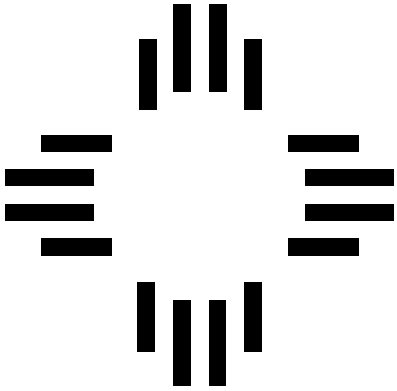
New Mexico Register

Volume XII, Issue Number 16
August 30, 2001



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
2001

New Mexico Register

Volume XII, Number 16
August 30, 2001

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Adopted Rules and Regulations

Effective Date and Validity of Rule Filings

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

Please note that the (*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00

The New Mexico Register
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The New Mexico Register is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is $270.00, except the first subscription from each New Mexico state agency may be ordered at $85.00. Individual copies of any Register issue may be purchased for $12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO ENVIRONMENT DEPARTMENT

NOTICE OF PUBLIC HEARING

Pursuant to NMSA 1978, Sections 75-1-1 through 75-1-6, and NMSA 1978, Section 9-7A-6.D, the New Mexico Environment Department will hold a public hearing to consider proposed changes to 20.7.2 NMAC, Environmental Protection, Wastewater and Water Supply Facilities, Rural Water Supply Infrastructure. The hearing will take place on October 5, 2001 at 1:30 p.m. in the auditorium, Harold Runnels Building, 1190 St. Francis, Santa Fe, New Mexico.

The proposed changes to the regulations are as follows:

Re-define Issuing Agency as the Department of Environment and provide the appropriate statutory authority for the regulations;
Set the Effective Date of the regulatory change on October 31, 2001;
Define "Base Interest Rate;"
Define "Wastewater Facility;"
Add wastewater facilities to the types of facilities that can be funded;
Change conditions for eligibility for average user cost reduction grants and zero percent loans to "median household income (MHI) less than ninety percent of the statewide non-metropolitan MHI based on most current decennial census;"
Set the base interest rate at three percent;
Add the provision that RIA loans may be refinanced "when the base interest rate set by the department is at least one percentage point less than the annual interest rate on the existing loan."; and
Add criteria for ranking wastewater projects

The proposed regulatory changes will allow for the loan interest rate to be reduced, will allow for refinance of existing loans at a lower interest rate, and will provide funds for wastewater projects as well as water supply projects. Proposed changes are identified in an underline and strikeout format based on the current version of 20 NMAC 7.2 or in a clean copy of the proposed version. Copies of the proposed regulation may be obtained by contacting Haywood R. Martin, Construction Programs Bureau Chief at New Mexico Environment Department, Construction Programs Bureau, 1190 St. Francis Drive, Room S-2070, Santa Fe, New Mexico 87502, (505) 827-2797. Text of the proposed changes may also be requested by email by sending a request to haywood_martin @nmenv.state.nm.us.

The New Mexico Environment Department will accept public comment, oral or written, on the proposed changes to 20.7.2 NMAC prior to or at the hearing. Written comments can be filed at the hearing or filed prior to the hearing with the Hearing Clerk at the address indicated below. All interested persons will be given an opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons desiring to present technical testimony must file a written notice of intent to present technical testimony on or before September 7 2001, to the Hearing Clerk, Carolyn Vigil, Office of the Secretary of Environment, P.O. Box 26110, Santa Fe, New Mexico 87502-6110. The notice of intent shall:

identify the party for whom the witness will testify;

identify each technical witness the party intends to present and state the qualifications of that witness, including a description of their educational and work background;

summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony;

include the text of any recommended modifications to the proposed regulatory change; and list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Mr. Cliff Hawley, Chief, Personnel Services Bureau, before September 14, 2001. Mr. Hawley can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, (505) 827-2844 (TDD or TDY users please access his number via the New Mexico Relay Network.) Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

NEW MEXICO STATE LAND OFFICE

NOTICE OF RULE MAKING

Ray Powell, New Mexico Commissioner of Public Lands, and the New Mexico State Land Office ("NMSLO") intend to promulgate a new rule, 19.2.10 NMAC, Easements and Rights of Way, which rule will supercede the current State Land Office Rule 10 ("Relating to Easements and Rights of Way") in its entirety. The current State Land Office Rule 10 will be repealed concurrently with the adoption of the new rule.

The proposed rule governs the granting of easements and rights of way on state trust lands for pipelines, public highways, railroads, tramways, telegraph, fiber optic, telephone and power lines, irrigation works, mining, logging and other purposes. The proposed rule establishes procedures for obtaining easements and rights of way; provides standards and requirements for the granting, use, surveying and valuation of easements and rights of way; and makes provision for access permits, damage sureties, construction reports, trespass, amendments, assignments, abandonment, relinquishment, renewal, cancellation, termination, reclamation, restoration, and the adoption and use of price schedules.

In connection with the promulgation of the proposed rule, the Commissioner intends to adopt a price schedule for telecommunication easements and rights of way. The proposed price schedule sets forth pricing methodologies for telecommunication easements and rights of way on state trust lands. Copies of the proposed price schedule may be obtained in the same manner as copies of the proposed rule. Written comments on the proposed price schedule shall be submitted in the same manner, and no later than the same date and time, as written comments on the proposed rule.

Two public hearings will be held on the proposed rule and price schedule. The first public hearing will be held on October 10, 2001, in Room 214 at the Corbet Center, New Mexico State University, Las Cruces, New Mexico, beginning at 9:00 a.m. The second public hearing will be held on October 11, 2001, at Morgan Hall in the Edward J. Lopez State Land Office Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico, beginning at 9:00 a.m. Written comments on the proposed rule and price schedule, including any comments submitted by e-mail, must be received by 5:00 p.m. on October 11, 2001, in order to be considered by the

Commissioner.

Copies of the proposed rule and price schedule may be obtained from, and written comments on the proposed rule and price schedule shall be submitted to, Barbara Medrano, New Mexico State Land Office, Office of the General Counsel, P.O. Box 1148, Santa Fe, New Mexico, 87504-1148, Phone No. (505) 827-5758, Fax No. (505) 827-4262. Copies of the proposed rule and price schedule may also be viewed at, or downloaded from, the NMSLO website (www.nmstatelands.org). Upon request, the documents may be made available in alternative formats.

