

NEW MEXICO BOARD OF LICENSURE
FOR
PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS



Administrative Code

Title 16, Chapter 39, Parts 1, 2, 3, 4, 5, 6, 7, and 8

Effective December 16, 2022

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TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 1 GENERAL PROVISIONS - PROFESSIONAL ENGINEERING AND SURVEYING
ORGANIZATION AND ADMINISTRATION

16.39.1.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.1.1 NMAC - Rp, 16 NMAC 39.1.1, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

16.39.1.2 SCOPE: Provisions for Part 1 apply to staff and officers of the board and to any person licensed as a professional engineer or a professional surveyor, or to anyone applying for licensure as a professional engineer or a professional surveyor in New Mexico.

[16.39.1.2 NMAC - Rp, 16 NMAC 39.1.2, 1/01/2002]

16.39.1.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." 16.39.1 NMAC applies to both engineering and surveying.

[16.39.1.3 NMAC - Rp, 16 NMAC 39.1.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.1.4 DURATION: Permanent.

[16.39.1.4 NMAC - Rp, 16 NMAC 39.1.4, 1/01/2002]

16.39.1.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.

[16.39.1.5 NMAC - Rp, 16 NMAC 39.1.5, 1/01/2002]

16.39.1.6 OBJECTIVE: The objective of Part 1 of Chapter 39 is to clearly define the organizational structure of the board, the types of meetings and order of business, the number needed for a quorum, the duties of the officers, the responsibilities of the board, the preparation and distribution of a roster of licensed professional engineers and surveyors, the establishment of fees, and retired status.

[16.39.1.6 NMAC - Rp, 16 NMAC 39.1.6, 1/01/2002]

16.39.1.7 DEFINITIONS:

A. "Category" means professional engineer or professional surveyor.

B. "Branch" means discipline.

[16.39.1.7 NMAC - Rp, 16 NMAC 39.1.7, 1/1/2002; A, 7/1/2015]

16.39.1.8 THE BOARD:

A. The name of this board shall be the state board of licensure for professional engineers and professional surveyors hereinafter referred to as the "board".

B. The official seal of the board shall be an embossed circular seal one and three-quarter inches in diameter consisting of two concentric circles; the outer circle to be one and three-quarter inches in diameter. The inner circle is to be one and one-quarter inches in diameter. The inner circle shall contain the seal of the state of New Mexico and the words, "state of New Mexico." The words, "board of licensure for professional engineers and professional surveyors", shall be contained between the two concentric circles.

C. The fiscal year of the board shall be July 1, through June 30 of the following calendar year.

[16.39.1.8 NMAC - Rp, 16 NMAC 39.1.8, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

16.39.1.9 MEMBERS OF THE BOARD: Members of the board are not employees within the meaning of that term under the Governmental Conduct Act; however, they are public officers; therefore the Governmental Conduct Act applies to all board members.

[16.39.1.9 NMAC - Rp, 16 NMAC 39.1.9, 1/01/2002; A, 7/01/2006]

16.39.1.10 MEETINGS OF THE BOARD:

A. Special and emergency meetings of the board may be called at any time by the chair of the board, or a majority of the board members; and meetings of either of the two committees may be called at any time by order of the respective chair of the professional engineering committee or the professional surveying committee or a majority of the committee members.

B. Proper public notice of all meetings shall be given in accordance with the provisions of the Open Meeting Act. [16.39.1.10 NMAC - Rp, 16 NMAC 39.1.10, 1/01/2002; A, 12/28/2017]

16.39.1.11 ORGANIZATION OF THE BOARD:

A. Annually, at the last meeting of the fiscal year, the board shall elect its officers, who shall take office on July 1.

B. Annually, at the first meeting after July 1, the chair of the board shall appoint from the board's members such additional committees as may be found appropriate by the board. [16.39.1.11 NMAC - Rp, 16 NMAC 39.1.11, 1/01/2002]

16.39.1.12 DUTIES OF THE BOARD, OFFICERS OF THE BOARD, AND THE EXECUTIVE DIRECTOR:

A. The board shall act as a whole in all administrative, financial and personnel matters and any other activity not specifically related to the practices of engineering or surveying.

B. The board shall appoint an executive director who shall serve at the pleasure of the board.

C. The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of licensure, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the chair.

D. The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

E. The secretary of the board shall co-sign all certificates of licensure and in the absence or incapacity of the chair and vice-chair, exercise the duties and shall possess all the powers of the chair.

F. The executive director shall perform and supervise the following for the board and professional engineering and professional surveying committees:

(1) conduct and care for all correspondence in the name of the board, the professional engineering committee and the professional surveying committee;

(2) record and file all applications, certificates of licensure, examinations, licenses and revocations for both professional engineering and professional surveying committees;

(3) prepare and submit to the board, at the first meeting of each fiscal year for review and approval, an annual report of board activities and statistics for the preceding fiscal year, including a financial report; prepare the approved annual report for transmittal to the governor;

(4) keep a record of all meetings of the board and committees and maintain a proper account of the business of the board; a draft of the meetings' minutes shall be provided to each member for comment within ten working days after each meeting; a final draft shall be provided to each board member at the next meeting for final approval;

(5) receive and account for all funds and transfer same to state treasurer within 24 hours of receipt; authorize and approve payment by department of finance and administration invoices and vouchers for only those expenditures included in the board's approved operating budget;

(6) present and submit to the board at the first meeting of each fiscal year a financial report prepared by the rules of generally accepted accounting principles as of the preceding June 30th, such report to include the reporting of the transactions of the board during the preceding fiscal year, and a complete statement of the receipts, expenses and expenditures of the board; upon being approved by the board, shall be included in the annual report and submitted to the governor;

(7) receive and review licensure applications for completeness for consideration by the respective committees;

(8) schedule and arrange for the administration of written examinations provided for in the Engineering and Surveying Practice Act, content of which having been approved by the board or respective professional engineering or professional surveying committees; when requested by the applicant, the director shall make reasonable accommodations for the testing of an applicant with a certified disability in accordance with the provisions of the Americans with Disabilities Act and who meets the minimum qualifications in the Engineering and Surveying Practice Act and these rules; when necessary qualified assistance, approved by the board, may be retained for conduct of examinations;

(9) prepare and maintain a current roster on the board's website, and furnish copies to the public upon request and payment of a fee as determined by the board; in accordance with Section 61-23-13 NMSA 1978;

(10) prepare and maintain a current roster of business entities with an affidavit identifying the authorized company officer and the professional engineer or professional surveyor or both who is employed by the business entity and in the responsible charge;

(11) provide one week in advance of each meeting, drafts of the agenda of the meeting to each member of the

board;

(12) publish an annual newsletter at a minimum;

(13) direct investigations of any alleged violations or infringements of the Engineering and Surveying Practice Act; a written report covering status of protest actions and alleged violations shall be presented to the appropriate committee at each meeting; this may be in the form of appropriate commentary recorded in the minutes, supported by a separate file on the case; when necessary, qualified assistance, approved by the board, may be retained for conduct of investigations;

(14) file formal disciplinary actions upon approval by the board with the appropriate jurisdiction for prosecution of alleged violations of the act and the board's rules.

[16.39.1.12 NMAC - Rp, 16 NMAC 39.1.12, 1/1/2002; A, 7/1/2006; A, 7/1/2015; A, 12/28/2017]

16.39.1.13 DUTIES OF THE OFFICERS OF THE PROFESSIONAL ENGINEERING AND PROFESSIONAL SURVEYING COMMITTEES:

A. The chair shall preside at all meetings and shall otherwise perform all duties pertaining to the office of the chair.

B. The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

[16.39.1.13 NMAC - Rp, 16 NMAC 39.1.13, 1/01/2002]

16.39.1.14 PROCEDURES AT BOARD MEETINGS AND COMMITTEE MEETINGS:

A. The order of business may be as follows:

(1) **board meetings:**

- (a) public notice;
- (b) approval of agenda;
- (c) approval of minutes;
- (d) reports of committees;
- (e) communications;
- (f) old business;
- (g) new business;
- (h) complaints and violations;
- (i) adjournment.

(2) **committee meetings:**

- (a) public notice;
- (b) approval of agenda;
- (c) approval minutes;
- (d) reports of sub-committees;
- (e) communications;
- (f) old business;
- (g) new business;
- (h) complaints and violations;
- (i) applications;
- (j) adjournment.

B. *Roberts' rules of order* shall generally govern the procedure of the board and committee meetings except as otherwise provided for in Title 16, Chapter 39 of the New Mexico administrative code or the Engineering and Surveying Practice Act.

C. Board members may participate in a meeting of the board or committees by means of a telephone conference or similar communications equipment and participation by such means shall constitute presence in person at the meeting. Participation by telephone may only occur when it is difficult or impossible for board members to attend.

[16.39.1.14 NMAC - Rp, 16 NMAC 39.1.14, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

16.39.1.15 ROSTER: The roster shall contain the following information for each licensee: legal name, street address or post office box number, city, state, zip code, class of licensure, discipline, status, and license number.

[16.39.1.15 NMAC - Rp, 16 NMAC 39.1.15, 1/1/2002; A, 7/1/2015]

16.39.1.16 FEES:

A. A fee will be assessed to process an application for a license to practice, for enrollment as an engineering intern or surveying intern, and for examinations.

B. Examination fees shall be paid on or before the date specified by the board prior to the date of the scheduled examination. Said fees are earned fees and are not refundable if the applicant should fail to appear for the examination.

C. Renewal and application fees are earned fees and are not refundable.

D. All fees shall be set by the board. Changes in renewal fees, application fees, and examination fees shall become effective as designated by the board.

[16.39.1.16 NMAC - Rp, 16 NMAC 39.1.16, 1/01/2002; A, 7/01/2006]

16.39.1.17 STATUS OF LICENSURE:

A. Intern Certification - a licensee's intern certification will automatically be superseded by the professional license and will not show as "active" on the roster.

B. Retired status - a licensee shall become eligible for retired status with a waiver of renewal fees after meeting all the following qualifications:

(1) retired from active practice;

(2) at least 60 years of age;

(3) have been a licensee for a continuous period of 20 years, at least 10 of which must have been in New Mexico;

(4) the licensee has filed an application prescribed by the board for retired status prior to the expiration of the license;

(5) the licensee does not have any pending complaints;

(6) the licensee does not have any pending litigation; and

(7) the licensee has completed any imposed disciplinary actions.

C. Licensees shall request retired status by letter. In the event the licensee on retired status desires to return to practice, the licensee shall apply to the board, comply with the continuing professional development requirements; and if approved shall pay the appropriate fee.

D. Professional engineers and professional surveyors on "retired status" with the board may use the titles "engineer", "surveyor", "professional engineer", "professional surveyor", PE or PS after their names and shall add "(Ret.)" or "(Retired)" after such title.

