



**PDHonline Course R601 (4 PDH)**

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# **New Mexico Board Rules of Professional Conduct and Responsibility**

**2012**

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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, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561

[16.39.1.1 NMAC - Rp, 16 NMAC 39.1.1, 1/01/2002; A, 7/01/2006]

**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:** NMSA 1978, Section 61-23-10 (B) 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]

**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 [RESERVED]**

[16.39.1.7 NMAC - Rp, 16 NMAC 39.1.7, 1/01/2002]

### **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 headquarters of the board shall be at Santa Fe, New Mexico.

**C.** 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.

**D.** 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]

**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]

### **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 as an exempt employee 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 of the board 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.

**F.** The executive director shall perform and/or 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) possess the official seal and affix same to all official documents upon order of the chair of the board;

(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 mailed to each member for comment within two weeks after each meeting with a final copy to be typed and furnished to each board member at the next meeting for final approval and recording;

( 5) receive and account for all funds and transfer same to state treasurer within twenty-four hours of receipt; only those invoices and vouchers for expenditures included in the board's approved operating budget shall be approved and signed by the executive director; approved vouchers and invoices shall be transmitted to the department of finance and administration; a tabulation of each financial transaction is to be maintained on a quarterly basis and submitted to the board at the next scheduled meeting for its information and approval; these tabulations are to be made part of the board's minutes;

(6) present to the board at the first meeting of the fiscal year a report as of the preceding June 30th, of the transactions of the board during the preceding fiscal year, and a complete statement of the receipts and expenditures of the board, and upon being approved by the board, shall be included in the annual report and submitted to the governor;

(7) gather information and if necessary conduct interviews of applicants for licensure to insure that applications are sufficiently and accurately completed;

(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 the roster and supplemental roster in accordance with Section 61-23-13; include in the roster and supplement only the names of those engineering interns and surveying interns who have been enrolled during that fiscal year;

(10) maintain a current roster on the board's website and make available in hard copy to a licensee if requested; file a copy with the secretary of state and other required agencies, and furnish copies to the public upon request and payment of a fee as determined by the board and in accordance with the Inspection of Public Records Act;

(11) report to and inquire of the national council of examiners for engineering and surveying violations of state engineering and surveying laws;

(12) furnish to the press and state engineering and surveying societies lists of newly qualified licensees and enrolled engineering interns or surveying interns;

(13) distribute one week in advance of each meeting, copies of the agenda of the meeting to each member of the board;

(14) distribute twice in each fiscal year a newsletter regarding board actions and items of interest to licensees;

(15) 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;

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

[16.39.1.12 NMAC - Rp, 16 NMAC 39.1.12, 1/01/2002; A, 7/01/2006]

**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) approval of agenda
- (b) approval of minutes
- (c) reports of committees
- (d) communications
- (e) old business
- (f) new business
- (g) complaints and violations
- (h) adjour nment

**(2)committee meetings**

- (a) approval of agenda
- (b) approval of minutes
- (c) reports of sub-committees
- (d) communications
- (e) old business
- (f) new business
- (g) complaints and violations
- (h) applications
- (i) adjour nment

**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, 1/01/2002; A, 7/01/2006]

**16.39.1.15 ROSTER:**

**A.** 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, branch, status, and license number.

**B.** Anyone may obtain a copy of the roster by paying the established fee. Also see Section 61-23-13, NMSA, 1978.

[16.39.1.15 NMAC - Rp, 16 NMAC 39.1.15, 1/01/2002]

**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.** 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; and

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

**B.** 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.

**C.** 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.

**D.** 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) is not engaged in the respective professions (engineering or surveying) which requires licensure in this jurisdiction;

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

(3) has filed an application and application fee prescribed by the board for inactive status prior to the expiration of the license and the 60 day grace period.

**E.** In the event a licensee on inactive status desires to return to practice within six (6) 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.

**F.** An inactive licensee who has enjoyed inactive status in excess of six (6) 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. (In the event an inactive licensee does not maintain a current license in any jurisdiction for the six previous years prior to requesting active status, that person will be required to take the principles and practice of engineering (PE) examination or the principles and practice of surveying (PS) examination.