In addition to other methods, written comments on the proposed rule and price schedule may be submitted by e-mail. Comments submitted by e-mail shall be submitted as either Microsoft Word or Wordperfect documents to Barbara Medrano, New Mexico State Land Office, at the following e-mail address: bmedrano@slo.state.nm.us. Comments received by e-mail will be printed by the NMSLO and entered in the rule-making record with other comments on the proposed rule and price schedule.

Disabled individuals who wish to participate in the hearings and who require special equipment or assistance should contact the New Mexico State Land Office at the above noted telephone and fax numbers or address no later than September 24, 2001.

In connection with the promulgation of the proposed rule, the Commissioner intends to change the numbering in the New Mexico Administrative Code of the State Land Office rule related to land exchanges. The Commissioner intends to change the numbering of this rule from 19.2.10 NMAC to 19.2.21 NMAC. This is only a change in numbering, and no change will be made to the substantive provisions of this rule.

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

NOTICE

On August 3, 2001, the New Mexico Board of Examiners for Architects repealed the following rules:

- 16 NMAC 30.1
- 16 NMAC 30.2
- 16 NMAC 30.3
- 16 NMAC 30.4
- 16 NMAC 30.5
- 16 NMAC 30.6

On August 3, 2001, the New Mexico Board of Examiners for Architects then re-promulgated the following rules:

- 16.30.1 NMAC
- 16.30.2 NMAC
- 16.30.3 NMAC
- 16.30.4 NMAC
- 16.30.5 NMAC
- 16.30.6 NMAC

Rules 16.30.1 NMAC through 16.30.6 NMAC become effective September 6, 2001.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS
PART 1 GENERAL PROVISIONS

16.30.1.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects.
[16.30.1.1 NMAC – Rp 16 NMAC 30.1.1, 9/6/2001]

16.30.1.2 SCOPE: Provisions for Part 1 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.
[16.30.1.2 NMAC – Rp 16 NMAC 30.1.2, 9/6/2001]

16.30.1.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board…may make rules not inconsistent with law."
[16.30.1.3 NMAC – Rp 16 NMAC 30.1.3, 9/6/2001]

16.30.1.4 DURATION: Permanent.
[16.30.1.4 NMAC – Rp 16 NMAC 30.1.4, 9/6/2001]

16.30.1.5 EFFECTIVE DATE: September 6, 2001, unless a different date is cited at the end of the section. [16.30.1.5 NMAC – Rp 16 NMAC 30.1.5, 9/6/2001]

16.30.1.6 OBJECTIVE: The objective of this rule is to clearly define terminology used within Sections 61-15-1 to –13 NMSA 1978.
[16.30.1.6 NMAC – Rp 16 NMAC 30.1.6, 9/6/2001]

16.30.1.7 DEFINITIONS:

A. "architect" means an architect legally registered in New Mexico (Subsection A of Section 61-15-2 NMSA 1978).

B. "architectural services" means services for projects located in New Mexico and shall be performed by a legally registered architect or under the architect's responsible charge (Subsection B of Section 61-15-2 NMSA 1978).

C. "competence" means

(1) In the practice of architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by architects of good standing practicing in New Mexico;

(2) An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience or ability in the specific technical areas involved; and

(3) An architect shall take into account all applicable state and municipal building codes, laws and regulations. An architect may rely on the opinion of others (example: attorneys, engineers, building officials) as to the intent and meaning of the codes, laws and regulations.

D. "consulting associate architect" means an architect who is acting in an advisory capacity to a registered architect, and whose present position is subordinate to the registered architect. (Subsection A (1) of Section 61-15-8 NMSA 1978).

E. "felony conviction" means conviction of a felony with a copy of the record of conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence (Subsection B (2) of Section 61-15-12 NMSA 1978).

F. "gross negligence" means

(1) Being habitually guilty of neglect; or

(2) Being found extremely careless and lacking in ordinary care and concern in the practice of architecture (Subsection A (3) of Section 61-15-12 NMSA 1978). Should the Board not discipline an architect for a single act of gross negligence, the board does not waive the right to invoke sanctions against the architect for repeated acts of gross negligence.

G. "incidental practice of architecture and engineering" means:

(1) 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);

(2) 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);

(3) All buildings and related structures within the regulatory provisions of the New Mexico 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:

(a) Single-family dwellings not more than two (2) stories in height;

(b) Multiple dwellings not more than two (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;

(c) Garages or other structures not more than two (2) stories in height which are appurtenant to buildings described in Subparagraphs (a) and (b) of Paragraph (3) of Subsection G of 16.30.1.7 NMAC; or

(d) Nonresidential buildings, as defined in the New Mexico Building Code (NMUBC), or additions having a total occupant load of ten (10) or less and not having more than two (2) stories in height, which shall not include E-3 Day Care), H (Hazardous) or I (Institutional)

occupancies;

(e) Alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

(4) 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.

(5) Occupant load shall be defined and determined by the method set forth in the current, adopted code.

H. "incompetency" means:

(1) Being adjudicated mentally incompetent by a court; or

(2) Engaging in conduct which evidences a lack of knowledge, ability or fitness to discharge the duty and responsibility owed by the architect to a client and to the public in order to safeguard life, health and property and to promote public welfare (Subsection A (3) of Section 61-15-12 NMSA 1978).

I. "intern architect" is a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board (Subsection F of Section 61-15-2 NMSA 1978).

J. "misconduct" means:

(1) Knowingly preparing or stamping construction documents in violation of the codes, laws or regulations;

(2) Stamping and signing construction documents, specifications, reports or other professional work not prepared under the architect-of record's responsible charge, as defined in Subsection M of 16.30.1.7 NMAC.