E. Inactive status - a licensee shall become eligible for inactive status with a waiver of renewal fees and professional development requirements after meeting all the following qualifications:

(1) the licensee is not engaged in the respective professions (engineering or surveying) which requires licensure in this jurisdiction;

(2) the licensee has been a licensed professional engineer or surveyor in this jurisdiction for 10 consecutive years;

(3) the licensee has filed an application prescribed by the board for inactive status prior to the expiration of the license;

(4) the licensee does not have any pending complaints;

(5) the licensee does not have any pending litigation; and

(6) the licensee has completed any imposed disciplinary actions.

F. In the event a licensee on inactive status desires to return to practice within six years of acquiring inactive status, the licensee shall make proper application to the board, comply with the continuing professional development requirements (a minimum of 30 PDHs) and if approved shall pay the appropriate fee.

G. An inactive licensee who has maintained inactive status in excess of six consecutive years may be readmitted to active practice of the profession only upon making proper application and completion of the requirements as prescribed by the board for reinstatement of a license.

[16.39.1.17 NMAC - Rp, 16 NMAC 39.1.17, 1/1/2002; A, 7/1/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

HISTORY OF 16.39.1 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the state records center and archives under: PELS 67-1, New Mexico Engineering Practice Act, filed 6-22-67; PELS 79-1, New Mexico Engineering and Land Surveying Practice Act, filed 10-29-79; PELS 67-2, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 06-22-67; PELS 68-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 10-07-68; PELS 69-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 07-03-69; PELS 71-1, Rules of Procedure Manual, filed 01-14-71; PELS 73-1, Rules of Procedure Manual, filed 01-04-73; PELS 75-1, Rules of Procedure Manual, filed 12-15-75; PELS 80-1, Regulations and Rules of Procedure, filed 01-28-80; PE/PS Rule No. 89-1, Regulations and Rules of Procedure, filed 08-15-89; Rule 100.1, Regulations and Rules of Procedure - The Board, filed 10-28-94; Rule 100.2, Regulations and Rules of Procedure--Members of the Board, filed 10-28-94; Rule 100.3, Regulations and Rules

of Procedure--Meeting of the Board, filed 10-28-94; Rule 100.4, Regulations and Rules of Procedure--Organization of the Board, filed 10-28-94; Rule 100.5, Regulations and Rules of Procedure--Duties of the Board, Officers of the Board, and The Executive Director, filed 10-28-94; Rule 100.6, Regulations and Rules of Procedure--Duties of the Officers of the Professional Engineering and Professional Surveying Committee, filed 10-28-94; Rule 100.7, Regulations and Rules of Procedure--Procedures at Board Meetings and Committee Meetings, filed 10-28-94; Rule 100.8, Regulations and Rules of Procedure--Roster, filed 10-28-94; Rule 100.9, Regulations and Rules of Procedure--Fees, filed 10-28-94; Rule 100.10, Regulations and Rules of Procedure--Status of Registration, filed 10-28-94.

History of Repealed Material:

16 NMAC 39.1 (filed 3-31-1998); 16 NMAC 39.1.17.4, 16 NMAC 39.1.17.5, 16 NMAC 39.1.17.6 (filed 01-04-2000) repealed 01/01/2002.

Other History:

Rule 100.1, Regulations and Rules of Procedure - The Board (filed 10-28-94); Rule 100.2, Regulations and Rules of Procedure--Members of the Board (filed 10-28-94); Rule 100.3, Regulations and Rules of Procedure--Meeting of the Board (filed 10-28-94); Rule 100.4, Regulations and Rules of Procedure--Organization of the Board (filed 10-28-94); Rule 100.5, Regulations and Rules of Procedure--Duties of the Board, Officers of the Board, and The Executive Director (filed 10-28-94); Rule 100.6, Regulations and Rules of Procedure--Duties of the Officers of the Professional Engineering and Professional Surveying Committee (filed 10-28-94); Rule 100.7, Regulations and Rules of Procedure--Procedures at Board Meetings and Committee Meetings (filed 10-28-94); Rule 100.8, Regulations and Rules of Procedure--Roster (filed 10-28-94) Rule 100.9, Regulations and Rules of Procedure--Fees (filed 10-28-94); and Rule 100.10, Regulations and Rules of Procedure--Status of Registration (filed 10-28-94) **all** renumbered, reformatted and replaced by 16 NMAC 39.1, General Provisions--Professional Engineering and Surveying--Organization and Administration, effective 04-15-1998.

16 NMAC 39.1 (filed 03-31-1998) General Provisions--Professional Engineering and Surveying--Organization and Administration, was replaced by 16.39.1 NMAC, General Provisions--Professional Engineering and Surveying--Organization and Administration, effective 01-01-2002.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 2 CONTINUING PROFESSIONAL DEVELOPMENT

16.39.2.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.
[16.39.2.1 NMAC - Rp, 16 NMAC 39.2.1, 12/01/2001; A, 7/01/2006; A, 7/1/2015]

16.39.2.2 SCOPE: Provisions for Part 2 apply to any person licensed as a professional engineer or a professional surveyor, or to anyone applying for licensure as a professional engineer or a professional surveyor in New Mexico.
[16.39.2.2 NMAC - Rp, 16 NMAC 39.2.2, 12/01/2001]

16.39.2.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that the board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. 16.39.2 NMAC applies to both engineering and surveying. Sections 61-23-24.1 and 61-23-27.12, NMSA 1978 prescribe that "the board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure (Title 16, Chapter 39 of the New Mexico Administrative Code) of the board."
[16.39.2.3 NMAC - Rp, 16 NMAC 39.2.3, 12/01/2001; A, 7/01/2006; A, 12/28/2017]

16.39.2.4 DURATION: Permanent.
[16.39.2.4 NMAC - Rp, 16 NMAC 39.2.4, 12/01/2001]

16.39.2.5 EFFECTIVE DATE: December 1, 2001, unless a later date is cited at the end of a section or paragraph.
[16.39.2.5 NMAC - Rp, 16 NMAC 39.2.5, 12/01/2001]

16.39.2.6 OBJECTIVE: The objective of Part 2 of Chapter 39 is to clearly define requirements of a professional development program for the renewal of professional engineer and surveyor licenses.
[16.39.2.6 NMAC - Rp, 16 NMAC 39.2.6, 12/01/2001]

16.39.2.7 DEFINITIONS:

A. Professional development hour (PDH) - a contact hour (nominal) of instruction or presentation.- The PDH is the common denominator for other units of credit.

B. Continuing education unit (CEU) - unit of credit customarily used for continuing education courses. One continuing education unit equals 10 contact hours in approved continuing education course.

C. College/unit semester/quarter hour - credit for course in ABET approved programs or other related college course approved in accordance with Subsection E of 16.39.2.8 NMAC.

D. Course/activity - any qualifying course or activity with a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice. Regular duties are not considered qualified activities.

E. Dual licensee - a person who is licensed as both a professional engineer and a professional surveyor.

F. Ethics/business-related course or activity - any qualifying course or activity with content areas related to:

- (1) the awareness of ethical concerns and conflicts;
- (2) an enhanced familiarity with the codes of conduct;
- (3) an understanding of standards of practice or care; or
- (4) project management and risk-assessment management.

[16.39.2.7 NMAC - Rp, 16 NMAC 39.2.7, 12/01/2001; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

16.39.2.8 CONTINUING PROFESSIONAL DEVELOPMENT - REQUIREMENTS:

The purpose of the continuing professional development requirement is to enhance the continuing level of professional development of professional engineers and professional surveyors.

A. Introduction - Every licensee shall meet the continuing professional development requirements of these regulations for professional development as a condition for license renewal.

B. Failure to meet requirements - Submission of professional development hours (PDHs) shall be made concurrently with license renewal. Failure to meet the PDH requirements will result in the rejection of renewal.

C. Requirements - each licensee is required to obtain 30 professional development hours (PDH) units during a

biennium at least two of which shall be in ethics/business-related. If a licensee exceeds the biennial requirement in any biennial cycle, a maximum of 15 PDH units may be carried forward into the subsequent biennium in accordance with what has been previously reported to the board. PDH units may be earned from participation in qualifying activities as follows:

- (1) successful completion of college courses relevant to engineering and surveying;
- (2) successful completion of short courses, tutorials, webinar or distance-education courses offered for self-study, independent study or group study through synchronous or asynchronous delivery method such as live, correspondence, archival or the internet;
- (3) presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, conferences, or educational institutions;
- (4) teaching or instructing in Paragraphs (1) through (3) of Subsection D of 16.39.2.8 NMAC;
- (5) authoring published papers, articles, books, or accepted licensing examination items;
- (6) active participation in professional or technical societies;
- (7) patents;
- (8) active participation in educational outreach activities, pertaining to professional licensure or the surveying/engineering professions, as a speaker, instructor, presenter or panelist.

D. Units - the conversion of other units of credit to PDH units is as follows:

- (1) One college or unit semester..... 45 PDH;
- (2) One college or unit quarter hour..... 30 PDH;
- (3) One continuing education unit..... 10 PDH;
- (4) One hour of professional development in coursework, seminars, or professional or technical presentations made at meetings, conventions, or conferences.....1 PDH;
- (5) for teaching, apply multiple of two (teaching credit is valid for teaching a course or seminar for the first time only; teaching credit does not apply to full-time faculty);
- (6) Publications:
 - (a) each published peer-reviewed paper or book in the licensee’s area of professional practice.....10 PDH;
 - (b) each published paper or article other than Subparagraph (a) of Paragraph (6) of Subsection E of 16.39.2.8 NMAC in the licensee’s area of professional practice.....5 PDH;
- (7) active participation in professional and technical societies (each organization) 2 PDH;
- (8) each patent.....10 PDH;
- (9) One hour of outreach activity.... 1 PDH (max 6 PDH/biennium).

E. Determination of credit - the board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit:

- (1) credit for college or community college approved courses will be based upon course credit established by the college;
- (2) credit for qualifying seminars, workshops, professional conventions, and courses/activities may be recommended by the professional societies;
- (3) additional criteria for credit determination shall be included in the board policy.

F. Record keeping - each licensee is responsible for maintaining records that support credits claimed is the responsibility of the licensee. Records required include but are not limited to:

- (1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor’s or speaker’s name, and PDH credits earned;
- (2) attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance;
- (3) proof of membership in a technical organization issuing a publication as a part of its membership fee;
- (4) a log indicating the medium used for a technical review, the subject of the review, the author or sponsoring organization, the date the review was conducted, a brief written summary of the contents of the reviewed material and the time spent on the review;
- (5) the organization sponsoring a civic or community activity, the date and location of the activity, the subject of the activity and the licensee’s involvement in the activity. These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

G. Exemptions - a licensee may be exempt from the professional development educational requirements for One of the following reasons:

- (1) new licensees by way of examination or comity/endorsement shall be exempt for the first year directly following the issuance of their license; PDH requirements will be prorated for any remaining portion of the licensing period beyond One year from the date of initial licensure;

(2) a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year; supporting documentation shall be furnished to the board;

(3) licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt; supporting documentation must be furnished to the board;

(4) licensees who have been approved for "retired status" by the board shall be exempt from the professional development hours required; in the event such a person elects to return to active practice of professional engineering or professional surveying, professional development hours must be earned before returning to active practice for the preceding biennial cycle.