[16.39.1.17 NMAC - Rp, 16 NMAC 39.1.17, 1/01/2002; A, 7/01/2006]

## **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

### **CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS**

#### **PART 2 PROFESSIONAL DEVELOPMENT**

**16.39.2.1 ISSUING AGENCY:** State Board of Licensure for Professional Engineers and Professional Surveyors, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561.

[16.39.2.1 NMAC - Rp, 16 NMAC 39.2.1, 12/01/2001; A, 7/01/2006]

**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:** NMSA 1978, Section 61-23-10 (B) 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 ]

**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 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 hours of class in approved continuing education course;

**C.** College/unit semester/quarter hour - credit for course from ABET approved curriculum 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 which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice;

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

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

[These definitions were moved from Paragraphs (1)-(5) of Subsection C of 16.39.2.8 NMAC.]

### **16.39.2.8 CONTINUING PROFESSIONAL DEVELOPMENT - MANDATORY PROGRAM:**

The purpose of the continuing professional development requirement is to demonstrate a 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 rejection of renewal; and correction of the deficiency must be made by submission of the appropriate PDHs and payment of the processing fee within 1 year of renewal date.

**C.** [Reserved]

**D. Requirements** - every licensee is required to obtain 30 professional development hours (PDH) units during a biennium, at least four of which shall be in ethics. A maximum of 10 PDH units may be earned in self-directed study. 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. PDH units may be earned as follows:

(1) successful completion of college courses;

(2) successful completion of continuing education courses;

- (3) successful completion of correspondence, televised, videotaped, and other short courses/tutorials;
- (4) presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;
- (5) teaching or instructing in Paragraphs (1) through (4) of Subsection D of 16.39.2.8 NMAC;
- (6) authoring published papers, articles, or books;
- (7) active participation in professional or technical societies and their committees;
- (8) patents;
- (9) subscription to a technical journal or trade publication during the first twelve (12) month of the biennium reporting period;
- (10) technical reviews, including articles from periodicals, books, video/audio cassettes, tutorials and other sources, which contribute to the technical or professional education or competency of the licensee;
- (11) participation in civic or community activities, relevant to the engineering and surveying professions, as a speaker, instructor, presenter or panelist;
- (12) successful completion of ethics training.

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

- (1) 1 college or unit semester hour.....45 PDH;
- (2) 1 college or unit quarter hour.....30 PDH;
- (3) 1 continuing education unit.....10 PDH;
- (4) 1 hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences.....1 PDH;
- (5) for teaching apply multiple of 2 (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) each published paper, article, or book.....10 PDH;
- (7) active participation in professional and technical societies. (Each organization).....2 PDH/yr;
- (8) each patent.....10 PDH;

- (9) 1 yr. subscription.....1 PDH (max 2 PDH/ biennium);
- (10) 1 hour of literature review.....1 PDH (max 6 PDH/biennium);
- (11) each civic or community activity.....1 PDH (max 4 PDH/biennium);
- (12) ethics training..... 4 PDH/biennium.

**F . 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;

**G. Record keeping** - licensees are charged with the responsibility of their own professional activities. The responsibility of maintaining records to be used to 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) verification of subscription to a publication in the form of a paid receipt or 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; and 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.

**H. 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;
- (2) a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year;

(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.

**I. Reinstatement** - a licensee may bring an expired license to active status by obtaining all delinquent PDH units 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;

**J. Comity/out-of-jurisdiction resident** - licensees who are residents of other jurisdictions shall meet the continuing professional development (CPD) 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.

**K. 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; holders of dual licenses are free to utilize PDH units approved for either field at their sole discretion; for persons who hold a dual license, half of the PDH units shall be in each profession.

**L. Forms** - all renewal applications will require the completion of a continuing education form specified by the board PDH credit claimed. The licensee must sign the continuing education form, and submit with the renewal application and fee.

[16.39.2.8 NMAC - Rp, 16 NMAC 39.2.8, 12/01/2001; A, 7/01/2006]

## **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

### **CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS**

#### **PART 3 ENGINEERING--CERTIFICATES OF 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, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561.

