records simultaneously physiological changes in human respiration, skin resistance or conductance, and cardiovascular activity including relative blood pressure or volume;

[R] S. “**polygraphy**” means the process of employing an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results or any other device used to measure truthfulness;

[S] T. “**private investigation company**” means a legal business entity that provides private investigation services, the location of which may be within or outside of the state, provided that the private investigation services are performed within New Mexico;

[F] U. “**private investigator**” means an individual who is licensed by the department to engage in business or who accepts employment to conduct an investigation pursuant to the Private Investigations Act to obtain information regarding:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) a person;

(3) the

location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties;

(5) the securing of evidence to be used before

a court, administrative tribunal, board or investigating committee or for a law enforcement officer; or

(6) the scene of a motor vehicle accident or evidence related to a motor vehicle accident;

[T] V. “**private investigations employee**” means an individual who is registered by the department to work under the direct control and supervision of a private investigator for a private investigation company performing all private investigator duties;

[V] W. “**private investigations manager**” means an individual who:

(1) is licensed as a private investigator and is issued a license by the department as a private investigations manager;

(2) directs, controls or manages a private investigation company for the owner of the company; and

(3) is assigned to and operates from the private investigation company that the private investigations manager is licensed to manage or from a branch office of that private investigation company;

[W] X. “**private patrol company**” means a legal business entity, the location of which may be within or outside of the state, including an independent or proprietary commercial organization that provides private patrol operator services that are performed in New Mexico and the activities of which include employment of licensed private patrol operators or security guards;

[X] Y. “**private patrol operations employee**” means an individual who is registered by the department to work under the direct control and supervision of a private patrol operator for a private patrol company;

[Y] Z. “**private patrol operations manager**” means an individual who:

(1) is licensed as a private patrol operator or registered as a level three security guard, and is issued a license by

the department as a private patrol operations manager and is a New Mexico resident;

(2) directs, controls or manages a private patrol company for the owner of the company; and

(3) is assigned to and operates from the private patrol company that the private patrol operations manager is licensed to manage or from a branch office of that private patrol company;

[Z] AA. “**private patrol operator**” means an individual who is licensed by the department to:

(1) conduct uniformed or non-uniformed services as a watchman, security guard or patrolman to protect property and persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the services required of a security guard or security dog handler or provide security services for an armored car company;

[AA] BB. “**proprietary commercial organization**” means an organization or division of an organization that provides full- or part-time security guard services solely for itself;

[BB] CC. “**provisional license**” means a license to practice polygraphy for the probationary period that is required to determine operational competency;

[CC] DD. “**registrant**” means an individual registered as a private investigations employee, a private patrol operations employee or a security guard at any level;

[DD] EE. “**screening examination**” means any examination that is non-specific and deals with general background information;

[EE] FF. “**security dog handler**” means an individual who patrols with dogs to detect illegal substances or explosives;

**[FF] GG. “security guard”** means an individual who is registered to engage in uniformed or non-uniformed services under the direct control and supervision of a licensed private patrol operator or a private patrol operations manager to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect life and property or prevent thefts; and

**[GG] HH. “sponsor”** means a licensed polygraph examiner;

**[HH] II. “special event”** means a parade or other public or private event of short duration requiring security;

**[H] JJ. “specific event examination”** means any examination that deals with a specific issue, crime or incident, criminal or otherwise;

**[JJ] KK. “superintendent”** means the superintendent of the regulation and licensing department;

**[KK] LL. “test data”** means the physiological data recorded or collected during a polygraph examination;

**[LL] MM. “test data analysis”** means the quantitative application of standardized scoring rules to the physiological test data and includes the use of computerized scoring programs.

[16.48.1.7 NMAC - Re-pr, 16.48.1.7 NMAC, 9/24/2008; A, 1/15/2019]

**16.48.1.10 PRACTICING WITHOUT A LICENSE:** It is unlawful for an individual to:

**A.** act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager or private patrol operation employee to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to the Private Investigations Act (Section 61-27B-1 NMSA 1978);

**B.** render physical protection for remuneration as a bodyguard unless the individual is

licensed as a private investigator or a private patrol operator;

**C.** continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager, ~~[or]~~ private patrol operations manager private patrol operation employee if the individual’s license issued pursuant to the Private Investigations Act has expired or been suspended or revoked;

**D.** falsely represent that the individual is employed by a licensee; or

**E.** practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act.

[16.48.1.10 NMAC - Re-pr & A, 16.48.1.10 NMAC, 9/24/2008; A, 1/15/2019]

#### **16.48.1.14 DISPLAY OF LICENSE AND NOTIFICATION OF CHANGES:**

**A.** A license shall at all times be posted in a conspicuous place in the New Mexico principal place of business of the licensee.

**B.** A copy of the registration of each registrant employed by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant works.

**C.** A registration card issued by the department shall at all times be in the possession of and located on the person of a registrant when working.

**D.** A security guard shall wear the registration card on the outside of the guard’s uniform so that the card is visible to others.

**E.** A licensee ~~[including owners, officers or directors of a private investigation company or a private patrol company]~~ or a registrant shall notify the department immediately in writing of a change in the mailing or contact address of the licensee or registrant.

**F.** Failure to notify the department within 30 days of changes required to be reported pursuant to this section or failure to carry or display a registration as required is grounds for suspension of a license or registration.

[16.48.1.14 NMAC - Re-pr & A, 16.48.1.14 NMAC, 9/24/2008; A, 1/15/2019]

### **REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD**

**This is an amendment to 16.48.2 NMAC, Sections 7 through 14 and 16 through 25, effective 1/15/2019.**

#### **16.48.2.7 DEFINITIONS:**

Please refer to 16.48.1.7 NMAC in addition to the definitions within this part.

**A. “Chemical agents”** means tear gas or any other certifiable non-lethal chemical agents used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**B. “Defensive impact tools”** means straight baton, expandable baton, side handle baton or other defensive impact tools used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**C. “Electronic non-lethal devices”** means tasers or other certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**D. “One-year verifiable training”** means proof of experience that has been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 1,000 hours of actual work performed in the respective area of licensure or registration sought after

**[D] E. “Restraint and control devices”** means handcuffs or similar certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

[16.48.2.7 NMAC - Re-pr & A, 16.48.2.7 NMAC, 9/24/2008; A, 1/15/2015; A, 1/15/2019]

**16.48.2.8 BOND AND GENERAL LIABILITY INSURANCE REQUIREMENT:**

**A.** All private investigators, private patrol operators and private investigation companies seeking to obtain or retain a license under the provisions of the Private Investigations Act shall file with the department and retain in full force and effect, a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department.

**B.** The owner or the chief executive officer of a private investigation company or private security company that provides personal protection or bodyguard services or the owner or the chief executive office of a private patrol company shall maintain a general liability certificate of insurance in the amount of not less than one million dollars (\$1,000,000).

**C.** A surety bond in the amount of ten thousand dollars (\$10,000) or a general liability certificate of insurance executed and filed with the department pursuant to the Private Investigations Act shall remain in force until the surety company issuing the bond or the certificate has terminated future indemnity by notice to the department.

**D.** Any failure to furnish and maintain such bond in such form shall be grounds for denial or revocation of any license of a private investigator, private patrol operator, or private investigation company.

**E.** In the event a bond is offered which varies from the department form the department shall determine whether bond is in substantial conformance with the Private Investigations Act and department rules.

**F.** The duration of each bond shall, unless sooner terminated in accordance with law, be for the term of the term of the license issued as set forth on the face thereof and 30 days thereafter.

**G.** Such bond shall also be filed and maintained for each period of renewal of license and the duration thereof shall be for the renewal period specified on the face of the license and 30 days thereafter.

**H.** Any claim filed or made against any private investigator, private patrol operator, or private investigation company shall be reported by him forthwith to his surety company.

**I.** Upon receipt of notice of any claim made against any private investigator, private patrol operator, or private investigation company the surety insurance company bonding such private investigator, private patrol operator, or private investigation company shall forthwith report the same to the department.

**J.** All complaints filed, judgments rendered or injunctions issued, whether temporary or final, against any private investigator, private patrol operator, private investigation company or his their surety insurance company shall be reported to department, within 10 days after receipt of the same by such private investigator, private patrol operator, private investigation company, surety company, or their agents, attorneys, or employees, together with the name of the court where filed and the name and address of the attorney for claimant, or the claimant if he has no attorney.

**K.** A private investigator or private patrol operator or private investigation company or licensee or registrant shall furnish the department with any information requested by the department

pursuant to a claim or complaint or suit filed alleging a violation of any rule or statute governing private investigators, private patrol operators, private investigation companies, licensees or registrants when requested to do so by the department. Failure to comply with this request may result in disciplinary action. No payment may be made by a surety insurance company pursuant to a claim or complaint filed with the department unless the department directs such payment to be made.

**L.** The failure to furnish such notice of claims or suits or such information shall be deemed sufficient to revoke or suspend any license of a private investigator, private patrol operator or private investigation company or to deem any bond for such private investigator, private patrol operator or private investigation company insufficient.

**M.** The department may determine that any claim made or suit filed against any private investigator, private patrol operator or private investigation company has reduced the amount of the bond of such investigator, patrol operator or private investigation company in full force and effect to such extent as the department shall, in its discretion, determine. Any judgment obtained against any private investigator or private patrol operator or private investigation company or his their surety insurance company shall be deemed to reduce the amount of his their bond insurance in full force and effect by the amount of the judgment. In the event the amount of the bond in full force and effect shall be so reduced, such private investigator or private patrol operator or private investigation company shall, within 10 days, file a new or supplemental bond insurance sufficient to meet the requirements of law as to the amount of bond insurance in full force and effect.

**N.** If any claim is made or suit filed against any private investigator or private patrol operator or private investigation company for his actions, or the actions of any of his employees, and any portion of such

act or acts as a private investigator or private patrol operator or private investigation company took place or occurred during the period for which a bond was in force, such surety shall be deemed liable for the whole of such claim to the extent of the total amount of the bond, provided that if more than one bond was in effect during the performance of all or any part of such acts, the liability shall be pro-rated among such sureties. [16.48.2.8 NMAC - Re-pr & A, 16.48.2.8 NMAC, 9/24/2008; A, 1/15/2019]

#### 16.48.2.9

#### **QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATOR LICENSE:**

**A.** Applicants for licensure as a private investigator must submit the following:

- (1) completed application;
- (2) proof of age indicating applicant is at least 21 years of age (copy of birth certificate, driver's license, state issued identification card, military identification, U.S. passport or baptismal certificate);
- (3) proof of successfully passing a jurisprudence examination to be administered by the department;
- (4) a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department; however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance in the amount not less than one million dollars (\$1,000,000) in lieu of the surety bond required by the provisions of this paragraph;
- (5) proof of experience that has been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

(a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer;

(6) non-refundable license fee as set forth in Part 5; and

(7) criminal history background check as set forth in Subsection C of 16.48.2.9 NMAC.

**B.** Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others than employers covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the applicant.

**C.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance, reinstatement or renewal of a private investigator license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

~~[(1)] Blank fingerprint cards shall be obtained from the department.~~

~~[(2)]~~ (1) Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

~~[(3)]~~ (2) Completed fingerprint cards shall be submitted to the department or department designee with a check, money order, or cashier's check for the prescribed fee.

**D.** Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC.

[16.48.2.9 NMAC - Re-pr & A, 16.48.2.9 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019]

#### 16.48.2.10

#### **QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION COMPANY LICENSE:**

**A.** Applicants for licensure as a private investigation company must submit the following:

- (1) completed application;
- (2) a surety bond in the amount of ten thousand dollars (\$10,000); however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance as specified in the Private Investigations Act in lieu of the surety bond required by the provisions of this paragraph; a private investigator or private patrol operator holding a certificate of deposit or surety bond prior to July 1, 2007 in the sum of two thousand dollars (\$2,000) shall be exempt from the bond provisions of the Private



Investigations Act, provided that the private investigator's or private patrol operator's license remains current and the holder remains in good standing with the regulation and licensing department;

(3) proof of an owner or a licensed private investigations manager who is licensed as a private investigator and who certifies that they will manage the daily operations of the private investigation company;

(4) proof of a physical location in New Mexico where records are maintained and made available for department inspection;

(5) proof of a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico;

(6) non-refundable license fee as set forth in Part 5; and

(7) criminal history background check as set forth in Subsection C of 16.48.2.10 NMAC.