H. Reinstatement - a licensee may bring a lapsed license to active status by obtaining all delinquent PDH units outstanding from the last biennium and complying with all other reinstatement requirements in the Engineering and Surveying Practice Act and the board's rules and regulations; however, if the total number required to become current exceeds 30, then 30 shall be the maximum number required.

I. Comity/out-of-jurisdiction resident - licensees who are residents of other jurisdictions shall meet the continuing professional development requirements of this board. These requirements may be deemed satisfied when a non-resident licensee provides evidence of having met requirements for another state engineering/surveying licensing board that are equal to or exceed the requirements of this board.

J. Dual licensees - the number of PDH units required shall remain the same for persons who hold a dual license as a professional engineer and professional surveyor; for persons who hold a dual license, half of the PDH units shall be in each profession.

K. Forms - all renewal applications will require the number of earned PDH units. The licensee must sign the renewal application, and submit with the appropriate fee.

[16.39.2.8 NMAC - Rp, 16 NMAC 39.2.8, 12/1/2001; A, 7/1/2006; A, 7/1/2015; A, 1/1/2016; A, 12/28/2017]

HISTORY OF 16.39.2 NMAC:

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

Rule No. 100.11 Regulations and Procedure - Continuing Professional Development - Mandatory Program, filed 10-28-94; Rule No. 100.11 Regulations and Rules of Procedure - Continuing Professional Development - Mandatory Program, filed 10-18-95.

History of Repealed Material:

16 NMAC 39.2 Professional Development, filed 10-16-1998, repealed (effective 12/01/01). Replaced by 16.39.2 NMAC, filed 10-16-01 (effective 12/01/01).

Other History:

Rule No. 100.11, Regulations and Rules of Procedure - Continuing Professional Development - Mandatory Program (filed 10-18-95) renumbered, reformatted and replaced by 16 NMAC 39.2, Continuing Professional Development - Mandatory Program, effective 04-15-1998.

16 NMAC 39.2, Continuing Professional Development - Mandatory Program (filed 03-31-1998) renumbered, reformatted and replaced by 16.39.2 NMAC, Continuing Professional Development - Mandatory Program, effective 12/01/01.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 3 ENGINEERING LICENSURE, DISCIPLINES, APPLICATIONS, EXAMS, PRACTICE,
SEAL OF LICENSEE AND ENDORSEMENTS

16.39.3.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.3.1 NMAC - Rp, 16 NMAC 39.3.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.3.2 SCOPE: Provisions for Part 3 apply to any person certified as an engineer intern, licensed as a professional engineer, or to anyone applying for certification as an engineer intern or licensure as a professional engineer in New Mexico.

[16.39.3.2 NMAC - Rp, 16 NMAC 39.3.2, 1/01/2002]

16.39.3.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. Subsection C of Section 61-23-10 NMSA 1978 states the professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act. Subsections A and B of Section 61-23-19 NMSA 1978 prescribe, "the board shall provide for the proper authentication of all documents. The board shall regulate the use of seals."

[16.39.3.3 NMAC - Rp, 16 NMAC 39.3.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.3.4 DURATION: Permanent.

[16.39.3.4 NMAC - Rp, 16 NMAC 39.3.4, 1/01/2002]

16.39.3.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.

[16.39.3.5 NMAC - Rp, 16 NMAC 39.3.5, 1/01/2002]

16.39.3.6 OBJECTIVE: The objective of Part 3 of Chapter 39 is to clearly define the procedure for granting licensure to practice engineering or certification as engineer interns, identify and provide procedures for engineering disciplines, applications and examinations, practice of engineering, seal of licensees and application by endorsement guidelines.

[16.39.3.6 NMAC - Rp, 16 NMAC 39.3.6, 1/01/2002; A, 7/1/2015]

16.39.3.7 DEFINITIONS:

A. "ABET" is defined as the accreditation board for engineering and technology.

B. "Board-approved, four - year curriculum in engineering" is defined as:

(1) engineering curriculum of at least four years that has been accredited by ABET within at least three years of the applicant's graduation with a bachelor's degree in engineering;

(2) curriculum not accredited by ABET but with the minimum number of engineering credits required for accreditation by ABET; and

(3) curriculum required for graduate degree (master or doctoral) in engineering from an engineering program with an ABET-accredited bachelor's degree has successfully completed (as confirmed by letter from graduation committee) all requirements deficient to bachelor's degree in engineering.

C. "Branch" refers to engineering disciplines as referred to in 16.39.3.8 NMAC.

D. "Category" refers to the type of license such as professional engineer or professional surveyor as referred to in Subsections L and P of Sections 61-23-23 NMSA 1978.

E. "Electronic signature" means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

F. "Engineering accreditation commission" is defined as the engineering accreditation commission of ABET, or any successor commission or organization.

G. "Engineering discipline" is defined as a designated area of proficiency and competence in the practice of engineering.

H. "Engineering experience" is defined as experience gained by the time of the application that includes demonstration of a knowledge of engineering mathematics, physical and applied science, properties of materials, and the

fundamental principles of engineering design as well as demonstration of the application of engineering principles in the practical solution of engineering problems and is:

- (1) progressive experience on engineering projects that demonstrates an increasing quality and responsibility;
 - (2) experience not associated with a graduate degree if that degree that is used to satisfy education requirements;
 - (3) experience obtained in compliance with the licensure act;
 - (4) experience gained in the armed services of a character equivalent to that which would have been gained in the civilian sector doing similar work;
 - (5) experience gained under the supervision of a licensed professional engineer;
 - (6) experience not gained under the supervision of a licensed professional engineer provided that an explanation is made to the satisfaction of the Board showing why the experience should be considered acceptable including the appropriate credentials of the unlicensed supervisor;
 - (7) sales experience demonstrating that engineering principles were required and used in gaining the experience;
 - (8) teaching experience in engineering or engineering-related courses at a junior-, senior-, or graduate-level in a college or university offering an engineering program of four years or more that is approved by the board;
 - (9) experience gained in engineering research and design projects by members of an engineering faculty where the program is approved by the board;
 - (10) experience gained in engineering research by industry or government employees; or
 - (11) experience in construction demonstrating the application of engineering principles.
- I. “FE exam” refers to the fundamentals of engineering exam.
 - J. “NCEES” refers to the national council of examiners for engineering and surveying.
 - K. “PE exam” refers to the principles and practice of engineering exam.
 - L. “Signature” means a physical or digital representation of the name of the person who applied it.

[16.39.3.7 NMAC - Rp, 16 NMAC 39.3.7, 1/01/2002; A, 7/01/2006; A, 1/01/2007; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

16.39.3.8 ENGINEERING DISCIPLINES:

A. Licensure is granted as a professional engineer and shall be so stated on the certificate. Although the Engineering and Surveying Practice Act makes no specific designation as to the disciplines of engineering practice on the certificates as issued by the board, the records and roster of the board shall indicate the discipline(s) in which the licensee is competent to practice in accordance with this section. Only the discipline(s) of engineering for which the applicant has successfully been examined or approved by the professional engineering committee will be recorded.

B. Requests for engineering disciplines will be accepted from the following list; and the board's records and roster will be annotated with the corresponding alphabetical code:

- | | | |
|------|-------------------------------|----|
| (1) | architectural | A |
| (2) | aeronautical | B |
| (3) | civil | C |
| (4) | agricultural | D |
| (5) | electrical and computer | E |
| (6) | network engineer | F |
| (7) | geological/geotechnical | G |
| (8) | chemical | H |
| (9) | industrial | I |
| (10) | mechanical | M |
| (11) | mining/mineral | N |
| (12) | metallurgical/materials | NN |
| (13) | petroleum | P |
| (14) | control systems | Q |
| (15) | structural | R |
| (16) | nuclear | T |
| (17) | fire protection | U |
| (18) | environmental | V |
| (19) | construction | W |
| (20) | naval architecture and marine | Nm |
| (21) | software | Sw |

C. Other disciplines may be considered as reviewed and approved by the board.

D. A licensee may be listed in no more than three disciplines of engineering. Subsequent to initial licensure, a licensee may apply for licensure in another discipline of engineering. The licensee shall demonstrate competence in that discipline and may be required to appear before the board. Demonstration of competence may be accomplished by presenting evidence as follows:

(1) the licensee shall file a separate application for the additional discipline requested and pay an application fee for the additional application; and

(2) complete the application forms to indicate clearly the education, experience, and three acceptable personal references which will substantiate proficiency in the discipline for which the licensee is applying; experience and personal references must be stated;

(3) an applicant for licensure by endorsement may initially apply for up to three disciplines, provided substantial evidence is presented to the board to demonstrate competence for each requested discipline.

E. Structural discipline - except for an applicant with a B.S. degree with a structural option and a minimum of four years of post-baccalaureate structural engineering experience, listing as a structural engineer may be obtained by having gained an acceptable engineering degree which included a minimum of six hours of structural design; having licensure as a professional engineer; and having four years of structural experience gained after licensure and acceptable to the board.

(1) Passing the NCEES structural tests part I & II may be substituted for two years of the required experience.

(2) A master's degree in structures may be substituted for one year of the required experience.

(3) An applicant for licensure as a structural engineer by endorsement shall meet the requirements of Paragraphs (1) and (2) of Subsection D of 16.39.3.8 NMAC.