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

**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:** NMSA 1978, Section 61-23-10 (B) 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. Section 61-23-10 (C) 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. Section 61-23-19 prescribes, "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]

**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 certificates of licensure to practice engineering or certificates 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]

**16.39.3.7 DEFINITIONS:**

**A.** Board-approved, four-year curriculum in engineering is defined as:

(1) engineering curriculum accredited by the engineering accrediting commission (EAC) of the accreditation board for engineering and technology (ABET);

(2) graduation from an engineering curriculum that receives ABET accreditation within three years of the applicant's graduation;

(3) non-ABET accredited engineering degree curriculum with the minimum number of engineering credits as required in an ABET-accredited degree (32 semester or 48 quarter credit hours in math/science including 12 semester credits of calculus terminating with differential equations; 32 semester or 48 quarter credit hours of engineering science; 16 semester or 24 quarter credits of engineering design; and 16 semester or 24 quarter credits of humanities/social science);

(4) graduate degree (master or doctoral) from an engineering program where the bachelor's degree is ABET-accredited and the candidate has completed all the BS deficiencies (confirmation letter from graduate committee), even though the applicant's bachelor's degree was earned in a non-engineering program.

**B.** On-site wastewater engineering practice is defined as the design of septic tank systems, on-site wastewater treatment plants, leach fields, evapotranspiration fields, and similar structures that do not discharge wastewater effluent directly to a surface watercourse or stream.

[16.39.3.7 NMAC - Rp, 16 NMAC 39.3.7, 1/01/2002; A, 7/01/2006]

**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 G
- (8) chemical H
- (9) industrial I
- (10) mechanical M
- (11) mining N
- (12) metallurgical NN
- (13) petroleum P
- (14) control systems Q
- (15) structural R
- (16) nuclear T
- (17) fire protection U
- (18) environmental V
- (19) construction W

**C.** 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 (3) 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 the three disciplines.

**D.** 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 6 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.

**E. 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 of 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.

**F.** Establishment of specialty sub-disciplines - The following specialty sub-discipline(s) for the practice of engineering are established. On-site wastewater engineering as defined in Subsection B of 16.39.3.7 NMAC.

**(1)** New Mexico governmental agency identifying the need for this specialty sub-discipline - New Mexico environment department.

**(2)** Training/education within New Mexico - a course of training/education conducted in cooperation with the New Mexico environment department and approved by the professional engineering committee of the board. The course content shall include NM laws, unique NM conditions requiring special design practice, site testing that must be performed, procedures of approval of plans and specifications, and requirements for certification of construction.

**(3)** The engineering disciplines in Subsection B of 16.39.3.8 NMAC that may be applicable to this specialty sub-discipline are: architectural, civil, agricultural, geological, industrial, petroleum, environmental and construction.

**(4)** The certification of specialty sub-discipline for on-site wastewater engineering shall expire at the end of the license renewal period that is three years after the granting of the certification for specialty sub-discipline. The certification may be renewed by submitting documentation of updated training/education.

**G.** Fire protection discipline - professional responsibility for professional engineers practicing fire protection engineering - the overall design of a fire protection system involves a broad range of hazards and protection schemes in the development of a workable, integrated solution to a fire system problem. This process includes the practice of engineering as defined by Section 61-23-3(E), NMSA 1978 (New Mexico Engineering and Surveying Practice Act). This rule clarifies the practice of engineering relating to fire protection systems.

**(1)** Licensed professional engineers, who design fire detection, fire alarm, or fire sprinkler systems including the identification of the water source shall sign, seal and prepare all plans in accordance with the New Mexico Engineering and Surveying Practice Act, Title 16, Chapter 39 of the New Mexico administrative code as it pertains to the practice of engineering:

**(a)** prepare construction plans and documents that depict all required components and devices for a complete fire detection, fire alarm, and/or fire sprinkler system in accordance with the applicable codes and standards;

(b) be responsible for any change orders, additions or corrections to bring a deficient layout into compliance with the applicable national fire protection association (NFPA) standard(s) and/or applicable local or state codes.