**B.** The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services shall provide proof of an active and current general liability certificate of insurance in the amount of no less than one million dollars (\$1,000,000).

**C.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a private investigation company license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors.

~~[(1)] Blank fingerprint cards shall be obtained from the department.~~

~~\_\_\_\_\_ (2)] (1)~~  
Fingerprints shall be taken:

(a)  
under the supervision of and certified by a New Mexico state police officer,

a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

~~[(3)]~~ (2) Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.  
[16.48.2.10 NMAC - Re-pr & A, 16.48.2.10 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019]

#### **16.48.2.11 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS MANAGER LICENSE:**

Applicants for licensure as a private investigations manager license must submit the following:

**A.** proof of a current license in good standing as a private investigator;

**B.** proof of successfully passing a jurisprudence examination to be administered by the department;

**C.** proof of employment with the private investigation company that the applicant is being licensed to manage;

**D.** completed application;

**E.** non-refundable license fee as set forth in Part 5;

**F.** pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance or reinstatement of a private investigations manager license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check;

~~[(1)] blank~~

~~fingerprint cards shall be obtained from the department;~~

~~\_\_\_\_\_ (2)] (1)~~ fingerprints shall be taken:

(a)  
under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above;

~~[(3)]~~ (2) completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.  
[16.48.2.11 NMAC - Re-pr & A, 16.48.2.11 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019]

#### **16.48.2.12 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS EMPLOYEE REGISTRATION:**

**A.** On or after July 1, 2007, every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

**B.** Applicants for registration as a private investigations employee must submit the following:

(1) completed application;

(2) non-refundable registration fee as set forth in Part 5;

(3) proof of age indicating applicant is at least 21 years of age (copy of birth certificate, driver's license, state

issued identification card, military identification, U.S. passport or baptismal certificate);

(4) proof of a high school diploma or its equivalent;

(5) proof of successfully passing a jurisprudence examination to be administered by the board;

(6) proof of employment or contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator; and

(7) criminal history background check as set forth in Subsection C of 16.48.2.12 NMAC.

C. Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance or reinstatement of a private investigations employee registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

~~[(1)] Blank fingerprint cards shall be obtained from the department.~~

~~(2)] (1)~~

Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

~~[(3)] (2)~~ Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.

D. Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC.

[16.48.2.12 NMAC - Re-pr & A, 16.48.2.12 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019]

#### 16.48.2.13

#### QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATOR LICENSE:

A. Applicants for licensure as a private patrol operator must submit the following:

(1) proof of age indicating applicant is at least 21 years of age (copy of birth certificate, driver's license, state issued identification card, military identification, U.S. passport or baptismal certificate);

(2) completed application;

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) proof of experience of actual work performed as a security guard consisting of not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a supervisory capacity; the experience shall have been acquired within five years preceding the filing of the application with the department; years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted; the burden of proving necessary experience is on the applicant;

~~[(6)] (5)~~ proof of being firearm certified as required by 16.48.4.8 NMAC, if the position will require being armed with a firearm;

~~[(7)] (6)~~ non-refundable application fee as set forth in Part 5; and

~~[(8)] (7)~~ criminal history background check as set forth in Subsection C of 16.48.2.13 NMAC.

B. Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance, reinstatement or renewal of a private patrol operator license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

~~[(1)] Blank fingerprint cards shall be obtained from the department.~~

~~(2)] (1)~~

Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) above.

~~[(3)] (2)~~ Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.

[16.48.2.13 NMAC - Re-pr & A, 16.48.2.13 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019]

#### 16.48.2.14

#### QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL COMPANY LICENSE:

A. Applicants for licensure as a private patrol company must submit the following:

(1) completed application;

(2) proof of an owner or a licensed private patrol operations manager who certifies they will manage the daily operations of the private patrol company;

(3) proof of a physical location in New Mexico where records are maintained and made available for department inspection;

(4) proof of a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico; and

(5) criminal history background check as set forth in Subsection C of 16.48.2.14 NMAC.

**B.** The owner or the chief executive officer of a private patrol company shall provide proof of a current and active general liability certificate of insurance in an amount not less than one million dollars (\$1,000,000).

**C.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance, reinstatement or renewal of a private patrol company license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors.

~~[(1)] Blank fingerprint cards shall be obtained from the department~~

~~(2)] (1)~~  
Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

~~[(3)] (2)~~ Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's

check for the prescribed fee.  
[16.48.2.14 NMAC - Re-pr & A, 16.48.2.14 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019]

**16.48.2.16  
QUALIFICATIONS AND  
EXPERIENCE REQUIREMENTS  
FOR APPLICANTS FOR A  
POLYGRAPH EXAMINER  
LICENSE:**

**A.** Applicants for licensure as a polygraph examiner must submit the following:

(1) proof of age indicating applicant is at least 18 years of age (copy of birth certificate, driver's license, state issued identification card, military identification, U.S. passport or baptismal certificate);

(2) completed application;

(3) proof of a high school diploma or its equivalent;

(4) proof of graduation from an accredited polygraph examiners course approved by the department;

(5) proof of:  
(a) completing a probationary operational competency period and passing an examination of ability approved by the department to practice polygraphy; or

(b) holding, for a minimum of two years immediately preceding the date of application, a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; the applicant must have no pending disciplinary actions and no formal disciplinary actions issued against the license in the last five years;

(6) non-refundable application fee as set forth in Part 5; and

(7) criminal history background check as set forth in Subsection C of 16.48.2.16 NMAC.

**B.** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance, reinstatement or renewal of a

polygraph examiner license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

~~[(1)] Blank fingerprint cards shall be obtained from the department~~

~~(2)] (1)~~  
Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in Subparagraphs (a) and (b) of Paragraph (2) of this subsection.

~~[(3)] (2)~~ Completed fingerprint cards shall be submitted to the department or designee with a check, money order, or cashier's check for the prescribed fee.

**C.** Probationary operational competency period.

(1) Under successful completion of a written examination, a provisional license may be issued.

(2) During the probationary period, consisting of at least six months, the polygraph examinations administered by the provisional licensee shall be reviewed for operational competency by a licensed polygraph examiner appointed by a board member or the superintendent to serve as a sponsor for the provisional licensee. During the probationary period, the provisional licensee must conduct a minimum of 30 polygraph examinations, a minimum of five of which must be examinations, two of the "specific" examinations, and three of the "screening type" examinations must be performed in the presence of

his or her sponsor, or recorded in their entirety for review by the sponsor or the board member. In the case of an applicant who conducts only "specific" examinations, a minimum of five "specific" examinations must be conducted in the presence of his or her sponsor, or recorded in their entirety for review by the sponsor or the board member.

(3) The sponsor appointed shall submit a progress report regarding the progress of the provisional licensee every 60 days on forms provided by the board.

(4) If an unsatisfactory report is submitted, the board member shall review the polygraph examinations administered by the provisional licensee for operational competency. Upon such review, the board member at his or her discretion may revoke the provisional license or take such action as it deems necessary to assure operational competency. Any revocations under this subsection shall be subject to the Uniform Licensing Act, Section 61-1-1 et. seq., NMSA 1978 Comp.

(5) The board member may at any time review the polygraph examinations administered by the provisional licensee for operational competency for any reason.

[16.48.2.16 NMAC - Re-pr & A, 16.48.2.16 NMAC, 9/24/2008; A, 08/30/09; A, 5/1/2010; A, 1/15/2019]

**16.48.2.17 LEVEL ONE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A.** Every individual seeking employment or employed as a level one security guard shall file an application for registration with the department.

**B.** Applicants for registration as a level one security guard shall submit the following:

(1) completed application with two passport type photos taken within the prior six months;

(2) non-refundable registration fee as defined in 16.48.5 NMAC;

(3) proof of age indicating applicant is at least 18 years of age (copy of driver's license, state issued identification card, military identification, baptismal certification or U.S. passport);

(4) achievement of a passing score of not less than ninety percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

(5) department's release of information form; and

(6) proof of completing a department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent; or

(c) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent.

**C. BACKGROUND CHECK:** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance, reinstatement or renewal of a level one security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

(b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

(c) fingerprint results will be sent electronically to the department.

**D. TRAINING REQUIREMENTS:** The following eight hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one registration. The training shall be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. Training shall be taught by an in-person instructor;

(1) legal training for security guards;

(a) legal responsibilities, qualifications, restrictions and liability of level one security guard;

(b) introduction to use of force continuum, appropriate use of force and de-escalation techniques;

(c) appropriate search and seizure, legal restrictions and civil liability, and;



(d) New Mexico laws on trespass pursuant to the act, Section 30-14-1 NMSA 1978;

(2) authority and responsibility of the security guard;

(a) communication with local law enforcement;

(b) radio dispatch protocol and other communication tools;

(c) image, professional communication, note-taking and report writing;

(3) incident scene management and preservation;

(a) identifying evidence;

(b) care and handling of evidence;

(c) securing the immediate area, and;

(d) witness/participant identification.

~~[E. — INSTRUCTOR REQUIREMENTS: On or after February 28, 2015, every individual seeking to be an approved training instructor for level one security guards, an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:~~

~~(1) applicant name, business address, and telephone number of the individual; and~~

~~(2) proof of instructor certification issued by a law enforcement academy (LEA) or the federal law enforcement training center (FLETC) or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent.]~~

[16.48.2.17 NMAC - Re-pr & A, 16.48.2.17 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019]

**16.48.2.18 LEVEL TWO SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A.** Every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. To carry a specific endorsement weapon, not including a firearm, will require successful completion of the specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

**B.** Applicants for registration as a level two security guard shall submit the following:

(1) completed application with two passport type photos taken within the prior six months;

(2) non-refundable registration fee as defined in 16.48.5 NMAC;

(3) proof of age indicating applicant is at least 21 years of age (copy of driver's license, state issued identification card, military identification, baptismal certification or U.S. passport);

(4) proof of a current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;

(5) achievement of a passing score of not less than ninety percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

(6) proof of a high school diploma or its equivalent;

(7) department's release of information form; and

(8) proof of completing a department approved weapon training program as defined in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent.

**C. BACKGROUND CHECK:** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance or reinstatement of a level two security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

<p>(b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and</p>	<p>(4) defensive impact tools training shall include, but not be limited to, the following subjects:</p>	<p>(n) functioning when contaminated, and; (o) storage and maintenance;</p>
<p>(c) fingerprint results will be sent electronically to the department.</p>	<p>(a) moral and legal aspects of baton usage;</p>	<p><b>E. ADDITIONAL ENDORSEMENTS:</b> An applicant for weapon endorsement must successfully complete training for the specific weapon endorsement. The following endorsement for level two applicants; eight hour electronic non-lethal device training shall include, but is not limited to, the following subjects:</p>
<p><b>D. TRAINING REQUIREMENTS:</b> The following 20 hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration. The training shall be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. Training shall be taught by an in-person instructor:</p>	<p>(b) use of force;</p>	<p>(1) technology overview ;</p>
<p>(1) legal and practical aspects of use of force and personal/employer liability;</p>	<p>(c) baton familiarization and uses;</p>	<p>(2) electrical and medical background;</p>
<p>(2) verbal and written communication and conflict management;</p>	<p>(d) first aid for baton injuries;</p>	<p>(3) specifications how electronic non-lethal devices work;</p>
<p>(3) restraint and control devices training shall include, but not be limited to, the following subjects:</p>	<p>(e) fundamentals of baton injuries;</p>	<p>(4) practical hands-on training;</p>
<p>(a) handcuffing nomenclature;</p>	<p>(f) stances and grips;</p>	<p>(5) changing batteries and air cartridges;</p>
<p>(b) daily maintenance and safety checks;</p>	<p>(g) target areas;</p>	<p>(6) firing drills;</p>
<p>(c) applying and removing handcuffs;</p>	<p>(h) defensive techniques;</p>	<p>(7) drive stun;</p>
<p>(d) potentially uncooperative and uncooperative handcuffing;</p>	<p>(i) control techniques;</p>	<p>(8) tactical considerations;</p>
<p>(e) handcuffing from control holds;</p>	<p>(j) arrest and control techniques, and;</p>	<p>(9) field applications</p>
<p>(f) handcuffing from standing and prone;</p>	<p>(k) skill practice;</p>	<p>(10) safety considerations and associated risks; and</p>
<p>(g) dangers of positional asphyxia and excited delirium;</p>	<p>(5) chemical agents training shall include, but not be limited to the following subjects:</p>	<p>(11) how an electronic non-lethal device overrides the central nervous system.</p>
<p>(h) standing a prone handcuffed subject;</p>	<p>(a) effects of chemical agents;</p>	<p><del><b>[F. INSTRUCTOR REQUIREMENTS:</b></del> On or after February 28, 2015, every individual seeking to be a level two security guard instructor to offer training in chemical agents, defensive impact tools, restraint and control devices or electronic non-lethal devices an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:</p>
<p>(i) conflict resolution;</p>	<p>(b) avoiding bad positions;</p>	<p>(1) applicant name, business address, and telephone number of the individual;</p>
<p>(j) handcuffing guidelines and best practice; and</p>	<p>(c) disengagement;</p>	<p>(2) proof of instructor certification issued by a law enforcement academy (LEA) or</p>
<p>(k) use of force and justification for handcuffing;</p>	<p>(d) proper defensive positions;</p>	
	<p>(e) shielding;</p>	
	<p>(f) drawing techniques;</p>	
	<p>(g) defense against moving attacks;</p>	
	<p>(h) spraying techniques;</p>	
	<p>(i) using OC spray with light;</p>	
	<p>(j) multiple opponent defense;</p>	
	<p>(k) proper weapon retention and disarming;</p>	
	<p>(l) cautions and hazards;</p>	
	<p>(m) recovery and decontamination;</p>	