(3) Engaging in any conduct involving fraud or deceit related to the business or practice of architecture;

(4) Making any false statement or giving any false information in connection with an application for registration or for renewal of registration;

(5) Being convicted of a crime related to the practice of architecture with a copy of the record of the conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence;

(6) Violating federal or state statute or rule that directly relates to the practice of architecture;

(7) Being unable to practice architecture with reasonable skill and safety to clients by reason of use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

(8) Making any substantial misrepresentation in the course of practice, including but not limited to, false, misleading or deceptive advertising or fraudulent or misleading claims;

(9) Using or altering material prepared by another person without the knowledge and consent of that person;

(10) Using the professional seal of another person without the knowledge and consent of that person;

(11) Engaging in any conduct in conflict with the Code of Conduct for Architects (16.30.4 NMAC);

(12) Engaging in conduct that the architects knows or should know through professional knowledge or experience is not within the acceptable standard for professional conduct that is ordinarily applied by architects of good standing practicing in the state of New Mexico and that is set forth in the board's Minimum Standards for the Practice of Architecture in New Mexico (16.30.6 NMAC);

(13) Repeatedly (more than three (3) times) violating the Architectural Act, Sections 61-15-1 through –13 NMSA 1978, the rules and regulations of the board, or the architectural laws of any other state or jurisdiction;

(14) Incurring a prior disciplinary action in another state or jurisdiction based upon acts or conduct by the registrant which if committed in this state would subject the registrant to disciplinary action by the board. Certified copies of the record of disciplinary action shall be conclusive evidence thereof; and

(15) Failing to report to the board any adverse action taken against the registrant by (1) the licensing board of another jurisdiction or (2) the National Council of Architectural Registration Boards (NCARB) for acts or conduct that would constitute grounds for disciplinary action by the board.

K. "practice of architecture" means rendering or offering to render those services described in Subsection B of Section 61-15-2 NMSA 1978 in connection with the design, construction, enlargement or alteration of a building or group of buildings and the space within the site surrounding those buildings which have as their principal purpose human occupancy or habitation (Subsection G of Section 61-15-2 NMSA 1978). "Offering to render" is defined as soliciting or executing architectural services.

L. "project" means the building or a group of buildings and the space within the site surrounding the buildings as defined in the construction documents (Subsection H of Section 61-15-2 NMSA 1978). Architectural and engineering stamps are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required architectural and engineering seals.

M. "responsible charge" means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised professional judgment with respect thereto. An architect's placing of the architect registration seal and signature on a document certifies that the architect has exercised direction, guidance and judgment on all issues pertaining to the health, safety and general welfare of the public, and accepts all legal responsibility for all architectural matters embodied within the document which shall meet the acceptable standards of architectural practice in the state of New Mexico as put forth by the board (Subsection I of Section 61-15-2 NMSA 1978).

[16.30.1.7 NMAC – Rp 16 NMAC 30.1.7, 9/6/2001]

HISTORY OF 16.30.1 NMAC:

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

BEA 68-1, Architectural Law And Rules And Regulations, 7-1-68.

BEA 69-1, Architectural Law And Rules And Regulations, 6-17-69.

BEA 70-1, Architectural Law And Rules And Regulations, 7-28-70.

BEA 74-1, Roster Of Registered Architects Laws Rules Regulations, 8-30-74.

BEA 78-1, Board Of Examiners For Architects, 9-19-78.

NMBEA 85-1, Architectural Act Rules And Regulations, 2-7-85.

NMBEA 86-1, Architectural Act Rules And Regulations, 4-9-86.

NMBEA 88-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 6-22-88.

NMBEA 89-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 11-28-89.

Regulation No. NMBEA 90-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 8-14-90.

NMBEA Rule 4, NCARB Examinations, 6-23-80.

NMBEA Rule 5, Definitions, 6-23-80.

History of Repealed Material:

16 NMAC 30.1, General Provisions - Repealed, 9-6-01.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS
PART 2 ORGANIZATION AND ADMINISTRATION

16.30.2.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects. [16.30.2.1 NMAC – Rp 16 NMAC 30.2.1, 9/6/2001]

16.30.2.2 SCOPE: Provisions for Part 2 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.
[16.30.2.2 NMAC – Rp 16 NMAC 30.2.2, 9/6/2001]

16.30.2.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board…may make rules not inconsistent with law."
[16.30.2.3 NMAC – Rp 16 NMAC 30.2.3, 9/6/2001]

16.30.2.4 DURATION: Permanent.
[16.30.2.4 NMAC – Rp 16 NMAC 30.2.4, 9/6/2001]

16.30.2.5 EFFECTIVE DATE: September 6, 2001, unless a different date is cited at the end of the section. [16.30.2.5 NMAC – Rp 16 NMAC 30.2.5, 9/6/2001]

16.30.2.6 OBJECTIVE: The objective of this rule is to clearly define the organizational structure of the board, the duties of the officers, the committees, types of meetings, order of business, the number needed for quorum, to provide authority to amend the board's rules and regulations, and to define the board's responsibility for publications.
[16.30.2.6 NMAC – Rp 16 NMAC 30.2.6, 9/6/2001]

16.30.2.7 DEFINITIONS: [Reserved].
[16.30.2.7 NMAC – Rp 16 NMAC 30.2.7, 9/6/2001]

16.30.2.8 UNIFORM LICENSING ACT: Procedures for administration of the New Mexico Architectural Act shall be governed by the provisions of the Uniform Licensing Act, Sections 61-15-1 through –31 NMSA 1978.
[16.30.2.8 NMAC – Rp 16 NMAC 30.2.9.4, 9/6/2001]

16.30.2.9 OFFICERS: the board shall annually elect a Chair, Vice Chair, and a Secretary/Treasurer who shall be chosen from among its members. Officers shall hold office until their successors have been duly elected and qualified. At the last regular meeting of the fiscal year, officers shall be elected. New officers shall take office on the first day of the fiscal year. [16.30.2.9 NMAC – Rp 16 NMAC 30.2.8.1, 9/6/2001]

16.30.2.10 DUTIES OF OFFICERS:

A. The Chair shall:

(1) Preside at all regular and special meetings, when present;

(2) Appoint all committee members and their chairpersons subject to confirmation vote of the board;

(3) Sign with the Secretary/Treasurer all approved board meeting minutes, all formal certificates of registration and the annual report to the governor; and

(4) Perform all other duties ordinarily pertaining to the office of Chair or as herein and hereafter prescribed.

B. The Vice Chair shall in the absence if the chair, preside at the meeting and execute the duties of the Chair.

C. The Secretary/Treasurer shall:

(1) Report on the financial status of the board at each regular meeting and upon request at a special meeting;

(2) Recommend to the board for its approval all proposed expenditures over the amount authorized by the legislature.