(2) Licensed professional engineers shall specify the installation of fire detection, fire alarm and/or fire sprinkler systems. A professional engineer's responsibilities are to identify on the construction plans/design drawings and documents/specifications the following:

(a) the applicable prescriptive codes and/or standards;

(b) the specific building use and/or occupancy classification; and/or;

(c) describe the function, placement, performance and operation of the devices and components to correctly layout the system(s);

(d) sprinkler system: the density and water flow and pressure requirements of the sprinkler system design, classification of the commodities to be protected, and confirmation of the water supply, hydraulic data and preliminary hydraulic design as shown on plans and documents signed and sealed by an engineer; the plans prepared by the engineer shall include details, location and design of the fire sprinkler riser, fire department connections, test station and sprinkler head location;

(e) alarm system: appropriate building system interfaces, effect of construction on system design, selection of devices and systems, device location and spacing, control panel location, and preliminary riser diagrams as shown on plans and documents signed and sealed by an engineer.

(3) Engineering for fire detection, fire alarm, and/or fire sprinkler systems by a New Mexico licensed professional engineer shall be limited to:

(a) those engineers who have been approved by the board to practice in the discipline of fire protection engineering, or

(b) an engineer who is competent by experience or education in designing such systems and can demonstrate continuing professional competency by attending and reporting sufficient professional development hours including, but not limited to, the fire protection codes and standards.

[16.39.3.8 NMAC - Rp, 16 NMAC 39.3.8, 1/01/2002; A, 7/01/2006]

### **16.39.3.9 APPLICATION - ENGINEERING INTERN AND PROFESSIONAL ENGINEER:**

**A.** Board members may not be used as references.

**B.** A copy of the New Mexico Engineering and Surveying Practice Act and Title 16, Chapter 39 of the New Mexico administrative code shall be provided to each applicant.

**C.** Applications for the fundamentals of engineering examination will be accepted from the following undergraduates: A person who has obtained at least a senior status in a board-approved four-year

curriculum in engineering, or in a board-approved four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; applications may be submitted on the short form.

**D.** Applicants, with board-approved engineering degrees, wishing to take the fundamentals of engineering examination shall submit their application on the long application form with official transcript(s) provided directly from the university.

**E.** Applicants for the principles and practices of engineering examination with an accreditation board engineering and technology (ABET) accredited engineering curriculum of four years or more or equivalent as determined by the board 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 professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. 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 equivalent as determined by the board 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 61.39.3.9 NMAC.

**F.** Any application, to be complete, other than those referred to in Subsection C of 16.39.3.9 NMAC above, must include acceptable replies from five references, pursuant to Section 61-23-14.1(A)(2), NMSA 1978 official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other states.

**G.** No applicant will be eligible to take any examination whose application for eligibility has not been completed as set forth in Subsection F of 16.39.3.9 NMAC for professional engineering committee approval no less than thirteen (13) weeks prior to the next scheduled examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must be completed and examination fees paid on or before the date specified by the board.

**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 three 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.

**K.** All applicants shall also show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of an 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]

### **16.39.3.10 EXAMINATIONS--ENGINEERING INTERN AND PROFESSIONAL ENGINEER:**

**A.** Regularly scheduled written examinations shall be held biannually in the spring and autumn respectively. Other examinations may be held at times and places as determined by the professional engineering committee.

**B.** Any applicant that fails any written examination will be notified of the next. A written request to retake the examination and payment of the examination fee shall be received on or before the date specified by the board.

**C.** An examinee that has made three unsuccessful attempts at achieving a passing score on an examination, shall only be eligible to take the next scheduled examination after providing 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 professional engineering committee. Type of examination 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;

(3) the examinations given by the professional engineering committee may be "open" or "closed book" or any combination thereof;

(4) only calculators specified by the national council of examiners for engineering and surveying shall be admitted in the examination room during the administration of the licensing examinations;

**E.** An examinee who has a question regarding the completed examination, shall put the matter in writing to the professional engineering committee; it will be considered at the next professional engineering committee meeting; the professional engineering committee's answer to the examinee shall be in writing.

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

### **16.39.3.11 PRACTICE OF ENGINEERING:**

**A.** Neither a person nor an organization shall advertise 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 organization by contract.