F. Specialty sub-disciplines - The professional engineering committee of the board may determine that the special practice of engineering within one or more of the engineering disciplines in Subsection B of 16.39.3.8 NMAC requires unique training/education and experience to adequately protect the public safety and health, and the professional engineering committee of the board shall declare this special practice of engineering to be a specialty sub-discipline. The declaration of a specialty sub-discipline shall be based on a need identified by the state or any of its political subdivisions, availability of appropriate and timely training/education within the state of New Mexico, and the ability of the identification of a specialty sub-discipline to inform the public of the needed special practice of engineering. If the professional engineering committee of the board declares a specialty sub-discipline, after a rules hearing, the requirements for the special practice of engineering shall be included in Title 16, Chapter 39 of the New Mexico administrative code for engineering and surveying:

(1) the specialty sub-discipline rules shall specify the training/education and experience requirements to obtain certification for the special engineering practice, including provisions for equivalent training when a particular course of training/education is specified; in anticipation that more than one discipline identified in Subsection B of 16.39.3.8 NMAC will qualify for the specialty sub-discipline, the rules shall identify which engineering disciplines in Subsection B of 16.39.3.8 NMAC, are most likely to qualify for the specialty sub-discipline;

(2) the board shall maintain a list of engineers who have been certified as meeting the requirements for the specialty sub-discipline; the list shall be available to the public upon request and pursuant to the inspection of public records; the professional engineering committee of the board shall establish a form for the application to obtain a certification for the specialty sub-discipline; upon approval by the professional engineering committee of the board, the qualified licensee's name shall be added to the list of licensees having the specialty sub-discipline;

(3) a licensee's name may be removed from the list of persons certified for the specialty sub-discipline, upon determination by the professional engineering committee of the board that the licensee no longer qualifies for the certification specialty sub-discipline; such removal shall be only after the appropriate process/hearing by the professional engineering committee of the board;

(4) the failure to obtain certification for the specialty sub-discipline shall not limit the practice of engineering within any of the engineering disciplines identified in Subsection B of 16.39.3.8 NMAC, and the failure to obtain certification in the specialty sub-discipline shall not constitute practice outside the licensee's area of competence; however, the failure to obtain certification for a specialty sub-discipline and a determination by the professional engineering committee of the board of inappropriate practice of engineering within the engineering specialty may be cause for determination that the engineering practice is not within the licensee's authorized discipline, and that appropriate disciplinary action can be taken;

(5) the certification of a specialty sub-discipline shall be for a period established by the professional engineering committee of the board, but not less than two years or more than six years; renewal of the specialty sub-discipline shall be concurrent with license renewal;

(6) the professional engineering committee of the board may remove the specialty sub-discipline from the rules for engineering and surveying, after a rules hearing, upon the finding that the training/education is no longer available or that the designation of the specialty sub-discipline is no longer needed to protect the public safety and health.

[16.39.3.8 NMAC - Rp, 16 NMAC 39.3.8, 1/01/2002; A, 7/01/2006; A, 1/01/2007; A, 7/1/2015; A, 12/28/2017; A, 12/16/2022]

16.39.3.9 APPLICATION - ENGINEERING INTERN AND PROFESSIONAL ENGINEER:

- A.** Types of applications- licensure as a professional engineer or certification as an engineer intern require that an applicant present his or her qualifications on forms prescribed by the board.
- B.** Any application, to be complete, must include acceptable replies from references, official transcripts provided directly from the colleges or universities attended; and if applicable, verification of prior examinations taken in other states.
- C.** Board members shall not be used as references.
- D.** Applications for engineering intern certification will be accepted after applicant has passed the fundamentals of engineering exam and graduated from a board-approved, four - year engineering curriculum; or graduated from a four - year engineering technology program that is accredited by the technical accreditation commission of the ABET, augmented by at least two years of board-approved, post graduate engineering experience. Applications to take the fundamentals of engineering exam administered by the NCEES will not be required from the state board. Successful passing of the fundamentals of engineering exam does not ensure certification as an engineer intern.
- E.** Applicants for the principles and practices of engineering examination must have certification as an engineer intern and have successfully completed an ABET accredited engineering curriculum of four years or more from a program that fulfills the required content of the engineering education standard as defined by NCEES and shall have a minimum of two years of post-baccalaureate experience acceptable to the professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. Applicants with an ABET accredited engineering technology degree shall have a minimum of four years of post-baccalaureate experience acceptable to the board at the date of application and shall have passed the fundamentals of engineering examination.
- F.** No applicant will be eligible to take the professional engineering examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.3.9 NMAC.
- G.** Applicants for the professional engineering license will be accepted after applicant has passed the professional engineering exam and has fulfilled the education and experience requirements. Successful passing of the professional engineering exam does not ensure licensure as a professional engineer. To satisfy the statutory requirement for board-approved engineering experience prior to licensure, a candidate with an ABET accredited engineering curriculum of four years or more or a program that fulfills the required content of the engineering education standard as defined by NCEES and shall have four years of post-baccalaureate experience acceptable to the professional engineering committee, and a candidate with an ABET accredited engineering technology degree shall have six years of post-baccalaureate experience acceptable to the professional engineering committee. After successfully completing the professional engineering examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 16.39.3.9 NMAC.
- H.** To update a professional engineer (PE) application file in relation to experience, the applicant must complete the appropriate portions of the application form and provide references acceptable to the professional engineering committee to verify each additional experience record.
- I.** Applications for licensure or certification by examination or comity/endorsement which have been approved by the professional engineering committee shall remain valid for two years from the date of approval.
- J.** An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional engineering committee's satisfaction, evidence that the applicants' qualifications are equal to, or exceed those in New Mexico, including review and fulfillment of the required content of the engineering standard as defined by NCEES.
- K.** All applicants for PE licensure shall also show proficiency in the English language and shall have a minimum of four years experience working in the United States or for a United States corporation under the direction of a professional engineer who will attest to the applicant's ability and knowledge as a competent engineer.
[16.39.3.9 NMAC - Rp, 16 NMAC 39.3.9, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

16.39.3.10 EXAMINATIONS--ENGINEERING INTERN AND PROFESSIONAL ENGINEER:

- A.** Regularly scheduled examinations shall be held in accordance with NCEES examination schedules.
- B.** Any applicant that fails an examination will be notified by NCEES.
- C.** An applicant that has not achieved a passing score on the principles and practice of engineering examination after three unsuccessful attempts, shall only be eligible to take the next scheduled examination after waiting a period of twelve months. The applicant shall provide documentation to the board of further study in preparation of the exam. If an applicant has not achieved a passing score on the principles and practice of engineering examination within the two year application period, the applicant shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.

D. The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one of the following:

(1) an "open book" examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;

(2) a "closed book" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or

(3) a "computer based" examination.

E. Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.

F. Questions regarding the completed fundamentals of engineering examination or the principles and practice of engineering examination shall be directed to NCEES.

[16.39.3.10 NMAC - Rp, 16 NMAC 39.3.10, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

16.39.3.11 PRACTICE OF ENGINEERING:

A. Neither a person nor a business entity shall advertise, accept work or offer to practice engineering work in a discipline of engineering unless the person or a member of the organization has been approved by the professional engineering committee in the appropriate discipline and who is legally able to bind that business entity by contract.

B. Neither persons nor business entities shall circumvent these rules. Licensees or business entities may advertise for work only in those disciplines of engineering in which they are approved by the professional engineering committee to practice. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

C. In the event a question arises as to the competence of a licensee in a specific technical field which cannot be otherwise resolved to the board's satisfaction, the board shall, either upon request of the licensee or of its own volition, require the licensee to pass an appropriate examination.

D. The professional engineering committee will consider the use of the terms, "engineer," "engineering," or any modification or derivative of such terms, in the title of a firm or business entity to constitute the offering of engineering. The board will also consider the use of these terms or any modification or derivative of such terms in a corporation's name or its articles of incorporation or in a foreign corporation's certificate of authority as published by the New Mexico secretary of state to constitute the offering of engineering services.

E. In the case of practice through a business entity offering or providing services or work involving the practice of engineering, an authorized company officer and the professional engineer who is employed by the business entity and in responsible charge shall place on file with the board within 30 days a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional engineer or authorized company officer, the affidavit shall be revised within 30 days and resubmitted to the board.

F. The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. An engineer may densify, augment and enhance previously performed survey work by a surveyor for a project as defined in Subsection U of Section 61-23-3 NMSA 1978 of the Engineering and Surveying Practice Act.

G. In the case of an employee of a business entity who performs only the engineering services involved in the operation of the business entity's business, the extent to which the engineering services can be provided without licensure is limited to only the legal boundaries of the property owned or leased by that business. Practice beyond this extent or within off-premises easements is considered within public space and is subject to the Engineering and Surveying Practice Act.
[16.39.3.11 NMAC - Rp, 16 NMAC 39.3.11, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

16.39.3.12 SEAL OF LICENSEE:

A. Each licensed professional engineer shall obtain a seal/stamp, which shall appear on all final engineering design drawings, the certification page of all specifications and engineering reports prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps signatures are not acceptable. Electronic signatures as provided by law and board's policy shall be acceptable.

B. The seal/stamp shall be the impression type seal, the rubber type, or a computer-generated facsimile. Computer generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

C. The design of the seal/stamp shall consist of either:

(1) three concentric circles, the outermost circle being one and one-half inches in diameter, the middle circle being one inch in diameter, and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, "*professional engineer*" and the licensee's name. The inner ring shall contain the words "*New Mexico*". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable; or

(2) a design approved by the board which contains the words "*professional engineer*", the licensee's name, "*New Mexico*", and the license number issued by the board each in text no less than 0.1 inches in height.

D. Professional engineers who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

E. For the purposes of the Engineering and Surveying Practice Act, a licensee of this board has "responsible charge of the work" as defined in Subsection O of Section 61-23-3 NMSA 1978 and may sign, date and seal/stamp plans, specifications, drawings or reports which the licensee did not personally prepare when plans, specifications, drawings or reports have been sealed only by another licensed engineer, and the licensee or persons directly under his personal supervision have reviewed the plans, specifications, drawings or reports and have made tests, calculations or changes in the work as necessary to determine that the work has been completed in a proper and professional manner.

F. The seal and signature shall be placed on work only when it is under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.

G. When the document contains more than one sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two or more licensees may affix their signatures and seals provided it is designated by a note under the seal specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet and, in the case of multiple licensees, explicitly identify the portion of work attributable to each licensee.

H. An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature. If the document contains more than one licensee and is electronically transmitted as specified under the preceding paragraph, each signature must contain an independent electronic signature.