(3) Approve all transfers of funds within categories and recommend to the board for its approval all budget adjustment requests between the categories or from cash reserves;

(4) Present a budget for each fiscal year to recommend to the board for its approval at the last meeting of the year;

(5) When necessary, appear and represent the board at all hearings where financial issues arise;

(6) After each board meeting, identify activities that shall be completed before the next meeting and the individuals to whom assigned; and

(7) Sign with the Chair all approved board meeting minutes and all formal certificates of registration. [16.30.2.10 NMAC – Rp 16 NMAC 30.2.9.1, 9/6/2001]

16.30.2.11 COMMITTEES: The Chair of the board shall appoint members to the following standing committees:

A. Rules and regulations committee whose responsibilities shall include:

(1) Statutory changes;

(2) Amendments or repeals or changes to the rules and regulations;

(3) Responding to complaints to the board; and

(4) Follow up on investigations of violations of the statute and regulations pertaining to the practice of architecture.

B. Examination and reciprocity committee whose responsibility shall include:

(1) Review of applicants for registration to determine if qualified to take the examination;

(2) Reviewing and recommending board action on applications for reciprocity; and

(3) All matters pertaining to examination.

C. Finance and operations committee whose responsibilities shall include:

(1) Reviewing the budget, assisting the Secretary/Treasurer and board staff in preparing a draft budget annually and making budget recommendations to the board.

(2) Reviewing the expenditures of the agency and assisting the Secretary/Treasurer in making regular reports and recommendations to the board regarding expenditures;

(3) Reviewing office operations with the director to determine staffing requirements and recommend personnel actions to the board; and

(4) Reviewing with the director office operations to assure efficiency, economy and security in all board affairs.

D. Committee for planning and development whose responsibilities shall include:

(1) Developing short and long-term goals for board consideration and approval;

(2) Examining ways and methods for improving board services and functions; and

(3) Monitoring the impact of architectural regulation and examine ways in which to increase its effectiveness.

E. Joint practice committee whose responsibilities shall include:

(1) Attending joint practice committee meetings; and

(2) Reporting to the board matters discussed at the joint practice committee meetings.
[16.30.2.11 NMAC – Rp 16 NMAC 30.2.8.2, 9/6/2001]

16.30.2.12 MEETINGS:

A. Types of meetings:

(1) Regular meetings: The board shall hold four (4) regular meetings during each fiscal year; one (1) meeting shall be held each quarter. The board shall set the tentative dates for the meetings at its last regular meeting of the fiscal year.

(2) Special meetings: The board shall call special meetings in accordance with the Open Meetings Act, Sections 10-15-1 through -4 NMSA 1978. The board shall approve an open meeting notice resolution in writing and all members shall sign it at the first regular meeting of the fiscal year.

(3) Last regular meeting: At the last regular meeting of the year the board shall:

(a) Elect officers for the following year;

(b) Adopt an open meetings notice resolution for public meeting notification; and

(c) Approve the budget for the following year.

B. Regular meetings shall be conducted in accordance with the latest edition of Robert's Rules of Order.

C. Quorum: To conduct official business and take official action, a majority of the board must be in attendance at any board meeting.

D. Amendments: The rules and regulations may be amended at any regular or special meeting of the board by majority vote after presentation of the proposed changes at a hearing for the public in compliance with the Uniform Licensing Act, Sections 61-1-1 through –33 NMSA 1978.

E. Order of business of the board: Regular meetings of the board shall include:

(1) Roll call

(2) Approval of the agenda

(3) Approval of minutes of previous meeting

(4) Chair's report

(5) Secretary/Treasurer's report

(6) Director's report

(7) Committee reports

(a) Exam and reciprocity committee

(b) Rules and regulations committee

(c) Finance and operations committee

(d) Committee for planning and development

(e) Joint practice committee

(8) Old business

(9) New business

(10) Adjournment

[16.30.2.12 NMAC – Rp 16 NMAC 30.2.8.3 – 8.5 and 16 NMAC 30.2.9.2 , 9/6/2001]

16.30.2.13 BOARD RESPONSIBILITIES FOR PUBLICATIONS:

A. Roster: A roster showing the number and addresses of all registered architects shall be prepared by the board and made available or sold to the public in accordance with the Architectural Act, Subsection E of Section 61-15-5 NMSA 1978.

B. Annual report: The chair shall submit an annual report to the governor and shall make that report available to all registrants (Subsection C of Section 61-15-5 NMSA 1978).

C. Architectural Act, rules and regulations: The board shall maintain current editions of the Act that will be published as often as the board deems necessary. These shall be made available to all architects registered in the state of New Mexico and to all applicants applying for registration. In addition, notice shall be made to all registered architects when changes occur in the statutes or rules and regulation.

[16.30.2.13 NMAC – Rp 16 NMAC 30.2.9.3, 9/6/2001]

HISTORY OF 16.30.2 NMAC:

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

BEA 68-1, Architectural Law And Rules And Regulations, 7-1-68.

BEA 69-1, Architectural Law And Rules And Regulations, 6-17-69.

BEA 70-1, Architectural Law And Rules And Regulations, 7-28-70.

BEA 74-1, Roster Of Registered Architects Laws Rules Regulations, 8-30-74.

BEA 78-1, Board Of Examiners For Architects, 9-19-78.

NMBEA Rule 1, Organization, 6-23-80.

NMBEA 85-1, Architectural Act Rules And Regulations, 2-7-85.

NMBEA 86-1, Architectural Act Rules And Regulations, 4-9-86.

NMBEA 88-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 6-22-88.

NMBEA 89-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 11-28-89.

Regulation No. NMBEA 90-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 8-14-90.

NMBEA Rule 2, Administration, 6-23-80.