~~the federal law enforcement training center (FLETC) or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;~~

~~(3) proof of the specific weapon instructor certification issued by the weapon manufacturer or one year of verifiable weapons training or training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;]~~

[16.48.2.18 NMAC - Re-pr & A, 16.48.2.18 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019]

### **16.48.2.19 LEVEL THREE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A.** Every individual seeking employment or employed as a level three security guard or level three armored vehicle security guard shall file an application for registration with the department.

**B.** Applicants for registration as a level three security guard shall submit the following:

(1) completed application with two passport type photos taken within the prior six months;

(2) non-refundable registration fee as defined in 16.48.5 NMAC;

(3) proof of age indicating applicant is at least 21 years of age (copy of driver's license, state issued identification card, military identification, baptismal certification or U.S. passport);

(4) copy of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;

(5) achievement of a passing score of not less than ninety percent on the board approved jurisprudence examination, provided by the board, covering the Private Investigations Act and the rules;

(6) proof of a high school diploma or its equivalent;

(7) department's release of information form;

(8) proof of completing a department approved firearm training program as defined in Subsection C of 16.48.2.19 NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum provided by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(9) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association (NRA) law enforcement activities division;

(10) proof of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC; and

(11) successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms.

### **C. PSYCHOLOGICAL EVALUATION**

(1)

**Requirements:** Prior to certification as a level three security guard in the state of New Mexico, upon initial licensure only, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. A list of licensed psychologists who are able to administer the exam will be available on the website or from the board office.

(a)

All psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

(b)

Evaluations cannot be more than one year old for certification purposes.

(c)

The original evaluation form shall be signed and transmitted directly to the board by the psychologist that performed the psychological evaluation

(d)

The willful providing of false information or willful failure to disclose information that the applicant knows or should have known is necessary to a complete and accurate evaluation shall be grounds for denial of licensure.

(2)

**Evaluation standards:** The psychological evaluation shall consist of the Minnesota multi-phasic inventory-2 restructured form or MMPI-2RF. The report shall incorporate all information gathered in the interview and testing, and shall contain a specific recommendation on a form provided by the department as to the applicant's suitability to carry a fire arm as a level three security guard. All psychologists performing evaluations must be licenses and

conform to the guidelines of the American psychological association regarding storage of records.

#### **D. FIREARM**

**TRAINING:** The following 16 hour curriculum, to include the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration. The training shall be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. Training shall be taught by an in-person instructor:

- (1) the four general firearms safety rules;
- (2) weapon manipulation;
- (3) types of sidearms;
- (4) firearm retention and equipment;
- (5) firearm storage devices;
- (6) locking devices;
- (7) ammunition and storage;
- (8) training household members;
- (9) hazards of loaded firearms in the home;
- (10) mental conditioning and tactics;
- (11) weapon manipulation and marksmanship;
- (12) threat recognition and judgmental shooting;
- (13) laws pertaining to firearms, deadly physical force and the exercise of the powers of arrest.

#### **E. BACKGROUND**

**CHECK:** Pursuant to Section 61-27B-34 of the act, NMSA 1978, all applicants for initial issuance or reinstatement of a level three security guard registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) All applicants for licensure or registration shall be fingerprinted electronically as

required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

(b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

(c) fingerprint results will be sent electronically to the department.

#### **~~F. INSTRUCTOR~~**

**REQUIREMENTS:** On or after February 28, 2015, every individual seeking to be a level three security guard instructor offering training in firearms and deadly physical force, an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

(1) applicant name, business address, and telephone number of the individual;

(2) proof of instructor certification issued by a law enforcement academy (LEA) or the federal law enforcement training center (FLETC) or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;

(3) if the level three training instructor offers firearms certification, proof of the instructor certification by a law enforcement academy or the national rifle association law enforcement

activities division is required.]

[16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 9/24/2008; A, 11/28/2009; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019]

#### **16.48.2.20**

#### **QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR SECURITY GUARD INSTRUCTOR REGISTRATIONS:**

On or after February 28, 2015, every individual seeking to be an approved training instructor, shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

A. electronic fingerprints to establish positive identification for a state and federal criminal history background check;

(1) All applicants for licensure or registration shall be fingerprinted electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation.

(2) Initial and renewal applicants will need to register on-line with the agent for New Mexico department of public safety prior to going to an electronic fingerprinting location:

(a) at the electronic fingerprinting location, the applicant will need to provide the electronic fingerprinting technician with a registration number they received after registering online;

(b) a designated fee determined by the New Mexico department of public safety shall be paid at the time of registration by credit card or at the fingerprinting site by cashier's check or money order; and

(c) fingerprint results will be sent electronically to the department; and

B. Proof of professional training specific to each level of instructor registration applied for;



**(1) Level One**  
Instructor: On or after February 28, 2015, every individual seeking to be an approved training instructor for level one security guards, an individual shall submit proof of instructor certification issued by a law enforcement academy (LEA), federal government entity, military or the federal law enforcement training center (FLETC) or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent; or

**(2) Level Two**  
Instructor: On or after February 28, 2015, every individual seeking to be a level two security guard instructor, offering training in chemical agents, defensive impact tools, restraint and control devices or electronic non-lethal devices, the application shall provide proof of level one instructor requirements and, proof of the specific weapon instructor certification issued by the weapon manufacturer or one year of verifiable weapons training or training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent; or

**(3) Level Three**  
Instructor: On or after February 28, 2015, every individual seeking to be a level three security guard instructor offering training in firearms and deadly physical force, an individual shall submit proof of instructor certification issued by a law enforcement academy (LEA), federal government entity, military or the federal law enforcement training center (FLETC), the national rifle association law enforcement activities division or one year of verifiable training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent. If the level three training instructor offers firearms certification, proof of the instructor's current certification by the department is required.  
 [16.48.2.20 NMAC - N, 1/15/2019]

**~~[16.48.2.20]~~ 16.48.2.21**  
**QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SPECIAL EVENT PERMIT:**

**A.** A private patrol company employing a nonresident security guard temporarily for a special event shall apply to the department for and may be issued a special event permit for each nonresident security guard qualified to be employed at the special event.

**B.** A special event permit is issued for a specific nonresident security guard and a specific special event and shall not be transferred to another security guard or used for a special event other than for the special event for which the permit is issued.

**C.** To be issued a special event permit, a private patrol company shall provide the department with a description of the special event, its location and the dates on which the temporary nonresident security guard will be employed to provide services at the special event. A special event permit shall bear the name of the private patrol company and contact information, the name of the nonresident security guard, the name of the special event for which it is issued, the dates of the special event and other pertinent information required by the department.

**D.** A special event permit shall be issued only to an individual who qualifies for a level one or higher security guard registration and who:

- (1)** is not a resident of New Mexico;
- (2)** does not hold a registration as a security guard in New Mexico; and
- (3)** meets other requirements specified by the department.

**E.** A special event permit requiring a security guard to carry a firearm shall only be issued to an individual who is qualified to be registered as a level three security guard.

**F.** It is a violation of the Private Investigations Act (61-27B-1 NMSA 1978) for a private patrol company to circumvent the registration process for permanent or long-term part-time employment of security guards through use of the provisions of this section.  
 [16.48.2.21 NMAC - Rn, 16.48.2.20 NMAC, 1/15/2019]

**~~[16.48.2.21]~~ 16.48.2.22**  
**CESSATION OF LICENSE**

**BUSINESS:** A registrant or licensee subject to the Private Investigations Act who ceases to do business as a registrant or licensee before the registration or license expiration date shall submit written notice of cancellation of his license to the department within 30 days of cessation of such business.  
 [16.48.2.22 NMAC - Rn, 16.48.2.21 NMAC, 1/15/2019]

**~~[16.48.2.22]~~ 16.48.2.23**  
**GENERAL QUALIFICATIONS FOR REGISTRATION AND LICENSE OF APPLICANTS:**

**A.** Must be a citizen of the United States.

**B.** Cannot have been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards as defined by the department.

**C.** Must have reached the age of majority (18 years) or 21 years if required by law or rule.  
 [16.48.2.23 NMAC - Rn, 16.48.2.22 NMAC, 1/15/2019]

**~~[16.48.2.23]~~ 16.48.2.24**  
**[RESERVED]**

[16.48.2.24 NMAC - Rn, 16.48.2.23 NMAC, 1/15/2019]

**~~[16.48.2.24]~~ 16.48.2.25**  
**RECIPROCITY:**

**A.** An investigator licensed in another state may conduct business in New Mexico only under the circumstances indicated below:

(1) the investigation must be initiated in the investigator's home state;

(2) the investigator may spend no more than 30 days per case while conducting an investigation in another state;

(3) the investigator is prohibited from soliciting business while in another state and from establishing a business or setting up residence while conducting an investigation in that state.

**B.** An applicant for licensure or registration by reciprocity may not engage in the practice of private investigations, private patrol operator, polygraph examiners or security guard in New Mexico until approval for licensure by reciprocity has been given and the department has issued an initial license.

**C.** Acceptance of a reciprocity applicant for licensure or registration is subject to department approval. All applicants for licensure or registration by reciprocity shall:

(1) be of good moral character;

(2) be duly and currently licensed or registered in at least one other state;

(3) have no history of disciplinary action within the last five years against any professional license or registration;

(4) provide proof of having met education and experience requirements in the state of licensure similar to or better than those required in New Mexico.

[16.48.2.25 NMAC - Rn, 16.48.2.24, 1/15/2019]

## REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

**This is an amendment to 16.48.4 NMAC, Section 8, effective 1/15/2019.**

### 16.48.4.8 MANDATORY FIREARMS TRAINING:

**A.** After July 1, 2007, any private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol operations employee may carry a firearm upon successful completion of the mandatory firearm training required by the department. Any licensee who carries a firearm on duty shall be required to provide proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division prior to carrying a weapon on duty, and annually thereafter.

**B.** The licensee will be required to qualify with the same type of weapon and caliber he will be carrying while on duty.

**C.** Specific course requirements and verification of completion forms will be posted on the board website and available on request from the board office.

**D.** The firearms qualification form issued by an instructor recognized and certified by the New Mexico law enforcement academy, federal government entity, military or the national rifle association law enforcement activities division shall at all times be in the possession of and located on the person of a registrant when working.  
[16.48.4.8 NMAC - Re-pr & A, 16.48.4.8 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019]

## REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

**This is an amendment to 16.48.7 NMAC, Sections 8, 9, 10 & 11, effective 1/15/2019.**

### 16.48.7.8 LICENSE AND REGISTRATION RENEWAL:

Licensees and registrants shall renew their licenses issued pursuant to the Private Investigations Act [~~bi-annually~~] biennially by remitting to the board office a renewal fee, renewal application form provided by the board, completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check. Renewal documents must be postmarked no later than the expiration date or a late fee will be assessed without exception. Continuing education hours shall be documented as described in Part 6.