**B.** Neither persons nor organizations shall circumvent these rules. Licensees or organizations 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 organization 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 public regulation commission to constitute the offering of engineering services.

[16.39.3.11 NMAC - Rp, 16 NMAC 39.3.11, 1/01/2002; A, 7/01/2006]

### **16.39.3.12 SEAL OF LICENSEE:**

**A.** Each licensed professional engineer shall obtain a seal/stamp, which must appear on all design drawings, and 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 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.

**C.** The design of the seal/stamp shall consist of 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.

**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 Section 61-23-3 (M), 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 and/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 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. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services. A licensed professional engineer may apply photogrammetric methods to derive topographic and other data and shall certify the work by affixing the licensee's seal and signature.

[16.39.3.12 NMAC - Rp, 16 NMAC 39.3.12, 1/01/2002; A, 7/01/2006]

**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.** graduation from an approved engineering curriculum, four years of experience satisfactory to the professional engineering committee, and passing of the 8-hour fundamentals and 8-hour professional examinations; (1979 law and 1987 law);

**B.** 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 8-hour fundamentals and 8-hour professional examination (1993 law);

**C.** 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 8-hour fundamentals and 8-hour professional examination (1979 law and 1987 law);

**D.** licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum, twenty years experience satisfactory to the professional engineering committee, and passing the 8-hour professional examination (1979 law and 1987 law);

**E.** licensure prior to July 1, 1940, by twelve years of experience satisfactory to the professional engineering committee (1934 law);

**F.** 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);

**G.** 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);

**H.** licensure prior to July 1, 1967, by twenty-four years of experience satisfactory to the professional engineering committee, and by passing an oral examination (1957 law);

**I.** licensure prior to July 1, 1967, by graduation from an approved curriculum prior to July 1, 1957, and passing the 8-hour professional examination (1957 law);

**J.** licensure prior to July 1, 1979, by eight years of experience satisfactory to the professional engineering committee, and by having passed the 8-hour fundamentals and 8-hour professional examinations (1969 law);

**K.** licensure prior to July 1, 1979, by thirty years of experience, the last twelve years of which must have been of outstanding nature and by having been nationally eminent among his peers (1967 law);

**L.** 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]

## **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, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561

[16.39.4.1 NMAC - Rp, 16 NMAC 39.4.1, 1/01/2002; A, 7/01/2006]

**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:** NMSA 1978, Section 61-23-10 (B) 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...(C) 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." NMSA 1978, Section 61-23-10 ( K) 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'...; as used in the Engineering and Surveying Practice Act, Section 61-23-10 (L) '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]

**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 16.30.1.7.12 NMAC (Board of Examiners for Architects).

[16.39.4.6 NMAC - Rp, 16 NMAC 39.4.6, 1/01/2002]

**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 Section 61-23-22(A), 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 four hundred thousand dollars (\$400,000) and having a total occupant load not greater than fifty (50);

**B.** Engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than four hundred thousand dollars (\$400,000) and having a total occupant load not greater than fifty (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 four hundred thousand dollars (\$400,000) or having a total occupant load greater than fifty (50), with the exception of:

( **1** ) single-family dwellings not more than two (2) stories in height;

( **2** ) multiple dwellings not more than (2) stories in height containing not more than four (4) 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 (4) dwelling units each to form apartment or condominium complexes where the total exceeds four (4) dwelling units on any lawfully divided lot;

( **3** ) garages or other structures not more than two (2) stories in height which are appurtenant to buildings described in 16.39.4.8. C (1) and 16.39.4.8.C (2); or

( **4** ) nonresidential buildings, as defined in the uniform building code, or additions having a total occupant load of ten (10) or less and not more than two (2) 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]

## **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 , 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561

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

**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:** NMSA 1978, Section 61-23-10 (B) 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... (D) 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]

**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 DEFINITION [RESERVED]**

[16.39.5.7 NMAC - Rp, 16 NMAC 39.5.7, 1/01/2002]

### **16.39.5.8 APPLICATION - SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:**

**A.** Board members may not be used as references.

**B.** A copy of the New Mexico Engineering and Surveying Practice Act and the Title 16, Chapter 39 of the New Mexico Administrative Code shall be provided to each applicant.