[16.39.3.12 NMAC - Rp, 16 NMAC 39.3.12, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022; A, 12/16/2022]

16.39.3.13 ENDORSEMENTS: For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional engineering committee will only recognize licensure granted by those authorities when the professional engineering committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineering and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-14 and 61-23-14.1, NMSA 1978". Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the district of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional engineer shall be as follows:

A. has been actively licensed for the contiguous 10 years immediately preceding application to New Mexico, and has not received any form of disciplinary action related to the practice of engineering or professional conduct from any jurisdiction within the five years preceding application to New Mexico, and has not had the applicant's professional license suspended or revoked at any time from any jurisdiction; (2019 law);

B. graduation from an approved engineering curriculum that fulfills the required content of the engineering education standard as defined by NCEES, four years of experience satisfactory to the professional engineering committee, and passing of the eight - hour fundamentals and eight - hour professional examinations; (2017 law);

C. graduation from an ABET accredited engineering technology program, six years of experience satisfactory to the professional engineering committee, and passing of the eight - hour fundamentals examination and eight - hour professional examination (1993 law);

D. graduation from an approved engineering curriculum, four years of experience satisfactory to the professional engineering committee, and passing of the eight hour fundamentals and eight - hour professional examinations; (1979 law and 1987 law);

E. licensure prior to July 1, 2002, graduation from an ABET accredited engineering technology program or from an engineering or related science curriculum approved by the committee, six years of experience satisfactory to the professional engineering committee, and passing of the eight -hour fundamentals and eight -hour professional examination (1993 law);

F. licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum other than the ones approved by the committee, eight years of experience satisfactory to the professional engineering committee, and passing of the eight -hour fundamentals and eight -hour professional examination (1979 law and 1987 law);

G. licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum, 20-years experience satisfactory to the professional engineering committee, and passing the eight -hour professional examination (1979 law and 1987 law);

- H.** licensure prior to July 1, 1940, by 12 years of experience satisfactory to the professional engineering committee (1934 law);
 - I.** licensure prior to July 1, 1957, by graduation from an approved curriculum, and four years or more of experience satisfactory to the professional engineering committee (1935 law);
 - J.** licensure prior to July 1, 1957, by passing a written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved curriculum, and four years or more of experience satisfactory to the professional engineering committee (1952 law);
 - K.** licensure prior to July 1, 1967, by 24 years of experience satisfactory to the professional engineering committee, and by passing an oral examination (1957 law);
 - L.** licensure prior to July 1, 1967, by graduation from an approved curriculum prior to July 1, 1957, and passing the eight - hour professional examination (1957 law);
 - M.** licensure prior to July 1, 1979, by eight years of experience satisfactory to the professional engineering committee, and by having passed the eight - hour fundamentals and eight - hour professional examinations (1969 law);
 - N.** licensure prior to July 1, 1979, by 30 years of experience, the last 12 years of which must have been of outstanding nature and by having been nationally eminent among his peers (1967 law);
 - O.** for the purposes of endorsement, an approved engineering curriculum shall be an ABET accredited engineering curriculum of four years or more or equivalent as determined by the board.
- [16.39.3.13 NMAC - Rp, 16 NMAC 39.3.13, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

HISTORY OF 16.39.3 NMAC:

Pre-NMAC History: The material in part is derived from that previously filed with the state records center & archives under: PELS 67-1 New Mexico Engineering Practice Act, filed 6/22/1967; PELS 79-1 New Mexico Engineering and Land Surveying Practice Act, filed 10/29/1979; PELS 67-2 By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 6/22/1967; PELS 68-1 By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 10/7/1968; PELS 69-1 By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 7/3/1969; PELS 71-1 Rules of Procedure Manual, filed 1/14/1971; PELS 73-1 Rules of Procedure Manual, filed 1/4/1973; PELS 75-1 Rules of Procedure Manual, filed 12/15/1975; PELS 80-1 Regulations and Rules of Procedure, filed 1/28/1980; PE/PS Rule No. 89-1 Regulations and Rules of Procedure, filed 8/15/1989; Rule No. 200.1 Regulations and Rules of Procedure - Engineering Disciplines, filed 10/28/1994; Rule No. 200.2 Regulations and Rules of Procedure - Application - Engineering Intern and Professional Engineer, filed 10/28/1994; Rule No. 200.3 Regulations and Rules of Procedure - Examinations - Engineering Intern and Professional Engineer, filed 10/28/1994; Rule No. 200.4 Regulations and Rules of Procedure - Practice of Engineering, filed 10/28/1994; Rule No. 200.5 Regulations and Rules of Procedure - Seals of Registrant licensee, filed 10/28/1994; Rule No. 200.6 Regulations and Rules of Procedure - Endorsements, filed 10/28/1994.

History Repealed Material:

16 NMAC 39.3 (filed 03/31/1998) repealed 01/01/2002).

Other History:

Rule No. 200.1 Regulations and Rules of Procedure - Engineering Disciplines (filed 10/28/1994); Rule No. 200.2 Regulations and Rules of Procedure - Application - Engineering Intern and Professional Engineer (filed 10/28/1994); Rule No. 200.3 Regulations and Rules of Procedure - Examinations - Engineering Intern and Professional Engineer (filed 10/28/1994); Rule No. 200.4 Regulations and Rules of Procedure - Practice of Engineering (filed 10/28/1994); Rule No. 200.5 Regulations and Rules of Procedure - Seals of Registrant licensee (filed 10/28/1994); and Rule No. 200.6 Regulations and Rules of Procedure - Endorsements (filed 10-28-94) were all renumbered, reformatted and replaced by 16 NMAC 39.3, Engineering--Certificates of Registration, Disciplines, Applications, Exams, Practice, Seal of Registrant and Endorsements, effective 04/15/1998. 16 NMAC 39.3, Engineering--Certificates of Registration, Disciplines, Applications, Exams, Practice, Seal of Registrant and Endorsements was renumbered, reformatted and replaced by 16.39.3 NMAC, Engineering--Certificates of Licensure, Disciplines, Applications, Exams, Practice, Seal of Registrant and Endorsements, effective 1/01/2002.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 4 INCIDENTAL PRACTICE

16.39.4.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.
[16.39.4.1 NMAC - Rp, 16 NMAC 39.4.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.4.2 SCOPE: Provisions for Part 4 apply to any person licensed as a professional engineer.
[16.39.4.2 NMAC - Rp, 16 NMAC 39.4.2, 1/01/2002]

16.39.4.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that “the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.” Subsection C of Section 61-23-10 NMSA 1978 prescribes that “the professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.” Subsection K of Section 61-23-10 NMSA 1978 states “the board, in cooperation with the board of examiners for architects and the board of landscape architects shall create a joint standing committee to be known as the 'joint practice committee'.” Subsection L of Section 61-23-10 NMSA 1978 states “as used in the Engineering and Surveying Practice Act, 'incidental practice' shall be defined by identical regulations of the board of licensure for professional engineers and professional surveyors and the board of examiners for architects.”
[16.39.4.3 NMAC - Rp 16 NMAC 39.4.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.4.4 DURATION: Permanent.
[16.39.4.4 NMAC - Rp, 16 NMAC 39.4.4, 1/01/2002]

16.39.4.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.
[16.39.4.5 NMAC - Rp, 16 NMAC 39.4.5, 1/01/2002]

16.39.4.6 OBJECTIVE: The objective of Part 4 of Chapter 39 is to define architectural work incidental to engineering and engineering work incidental to architecture as approved by the joint practice committee and as an identical rule to Subsection G of Section 16.30.1.7 NMAC (board of examiners for architects).
[16.39.4.6 NMAC - Rp, 16 NMAC 39.4.6, 1/01/2002; A, 12/28/2017]

16.39.4.7 DEFINITIONS: [RESERVED]
[16.39.4.7 NMAC - Rp, 16 NMAC 39.4.7, 1/01/2002]

16.39.4.8 INCIDENTAL PRACTICE OF ARCHITECTURE AND ENGINEERING - as defined in Subsection A of Section 61-23-22 NMSA 1978 means:

A. architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

B. engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

C. all buildings and related structures within the regulatory provisions of the New Mexico Uniform Building Code (NMUBC) will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than six hundred thousand dollars (\$600,000) or having a total occupant load greater than 50, with the exception of:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

- (3) garages or other structures not more than two stories in height which are appurtenant to buildings described in Paragraph (1) and (2) of Subsection C of 16.39.4.8 NMAC; or
- (4) nonresidential buildings, as defined in the uniform building code, or additions having a total occupant load of 10 or less and not more than two stories in height, which shall not include E-3 (Day Care), H (Hazardous), or I (Institutional) occupancies;
- (5) alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.
- D. the owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project;
- E. occupant load shall be defined and determined by the method set forth in Table 33-A of the Uniform Building Code (UBC).
- [16.39.4.8 NMAC - Rp, 16 NMAC 39.4.8, 1/01/2002; A, 7/1/2015; A, 12/28/2017]

HISTORY OF 16.39.4 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the state records center & archives under: PE/PS Rule 92-1, Definitions, filed 1-30-92 and Rule No. 300.1 Regulations and Rules of Procedure - Incidental Practice of Architecture and Engineering, filed 10-28-94.

History of Repealed Material:

16 NMAC 39.4, Incidental Practice of Architecture and Engineering (filed 03-31-98) repealed 01-01-2002.

Other History:

Rule No. 300.1 Regulations and Rules of Procedure - Incidental Practice of Architecture and Engineering (filed 10-28-94) was renumbered, reformatted and replaced by 16 NMAC 39.4, Incidental Practice of Architecture and Engineering, effective 04-15-1998.

16 NMAC 39.4, Incidental Practice of Architecture and Engineering (filed 03-31-98) was renumbered, reformatted and replaced by 16.39.4 NMAC, Incidental Practice, 01-01-2002.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 5 SURVEYING--APPLICATIONS, EXAMINATIONS, PRACTICE OF SURVEYING,
SEAL OF LICENSEE

16.39.5.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.5.1 NMAC - Rp, 16 NMAC 39.5.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.5.2 SCOPE: Provisions for Part 5 apply to any person certified as a Surveyor Intern, licensed as a professional surveyor, or to anyone applying for certification as a Surveyor Intern or licensure as a professional surveyor in New Mexico.

[16.39.5.2 NMAC - Rp, 16 NMAC 39.5.2, 1/01/2002]

16.39.5.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that “the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.” Subsection D of 61-23-10 NMSA 1978 states “the professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.”

[16.39.5.3 NMAC - Rp, 16 NMAC 39.5.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.5.4 DURATION: Permanent.

[16.39.5.4 NMAC - Rp, 16 NMAC 39.5.4, 1/01/2002]

16.39.5.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.

[16.39.5.5 NMAC - Rp, 16 NMAC 39.5.5, 1/01/2002]

16.39.5.6 OBJECTIVE: The objective of Part 5 of Chapter 39 is to clearly define the application and examination procedures, practice of surveying, and seal of licensee.

[16.39.5.6 NMAC - Rp, 16 NMAC 39.5.6, 1/01/2002]

16.39.5.7 DEFINITIONS:

A. “**ABET**” is defined as the accreditation board for engineering and technology.

B. “**Augment**”, as it relates to curriculum in this part, shall refer to classes taken as a part of or in addition to a formal degree program.

C. “**Authoritative location**” is defined as an accurately and precisely established location of a feature, object or boundary sufficient for use in establishing property rights, legal proceedings, or to protect the welfare and safety of the public.

D. “**Board-approved, four year curriculum in surveying**” is defined as:

(1) surveying curriculum of four years that has been accredited by ABET within at least three years of the applicant’s graduation with a bachelor’s degree in surveying;

(2) curriculum not accredited by ABET but with a minimum number of surveying credits required for accreditation by ABET;

E. “**Board-approved related science degree**” is defined as:

(1) A four year bachelor of arts or science degree that is augmented by a minimum of 18 core curriculum hours in surveying, 12 hours of higher mathematics and six hours of basic science.

(2) Core surveying classes shall include a minimum of a three hour semester course in each of the following areas:

(a) boundary law/ legal principles of land surveying;

(b) public land surveying system (PLSS);

(c) plane surveying;

(d) geodesy or photogrammetry.