[16.48.7.8 NMAC - N, 9/24/2008; A, 1/15/2019]

**16.48.7.9 LICENSE RENEWAL DEADLINE:** Licensees or registrants failing to submit a renewal application and the required documentation on or before the expiration date shall be considered expired and must refrain from practicing. A licensee or registrant will be allowed a 30-day grace period in which they will be allowed to renew their license or registration with a late fee. Any renewal received after the 30-day grace period will not be accepted and the licensee or registrant will need to comply with 16.48.2 NMAC.

[16.48.7.9 NMAC - N, 9/24/2008; A, 5/10/2010; A, 1/15/2019]

**16.48.7.10 LICENSE RENEWAL NOTICES:** Renewal notices will be electronically mailed to each current licensee and registrant at least 30 days prior to the expiration date of the license.

[16.48.7.10 NMAC - N, 9/24/2008; A, 1/15/2019]

**16.48.7.11 LICENSEE**

**RESPONSIBILITY:** Renewal notices will be electronically mailed to the last known address on file with the board. It is the responsibility of the licensee and registrant to keep the board informed of any changes in address and phone numbers. Failure to receive the renewal application notice shall not relieve the licensee or registrant of the responsibility of renewing his license before the expiration date.

[16.48.7.11 NMAC - N, 9/24/2008; A, 1/15/2019]

**REGULATION AND  
LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to Sections 2 and 7 of 16.62.1 NMAC, effective February 03, 2019.**

**16.62.1.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[1/14/00; 16.62.1.2 NMAC - Rn & A, 16 NMAC 62.1.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.1.7 DEFINITIONS:**

The following rules and regulations are for the purpose of implementing the provisions of the New Mexico Real Estate Appraisers Act.

**A.** Terms starting with the letter 'A' are defined as follows:

(1)

"Acceptable" appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, review appraisal, market analysis, real estate counseling/consulting, highest and best use analysis and feasibility analysis. All experience claimed must be obtained after January 30, 1989, and must be in conformance with applicable national uniform standards of professional appraisal practice (USPAP). Appraisal experience

acceptable toward licensing or certification can be from any state but must have been gained under the supervision of an appraiser who is certified at a level equal to or greater than the license or certificate the applicant is seeking.

(2)

"Appraisers act" or "act" means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

(3)

~~["Appraisal management company (AMC)" means a corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that:~~

~~(a)~~

~~contracts with independent appraisers to perform real estate appraisal services for clients;~~

~~(b)~~

~~receives requests for real estate appraisal services from clients and for a fee paid by client, enters into an agreement with one of more independent appraisers to perform the real estate appraisal services contained in the request;~~

~~(c)~~

~~otherwise serves as a third-party broker of appraisal management service between clients and appraiser.]~~

"Appraisal management company (AMC)" means:

(a)

any external third party that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year to:

(i)

recruit, select and retain appraisers;

(ii)

contract with appraisers to perform appraisal assignments;

(iii)

manage the process of having an appraisal performed; or

(iv)

review and verify the work of appraisers; or

(b)

any external third party that contracts with a qualifying licensed real estate broker or associate broker as defined in Chapter 61, Article 29 NMSA 1978 to provide broker price opinions.

(4) "Appraisal

management services" means:

(a) to

recruit, select, and retain appraisers;

(b)

to contract with licensed and certified appraisers to perform appraisal assignments;

(c)

to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(d)

to review and verify the work of appraisers.

[(4)] (5) "Appraisal

review" is the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, or an appraisal review assignment. The appraisal reviewer must have certification that corresponds with or is higher than the level of licensure required to perform the initial appraisal.

[(5)] (6)

"Assignment" means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement for a specified number of properties.

**B.** Terms starting with the letter 'B' are defined as follows: "Broker price opinion" means: an opinion by a qualifying or associate broker of the price of real estate for the purpose of marketing, selling, purchasing, leasing or exchanging the real estate or any interest therein or for the purposes of providing a financial institution with a collateral assessment of any real estate in which the financial institution has an existing or potential security interest; provided that the opinion of the price shall not be referred to or construed as an appraisal or appraisal report and shall not be used as the primary basis to determine the value of real estate for the purpose of loan origination.

**C.** Terms starting with the letter 'C' are defined as follows:

(1) "Complaint committee" shall be appointed by the board. The chairperson of the committee shall be an appraiser board member. The board appointed complaint committee is for the purpose of review of complaints and shall make recommendations to the board as to its findings. No real estate appraiser organization shall have a majority membership on the committee.

(2) "Complex" means a one to four family residential property appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(3) "Content approval for distance education" non-academic credit college courses provided by a college shall be approved by the appraiser qualifications board (AQB) and the New Mexico real estate appraisers board.

**D.** Terms starting with the letter 'D' are defined as follows: "Duly made application" means an application to the New Mexico real estate appraisers board including Subparagraphs (a) through (g) set out below, in addition to any other requirements of the board:

(1) a completed application on the form provided by the board; the form must be signed by the applicant attesting to the truthfulness of the information provided in the application; electronic signatures shall be acceptable;

(2) letters of verification from at least three individuals who are not related to the applicant but who are acquainted personally and professionally with him/her and who can attest that the applicant is of good moral character; and is competent;

(3) a statement attesting that he/she is a native, a naturalized citizen or a legal resident of the United States;

(4) transcripts or certificates or statements showing successful completion of the required appraisal courses;

(5) a recent photograph of the applicant in which the applicant clearly is discernible; the photograph must be at least two inches by three inches in size;

(6) a check or money order for the fees set out in 16.62.12.8 NMAC;

(7) an appraiser experience log recorded on the forms approved by the board or on another approved form, if required.

**E.** Terms starting with the letter 'E' are defined as follows:

(1) "Education advisory committee" shall be appointed by the board for the purpose of review of applications for course approval and sponsorship approval of appraiser educational offerings and shall make recommendations to the board as to its findings. Membership in a professional organization or association shall not be a prerequisite to serve on the committee. No real estate appraiser organization shall have a majority membership on the committee.

(2) "Ethics rule" emphasizes the personal and professional obligations and responsibilities of the individual appraiser.

(3) "Experience" is defined as verifiable time spent in performing tasks in accordance with the definition of "appraisal" and "appraisal assignment", as stated in the act, Section 61-30-3, NMSA 1978. Such tasks include inspecting and analyzing properties; assembling and analyzing relevant market data; forming objective opinions as to the value, quality or utility of such properties; and preparing reports or file memoranda showing data, reasoning and conclusions. Professional responsibility for the valuation function is essential for experience credit.

(4) "Experience" will be submitted to the board in the form of a log, which indicates assignment information and type, compensation status, time spent on the assignment and whether

the applicant signed the report. Experience credit claimed on the log must be attested to by the supervising appraiser. Experience logs are subject to review and request for supporting documentation.

(5) "Experience review process" is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable national uniform standards of professional appraisal practice (USPAP) standards.

**F.** Term starting with the letter 'F' is defined as follows: "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

**G.** Terms starting with the letter 'G'. [RESERVED]

**H.** Terms starting with the letter 'H'. [RESERVED]

**I.** Terms starting with the letter 'I'. "IDECC" - international distance education certification center.

**J.** Terms starting with the letter 'J'. [RESERVED]

**K.** Terms starting with the letter 'K'. [RESERVED]

**L.** Terms starting with the letter 'L' are defined as follows:

(1) "Licensee" means a trainee, license, residential certificate or general certificate.

(2) "Location" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe, New Mexico.

**M.** Term starting with the letter 'M' is defined as follows: "Module" is an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum. All modules identified in the required core curriculum for a specific classification must be successfully completed to satisfy the educational



requirements as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

**N.** Term starting with the letter 'N' is defined as follows: "Nonresident appraiser" for the purpose of Section 61-30-20 NMSA 1978 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current trainee registration, license, or certificate, and is in good standing, in another state.

**O.** Terms starting with the letter 'O'. [RESERVED]

**P.** Terms starting with the letter 'P' are defined as follows:

(1) "Practicing appraiser" means a state licensed or certified appraiser in good standing, engaged in performing appraisal assignments.

(2) "Primary business location" means the geographical location of a business where the supervisor and trainee spend the majority of their time. A trainee may perform work only in areas where the supervising appraiser has competency pursuant to USPAP.

**Q.** Terms starting with the letter 'Q'. [RESERVED]

**R.** Term starting with the letter 'R' is defined as follows: "Required core curriculum" is a set of appraisal subject matter (known as 'modules') which require a specified number of educational hours at each credential level; as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

**S.** Term starting with the letter 'S' is defined as follows: "Supervisor" means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last three years that affects the supervisor's legal ability to engage in appraisal practice.

**T.** Term starting with the letter 'T' is defined as follows: "Trainee" means an individual taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

**U.** Term starting with the letter 'U' is defined as follows: "Uniform standards of professional appraisal practice" (USPAP) means the uniform standard or the profession standard promulgated by the appraisal standards board of the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act and deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

**V.** Terms starting with the letter 'V'. [RESERVED]

**W.** Term starting with the letter 'W' is defined as follows: "Work file" is documentation necessary to support an appraiser's analyses, opinions, and conclusions.

**X.** Terms starting with the letter 'X'. [RESERVED]

**Y.** Terms starting with the letter 'Y'. [RESERVED]

**Z.** Terms starting with the letter 'Z'. [RESERVED]  
[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 11/15/08; A, 10/16/2009; A, 08/21/2010; A, 7/10/2011; A, 01/01/2015; A, 06/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2, 8 and 9 of 16.62.2 NMAC, effective February 03, 2019.**

**16.62.2.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.  
[1/14/00; 16.62.2.2 NMAC - Rn & A, 16 NMAC 62.2.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.2.8 TRAINEE:** A holder of a trainee registration, but not a license or certificate, is authorized to prepare appraisals of all types of real estate or real property, provided

such appraisals are not described or referred to as "state licensed" or "state certified" and provided further, the trainee appraiser does not assume or use any title, designation or abbreviation likely to create the impression that he/she is a state-licensed or state-certified real estate appraiser. Trainees are not qualified to perform under FIRREA, Title XI. An applicant for trainee real estate appraiser registration in the state of New Mexico must:

**A.** be a legal resident of the United States;

**B.** have reached the age of majority;

**C.** within the five year period preceding the application, prove successful completion of real estate appraisal education of at least 75 board-approved [classroom] creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); [hours;] real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; and the 15-hour national USPAP course or its equivalent;

**D.** comply with the competency rule of (USPAP).

**E.** courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased [~~and none may be taken on-line~~];

**F.** demonstrate to the board that he/she is honest, trustworthy and competent;

**G.** successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

**H.** pay the fees set out in 16.62.12.8 NMAC;

**I.** submit a duly made application to the board office;  
**J.** declare a supervisor; and  
**K.** successfully complete a supervisor/trainee course consistent with AQB criteria.  
 [1/14/00; 16.62.2.8 NMAC - Rn & A, 16 NMAC 62.2.8, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10; A, 7/10/2011; A, 01/01/2015; A, 02/03/2019]

#### **16.62.2.9 SUPERVISING APPRAISER/TRAINEE:**

**A.** Supervision of trainees: An appraiser may engage a declared trainee to assist in the performance of real estate appraisals and related activities, provided the supervising real estate appraiser:

(1) is in good standing and has been certified for at least three years;

(2) shall not have been subject to any disciplinary action within any jurisdiction within the last three years that affected the supervising real estate appraiser's legal eligibility to engage in appraisal practice, including but not limited to suspension, revocation, and limitations on the scope of the supervisor's practice;

~~[(2)]~~ (3) has no more than three trainees working under his/her supervision at one time;

~~[(3)]~~ (4) actively supervises the trainee by either being physically present or by a form of electronic communication; and

~~[(4)]~~ (5) is competent pursuant to USPAP in all appraisals supervised.

**B.** Prior to the date any trainee begins performing real estate appraisal and related activities under his/her supervision, the supervisor must:

(1) inform the board of the name of the trainee on the declaration form prescribed by the board; the supervisor must also inform the board within 10 days when a trainee is no longer working under his/her supervision; and

(2) ~~[attend]~~ complete a supervisor/trainee education program, either in person or via distance education, approved by the appraisal board regarding the role of a supervisor; if continuously supervising trainees, supervisors must ~~[attend]~~ complete the class at least every four years; and

(3) this class may be used as part of the continuing education requirements for the biennial renewal cycle.