History of Repealed Material:

16 NMAC 30.2, Organization And Administration - Repealed, 9-6-01.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS
PART 3 REGISTRATION AND RENEWAL, DUPLICATE CERTIFICATES, SEAL SPECIFICATIONS AND DOCUMENT IDENTIFICATION

16.30.3.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects.
[16.30.3.1 NMAC – Rp 16 NMAC 30.3.1, 9/6/2001]

16.30.3.2 SCOPE: Provisions for Part 3 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.
[16.30.3.2 NMAC – Rp 16 NMAC 30.3.2, 9/6/2001]

16.30.3.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board…may make rules not inconsistent with law."
[16.30.3.3 NMAC – Rp 16 NMAC 30.3.3, 9/6/2001]

16.30.3.4 DURATION: Permanent.
[16.30.3.4 NMAC – Rp 16 NMAC 30.3.4, 9/6/2001]

16.30.3.5 EFFECTIVE DATE: September 6, 2001, unless a different date is cited at the end of the section. [16.30.3.5 NMAC – Rp 16 NMAC 30.3.5, 9/6/2001]

16.30.3.6 OBJECTIVE: The objective of this rule is to clearly establish guidelines and procedures for registration and registration renewal as an architect in New Mexico and for issuance of a duplicate certificate of registration and to provide specifications and guidelines for the use of an individual seal and for document identification.
[16.30.3.6 NMAC – Rp 16 NMAC 30.3.6, 9/6/2001]

16.30.3.7 DEFINITIONS: [Reserved.]
[16.30.3.7 NMAC – Rp 16 NMAC 30.3.7, 9/6/2001]

16.30.3.8 GENERAL QUALIFICATIONS:

A. The examination and reciprocity committee shall make its recommendations to the board regarding the qualifications of applicants for registration. A majority vote of the members of the board shall be required in determining those appli-

cants qualified for registration.

B. The applicant shall be of good character and repute. Factors that the board may consider under this qualification are:

(1) Conviction of a felony;

(2) Misstatement or misrepresentation of fact by the applicant in connection with his or her application;

(3) Violation of any of the standards of conduct required by registration holders and set forth in the statutes or rules and regulations; or

(4) Practicing architecture without a valid and current registration in the jurisdiction in which the practice took place;

C. Rules and procedures set out herein for obtaining registration in New Mexico apply equally to residents of the state and non-residents.

D. An oral interview before the board may be required of any applicant for New Mexico registration;

E. All applicants must pass the New Mexico architectural jurisprudence exam administered by the board. Failure to answer all questions may result in a failing grade. An applicant who has failed two (2) successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one (1) year from the date of the last jurisprudence exam failed.

[16.30.3.8 NMAC – Rp 16 NMAC 30.3.8, 9/6/2001]

16.30.3.9 REGISTRATION THROUGH EDUCATION, TRAINING AND EXAMINATION:

A. Registration standards shall be in accordance with those of the National Council of Architectural Boards (NCARB) as described under "standards of eligibility for Council certification" in the latest editions of the NCARB Handbook for Interns and Architects and the NCARB Education Standard.

B. Training requirements shall satisfy the NCARB standards of training. The applicant shall provide a complete and bound NCARB Intern Development Program (IDP) record showing completion of the IDP training requirements as set forth in the latest editions of the NCARB Handbook for Interns and Architects, the NCARB Education Standard and the IDP Guidelines. Copies of the latest editions of the NCARB Handbook for Interns and Architects, the NCARB Education Standard and the IDP Guidelines are available from the board office.

C. Application for examination:

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

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

(3) Board approval of applications for the Architect Registration Examination (A.R.E.) shall remain valid for three (3) years. Thereafter, an applicant may request from the board a renewable one (1) year extension. Those desiring re-examination during the period when the application is in force shall do so through NCARB.

(4) In case an applicant does not qualify for examination, he or she shall be informed of the cause and apprised of his or her rights under the Uniform Licensing Act, Sections 61-1-1 through –31 NMSA 1978. Should the applicant subsequently meet the requirements for examination, he or she may resubmit the application.

D. Examination materials and results shall be confidential and shall not be considered public records. Nothing therein shall prevent the board from reporting an applicant's scores to the architectural registration boards in other jurisdictions or to the National Council of Registration Boards (NCARB). The board shall give written notification to an applicant no later than thirty (30) days after the board receives the results from NCARB.

E. Special provisions for examinees with disabilities:

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

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

F. Examination application fee:

(1) In-state ……. $50.00

(2) Out-of-state ……. $100.00

[16.30.3.9 NMAC –Rp 16 NMAC 30.3.9, 9/6/2001]

16.30.3.10 REGISTRATION THROUGH RECIPROCITY:

A. An individual who holding a current NCARB certificate and is seeking registration through reciprocity or endorsement shall return a completed application and all fees to NCARB for processing.

B. An individual who cannot meet the requirements for NCARB certificate and is seeking registration through reciprocity or endorsement as a broadly-experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and have held such registration in a position of responsibility for at least five (5) years. The broadly-experienced category applicant shall return to the board a completed application, on the form prescribed by the board, along with other pertinent documents and the application fee. Each broadly-experienced category applicant shall provide to the board evidence of academic training and work experience directly related to architecture, including but not limited to evidence of training or experience in the following areas:

(1) Design and construction documents;

(2) Construction administration;

(3) Management; and

(4) Related activities.

C. Each applicant must attest on an affidavit that the applicant:

(1) Has not performed or offered to perform, and will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

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

(3) Has secured a copy and has read the Architectural Act, Sections 61-15-1 through –13 NMSA 1978 and the New Mexico Board of Examiners for Architects Rules and Regulations, and shall comply with the same.

D. All applicants must pass a New Mexico architectural jurisprudence exam administered by the board. An applicant who has failed two (2) successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one (1) year from the date of the last jurisprudence exam failed.

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

F. Seismic design requirements: Applicants for registration through reciprocity or endorsement shall present evidence satisfactory to the board of their qualification in design for seismic forces. The evidence shall be based on NCARB requirements existing at the time of application.

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

H. The board shall review all applications on a case-by-case basis.

I. Provisional registration:

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

(a) The applicant has complied with all requirements prescribed in Subsections A-G of 16.30.3.10 NMAC above;

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

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

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

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

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

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

[16.30.3.10 NMAC – Rp 16 NMAC 30.3.10, 9/6/2001]

16.30.3.11 REGISTRATION RENEWAL:

A. Fees: Renewal fees are paid biennially in even-numbered years. New registrations occurring in a non-renewal year shall be prorated on a yearly basis and shall expire on December 31st of that odd-numbered year. The fees for two (2) years are:

(1) In state ……. $150.00

(2) Out of state ……. $250.00

B. Continuing education: Effective December 31, 2001, all architects will be required to show compliance with these mandatory education requirements as a condition for renewing registration:

(1) Purpose and scope: These rules provide for a continuing education program to insure that all architects remain informed of those technical subjects necessary to safeguard life, health, property, and promote the public welfare. These rules apply to all architects registered in New Mexico.

(2) Definitions: **"contact hour"** means fifty (50) minutes actual time engaged in continuing education activities.