(3) The remainder of the 18 core curriculum hours in surveying may include classes in route surveying, geographic information systems, land development, global positioning systems, photogrammetry or geodesy, remote sensing, mapping, or professional ethics .

(4) 12 hours of higher mathematics may include college algebra, trigonometry, analytical geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistic and advanced calculus.

(5) Six hours of basic science may include physics, chemistry, geology, physical geography, biology, and astronomy.

F. “Four year”, as it relates to a minimum course of academic study in this part, means a program of study normally associated with a university, college or other accredited academic course of study that includes a minimum 120 semester hours.

G. “Geomatics”, as it relates to curriculum as discussed in these rules, will be considered synonymous with surveying.

H. “NCEES” refers to the national council of examiners for engineering and surveying.
[16.39.5.7 NMAC - Rp, 16 NMAC 39.5.7, 1/01/2002; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

16.39.5.8 APPLICATION - SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:

A. Types of application - licensure as a professional surveyor or certification as a survey intern require that an applicant present his or her qualifications on forms prescribed by this board.

B. Any application, to be complete, must include acceptable replies from references, official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other state(s).

C. Board members shall not be used as references.

D. Applications for surveying intern certification will be accepted after an applicant has passed the fundamentals of surveying exam and has graduated from a board-approved, four year surveying curriculum, or if a graduate of an approved four year curriculum in a related science as defined by Subsection E of Section 16.39.5.7 NMAC and augmented with the required two-year combined office and field board approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the required years of experience, but work prior to or while attending school may be counted toward the required experience at the discretion of the board.

E. Applicants for the principles and practices of surveying examination having graduated with a board-approved four year surveying curriculum of four years or more, or with a related-science degree, as determined by the board shall have a minimum of four years of experience acceptable to the professional surveying committee at the date of application and shall have passed the fundamentals of surveying examination.

F. No applicant will be eligible to take the professional surveying examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.5.8 NMAC.

G. Applicants for the professional surveying license will be accepted after applicant has passed the professional surveying exam, the New Mexico state specific surveying exam, and has fulfilled the education and experience requirements. Successful passing of the professional surveying exam does not ensure licensure as a professional surveyor. To satisfy the statutory requirement for board-approved surveying experience prior to licensure, a candidate with a board-approved surveying curriculum of four years or more as determined by the board shall have four years of experience acceptable to the professional surveying committee. This experience may be acquired before or after certification as a surveying intern. A candidate with a related science degree shall have four years of surveying experience acceptable to the professional surveying committee pursuant to the Engineering and Surveying Practice Act, Subsection A of Section 61-23-27.4 NMSA 1978. After successfully completing the professional surveying examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 16.39.5.8 NMAC.

H. To update a professional survey (PS) application file in relation to experience, the applicant must complete an application update form and provide references acceptable to the professional surveying committee to verify each additional experience record.

I. Applications for licensure or certification by examination, comity or endorsement which have been approved by the professional surveying committee shall remain valid for two years from the date of approval.

J. An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional surveying committee’s satisfaction, evidence that the applicant’s qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico at the time of application.

K. All applicants for professional surveyor license shall show proficiency in the English language and shall have a minimum of four years of experience if a graduate of a board approved, four year surveying curriculum or eight years if a graduate of a board approved related science curriculum, working in the United States, or for a United States corporation, under the direction of a licensed professional surveyor who can attest to the applicant’s ability and knowledge as a competent surveyor.

L. When considering surveying applicants who are graduates of educational programs from a school, college or university outside of the United States and its jurisdictions, or considering applicants from related science programs, the board will evaluate and approve the degrees on an individual basis. The board may require an independent evaluation of the education and such evaluation shall be done through an organization approved by the board and at the expense of the applicant.

[16.39.5.8 NMAC - Rp, 16 NMAC 39.5.8, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 1/1/2016; A, 12/28/2017; A, 3/12/2022; A, 12/16/2022]

16.39.5.9 EXAMINATIONS--SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:

A. Regularly scheduled examinations shall be held in accordance with NCEES examination schedules. Other examinations may be held at times and places as determined by the professional surveying committee.

B. An applicant that fails the New Mexico state specific surveying examination will be notified of the next available examination sessions. A written request to retake the examination and payment of the examination fee shall be on or before the specified date set by the board. Any applicant that fails a NCEES examination will be notified by NCEES.

C. An applicant that has not achieved a passing score on the principles and practice of surveying examination after three unsuccessful attempts, shall only be eligible to take the next scheduled examination after waiting a period of 12 months. The applicant shall provide documentation to the board of further study in preparation of the exam. If an applicant has not achieved a passing score on the principles and practice of surveying examination within the two year application period shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.

D. The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one of the following:

(1) an **“open book”** examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;

(2) a **“closed book”** examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or

(3) a **“computer based”** examination.

E. Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.

F. An applicant who has a question regarding the New Mexico state specific surveying examination shall put the question in writing to the professional surveying committee. The question will be considered at the next professional surveying committee meeting. The committee’s answer to the examinee shall be in writing. Questions regarding the completed fundamental of surveying examination or the principles and practice surveying examination shall be directed to NCEES.

[16.39.5.9 NMAC - Rp, 16 NMAC 39.5.9, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

16.39.5.10 PRACTICE OF SURVEYING:

A. A person or any business entity shall not advertise or offer to practice surveying work or accept such work unless that person or a member of the business entity is licensed by the board and is legally able to bind that business entity by contract.

B. Neither persons nor business entities shall circumvent these rules.

C. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

D. The board will consider the use of the terms, "surveyor", "surveying" or any modification or derivative of such terms, in the title of a firm or business entity to constitute the offering of surveying services. The board also considers the use of these terms or any modification or derivative of such terms in a domestic corporation’s articles of incorporation or in a foreign corporation’s certificate of authority as published by the New Mexico’s secretary of state to constitute the offering of surveying services.

E. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit within 30 days, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be revised within 30 days and resubmitted to the board.

F. Inclusions and exclusions to the practice of surveying.

Land surveying does not encompass work products which represent only a generalized location of a feature, object, or boundary upon which the public would not reasonably rely as the precise location of that feature, object, or boundary.

(1) Activities included within the practice of surveying activities that must be accomplished by or under the responsible charge of a professional surveyor (unless specifically exempted in Subsection B of this Section) include, but are not limited to, the following:

(a) The creation of maps and georeferenced databases representing authoritative locations for boundaries, the location of fixed works, or topography. This includes maps and georeferenced databases prepared by any person or government agency where that data is provided to the public as a survey product.

(b) Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information.

(c) Certification of positional accuracy of maps or measured survey data.

(d) Adjustment or authoritative interpretation of raw survey data.

(e) Geographic information system (GIS)-based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected.

(f) Authoritative interpretation of maps, deeds, and other land title documents to resolve conflicting data elements.

(g) Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control.

(h) Analysis, adjustment or transformation of cadastral data of the parcel layers with respect to the geodetic control layer within a geographic information system (GIS) resulting in the affirmation of positional accuracy.

(2) Activities excluded from the practice of surveying. A distinction must be made in the use of electronic systems between making or documenting original measurements in the creation of survey products, versus the copying, interpretation, or representation of those measurements in such systems. Further, a distinction must be made according to the intent, use, or purpose of measurement products in electronic systems to determine a definitive location versus the use of those products as a locational reference for planning, infrastructure management, and general information. The following items are not to be included as activities within the definition of the practice of surveying:

(a) The creation of general maps:

(i) Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians.

(ii) Prepared for publication in a gazetteer or atlas as an educational tool or reference publication.

(iii) Prepared for or by education institutions for use in the curriculum of any course of study.

(iv) Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event.

(v) Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and user guides.

(b) The transcription of previously georeferenced data into a geographic information system (GIS) or land information systems (LIS) by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

(c) The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

(d) The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

(e) The incorporation or use of documents or databases prepared by any federal agency into a Geographic information system (GIS)/ land information systems (LIS), including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps.

(f) Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management responsibility. The distribution of these maps and/or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data sources and dates, and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.

(g) Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data.

(h) Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

G. In the case of an employee of a business entity who performs only the surveying services involved in the operation of the business entity's business, the extent to which the surveying services can be provided without licensure is limited to only the legal boundaries of the property owned or leased by that business. Practice beyond this extent or within off-premises easements is considered within public space and is subject to the Engineering and Surveying Practice Act. [16.39.5.10 NMAC - Rp, 16 NMAC 39.5.10, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

16.39.5.11 SEAL OF LICENSEE:

A. Each licensed professional surveyor shall obtain a seal/stamp which must be impressed on all plats, reports, etc., prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps and all facsimiles of signatures are not acceptable. Electronic signature as provided by law and board's policy shall be acceptable.

B. The seal/stamp shall be either the impression type seal, the rubber type, or a computer-generated facsimile. Computer-generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

C. The design of the seal/stamp shall consist of either:

(1) three concentric circles, the outermost circle being one and one-half inches in diameter, the middle circle being one inch in diameter, and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, "*professional surveyor*" and the licensee's name. The inner ring shall contain the words "*New Mexico*". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable; or

(2) a design approved by the board which contains the words "*professional surveyor*", the licensee's name, "*New Mexico*", and the license number issued by the board each in text no less than 0.1 inches in height.

D. Professional surveyors who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

E. The seal and signature shall be placed on work only when it was under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.

F. When the document contains more than one sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two or more licensees may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet and, in the case of multiple licensees, explicitly identify the portion of work attributable to each licensee.

G. An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature. If the document contains more than one licensee and is electronically transmitted as specified under the preceding paragraph, each signature must contain an independent electronic signature.

[16.39.5.11 NMAC - Rp, 16 NMAC 39.5.11, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022; A, 12/16/2022]

16.39.5.12 ENDORSEMENTS: For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional surveying committee will only recognize licensure granted by those authorities when the professional surveying committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineer and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-27.3 and 61-23-27.4 NMSA 1978". Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the District of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional surveyor shall be as follows:

A. Graduation from a four year board-approved surveying curriculum, four years of experience satisfactory to the professional surveying committee, and passing of the fundamentals of surveying and professional surveying examinations (1995 law).

B. Graduation from an engineering or related science curriculum that are approved by the committee and augmented with 18 semester hours of surveying, eight years of experience satisfactory to the professional surveying committee, and passing of the eight hour fundamentals and eight hour professional examinations (1995 law).

C. Licensure prior to July 1, 1995, by graduation from a two year board-approved surveying or associated curriculum, eight years of experience satisfactory to the professional surveying committee and passing of the eight hour fundamentals and eight hour professional examination.