**C.** When training for residential license or residential certification the supervisor must accompany the trainee on complete interior inspections of the subject property on the first 25 assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type.

**D.** When training for general certification the supervisor must accompany the trainee on inspections of the subject property on the first 25 non-residential assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type and market area.

**E.** The supervising appraiser shall:

(1) review all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee are utilized;

(2) certify that the report is in compliance with USPAP;

(3) maintain an experience log jointly with the appraiser trainee to ensure the experience log is accurate, current and complies with the requirements of the trainee appraiser's credentialing jurisdiction;

(4) sign the appraisal experience log at least every 30 days and use the title "supervising appraiser" when signing;

(5) review the hours claimed on the log and address any discrepancies.

**F.** Appraisal experience logs shall include:

(1) type of property;

(2) date of report;

(3) address of appraised property;

(4) description of work performed by the trainee appraiser and the scope of the review and supervision of the supervisory appraiser;

(5) number of actual work hours by the trainee appraiser on the assignment; and

(6) the signature and state certification number of the supervising appraiser.

**G.** Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.

**H.** The supervising appraiser shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

**I.** Trainees: All trainees shall perform all real estate appraisal and related activities under the immediate, active, and personal supervision of a certified real estate appraiser.

(1) All appraisal reports must be signed by the trainee's declared supervisor. By signing the appraisal report, the certified appraiser accepts responsibility with the trainee for the content of and conclusions of the report.

(2) A trainee may assist in the performance of real estate appraisals and claim full credit for the actual hours worked on an appraisal, provided the trainee maintains a log on a form prescribed by the board.

(a)  
The log must detail all appraisals and related activities performed by the trainee. The hours claimed on the log must be verifiable by either signature on the report or by other written documentation in the work file.

(b)  
The log must be updated and signed by the supervisor at least every 30 days.

(c)  
The log must contain a statement affirming that both the supervising appraiser and trainee have competence as defined by USPAP.

(3) Trainees must ~~[attend]~~ complete a supervisor/trainee education program, either in person or via distance education, approved by the appraisal board before supervision begins. The trainee shall not receive appraisal experience credit for appraisals performed until the class is ~~[taken]~~ completed.

(4) Trainees shall assure that the supervisor has properly completed and sent the declaration form to the appraisal board on or before the day the trainee begins assisting the supervising appraiser.

(5) Trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of this section.  
[16.62.2.9 NMAC - N, 01/01/2015; A, 01/15/2017; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to Sections 2 and 8 of 16.62.3 NMAC and Part Name Change, effective February 03, 2019.

## TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 62 REAL ESTATE APPRAISERS PART 3 APPLICATION FOR ~~[LICENSE]~~ LICENSED RESIDENTIAL

**16.62.3.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/97; 16.62.3.2 NMAC - Rn & A, 16 NMAC 62.3.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.3.8 [LICENSE]**  
**LICENSED RESIDENTIAL:**  
~~[A holder of a license]~~ Licensed residential real estate appraisers may appraise complex residential or nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. ~~[The holder of a license]~~ Licensed residential real estate appraisers may not assume or use any title, designation or abbreviation likely to create the impression of certification.

**A.** For federally related transactions, the licensed residential real estate appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000.

**B.** Complex one-to four-family residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical. For non-federally related transaction appraisals, transaction value shall mean market value.

**C.** All licensed residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP)

**D.** Applicants for ~~[license]~~ licensed residential in the state of New Mexico must.

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove successful completion of real estate appraisal education of at least

150 board-approved ~~[classroom]~~ creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules ~~[(no more than fifty percent of the courses from courses (d) through (g) may be from courses offered over the internet or distance learning modalities)]~~:

(a)  
basic appraisal principles 30 hours

(b)  
basic appraisal procedures 30 hours

(c)  
the 15 hour national USPAP course and examination 15 hours

(d)  
residential market analysis and highest and best use 15 hours

(e)  
residential appraiser site valuation and cost approach 15 hours

(f)  
residential sales comparison and income approaches 30 hours

(g)  
residential report writing and case studies 15 hours

(4)  
successfully complete the appraiser qualifications board (AQB) approved licensed residential real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months, and the applicant must meet the requisite experience requirement within 24 months;

(5) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(6)  
demonstrate to the board that he/she is honest, trustworthy and competent;

(7)  
successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(8) pay the fee set out in 16.62.12.8 NMAC;  
 (9) meet the minimum criteria for state licensure issued by the appraisers qualifications board of the appraisal foundation;  
 (10) submit a duly made application to the board office;

~~[(11) completion of 30 semester hours of college-level education from an accredited college or university. (Effective January 1, 2015, the appraiser qualifications board of the appraisal foundation adopted changes of the real property appraiser qualification criteria.)]~~

~~E. Trainee appraisers wishing to change to the licensed appraiser classification must also satisfy the college-level education requirements.]~~

~~[F.] E.~~ Appraisers holding a valid trainee appraiser credential may satisfy the educational requirements of 75 board-approved hours for the licensed residential real property appraiser credential by completing the following additional educational hours:

- (1) residential market analysis and highest and best use 15 hours
- (2) residential appraiser site valuation and cost approach 15 hours
- (3) residential sales comparison and income approaches 30 hours
- (4) residential report writing and case studies 15 hours

~~[G.] E.~~ Appraisers holding a valid licensed residential or general certified appraiser credential satisfy the educational requirements for the licensed residential appraiser credential.

~~[H.] G.~~ Experience: Applicants for state ~~[licensure]~~ licensed residential must have a minimum of ~~[2,000]~~ 1,000 hours of experience obtained in no fewer than ~~[12]~~ six months in real property appraisal as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraisers under

whose supervision the experience was obtained.

[10/1/97; 16.62.3.8 NMAC - Rn & A, 16 NMAC 62.3.8, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 8 of 16.62.4 NMAC, February 03, 2019.**

**16.62.4.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.  
 [10/1/97; 16.62.4.2 NMAC - Rn & A, 16 NMAC 62.4.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.4.8 RESIDENTIAL CERTIFICATION:** A holder of a residential certificate is eligible to prepare appraisals of all residential real estate for federally related transactions or other uses. He/she may appraise nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a residential certificate may not assume or use any title, designation or abbreviation likely to create the impression of general certification.

**A.** The certified residential real estate appraiser classification qualifies the appraiser to appraise one to four residential units without regard to value or complexity. The classification includes the appraisal of vacant or unimproved land that is utilized for one to four family purposes or for which the highest and best use is for one to four family purposes. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

**B.** All certified residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP).

**C.** Applicants for certification in residential appraisal in the state of New Mexico must:

- (1) be a legal resident of the United States;
- (2) have reached the age of majority;
- (3) prove successful completion of real estate appraisal education of at least 200 board-approved ~~[classroom]~~ creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules ~~[(no more than fifty percent of the courses from courses (d) through (j) may be from courses offered over the internet or distance learning modalities)]~~:
  - (a) basic appraisal principles 30 hours
  - (b) basic appraisal procedures 30 hours
  - (c) the 15 hour national USPAP course and examination 15 hours
  - (d) residential market analysis and highest and best use 15 hours
  - (e) residential appraiser site valuation and cost approach 15 hours
  - (f) residential sales comparison and income approaches 30 hours
  - (g) residential report writing and case studies 15 hours
  - (h) statistics, modeling and finance 15 hours
  - (i) advanced residential applications and case studies 15 hours
  - (j) appraisal subject matter electives 20 hours



(4) ~~[hold a bachelor's degree or higher from an accredited college or university;]~~ complete college-level education experience under one of the following scenarios: (Effective ~~[January 1, 2015]~~ May 1, 2018, the appraiser qualifications board of the appraisal foundation adopted changes of the real property appraiser qualification criteria);

(a) Option #1: hold a bachelor's degree or higher from an accredited college or university in any field of study;

(b) Option #2: hold an Associate's Degree in a field of study related to:

(i) Business Administration

(ii) Accounting

(iii) Finance

(iv) Economics; or

(v) Real Estate

(c) Option #3: Successful completion of 30 semester hours of college-level courses in each of the following specific topic areas:

(i) English Composition (three hours)

(ii) Microeconomics (three hours)

(iii) Macroeconomics (three hours)

(iv) Finance (three hours)

(v) Algebra, Geometry, or Higher

Math (three hours)

(vi) Statistics (three hours)

(vii) Computer Science (three hours)

(viii) Business Law or Real Estate Law

(three hours)

(ix) Two elective courses in any of the above topics, or in Accounting, Geography, Agricultural Economics, Business Management, or Real Estate (three hours each).

(d) Option #4: Successful completion of at least 30 hours of College Level Examination Program® (CLEP)® examinations that cover each of the following specific topic areas:

<b>Equivalency Table</b>		
<b>CLEP Exams</b>	<b>CLEP Semester Hours Granted</b>	<b>Applicable College Classes</b>
College Algebra	3	Algebra, Geometry, Statistics, or higher mathematics
College Composition	6	English Composition
College Composition Modular	3	English Composition
College Mathematics	6	Algebra, Geometry, Statistics, or higher mathematics
Principles of Macroeconomics	3	Macroeconomics or Finance
Principles of Microeconomics	3	Microeconomics or Finance
Introductory Business Law	3	Business Law or Real Estate Law
Computer Science	3	Information Systems

(e) Option #5: any combination of Option #3 and Option #4 that includes all of the topics identified.

(f) Option #6: No college-level education required. This option only applies to appraisers who have held a Licensed Residential credential for a minimum of five (5) years and have no record of

any adverse, final, and non-appealable disciplinary action affecting the licensed residential appraiser's legal eligibility to engage in appraisal practice with five (5) years immediately preceding the date of application for a Certified residential credential.

(5) pass examination: the appraiser qualifications board (AQB) approved certified real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination; the requisite experience requirement must be met within 24 months, successful completion of the examination is valid for a period of 24 months;

(6) assure courses taken in satisfying the qualifying education requirements are not repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(7) demonstrate to the board that he/she is honest, trustworthy and competent;

(8) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(9) pay the fee set out in 16.62.12.8 NMAC;

(10) meet the minimum criteria for the state residential certificate classification issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

(11) submit a duly made application to the board office.

**D.** Trainee and licensed appraisers wishing to change to the residential certified appraiser classification must also satisfy the college degree requirement.

**E.** Appraisers holding a valid general certified appraiser credential satisfy the educational requirements for the residential certified appraiser credential.

**F. Appraisers**

holding a valid trainee appraiser credential may satisfy the educational requirements of 125 board-approved hours for the certified residential real property appraiser credential by completing the following additional educational hours:

- (1) residential market analysis and highest and best use 15 Hours
- (2) residential appraiser site valuation and cost approach 15 Hours
- (3) residential sales comparison and income approaches 30 Hours
- (4) residential report writing and case studies 15 Hours
- (5) statistics, modeling and finance 15 Hours
- (6) advanced residential applications and case studies 15 Hours
- (7) appraisal subject matter electives 20 Hours

**G. Appraisers holding**

a valid licensed residential real property appraiser credential may satisfy the educational requirements of 50 board-approved hours for the certified residential real property appraiser credential by completing the following additional educational hours:

- (1) statistics, modeling and finance 15 Hours
- (2) advanced residential applications and case studies 15 Hours
- (3) appraisal subject matter electives 20 Hours

**H. Experience:**

applicants for state residential certification must have a minimum of ~~[2,500]~~ 1,500 hours of experience in real property appraisal obtained during no fewer than ~~[24]~~ twelve months as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraiser under whose supervision the experience was obtained.

[10/1/97; 16.62.4.8 NMAC - Rn & A, 16 NMAC 62.4.8, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 8 of 16.62.5 NMAC, effective February 03, 2019.**

**16.62.5.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/97; 16.62.5.2 NMAC - Rn & A, 16 NMAC 62.5.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.5.8 GENERAL CERTIFICATE:** A holder of a general certificate may prepare appraisals on all real estate and may indicate that such appraisals are state certified.

**A.** All certified general real estate appraisers must comply with the competency rule of the national uniform standards of professional practice (USPAP).