(3) Requirements:

(a) To renew registration, in addition to other requirements, an architect must have acquired continuing education for each 24-month period since the architect's last renewal of initial registration, or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration, or other disciplinary action, or both.

(b) Renewal period: For any 24-month biennial renewal period a total of twenty-four (24) contact hours from the activities listed in Paragraph (4) of Subsection B of 16.30.3.11 NMAC below must be reported. At least sixteen (16) contact hours shall be in public protection subjects: safeguarding life, health, property and promoting the public welfare. The remaining eight (8) hours may be acquired in more general subjects. No more than eight (8) hours may be carried over from one renewal cycle to another.

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

(a) Contact hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions.

(b) Contact hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions. Such presentations as those sponsored by the American Institute of Architects, Construction Specifications Institute, Construction Products Manufacturers Council or similar organizations devoted to architectural education may qualify.

(c) Contact hours in attendance at short courses or seminars related to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers.

(d) Contact hours spent in self-study courses such as those sponsored by the National Council of Architectural Registration Boards, American Institute of Architects or similar organizations. Up to three preparation hours may be credited for each class hour spent teaching architectural courses or seminars. College or university faculty may not claim credit for teaching regular curriculum courses.

(e) Contact hours spent in architectural research that is published or formally presented to the profession or public.

(f) College or university credit courses dealing with architectural subjects or business practice. Each semester hour shall equal fifteen (15) contact hours. A quarter hour shall equal ten (10) contact hours.

(g) Contact hours spent in professional service to the public or profession on boards, commissions or committees that draws upon the registrant's professional expertise, such as: serving on planning commissions, building code advisory boards, urban renewal boards, professional boards or committees or code study committees. Except as allowable by law, all services must be provided pro bono.

(h) A maximum of eight (8) contact hours biennially for architectural services donated to charitable, religious, educational or other public or private non-profit organization, as defined under Section 501 (c) (3) of the Internal Revenue Code, organized for the benefit of the general public.

(i) Mentoring: A maximum of eight (8) contact hours biennially may be acquired for serving as a mentor for the Intern Development Program (IDP) or the A.R.E. Study Sessions. Alternatively, a maximum of eight (8) contact hours may be acquired for serving as mentor for student/intern architectural projects that benefit the general public.

(j) Contact hours spent in educational tours of architecturally significant buildings, where the tour is sponsored by a college, university or professional organization.

(5) Records and record-keeping:

(a) A registered archi-

tect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours.

(b) One (1) continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

(c) Failure to fulfill the continuing education requirements, or file the required biennial report, properly and completely signed, shall result in non-renewal of an architect's certificate of registration.

(d) Any untrue of false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and will subject the registrant to revocation of registration or other disciplinary action.

(6) Initial registration:

(a) An architect whose initial registration occurs less than twelve (12) months from the December 31st deadline of the next renewal cycle shall not be required to report continuing education hours.

(b) An architect whose initial registration occurs more than twelve (12) months from the December 31st deadline of the next renewal cycle but less than twenty-four (24) months from the date of initial registration shall be required to report twelve (12) contact hours, eight (8) of which shall be in public protection subjects.

(7) Reinstatement: A former registrant, with a registration that has been expired less than three (3) years may only apply for reinstatement under 16.30.3.13 NMAC if all delinquent contact hours are earned within the twelve (12) months preceding the application to renew. However, if the total number of contact hours required to become current exceeds twenty-four (24), then twenty-four (24) shall be the maximum number of contact hours required.

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

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

(b) Is a resident of another state or district that accepts New Mexico requirements to satisfy its continuing education requirements, and certifies that all requirements for current continuing education compliance and registration have been met in that jurisdiction; or

(c) Is a government employee working as an architect and assigned to duty outside the United States.

(9) Non-compliance:

(a) If any credits are disallowed by the board, then the registrant shall have one hundred and eighty (180) calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements. Such contact hours shall not be used again in the next renewal cycle.

(b) Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.

(10) The board may consider a hardship case.

[16.30.3.11 NMAC – Rp 16 NMAC 30.3.11, 9/6/2001]

16.30.3.12 EXPIRATION OF A CERTIFICATE:

A. All certificates of registration shall expire in the same year.

B. A certificate expires upon the death of a registrant

[16.30.3.12 NMAC – Rp 16 NMAC 30.3.11.2, 9/6/2001]

16.30.3.13 RENEWAL OF AN EXPIRED CERTIFICATE:

A. In the event a registrant fails to timely renew his or her certificate, the registrant shall be required to pay to the board both the annual fee and a late fee. The late fee shall be fifty dollars ($50.00) for the first late month (January), after which the late fee shall equal one (1) year's registration fee (one hundred twenty-five dollars ($125.00) for out-of-state registrants and seventy-five dollars ($75.00) for in-state residents)

B. In no event shall the annual fee and the late fee exceed twice the regular renewal fee for each year the registrant remains in default, for a period not to exceed three (3) years, after which time an expired certificate becomes inactive.

[16.30.3.13 NMAC – Rp 16 NMAC 30.3.11.3, 9/6/2001]

16.30.3.14 CERTIFICATE EXPIRED FOR THREE (3) YEARS OR MORE AND RENEWAL OF SUCH A CERTIFICATE:

A. In the event a certificate has lapsed for a continuous period of three (3) years or more, then the certificate and the file shall be transferred to the state records center for storage.

B. To renew a certificate that has been expired three (3) years or more, the former registrant shall be required to present evidence to the board of continued proficiency and may be required to appear personally before the board in order that the board may determine whether to renew the lapsed certificate. The board may require the applicant to complete additional requirements and provide evidence of continuing education, at the board's discretion.

[16.30.3.14 NMAC – Rp 16 NMAC 30.3.11.4, 9/6/2001]

16.30.3.15 SENIOR ARCHITECTS: Upon written request, any architect registered in New Mexico who is sixty-five (65) years of age or older may renew his or her registration for a biennial fee of twenty dollars ($20.00) if the following requirements are met:

A. The registrant shall be sixty-five years of age or older and retired from the practice of architecture on the date of his or her registration renewal. Retired means that the architect no longer practices architecture and no longer stamps and certifies construction documents with his or her seal.

B. The registrant shall have ten (10) years of continuous registration as an architect, five (5) years as a registered architect in New Mexico.

C. In the event a senior architect wishes to reinstate a registration to practice architecture, the board may require proof of proficiency and the fulfillment of additional requirements deemed necessary.