D. Licensure prior to July 1, 1995, by graduation from a board- approved surveying or associated curriculum of at least 45 semester hours, eight years of experience satisfactory to the professional surveying committee, and passing of the eight

hour fundamentals and eight hour professional examination;

E. Licensure prior to July 1, 1979, eight years of experience satisfactory to the professional surveying committee and passing of the eight hour fundamentals and eight hour professional examinations.
[16.39.5.12 NMAC - N, 7/1/2015; A, 12/28/2017]

HISTORY OF 16.39.5 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the state records center & archives under: PELS 79-1, New Mexico Engineering Practice Act, filed 6-22-67; PELS 79-1 New Mexico Engineering and Land Surveying Practice Act, filed 10-29-79; PELS 67-2, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 06-22-67; PELS 68-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 10-07-68; PELS 69-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 07-03-69; PELS 71-1, Rules of Procedure Manual, filed 01-14-71; PELS 73-1, Rules of Procedure Manual, filed 01-04-73; PELS 75-1, Rules of Procedure Manual, filed 12-15-75; PELS 80-1, Regulations and Rules of Procedure, filed 01-28-80; PE/PS Rule No. 89-1, Regulations and Rules of Procedure, filed 08-15-89; Rule No. 400.1, Regulations and Rules of Procedure - Application - Surveyor Intern and Professional Surveyor, filed 10-28-94; Rule No. 400.2, Regulations and Rules of Procedure - Examinations - Surveyor Intern and Professional Surveyor, filed 10-28-94; Rule No. 400.3, Regulations and Rules of Procedure - Practice of Surveying, filed 10-28-94; Rule No. 400.4, Regulations and Rules of Procedure - Seal of Registrant licensee, filed 10-28-94.

History of Repealed Material:

16 NMAC 39.5, Surveying--Applications, Examinations, Practice of Surveying, Seal of Registrant (filed 03-31-98) repealed 01-01-2002).

Other History:

Rule No. 400.1, Regulations and Rules of Procedure - Application - Surveyor Intern and Professional Surveyor (filed 10-28-94); Rule No. 400.2, Regulations and Rules of Procedure - Examinations - Surveyor Intern and Professional Surveyor (filed 10-28-94); Rule No. 400.3, Regulations and Rules of Procedure - Practice of Surveying (filed 10-28-94); Rule No. 400.4, Regulations and Rules of Procedure - Seal of Registrant licensee (filed 10-28-94) were all renumbered, reformatted and replaced by 16 NMAC 39.5, Surveying--Applications, Examinations, Practice of Surveying, Seal of Registrant, effective 04-15-1998.
16 NMAC 39.5, Surveying--Applications, Examinations, Practice of Surveying, Seal of Registrant (filed 03-31-98) was renumbered, reformatted and replaced by 16.39.5 NMAC, Surveying--Applications, Examinations, Practice of Surveying, Seal of Licensee, effective 01-01-2002.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 6 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

16.39.6.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505)476-4565.
[16.39.6.1 NMAC - N, 7/1/2015]

16.39.6.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.
[16.39.6.2 NMAC - N, 7/1/2015]

16.39.6.3 STATUTORY AUTHORITY: Section 61-23-10 (B) NMSA 1978 prescribes that “the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying.” 16.39.1 NMAC applies to both engineering and surveying.
[16.39.6.3 NMAC - N, 7/1/2015]

16.39.6.4 DURATION: Permanent.
[16.39.6.4 NMAC - N, 7/1/2015]

16.39.6.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[16.39.6.5 NMAC - N, 7/1/2015]

16.39.6.6 OBJECTIVE: The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to Section 61-23-10 (B) NMSA 1978.
[16.39.6.6 NMAC - N, 7/1/2015]

16.39.6.7 DEFINITIONS: Definitions regarding military service members, veterans, spouses and dependents are outlined pursuant to 61-1-34 NMSA 1978.

- A. “Licensing fee”** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.
- B. “Military service member”** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.
- C. “Veteran”** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.39.6.7 NMAC - N, 7/1/2015; A, 3/12/2022; A, 12/16/2022]

16.39.6.8 APPLICATION REQUIREMENTS:

- A.** Applications for licensure shall be completed on a form provided by the department.
- B.** The information shall include:
 - (1)** completed application;
 - (2)** satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States.
- C.** The license shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application.
- D.** Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

[16.39.6.8 NMAC - N, 7/1/2015; A, 3/12/2022; A, 12/16/2022]

16.39.6.9 RENEWAL REQUIREMENTS:

- A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Article 23 NMSA 1978.
- B.** The licensee must submit the following documents at the time of renewal:
 - (1)** Proof of military service, spouse or dependent, or veteran status:

- (a) for military service member: copy of military orders;
 - (b) for spouse of military service members: copy of spouse's military orders, and copy of marriage license;
 - (c) for spouses of deceased military service members: copy of spouse's DD214 and copy of marriage license;
 - (d) for dependent children of military service members: copy of military orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
 - (e) for veterans (retired or separated): copy of DD214 showing proof of honorable discharge.
- (2) applicants for professional engineering license must meet the requirement as outlined in 16.39.3.9 NMAC;
- (3) applicants for professional surveying license must meet the requirement as outlined in 16.39.5.8 NMAC.

C. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial renewal period pursuant to Subsection B of Section 61-23-10 NMSA 1978.
 [16.39.6.9 NMAC - N, 7/1/2015; A, 12/16/2022]

HISTORY OF 16.39.6 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 7 MISC--PROCEDURES FOR ISSUANCE, REVOCATION, SUSPENSION, IMPOSITION OF
FINES, REISSUANCE OF CERTIFICATES AND DISCIPLINARY ACTION

16.39.7.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 875057, telephone no. (505) 476-4565.

[16.39.7.1 NMAC - Rp, 16 NMAC 39.7.1, 1/01/2002; A, 7/01/2006; A, 7/01/2015]

16.39.7.2 SCOPE: Provisions for Part 7 apply to persons certified as engineer interns or surveyor interns, persons licensed as, professional engineers or professional surveyors, applicants for either licensure or certification, and persons who engage in the business or act in the capacity of a professional engineer or professional surveyor without being licensed by the board.

[16.39.7.1 NMAC - Rp 16 NMAC 39.7.2, 1/01/2002; A, 7/01/2006]

16.39.7.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 7 applies to both engineering and surveying.

[16.39.7.3 NMAC - Rp 16 NMAC 39.7.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.7.4 DURATION: Permanent.

[16.39.7.4 NMAC - Rp, 16 NMAC 39.7.4, 1/01/2002]

16.39.7.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.

[16.39.7.5 NMAC - Rp, 16 NMAC 39.7.5, 1/01/2002]

16.39.7.6 OBJECTIVE: The objective of Part 7 is to define procedures for revocation, suspension, imposition of fines, reissuance of certificates and disciplinary action. It is also to define actions constituting violations of the act.

[16.39.7.6 NMAC - Rp, 16 NMAC 39.7.6, 1/01/2002]

16.39.7.7 DEFINITIONS: "disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.39.7.7 NMAC - Rp, 16 NMAC 39.7.7, 1/01/2002; A, 3/12/2022]

16.39.7.8 ISSUANCE, REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF LICENSES AND CERTIFICATES AND DISCIPLINARY ACTION:

A. The board may impose fines as may be determined by the nature of the violation pursuant to Section 61-23-24 and 61-23-27.11 NMSA 1978.

B. A lost, mutilated or destroyed certificate shall be replaced only upon the written request of the licensee and payment of the required fee. The reissued certificate shall show the original license number and original date, shall be signed by the current chair and secretary of the board in office at that date, and shall carry the notation "reissued (DATE)."

[16.39.7.8 NMAC - Rp, 16 NMAC 39.7.8, 1/01/2002; A, 7/01/2015; A, 3/12/2022]

16.39.7.9 VIOLATIONS:

A. For business entities using the words "engineering" or "surveying" in their titles or offering engineering or surveying services, the board's executive director shall write the business entity, enclosing an affidavit to be completed which identifies the member of the business entity who is licensed to practice in the state of New Mexico and who is an employee of and legally able to bind the business entity by contract. If no response to this request is received within 30 days, a second letter shall be sent by certified mail, return receipt requested. If the second letter does not result in a response 30 days from the receipt of a refusal, the matter may be turned over to the

attorney general's office for action.

B. It shall be considered “a violation” under Paragraph (1) of Subsection A of Section 61-23-24 NMSA 1978 and Paragraph (1) of Subsection A of Section 61-23-27.11 NMSA 1978 of the Engineering and Surveying Practice Act for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence or in contravention of any of the provisions of these rules. It shall also be considered “a violation” under Subsection A of Section 61-23-23.1 NMSA 1978 and Subsection A of Section 61-23-27.15 NMSA 1978 of the Engineering and Surveying Practice Act for any person to act in the capacity of a professional engineer or a professional surveyor without being licensed by the board.

C. The practice or offer to practice engineering by a licensee of the board in any state, territory or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board. The practice or offer to practice surveying by a licensee of the board in any state, territory, or country where the licensee has been determined to be in violation of that jurisdiction's licensing requirement shall be considered to be professional misconduct which may be actionable by the board.

D. Each applicant or licensee shall notify the board, in writing, within 90 days, of the imposition of any disciplinary action by any other applicable licensing board or any conviction of or entry of plea of nolo contendere to any crime under the laws of the United States, or any state, territory or county thereof, which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, which is a felony directly related to the practice of engineering or surveying as listed in Subsection F of 16.39.7.9 NMAC.

E. The board shall comply with the provisions of the Parental Responsibility Act as they relate to the denial, suspension or revocation of certificates of licensure for non-payment of child support.