**B.** Applicants for the general certificate in the state of New Mexico must:

- (1) be a legal resident of the United States;
- (2) have reached the age of majority;
- (3) submit a duly made application to the board office.
- (4) hold a bachelor's degree or higher from an accredited college or university;
- (5) demonstrate to the board that he/she is honest, trustworthy and competent;
- (6) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;
- (7) pay the fee set out in 16.62.12.8 NMAC;
- (8) meet the minimum criteria for state general certification classification issued by the appraiser qualifications board

(AQB) of the appraisal foundation; (Effective January 1, 2015, the appraiser qualifications board of the appraisal foundation adopted changes of the real property appraiser qualification criteria).

(9)

successfully complete the appraisal qualifications board (AQB) approved general certified real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months; and

(10)

successfully complete the real estate appraisal core curriculum educational requirements with a particular emphasis on non-residential properties.

**C. Applicants**

shall successfully satisfy the core curriculum educational requirement of 300 board-approved courses by completing the following:

- (1) basic appraisal principles 30 hours;
- (2) Statistics, Modeling, and Finance 15 hours;
- ~~[(2)]~~ (3) basic appraisal procedures 30 hours;
- ~~[(3)]~~ (4) the 15 hour national USPAP course and examination 15 hours;
- ~~[(4)]~~ (5) general appraiser market analysis and highest and best use 30 hours;
- ~~[(5)]~~ (6) general appraiser sales comparison approach 30 hours;
- ~~[(6)]~~ (7) general appraiser site valuation and cost approach 30 hours;
- ~~[(7)]~~ (8) general appraiser income approach 60 hours;
- ~~[(8)]~~ (9) general appraiser report writing and case studies 30 hours;
- ~~[(9)]~~ (10) appraisal subject matter electives 30 hours.

**D. Appraisers**

holding a valid trainee appraiser credential may satisfy the educational requirements of 225 board-approved hours for the certified general real property appraiser credential by

completing the following additional educational hours:

- (1) general appraiser market analysis and highest and best use 30 hours;
- (2) statistics, modeling and finance 15 hours;
- (3) general appraiser sales comparison approach 30 hours;
- (4) general appraiser site valuation and cost approach 30 hours;
- (5) general appraiser income approach 60 hours;
- (6) general appraiser report writing and case studies 30 hours;
- (7) appraisal subject matter electives 30 hours.

**E.** Appraisers holding a valid licensed residential real property appraiser credential may satisfy the educational requirements of 150 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

- (1) general appraiser market analysis and highest and best use 15 hours;
- (2) statistics, modeling and finance 15 hours;
- (3) general appraiser sales comparison approach 15 hours;
- (4) general appraiser site valuation and cost approach 15 hours;
- (5) general appraiser income approach 45 hours;
- (6) general appraiser report writing and case studies 15 hours;
- (7) appraisal subject matter electives 30 hours.

**F.** Appraisers holding a valid certified residential real property appraiser credential may satisfy the educational requirements of 100 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

- (1) general appraiser market analysis and highest and best use 15 hours;

- (2) general appraiser sales comparison approach 15 hours;
- (3) general appraiser site valuation and cost approach 15 hours;
- (4) general appraiser income approach 45 hours;
- (5) general appraiser report writing and case studies 10 hours.

**G.** Experience: applicants for state general certification must have a minimum of 3,000 hours of experience in real property appraisal obtained during no fewer than [30] (18) months, of which, 1,500 hours must be in non-residential appraisal work, submitted on a form prescribed by the board and attested to by the duly certified general supervising appraiser under whose supervision the experience was obtained.

[10/1/97; 16.62.5.8 NMAC - Rn & A, 16 NMAC 62.5.8, 09/13/2004; A, 11/25/06; A, 08/21/10; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 8 of 16.62.6 NMAC, effective February 03, 2019.**

**16.62.6.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers. [1/14/00; 16.62.6.2 NMAC - Rn & A, 16 NMAC 62.61.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.6.8 EXAMINATION REQUIREMENTS:** All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed uniform state certifications/licensing examination or its equivalent.

**A.** The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

**B.** An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator, Hewlett Packard calculator 12C or its equivalent; the applicant gives or receives any kind of aid during the examination; or someone other than the applicant takes the test or attempts to take the test for the applicant.

**C.** All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

**D.** The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations known as the state board jurisprudence examination which will require a score of seventy[~~two~~] percent or more for a passing grade. This jurisprudence examination shall be taken during initial application for no charge, if this exam is failed then the exam can be taken a second time for a fee of \$95. If the second exam is failed then the application will be deemed incomplete and then referred to the board, at their next meeting, for decision.

**E.** The applicant must take the examination prescribed by the board.

[1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004; A, 06/13/08; A, 08/21/10; A, 01/15/17; A, 02/03/2019]

**REGULATION AND  
LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to Sections 2, 8, 9, 10, 12 of and adding Section 16 to 16.62.7 NMAC, effective February 03, 2019.**

**16.62.7.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers. [10/1/97; 16.62.7.2 NMAC - Rn & A, 16 NMAC 62.7.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.7.8 INITIAL LICENSE ISSUANCE:** Initial licenses expire on April 30 in the second year of licensure. No license will be issued for longer than 24 months [or less than 13 months]. Applications for licensure are valid for one year from the date of receipt. [10/1/97; 16.62.7.8 NMAC - Rn & A, 16 NMAC 62.7.8, 09/13/2004; A, 01/15/2017; A, 02/03/2019]

**16.62.7.9 RENEWAL PERIOD AND EXPIRATION:** All licenses will expire every two years on April 30. [Renewal fees for the initial period will be prorated as defined in 16.62.12.8 NMAC.] [10/1/97; 16.62.7.9 NMAC - Rn & A, 16 NMAC 62.7.9, 09/13/2004; A, 02/03/2019]

**16.62.7.10 RENEWAL PROCESS:**

**A.** A completed renewal application, accompanied by the required fee as defined in 16.62.12.8 NMAC and [documentation] completion of 28 hours of continuing education, is required. Renewal applications may be submitted online or by mail, and must be completed, post-marked or delivered to the board office on or before April 30 of the renewal year.

**B.** Deferrals may not be granted to credential holders, except in the case of individuals returning from active military duty. Licensees returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements.

**C.** The board shall audit a percentage of renewal applications each renewal period to verify the continuing education requirement has been met. The licensee must maintain proof in the form of certificates issued by the education providers (transcripts not acceptable) of continuing education courses taken for the past four years. The board reserves the right to audit a licensee's continuing education records as it deems necessary.

**D.** As part of the renewal process, applicants are required to attest that they have reviewed and are familiar with Real Estate Appraisers rules 16.62.1 NMAC through 16.62.18 NMAC. [10/1/97; 16.62.7.10 NMAC - Rn & A, 16 NMAC 62.7.10, 09/13/2004; A, 11/25/2006; A, 06/13/2008; A, 01/16/2011; A, 01/15/2017; A, 02/03/2019]

**16.62.7.12 REQUIRED CONTINUING EDUCATION:**

**A.** Twenty-eight [classroom] hours as defined in 16.62.8.7 NMAC of continuing education in courses approved by the board, which must include the appraisal qualification board (AQB) approved seven hour national uniform standards of professional appraisal practice (USPAP) update course, are required in each two-year renewal period. [The board also requires that the licensee take and pass the jurisprudence examination in accordance with Subsection D of 16.62.6.8 NMAC for each renewal cycle. The board will require a \$95 administrative fee to be submitted with this test for renewal.]

**B.** Each license holder is required to submit a list of continuing education courses with each renewal. For continuing

education cycle periods of 185 days to 365 days, 14 hours of continuing education is required. For continuing education cycle periods of less than 185 days, no hours of continuing education are required.

**C.** Effective with the first biennial renewal period and each subsequent renewal, a seven hour class in the national uniform standards of professional appraisal practice update course is required as part of the continuing education requirement. Successful completion includes passing an exam, if required, by the appraiser qualifications board (AQB).

**D.** Educational offerings taken by an individual in order to fulfill the class hour requirement for a different classification than his/her current classification may be simultaneously counted towards the continuing education requirement of his/her current classification.

**E.** Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two hours. [10/1/97; 16.62.7.12 NMAC - Rn & A, 16 NMAC 62.7.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 01/16/2011; A, 01/15/2017; A, 02/03/2019]

**16.62.7.16 EXEMPTION FROM ISSUANCE LICENSE OR CERTIFICATE:**

**A.** The process of analyzing, without altering, an appraisal report, except appraisal reviews as defined in the Definitions under Paragraph (5) of Subsection A of 16.62.1.7 NMAC of General Provisions AND The Uniform Standards of Professional Appraisal Practice, that is part of a request for mortgage credit, is a specialized service as defined in Subsection Q of Section 61-30-3 NMSA 1978 and is exempt from the requirements of licensing or certification.

**B.** The process of completing an appraisal review, as defined in the Definitions under Paragraph (5) of Subsection A



of 16.62.1.7 NMAC of General Provisions AND as defined by the Uniform Standards of Professional Appraisal Practice, completed by a review appraiser holding a valid license or certification and completing the appraisal review from a location outside of New Mexico, is exempt from the requirements of licensing or certification provided the appraisal reviewer has a valid license or certification that corresponds with or is higher than the level of licensure or certification required to perform the appraisal under review.

[16.62.7.16 NMAC – N, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2, 7, 11 and 14 to 16.62.8 NMAC, effective February 03, 2019.**

**16.62.8.2 SCOPE:** All trainees, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/14/00; 16.62.8.2 NMAC - Rn & A, 16 NMAC 62.8.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.8.7 DEFINITIONS:** “[~~Classroom hours~~] Class Hours” for the purpose of fulfilling continuing education requirements includes approved courses offered over the internet or other distance learning modalities.

[3/14/00; 16.62.8.7 NMAC - Rn, 16 NMAC 62.8.7, 09/13/2004; A, 02/03/2019]

**16.62.8.11 ACCEPTABLE CONTINUING EDUCATION:** Courses approved for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of trainees, licensees and certificate holders. The

primary objective of such courses shall be consistent with the board’s charge to protect the public and to increase the professional competence of trainees, licensees and certificate holders. [~~No more than 14 of the hours may be from courses offered over the internet or other distance learning modalities.~~]

[3/14/00; 16.62.8.11 NMAC - Rn & A, 16 NMAC 62.8.11, 09/13/2004; A, 11/25/06; A, 08/21/2010; A, 01/01/2015; A, 02/03/2019]

### **16.62.8.14 APPROVAL**

**OF SPONSORS:** The board may approve individuals or organizations as course sponsors. Colleges and universities offering credit courses in real estate appraisal are also considered approved sponsors.

**A.** Requests for approval must be made on board approved forms and include a data storage device (CD or USB) containing an outline and a code of conduct for instructors.

**B.** The instructor selection and retention policy will include, at a minimum, the following requirements:

(1) instructors of qualifying education courses must be licensed by exam or certified at the same or a higher category than the level of classes they are engaged to teach.

(2) instructors engaged to teach the national uniform standards of professional appraisal practice (USPAP) course must qualify under the instructor evaluation policy for instructor selection for the national USPAP course developed by the appraisal foundation;

(3) instructors must teach only the appraisal foundation-approved national uniform standards of professional appraisal practice (USPAP) course;

(4) student critiques must be requested and maintained for each class given;

(5) a summary of the critiques and the pass rate of the class must be submitted to the board within 30 days after the course is completed;

(6) the sponsor shall provide a procedure for periodic monitoring of instructors in the classroom setting along with the sponsor application.

**C.** Approved sponsors shall comply with the following requirements to maintain approved status; the school must be conducted in accordance with these rules:

(1) to permit the board or its representative access to the school or classes being conducted

and to make available to the board, upon request, all information pertaining to the activities of the school required for the administration of the rules and regulations, including its financial condition;

(2) to advertise the school at all times in a form and manner free from misrepresentation, deception or fraud;

(3) assure that all representations made by anyone authorized by the school to act as its agent or solicitor for prospective students are free from misrepresentation, deception or fraud;

~~[(4) when a school closes, all student records shall be submitted to the board within 30 days;]~~

~~[(5)]~~ (4) to maintain current, complete, and accurate student records and instructor critiques or summaries which shall be accessible at all times to the board or its authorized representative; these records shall include, in addition to other information, a record of payments made, a record of attendance, and a record of units of work completed;

~~[(6)]~~ (5) to conduct all courses in accordance with outlines submitted to and approved by the board;

~~[(7)]~~ (6) to only certify course completion for students who have successfully taken and passed the course; credit cannot be given for students who pass a course by challenging the course;

~~[(8)]~~ (7) sponsors will be subject to renewal of approval every three (3) years or on a renewal

period as determined by the AQB expiration date; the board assumes no responsibility for renewal courses not received from the sponsor's for any reason; it is the sponsor's responsibility to make timely request(s) for the renewal of course(s) for board approval;

~~[(9)]~~ (8) sponsors must assure that all instructors:

(a) conduct all classes in accordance with board rules;

(b) ensure that all instruction is free from misrepresentation;

(c) instruct only from board-approved outlines;

(d) allow access to any class being instructed to any duly appointed representative of the board; and

(e) certify to his/her sponsor a true and correct record of students' attendance in his/her classes;

~~[(10)]~~ (9) failure to comply with this rule may result in the loss of approval of the sponsor; and

~~[(11)]~~ (10) the board reserves the right to disapprove an instructor.