**C.** 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 states.

**D.** An applicant whose application for eligibility has not been completed as set forth in Subsection D of 16.39.5.8 NMAC thirteen (13) weeks prior to the examination will not be eligible to take any examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must be completed and examination fees paid on or before the specified date set by the board.

**E.** To update an application file in relation to experience, the candidate must complete appropriate portions of the application form and provide references acceptable to the professional surveying committee to verify each additional experience record.

**F.** Applications for the principles & practice of surveying and the fundamentals of surveying examinations which have been approved by the board shall remain valid for three (3) years.

**G.** 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. All applicants shall show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of a licensed professional surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.

[16.39.5.8 NMAC - Rp, 16 NMAC 39.5.8, 1/01/2002; A, 7/01/2006]

### **16.39.5.9 EXAMINATIONS--SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:**

**A.** Regularly scheduled written examinations shall be held biannually in the spring and autumn respectively. Other examinations may be held at times and places as determined by the professional surveying committee.

**B.** An applicant that fails any written 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.

**C.** An examinee that has made three unsuccessful attempts at achieving a passing score on an examination shall only be eligible to take the next scheduled examination after providing documentation to the board of further study in preparation of the exam.

**D.** An examinee who has a question regarding an 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.

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

#### **16.39.5.10 PRACTICE OF SURVEYING:**

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

**B.** Neither persons nor organizations 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 organization 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 public regulation commission to constitute the offering of surveying services.

[16.39.5.10 NMAC - Rp, 16 NMAC 39.5.10, 1/01/2002; A, 7/01/2006]

#### **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.

**C.** The design of the seal/stamp shall consist of three concentric circles, the outermost one 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.

**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.

[16.39.5.11 NMAC - Rp, 16 NMAC 39.5.11, 1/01/2002; A, 7/01/2006]

[There is no Part 6]

## **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

### **CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS**

#### **PART 7 MISC.--PROCEDURES FOR 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, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561

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

**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:** NMSA 1978, Section 61-23-10 (B) 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]

**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: [RESERVED]**

[16.39.7.7 NMAC - Rp, 16 NMAC 39.7.7, 1/01/2002]

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

**A.** The Board may impose fines as may be determined by the nature of the violation.

**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]

**16.39.7.9 VIOLATIONS:**

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

**B.** It shall be considered "misconduct" under NMSA 1978, Sections 61-23-24 (A)(1) (2005) and 61-23-27.11(A)(1) (2005) 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 "misconduct" under NMSA 1978, Sections 61-23-23.1(A) (2003) and 61-23-27.15(A) (2003) 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 and/or surveying by a licensee of the board in any state, territory and/or country where the licensee is 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 ninety (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, whether a felony, misdemeanor, or otherwise, an essential element of which is moral turpitude, or which is directly related to the practice of engineering or surveying.

**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 nonpayment of child support.

[16.39.7.9 NMAC - Rp 16 NMAC 39.7.9, 1/01//2002; A, 7/01/2006]

## **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, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561

[16.39.8.1 NMAC - Rp, 16 NMAC 39.8.1, 1/01/2002; A, 7/01/2006]

**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:** NMSA 1978, Section 61-23-10 (B) 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]

**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**) In order to protect public safety, health, welfare and property in the performance of their professional duties, licensees shall at all times:

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

( **b**) 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.

( **c**) Approve and seal only those engineering documents and surveys which conform to accepted engineering and surveying standards.

( **d**) Refuse to associate in a business venture with any person or firm which 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.

( **e**) Inform the Board of any known violation of these Rules of Professional Conduct. Cooperate with the Board in furnishing information or assistance as may be requested by the Board in matters concerning violations.

**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) 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.

**D. Professional relationships with employer or client.**

( 1) Licensees shall act in professional matters for each employer or client as fiduciaries and shall 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 organization 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 organization 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 facts, data or information obtained in a professional capacity without prior consent of the client or employer except:

( a) As provided in 16.39.8.A (1) (b) & (e) of this section.

( 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.

[16.39.8.9 NMAC - Rp, 16 NMAC 39.8.9, 1/01/2002]