F. Criminal Convictions:

(1) Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, that may disqualify an applicant from receiving licensure, or disciplinary action including but not limited to suspension or revocation:

- (a)** crimes involving homicide, murder, manslaughter, or resulting in death;
- (b)** crimes involving human trafficking, or trafficking in controlled substances;
- (c)** kidnapping, false imprisonment, assault, aggravated assault, battery, aggravated battery;
- (d)** rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;
- (e)** crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, injury to pregnant woman, custodial interference, property damage, or financial exploitation;
- (f)** crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud, unauthorized use of a credit card; receiving stolen property, money laundering, burglary tools, or stolen vehicles;
- (g)** crimes involving arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;
- (h)** crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;
- (i)** violation of Partial-Birth Abortion Ban Act;
- (j)** crimes involving bribery, intimidating witnesses, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;
- (k)** crimes involving jury tampering;
- (l)** crimes involving escape from custody, jail or penitentiary;
- (m)** crimes involving harboring or aiding a felon;
- (n)** crimes involving tax evasion or tax fraud;
- (o)** crimes involving violations of the Mortgage Foreclosure Consultant Fraud Prevention Act, or the Savings and Loan Act;
- (p)** crimes involving the Credit Union Act;
- (q)** crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, issuing a worthless check, obtaining information under false

pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

(r) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;

(s) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;

(t) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;

(u) crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;

(v) crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;

(w) crimes involving making or permitting a false public voucher;

(x) crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;

(y) crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so, or violations of the New Mexico Uniform Securities Act;

(z) crimes involving extortionate extensions of credit;

(aa) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of and official act, or illegal kickbacks;

(bb) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(cc) crimes involving the practice of medicine, dentistry or osteopathic medicine without a license or authorization of the appropriate regulating authority;

(dd) 4th or subsequent driving under the influence of intoxicating liquor or drugs;

(ee) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

(2) The board shall not consider the fact of a criminal conviction as part of an application for licensure, or license renewal, unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(3) The board shall not deny, suspend, or revoke a license, or impose disciplinary action on a licensee on the sole basis of a criminal conviction, unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(4) Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Engineering and Surveying Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

(5) In connection with an application for licensure or a license renewal, or disciplinary action, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(a) an arrest not followed by a valid conviction;

(b) a conviction that has been sealed, dismissed, expunged or pardoned;

(c) a juvenile adjudication; or

(d) a conviction for any crime other than the disqualifying criminal convictions

listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

[16.39.7.9 NMAC - Rp 16 NMAC 39.7.9, 1/01/2002; A, 7/01/2006; A, 7/01/2015; A, 12/28/2017; A, 3/12/2022]

HISTORY OF 16.39.7 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the state records center and archives under: PELS 67-2, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 6-22-67; PELS 68-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors,

filed 10-7-68; PELS 69-1, Bylaws of State Board of Registration for Professional Engineers and land Surveyors, filed 7-3-69; PELS 71-1, Rules of Procedure Manual, filed 1-14-71; PELS 73-1, Rules of Procedure Manual, filed 1-4-73; PELS 75-1, Rules of Procedure Manual, filed 12-15-75; PELS 80-1, Regulations and Rules of Procedure, filed 1-28-80; Rule PE/PS Rule No. 89-1, filed 8-15-89; Rule No. 600.1, Regulations and Rules of Procedure - Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action, filed 10-28-94; Rule No. 600.2, Regulations and Rules of Procedure - Violations, filed 10-28-94; Rule No. 600.2, Amendment 1, filed 10-18-95; and Rule No. 600.2, Amendment 2, filed 12-12-95.

History of Repealed Material:

16 NMAC 39.7, Misc.--Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action (filed 03-31-1998) was repealed 01-01-2002.

Other History:

Rule No. 600.1, Regulations and Rules of Procedure - Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action (filed 10-28-94) and Rule No. 600.2, Regulations and Rules of Procedure - Violations (filed 10-28-94); were renumbered, reformatted and replaced by 16 NMAC 39.7, Misc.--Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action, effective 04-15-1998.

16 NMAC 39.7, Misc.--Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action (filed 03-31-1998) was renumbered, reformatted and replaced by 16.39.7 NMAC, 16 NMAC 39.7, Misc.--Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action, effective 01-01-2002.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 8 CODE OF PROFESSIONAL CONDUCT--ENGINEERING AND SURVEYING

16.39.8.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.
[16.39.8.1 NMAC - Rp, 16 NMAC 39.8.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

16.39.8.2 SCOPE: Provisions for part 8 apply to persons certified as engineer interns or surveyor interns, licensed as professional engineers or professional surveyors or anyone applying for certification as an engineer intern or surveyor intern or licensed as a professional engineer or professional surveyor.
[16.39.8.2 NMAC - Rp, 16 NMAC 39.8.2, 1/01/2002; A, 7/01/2006]

16.39.8.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 8 applies to both engineering and surveying.
[16.39.8.3 NMAC - Rp, 16 NMAC 39.8.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.8.4 DURATION: Permanent
[16.39.8.4 NMAC - Rp, 16 NMAC 39.8.4, 1/01/2002]

16.39.8.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.
[16.39.8.5 NMAC - Rp, 16 NMAC 39.8.5, 1/01/2002]

16.39.8.6 OBJECTIVE: The objective of part 8 is to establish and maintain rules of professional conduct for professional engineers and professional surveyors.
[16.39.8.6 NMAC - Rp, 16 NMAC 39.8.6; 1/01/2002; A, 7/01/2006]

16.39.8.7 DEFINITIONS: In these Rules of Professional Conduct, the word "licensee" shall mean any person holding a current license or certification issued by the Board.
[16.39.8.7 NMAC - Rp, 16 NMAC 39.8.7, 1/01/2002]

16.39.8.8 PREAMBLE:

A. In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following Rules of Professional Conduct shall apply to every person holding a certificate of licensure to perform engineering or surveying services in the State of New Mexico.

B. The Rules of Professional Conduct as promulgated herein are an exercise of the regulatory power vested in the Board by virtue of the acts of the legislature. These rules are in addition to but are not intended to supersede, the provisions of the New Mexico Engineering and Surveying Practice Act.

C. All persons licensed under the New Mexico Engineering and Surveying Practice Act are charged with having knowledge of the existence of these Rules of Professional Conduct and shall be deemed to be familiar with the provisions of these rules and to understand them. Such knowledge shall encompass understanding these rules of Professional Conduct and failure to follow these rules may be considered misconduct by the Board.

[16.39.8.8 NMAC - Rp, 16 NMAC 39.8.8, 1/01/2002]

16.39.8.9 RULES OF PROFESSIONAL CONDUCT:

A. The protection of the public safety, health, welfare and property in the performance of professional duties.

(1) Perform those duties in conformance with accepted engineering and surveying practices.

(2) Notify their employer or client and such other authority as may be appropriate of any instance in which their professional judgment is overruled under circumstances endangering the public safety, health, welfare or property.

(3) Approve and seal only those engineering and surveying documents which conform to applicable engineering and surveying standards.

(4) Shall not reveal privileged or confidential facts, data or information without prior consent of the client

or employer except as authorized or required by law or this code.

(5) Refuse to associate in a business venture with any person or firm whom they may have reason to believe is engaging in fraudulent or dishonest business or professional practices as an engineer or surveyor and refuse to use or permit the use of their name or firm in connection with any such business venture.

(6) Inform the board of any violation of this code. Cooperate with the board in furnishing information or assistance as may be requested by the board in matters concerning violations.

(7) Shall not assist or participate in the unlawful practice of engineering and surveying by a person or firm.

B. Specialization and the performance of services only in specific areas of competence.

(1) Licensees shall undertake assignments only when qualified by education, experience or examination in the specific technical fields of engineering or surveying involved.

(2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competency, nor to any such plan or documents not prepared under their responsible charge.

(3) Licensees may accept an assignment when the total work involves technical fields beyond those in which they are qualified, providing their services are limited to those phases in which they are qualified and that the phases in which they are not qualified are performed by licensees who are properly qualified. In this instance, each qualified licensee will sign and seal the documents for their phase of the assignment.

C. The issuance of public statements.

(1) Licensees shall be objective and truthful in professional reports, statements or testimony. A professional report or professional opinion issued by or under the responsible charge of a licensee shall not contain any intentionally false, misleading or deceitful statements or testimony. Any report, statement or testimony by a licensee shall contain all relevant and pertinent information as required by accepted engineering or surveying principles.

(2) If a licensee issues statements on technical matters in his or her capacity as a professional engineer or professional surveyor on behalf of an interested party, the licensee must expressly preface his or her remarks by identifying said interested party and by revealing the existence and nature of any interest the licensee may have in the matter.

(3) A licensee who is competent in the subject matter may express publicly technical opinions that are found upon knowledge of the facts.

D. Professional relationships with employer or client.

(1) Licensees shall act in professional matters for each employer or client to avoid conflicts of interest. Licensees shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest or other circumstances which could reasonably be expected to influence their judgment or the quality of their services.

(2) Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(3) Licensees shall not solicit or accept any gratuity, material favor, or any valuable consideration, directly or indirectly, from contractors, their agents, servants or employees or from any other party dealing with his client or employer in connection with any project for which he is performing or has contracted to perform engineering or surveying services. (The phrase "valuable consideration" is defined to mean any act, article, money or other material possession which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his ability to exercise his own judgment.)

(4) Licensees in public service as a member or employee of a governmental body, agency or department shall not participate, directly or indirectly in deliberations or actions which would constitute a conflict of interest with respect to services offered or provided by him, his associates, or the licensee's business entity to such governmental body, agency or department.

(5) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their business entity serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of appropriate public authority.

(6) Licensees shall not reveal privileged or confidential facts, data or information obtained in a professional capacity without prior consent of the client or employer except:

(a) As provided in Paragraphs (2) and (6) of Subsection A of 16.39.8.9 NMAC.

(b) As authorized or required by law.

(c) Any document that is a matter of public record by virtue of it being on file with a public agency.

(d) Any fact, data or information which is clearly the property of the engineer or surveyor.

E. Solicitation of professional employment.

(1) Licensees shall not falsify or permit misrepresentation of their, or their associates' academic or

professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other representations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments with the intent and purpose of enhancing their qualifications and their work.

(2) Licensees shall not offer, give, solicit or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure or influence the award of work and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, and which may be reasonably construed by the public as having the effect or intent to influence the award of a contract.

F. Avoiding conduct or practice that deceives the public.

(1) Licensees shall avoid the use of a statement containing a material misrepresentation of a fact or omitting a material fact.

(2) Consistent with the foregoing, licensees may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

G. Interaction with other licensees.

(1) Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other licensees.

(2) Licensees in private practice shall not review the work of another licensee for the same client, except with the knowledge of such licensees, or unless the connection of such licensee with the work has been terminated.

(3) Licensees in governmental, industrial, or educational employment are entitled to review and evaluate the work of other licensees when so required by their employment duties.

[16.39.8.9 NMAC - Rp, 16 NMAC 39.8.9, 1/01/2002; A, 7/1/2015; A, 12/28/2017; A, 12/16/2022]

HISTORY OF 16.39.8 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the state records center & archives under: PELS 89-2, Rules of Professional Conduct, filed 8-15-89; PE/PS Rule No. 89-2, Rules of Professional Conduct, filed 8-15-89; Rule No. 700.1, Code of Professional Conduct -Preamble, filed 10-28-94; and Rule No. 700.2, Code of Professional Conduct - Rules of Professional Conduct, filed 10-28-94.

History of Repealed Material:

16 NMAC 39.8, Code of Professional Conduct--Engineering and Surveying (filed 03-31-1998) repealed 01/01/2002.

Other History:

Rule No. 700.1, Code of Professional Conduct -Preamble (filed 10-28-94) and Rule No. 700.2, Code of Professional Conduct - Rules of Professional Conduct (filed 10-28-94) were renumbered, reformatted and replaced by 16 NMAC 39.8, Code of Professional Conduct--Engineering and Surveying, effective 04-15-1998.

16 NMAC 39.8, Code of Professional Conduct--Engineering and Surveying (filed 03-31-1998) was renumbered, reformatted and replaced by 16.39.8 NMAC, Code of Professional Conduct--Engineering and Surveying, effective 01-01-2002.