**D.** Sponsors may also be approved for seminars, conferences and one-time courses. Approval is limited to the dates of the course and may not be renewed.

[3/14/00; 16.62.8.14 NMAC - Rn, 16 NMAC 62.8.14, 09/13/2004; A, 11/25/2006; A, 01/16/2011; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 8 of 16.62.9 NMAC, effective February 03, 2019.**

**16.62.9.2 SCOPE:** All trainees, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/15/00; 16.62.9.2 NMAC - Rn & A, 16 NMAC 62.9.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.9.8 CERTIFICATE OF GOOD STANDING/FEE:** The board shall issue a certificate of good standing to any state trainee, licensed residential, ~~[and]~~ or certified real estate appraiser who is currently or has been credentialed under the act by virtue of having met the following requirements.

**A.** The trainee, license ~~[and certificate of the applicant]~~ or certificate holder must pay the required fees in ~~[full]~~ advance.

**B.** The applicant's appraiser trainee, license ~~[or]~~ and certificate must not be under suspension or revocation as a result of disciplinary action by the board, and the trainee, license and certificate holder must not be the subject of a pending notice of contemplated action issued by the board.

**C.** The certificate of good standing shall specify the current license status and license history of the applicant. Verification of license history and good standing may also be obtained from the national registry of real estate appraisers.

**D.** The applicant must submit a written request and pay a fee set by the board for issuance of the certificate of good standing.  
[2/28/94; 3/15/00; 16.62.9.8 NMAC - Rn & A, 16 NMAC 62.9.8, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 9 of 16.62.10 NMAC, February 03, 2019**

**16.62.10.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/15/00; 16.62.10.2 NMAC - Rn & A, 16 NMAC 62.10.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### 16.62.10.9 PROVISIONS FOR EMERGENCY LICENSURE:

**A.** Licensed or certified real estate appraisers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed or certified in New Mexico during the four months following the declared disaster with the same level of licensure they currently hold at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.62.2.8 NMAC, trainee; 16.62.3.8 NMAC, licensed; 16.62.4.8 NMAC, residential; and 16.62.5.8 NMAC, general;

(3) other required verification will be to contact the applicant's prior licensing board by email, mail or telephone.

**B.** The board may waive the following requirements for licensure:

(1) application fees;

(2) taking and passing the NM state exam; the applicant will be required to take and pass the NM state exam within 60 days from the date the emergency license is issued.

C. The board may waive the specific forms required under 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC.

E. Licenses issued under (the emergency provision) shall expire on April 30 following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before April 30 following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal. [16.62.10.9 NMAC - N/E, 11/10/05; A, 11/25/06; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 8 of 16.62.11 NMAC, effective February 03, 2019**

**16.62.11.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers. [16.62.11.2 NMAC - N, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

## 16.62.11.8 APPLICATION FOR RECIPROCITY:

A. Applications for New Mexico state licensed residential appraiser, certified residential appraiser, or certified general [certified] appraisers must hold [an] a current and valid appraisers license or certificate in another state at the time of application for reciprocity.

B. Applicants for reciprocity in the state of New Mexico must:

[1] ~~come from a home state where the credentialing requirements meet or exceed the New Mexico board of real estate appraisers requirements;~~

[2] (1) complete an application for New Mexico state licensed appraiser or certified appraiser, including the first page, the personal history questionnaire, three letters of verification, a two inch by two inch photograph;

[3] (2) verification of license history and good standing as obtained from the national registry of real estate appraisers;

[4] (3) submit copy of current license;

[5] (4) pay the appropriate fee by check or money order;

[6] (5) comply with all the New Mexico board of real estate appraisers statutes, rules and regulations; and

[7] (6) rely on a credential from a home state that complies with Title XI as determined by the appraisal subcommittee;

C. A reciprocal license shall expire [two years] on April 30 of the second calendar year after issuance.

D. Renewal requirements shall be in the same manner and with the same requirements as for the same classification of certified or licensed appraiser as stated in 16.62.7 NMAC [16.62.11.8 NMAC - N, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 8 of 16.62.12 NMAC, effective February 03, 2019.**

**16.62.12.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers. [2/29/96; 16.62.12.2 NMAC - Rn & A, 16 NMAC 62.12.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.12.8 FEES:** All fees required under the Real Estate Appraiser Act or these regulations are non-refundable unless otherwise noted.

A. Application fee for a trainee is \$200, which includes the initial trainee period.

B. Application fee for a [license] licensed residential is \$300, which includes the initial licensing period.

C. Application fee for residential certification is \$300, which includes the initial licensing period.

D. Application fee for general certification is \$400, which includes the initial licensing period.

E. The fee for all examinations will be paid directly to the company who provides the exam.

F. The biennial renewal fee for trainee appraisers is \$200. ~~[During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$55-per year or portion of a year. Any renewal issued for less than six months will be charged \$30.]~~

G. The biennial renewal fee for licensed residential appraisers is \$300. ~~[During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.]~~



**H.** The biennial renewal fee for residential certified appraisers is \$300. ~~[During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.]~~

**I.** The biennial renewal fee for general certified appraisers is \$355. ~~[During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$155 per year or portion of a year. Any renewal issued for less than six months will be charged \$80.]~~

**J.** The current fee for listing on the federal registry as charged by the appraisal subcommittee (ASC).

**K.** The application fee for a temporary practice permit is \$200.

**L.** The fee for replacement of trainee, license or certificate is \$50.

**M.** The fee for a certificate of good standing is \$25.

**N.** Administrative reinstatement fee is \$200 for retired and inactive status.

**O.** Administrative late fee is \$100.00 for expired status if renewed within 90 days of expiration.

**P.** Administrative fees as follows:

(1) approved continuing education course is \$50;  
(2) approval of continuing education sponsorship is \$75;

(3) licensee list is \$150;

~~[(4) state board jurisprudence examination administrative fee is \$95;]~~

~~[(5)] (4)~~ miscellaneous is \$25 up to a max of \$100.

[2/29/96; 16.62.12.8 NMAC - Rn & A, 08/21/2010; A, 01/16/2011; A, 7/10/2011; A, 01/01/2015; A, 01/01/2015; A, 01/15/2017; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2 and 9 of 16.62.13 NMAC, effective February 03, 2019.**

**16.62.13.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers. [10/1/97; 16.62.13.2 NMAC - Rn & A, 16 NMAC 62.13.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.13.9 REVIEW OF COMPLAINT:** The chairman of the board shall appoint at least one appraiser member of the board to evaluate each complaint filed with the board.

**A.** The board member appointee/evaluator shall also be chairperson of the complaint committee. The ~~[administrative review]~~ evaluation of complaints shall be completed by this person.

**B.** If the board member appointee or evaluator determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous, an investigation shall not be initiated and the complaint shall be referred to the board with a recommendation that the case be closed. If the chair of the complaint committee determines that the complaint merits further investigation, the complaint will be assigned to the complaint committee.

~~[B:]~~ **C.** The complaint committee may perform a regulatory review of an appraisal that is the subject of a complaint. Complaint committee members shall be competent to perform a regulatory review of an appraisal.

~~[C:]~~ **D.** The complaint committee may refer the appraisal that is the subject of a complaint to a peer committee to perform a Standard 3 review of the appraisal.

~~[D:]~~ **E.** Upon completion and review of the investigation initiated pursuant to this regulation, the board member appointee/evaluator along with the complaint committee shall either recommend to the board action in lieu of disciplinary action, a recommendation for disciplinary action, or a recommendation that the case be closed ~~[or shall submit to the board a recommendation for further disciplinary action].~~

~~[E:]~~ If the board member appointee/evaluator and board counsel determine that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous, an investigation shall not be initiated and the complaint shall be deemed invalid and closed without further incident. [10/1/97; 16.62.13.9 NMAC - Rn & A, 16 NMAC 62.13.9, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 2, 10 and 12 of 16.62.15 NMAC, effective February 03, 2019.**

**16.62.15.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers. [3/15/00; 16.62.15.2 NMAC - Rn & A, 16 NMAC 62.15.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

## 16.62.15.10 APPLICATION FOR REINSTATEMENT FROM RETIREMENT STATUS:

**A.** The application for the reinstatement of a license or certificate shall provide space for the applicant to provide the board the following information:

(1) the license number of the former trainee, license or certificate;



(2) the full name of the applicant;  
 (3) the date of the original issue; and  
 (4) the date of the applicant's retirement.

**B.** The application must be completed and returned to the board with a check or money order in an amount equivalent to all lapsed renewal fees. In addition, the applicant for reinstatement of trainee, license or certificate must offer proof sufficient to satisfy the board that he[?] or she has taken in the calendar year immediately preceding the application for reinstatement, a minimum of 14 [clock=] hours per year missed in refresher courses in addition to ~~[any hours of continuing education units the applicant might have been delinquent prior to retirement]~~ all required continuing education hours that would have been required if the credential holder was in an active status. Prior to reinstatement, the applicant must show proof that he or she is current with all continuing education hours required for each year in retirement status.

**C.** The application must be completed within two years from the date the active trainee, license or certificate expired. The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

**D.** No appraiser who has retired shall reactivate his/her practice until a new trainee registration, license or certificate is received. The appraiser shall not prepare an appraisal while in retirement status.  
 [3/15/00; 16.62.15.10 NMAC - Rn & A, 16 NMAC 62.15.10, 09/13/2004; A, 06/13/08; A, 01/01/2015; A, 01/15/2017; A, 02/03/2019]

# **16.62.15.12 REINSTATEMENT FROM INACTIVE STATUS**

**A.** The inactive licensee may apply for reinstatement to active status within three years after trainee, license or certificate has been placed on inactive status.

The applicant shall complete an application for reinstatement to include the following:

- (1) the license number of the former apprentice/trainee, license or certificate;
- (2) the full name of the applicant;
- (3) the date of the original issue;
- (4) the date of the applicant's inactive status.

**B.** The application must be completed and returned to the board with a check or money order for the required biennial renewal fee and administrative reinstatement fee. In addition, the applicant for reinstatement of trainee, license or certificate must provide satisfactory proof of completion of the continuing education requirements that would have been required had the credential always been active described in 16.62.8 NMAC.

**C.** The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application is in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

**D.** No appraiser who has an inactive status shall reactivate his/her practice until a new trainee registration, license or certificate is received.

**E.** No application for inactive status will be accepted if the appraiser is under investigation or facing disciplinary proceedings.

**F.** If the inactive licensee applies for reinstatement to active status more than three years after trainee, license or certificate has been placed on inactive status, the applicant shall:

(1) complete an application for reinstatement to include the following:

- (a) the license number of the former trainee, license or certificate;
- (b) the full name of the applicant;
- (c) the date of the original issue;
- (d) the date of the applicant's inactive status; and

(2) take and pass the state examination.

**G.** The application must be completed and returned to the board with a check or money order in an amount described in 16.62.12 NMAC. In addition, the applicant for reinstatement of traineeship, license or certificate must provide satisfactory proof of completion of the continuing education requirements described in 16.62.8 NMAC in addition to classroom hours:

(1) licensed and residential certified appraisers:

- (a) 15 hour national USPAP;
- (b) residential market analysis and highest and best use;
- (c) residential appraiser site valuation and cost approach;
- (d) residential sales comparison and income approaches;
- (e) residential report writing and case studies.

(2) general certified appraisers:

- (a) 15 hour national USPAP;
- (b) general appraiser market analysis and highest and best use;
- (c) general appraiser site valuation and cost approach;
- (d) general appraiser sales comparison and income approaches;
- (e) general appraiser report writing and case studies;

(f)

general appraiser income approach.