[16.30.3.15 NMAC – Rp 16 NMAC 30.3.11.5, 9/6/2001]

16.30.3.16 DUPLICATE CERTIFICATES: The board may, after consideration of a written request from a registrant outlining the circumstances supporting the request, authorize the issuance of a duplicate certificate of registration. The fee for supplying such a certificate shall be thirty-five dollars ($35.00) and the duplicate certificate will be clearly marked as such.

[16.30.3.16 NMAC – Rp 16 NMAC 30.3.12, 9/6/2001]

16.30.3.17 DISPLAY OF A CERTIFICATE OF REGISTRATION: The board requires that each registrant display his or her certificate of registration in a conspicuous location in his or her place of business.

[16.30.3.17 NMAC – Rp 16 NMAC 30.3.13, 9/6/2001]

16.30.3.18 INDIVIDUAL SEAL AND DOCUMENT IDENTIFICATION:

A. Registration seal specifications: Each architect registered for prac-

tice within the state of New Mexico shall secure a registration seal of the following design: The seal shall secure a registration seal of the following design: The seal shall have two (2) concentric circles with the outer circle measuring 1-3/4 inches in diameter and the inner circle being 1-1/4 inches in diameter. The upper portion of the annular space between the two circles shall bear the words "STATE OF NEW MEXICO" and the lower portion shall bear the words "REGISTERED ARCHITECT". The space enclosed by the inner circle shall bear the name of the architect and his or her registration number. In no event shall the seal contain more than one name of an architect. By placement of a seal and signature on a drawing, an architect verifies that his or her registration is valid and that he or she is practicing in accordance with the Architectural Act, Sections 61-15-1 through –13 NMSA 1978 and these rules and regulations.

B. Use of registration seal:

(1) Each original sheet of construction drawings and each cover sheet of specifications, submitted for permitting, and reports, prepared by or under the responsible charge of an individual architect, must bear the imprint of the seal with the signature of that architect and the date of the signature closely aligned to the seal. The name and address of the architect must also appear on the sealed page.

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

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

(4) Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible charge by persons not employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation.

(5) An exception to Paragraph (4) of Subsection B of 16.30.3.18 NMAC above is made for architects who review, adapt, and seal prototypical projects provided that:

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

(b) The New Mexico registered architect has permission of the plan owner to adapt the documents; and

(c) All previous title blocks and seals have been removed. In applying his or her seal, the New Mexico registered architect assumes full responsibility for the documents as if prepared by or under the architect's responsible charge.

(6) An exception to Paragraph (4) of Subsection B of 16.30.3.18 NMAC above is made for kit-of-parts. A kit-of-parts is a manufactured item and the New Mexico registered architect is not responsible for the components.

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

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

C. In the case of termination or death: Prior to sealing, signing and dating work, a successor registered architect shall be required to notify the original architect, his successors, or assign, by certified letter to the last known address of the original registered architect, of the successor's intention to use or reuse the original registered architect's work. A successor registered architect must use his or her own title block, seal and signature and must remove the title block, seal and signature of the original architect before sealing, signing and dating any sealed construction drawings and specifications. The successor registered architect shall take full responsibility for the drawings as though they were the successor's original product.

D. Plan checking: Any authorized person checking documents for compliance with any applicable statutes, codes, ordinances, rules or regulations such as building codes, fire codes or zoning ordinances may "red-line" and list changes to meet such applicable statutes, codes, ordinances, rules and regulations, as this is not the practice of the profession. However, a person may not modify a professional document submitted for review unless that modification is supported by reference to an applicable code or standard. A non-registrant shall not modify, in any manner, a document embodying the discretion or judgment of a registrant without the express permission of the architect who is in responsible charge.

[16.30.3.18 NMAC – Rp 16 NMAC 30.3.14, 9/6/2001]

HISTORY OF 16.30.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
BEA 68-1, Architectural Law And Rules And Regulations, 7-1-68.
BEA 69-1, Architectural Law And Rules And Regulations, 6-17-69.
BEA 70-1, Architectural Law And Rules And Regulations, 7-28-70.
BEA 74-1, Roster Of Registered Architects Laws Rules Regulations, 8-30-74.
BEA 78-1, Board Of Examiners For Architects, 9-19-78.
NMBEA 85-1, Architectural Act Rules And Regulations, 2-7-85.
NMBEA 86-1, Architectural Act Rules And Regulations, 4-9-86.
NMBEA 88-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 6-22-88.
NMBEA 89-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 11-28-89.
Regulation No. NMBEA 90-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 8-14-90.
NMBEA Rule 4, NCARB Examinations, 6-23-80.

History of Repealed Material:
16 NMAC 30.3, Registration And Renewal, Duplicate Certificates, Seal Specifications And Document Identification, - Repealed, 9-6-01.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS
PART 4 CODE OF CONDUCT

16.30.4.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects.
[16.30.4.1 NMAC – Rp 16 NMAC 30.4.1, 9/6/2001]

16.30.4.2 SCOPE: Provisions for Part 4 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.
[16.30.4.2 NMAC – Rp 16 NMAC 30.4.2, 9/6/2001]

16.30.4.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board…may make rules not inconsistent with law."
[16.30.4.3 NMAC – Rp 16 NMAC 30.4.3, 9/6/2001]

16.30.4.4 DURATION: Permanent.
[16.30.4.4 NMAC – Rp 16 NMAC 30.4.4, 9/6/2001]

16.30.4.5 EFFECTIVE DATE: September 6, 2001, unless a different date is cited at the end of the section. [16.30.4.5 NMAC – Rp 16 NMAC 30.4.5, 9/6/2001]

16.30.4.6 OBJECTIVE: The objective of this rule is to clearly outline the standards of conduct expected to be upheld by an individual registered as a New Mexico architect.
[16.30.4.6 NMAC – Rp 16 NMAC 30.4.6, 9/6/2001]

16.30.4.7 DEFINITIONS: [Reserved.]
[16.30.4.7 NMAC – Rp 16 NMAC 30.4.7, 9/6/2001]

16.30.4.8 COMPETENCE:

A. In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in New Mexico.

B. In designing a project, an architect shall take into account all applicable state and municipal building laws, codes and regulations. While an architect may rely on the advice of other professionals, such as attorneys, engineers, and other qualified persons, as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws, codes and regulations.