~~[H.]~~ The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

~~I.~~ No appraiser who has an inactive status shall reactivate his/her practice until a new trainee registration, license or certificate is received.

~~J.~~ No application for inactive status will be accepted if the appraiser is under investigation or facing disciplinary proceedings.]

~~[K.]~~ H. A licensee on inactive status shall not render or offer to render appraisal services or otherwise engage in the any appraisal practice until the board issues a new license.  
[16.62.15.12 NMAC - N, 01/01/2015; A, 01/15/2017; A, 02/03/2019]

### REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to Section 2 of 16.62.16 NMAC, effective February 03, 2019.

**16.62.16.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.  
[3/15/00; 16.62.16.2 NMAC - Rn & A, 16 NMAC 62.16.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to Sections 2 and 8 of 16.62.17 NMAC, effective February 03, 2019.

**16.62.17.2 SCOPE:** All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers, temporary licensed or certified real estate appraisers and members of the general public.  
[3/15/00; 16.62.17.2 NMAC - Rn & A, 16 NMAC 62.17.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.17.8 PROHIBITION:** Any person who violates the New Mexico Real Estate Appraisers Act is guilty of a misdemeanor and shall pay a fine of not more than \$500 [and/] or be imprisoned for not more than six months.  
[3/15/00; 16.62.17.8 NMAC - Rn, 16 NMAC 62.17.8, 09/13/2004; A, 02/03/2019]

### REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

This is an amendment to Section 7 of 16.65.1 NMAC, effective February 03, 2019.

**16.65.1.7 DEFINITIONS:** All words and terms defined in the Appraisal Management Company Registration Act have the same meaning in these rules.

**A.** Terms starting with the letter 'A' are defined as follows:

**(1) "Act"**  
means the Real Estate Appraisal Management Company Registration Act.

**(2)**  
"Applicant" means a company who has submitted an application to the board seeking registration.

(3)

"Appraisal" means the act or process of developing an opinion of the value of real property in conformance with the uniform standards for professional appraisal practice published by the appraisal foundation.

(4)

"Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, and which reference is made in the federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments."

(5)

["Appraisal management company" (AMC) means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year.]  
"Appraisal management company" (AMC) means:

(a)

any external third party that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year to:

(i)

recruit, select and retain appraisers;

(ii)

contract with appraisers to perform appraisal assignments;

(iii)

manage the process of having an appraisal performed; or

(iv)

review and verify the work of appraisers; or

(b)

any external third party that contracts with a qualifying licensed real estate broker or associate broker as defined in Chapter 61, Article 29 NMSA 1978 to provide broker price opinions.

**(6)** “Appraisal management services” means:

**(a)** to recruit, select, and retain appraisers;

**(b)** to contract with licensed and certified appraisers to perform appraisal assignments;

**(c)** to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

**(d)** to review and verify the work of appraisers.

**(7)** “Appraisal review” the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal, or an appraisal review.

**(8)** “Appraisal review report” is a report that develops or communicates an opinion about the quality of another appraiser work that was performed as part of an appraisal.

**(9)** “Appraisers Act” means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

**(10)** “Assignment” means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement for a specified number of properties.

**B.** Terms starting with the letter ‘B’ are defined as follows:

**(1)** “Board” means the New Mexico real estate appraisers board.

**(2)** “Board file” means all documents that an AMC is required to create and maintain for the board.

**C.** Terms starting with the letter ‘C’ are defined as follows:

**(1)** “Client” means a person or entity that contracts with, or otherwise enters into an agreement with an appraisal management company for the performance of real estate appraisal services.

**(2)** “Complaint committee” is a board appointed committee that is composed for the purpose of reviewing complaints and making recommendation to the board as to its findings.

**(3)** “Controlling person” (CP) means:

**(a)** an owner, officer or director of a corporation, partnership, limited liability company or other business entity seeking to offer appraisal management services in this state;

**(b)** an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and that has the authority to enter into agreements with independent for the performance of real estate appraisal services; or

**(c)** an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of appraisal management companies.

**(4)** “Clerical review” is a non-standard three review of the completeness of the appraisal.

**D.** Terms starting with the letter ‘D’. [RESERVED]

**E.** Term starting with the letter ‘E’ is defined as follows:

**(1)** “Employee in charge (EIC)” means a designated employee of the appraisal management company, with the responsibilities and obligations to the board set forth with these rules.

**(2)** “Evaluation” is a valuation permitted by the board’s appraisal regulations for transactions that qualify for the appraisal threshold exception, business loan exception, or

subsequent transaction exception.

**F.** Term starting with the letter ‘F’ is defined as follows: “FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

**G.** Terms starting with the letter ‘G’. [Reserved]

**H.** Terms starting with the letter ‘H’. [Reserved]

**I.** Terms starting with the letter ‘I’. [Reserved]

**J.** Terms starting with the letter ‘J’. [Reserved]

**K.** Terms starting with the letter ‘K’. [Reserved]

**L.** Terms starting with the letter ‘L’. [Reserved]

**M.** Terms starting with the letter ‘M’. [Reserved]

**N.** Term starting with the letter ‘N’ is defined as follows: “Nonresident appraiser” means an individual or entity that holds a current registration or license in another state.

**O.** Term starting with the letter ‘O’ is defined as follows: “Outsourced appraisal review” is an appraisal review conducted by a licensed appraiser who is not an employee of the AMC.

**P.** Terms starting with the letter ‘P’ are defined as follows.

**(1)** “Panel” means a group of independent appraisers that have been selected by an appraisal management company to perform real estate appraisal services for the appraisal management company.

**(2)** “Peer review” is an opinion as to the completeness of another appraiser’s work; completed by a licensed appraiser of similar experience and qualifications for the purpose of making a recommendation to the board as to its findings.

**Q.** Terms starting with the letter ‘Q’. [Reserved]

**R.** Terms starting with the letter ‘R’. [Reserved]

**S.** Term starting with the letter ‘S’ is defined as follows: “Staff appraiser” is an appraiser hired by an AMC as an employee, who is licensed by the board, to act as an appraiser and is subject to these rules.

**T.** Terms starting with the letter 'T'. [Reserved]

**U.** Term starting with the letter 'U' is defined as follows: "Uniform standards of professional appraisal practice (USPAP)" means the uniform standards or professional appraisal practice promulgated by the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act. USPAP deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

**V.** Terms starting with the letter 'V'. [Reserved]

**W.** Term starting with the letter 'W' is defined as follows: "Work file" is documentation necessary to support an appraiser's analyses, opinions, and conclusions.

**X.** Terms starting with the letter 'X'. [Reserved]

**Y.** Terms starting with the letter 'Y'. [Reserved]

**Z.** Terms starting with the letter 'Z'. [Reserved]  
[16.65.1.7 NMAC - N, 10/16/09; A, 01/01/2015; A, 01/15/2017; A, 02/03/2019]

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

**This is an amendment to Sections 8, 11 and adding new Section 15 to 16.65.2 NMAC, effective February 03, 2019.**

### 16.65.2.8

#### AMC REGISTRATION

**REQUIREMENTS:** Each AMC applying to the board for registration shall:

**A.** designate one controlling person (CP) that will submit to service of process;

**B.** designate one employee in charge (EIC) that will be the main contact for all communication between the board and the AMC (CP may be designated as the EIC, if that person meets all qualifications required by the board);

**C.** specify all entities doing business as (DBA) under the AMC;

**D.** certify that all appraisers added to the panel of the AMC hold a New Mexico license and certificate in good standing as an appraiser;

**E.** the AMC shall evaluate all appraisers within the renewal period to ensure that the real estate appraisal services are being conducted in accordance with the uniform standards of professional appraisal practices and board rules;

**F.** maintains a board file, containing:

(1) a detailed record of each ~~[service request]~~ appraisal assignment with the corresponding engagement letter and the independent appraiser that performs the real estate appraisal services for the AMC;

(2) certification and evaluation of all appraisers, as required under Subsections C and D;

(3) list of all non-taxable transaction certificates issued;

(4) a detailed record of the process and criteria that the AMC has in place to review the work of appraisers; and

(5) written procedure for contracting with and paying appraisers.

(6) a list of all appraisers who performed an appraisal in connection with a transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets in New Mexico during the previous year.

**G.** maintain a bond or other equivalent means of surety:

(1) a bond of twenty-five thousand dollars (\$25,000) shall be underwritten by a corporate surety authorized to transact business in New Mexico; such bond shall meet the following conditions:

(a) payments from a bond required pursuant to this section shall only be used to cure violations caused by a

registrant, confirmed by the board;

(b) claims against the bond shall be made within two years following the board's final decision and order, finding a violation;

(c) bonds shall be construed so that the corporate surety may pay claimants directly, upon approval by the board;

(d) the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond;

(e) the bond carrier shall provide to the board and to the AMC thirty [day's] days prior written notice of intent to cancel a bond required pursuant to this section; the surety for such a bond shall remain liable under the provisions of the bond for all obligations of the principal pertaining to bond terms that occur before the bond is canceled, expires or otherwise becomes ineffective;

(f) failure to maintain the bond for the period required by law is cause for revocation of the AMC registration; and

(g) if the bond is canceled, expires or otherwise becomes ineffective during the period of the registration, the AMC shall immediately notify the board; if the AMC has not provided proof of a new bond before the fortieth day after the date on which the bond was canceled, expired or otherwise became ineffective, the AMC shall be subject to revocation of its registration for failure to maintain a bond;

(2) as an equivalent means of surety, an AMC may maintain an agreement of cash collateral assignment executed with a state or national bank or federally insured savings association authorized to do business in New Mexico as trustee; interest, if any, accumulating on the cash collateral assignment shall accrue to the AMC.

[16.65.2.8 NMAC - N, 10/16/09; A, 01/16/11; A, 01/01/2015; A, 02/03/2019]



**16.65.2.11 EMPLOYEE IN CHARGE (EIC) REGISTRATION REQUIREMENTS:**

In order to serve as the EIC for a registered AMC, a designee shall:

A. not have had a license to practice as an appraiser refused, denied, canceled or revoked in this state or in any other state;

B. be of good moral character;

C. submit to a state background investigation; and

D. shall be responsible for;

(1) the selecting of appraisers for the performance of real estate appraisal services which includes: ensuring that each appraiser is licensed and provides a combined reporting system (CRS) identification number;

(2) have the responsibility of reviewing completed appraisals as part of the board file:

(a) shall ensure clerical review is conducted on all appraisals completed within the renewal period;

(b) shall randomly select a statistically significant number, but not less than five percent, all fractions rounded up, of outsource appraisal reviews on appraisals completed within the renewal period;

(c) outsource appraisal reviews shall be completed by an appraiser that is certified or licensed in good standing within their state of licensure at a level that corresponds with or is higher than the level of licensure required to perform the appraisal.

(3) maintaining required documentation as part of the board file.

E. [successfully-complete a board approved 15-hour USPAP course for registration and a board approved seven-hour USPAP update for renewals;] For initial registration of any Employee In Charge (EIC), proof that a 15 hour USPAP course was completed (no limitation on date completed) must be submitted along with the application for registration. For subsequent

renewals of an existing registered EIC, an appraisal qualification board (AQB) seven hour National USPAP Update course must have been taken within the past two years. The appraisal qualifications board (AQB) approved 15 hour national USPAP course and the seven hour national USPAP update course do not require prior approval by the board with proof that the course was taught by an AQB certified USPAP instructor who is also a residential or general certified appraiser; the course sponsor may certify in the form of a certificate provided to the student that the instructor meets AQB criteria; the instructor must be affiliated with a sponsor approved in at least one state of the United States.

[16.65.2.11 NMAC - N, 10/16/09; A, 01/16/11; A, 7/10/2011; A, 01/15/2017; A, 02/03/2019]

**16.65.2.15 “AMC NATIONAL REGISTRY”:** The Board’s staff shall, as required by federal law, report all residential appraisal management companies to the AMC National Registry. For the purposes of this rule, “residential appraisal management company” means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year.

[16.65.2.15 NMAC – N, 02/03/2019]

## END OF ADOPTED RULES

# 2019 New Mexico Register

## Submittal Deadlines and Publication Dates

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Issue 3	January 31	February 12
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Issue 6	March 14	March 26
Issue 7	March 28	April 9
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