C. An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training and experience in the specific technical areas involved.

D. No person shall be permitted to practice architecture if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.
[16.30.4.8 NMAC – Rp 16 NMAC 30.4.8.1, 9/6/2001]

16.30.4.9 CONFLICT OF INTEREST:

A. An architect shall not accept compensation for services from more than one (1) party on a project unless the circumstances are fully disclosed to all interested parties in writing and agreed to in writing by all interested parties.

B. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his or her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

C. An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products without full disclosure to the client.

D. When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

E. An architect shall not pay or receive a finder's fee, commission or compensation for the referral of a client to another professional, including but not limited to, an engineer, surveyor, builder, realtor or another architect, unless the circumstances are fully disclosed to all interested parties in writing and agreed to in writing by all interested parties.
[16.30.4.9 NMAC – Rp 16 NMAC 30.4.8.2, 9/6/2001]

16.30.4.10 FULL DISCLOSURE:

A. An architect, making public statements on architectural questions, shall disclose whether the architect is being compensated for making such a statement.

B. An architect shall accurately represent to a prospective or existing client or employer the architect's qualifications and the scope of the architect's responsibility in connection with work for which he or she is claiming credit.

C. If, in the course of an architect's work on a project, the architect becomes aware of a decision taken by the architect's employer or client, against the architect's advice, which violates applicable state or municipal building laws, codes and regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall:

(1) Notify the employer or client in writing;

(2) Report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws, codes and regulations;

(3) Refuse to consent to the decision; or

(4) In circumstances where the architect reasonably believes that such decisions will be taken notwithstanding the architect's objection, terminate the architect's services with reference to the project and have no liability to the architect's client or employer on account of the termination.

D. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with the architect's application for registration or renewal.

E. An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience or character.

F. An architect possessing knowledge of a violation of these rules by another architect shall report such knowledge to the board.
[16.30.4.10 NMAC – Rp 16 NMAC 30.4.8.3, 9/6/2001]

16.30.4.11 COMPLIANCE WITH LAWS:

A. An architect, in the conduct of his or her architectural practice, shall not violate any state or federal criminal law.

B. An architect shall neither offer nor make any payment or gift to a government official, whether elected or appointed, with the intent of influencing the official's judgment in connection with a

prospective or existing project in which the architect is interested.

C. An architect shall comply with the registration laws and regulations governing his or her professional practice in any jurisdiction.

[16.30.4.11 NMAC – Rp 16 NMAC 30.4.8.4, 9/6/2001]

16.30.4.12 PROFESSIONAL CONDUCT:

A. Each office maintained for the preparation of architectural drawings, specifications, reports or other professional work shall have an architect regularly employed having direct knowledge and supervisory control of such work.

B. An architect shall not sign or seal drawings, specifications, reports or other professional work which was not prepared by the architect or under his or her responsible charge as defined in Subsection M of 16.30.1.7 NMAC. Responsible charge may be exercised through a third party who is not a registered architect, but the architect must maintain and make available to the board upon request for at least five years following sealing or signing, adequate and complete records demonstrating the extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation.

C. An architect shall neither offer nor make any gifts, other than gifts of nominal value, which may include reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

D. An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

E. A registered architect shall not associate in a business venture offering architectural services with a person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating board rules and regulations or statutes. A registered architect with such knowledge shall report such occasions to the board, and shall cooperate with any resulting investigations.

[16.30.4.12 NMAC – Rp 16 NMAC 30.4.8.5, 9/6/2001]

16.30.4.13 MISREPRESENTATION OF PRIOR EXPERIENCE: Registered architects shall accurately represent to a prospective or existing client or employer their qualifications and the scope of their responsibility in connection with work for which they are claiming credit.

A. In presenting qualifications to prospective clients, both public and private, it shall be the responsibility of each registered architect to clearly and appropriately state prior professional experience of the architect and the firm the architect is representing. If an architect uses visual representations of prior projects or experience, the architect whose seal appears must be clearly identified.

B. An architect who has been an employee of another architectural practice may not claim unconditional credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that the individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of the architect's participation in the project.

C. An architect who was formerly a principal in a firm may legitimately make additional claims provided the architect discloses the nature of ownership in the previous architectural firm (example: stockholder or junior partner) and identifies with specificity the architect's responsibilities for the project.

D. An architect who presents a project that has received awards recognition must comply with the requirements of this rule with regard to project presentation to the public and prospective clients.

E. Projects which remain unconstructed and which are listed as credits should be listed as "unbuilt" or some similar designation.

[16.30.4.13 NMAC – Rp 16 NMAC 30.4.8.6, 9/6/2001]

HISTORY OF 16.30.4 NMAC:

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

BEA 68-1, Architectural Law And Rules And Regulations, 7-1-68.

BEA 69-1, Architectural Law And Rules And Regulations, 6-17-69.

BEA 70-1, Architectural Law And Rules And Regulations, 7-28-70.

BEA 74-1, Roster Of Registered Architects Laws Rules Regulations, 8-30-74.

BEA 78-1, Board Of Examiners For Architects, 9-19-78.

NMBEA 85-1, Architectural Act Rules And Regulations, 2-7-85.

NMBEA 86-1, Architectural Act Rules And Regulations, 4-9-86.

NMBEA 88-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 6-22-88.

NMBEA 89-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 11-28-89.

Regulation No. NMBEA 90-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 8-14-90.

History of Repealed Material:

16 NMAC 30.4, Code Of Conduct - Repealed, 9-6-01.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS
PART 5 ENFORCEMENT

16.30.5.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects.

[16.30.5.1 NMAC – Rp 16 NMAC 30.5.1, 9/6/2001]

16.30.5.2 SCOPE: Provisions for Part 5 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.5.2 NMAC – Rp 16 NMAC 30.5.2, 9/6/2001]

16.30.5.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board…may make rules not inconsistent with law."

[16.30.5.3 NMAC – Rp 16 NMAC 30.5.3, 9/6/2001]

16.30.5.4 DURATION: Permanent.

[16.30.5.4 NMAC – Rp 16 NMAC 30.5.4, 9/6/2001]

16.30.5.5 EFFECTIVE DATE: September 6, 2001, unless a different date is cited at the end of the section. [16.30.5.5 NMAC – Rp 16 NMAC 30.5.5, 9/6/2001]

16.30.5.6 OBJECTIVE: The objective of this rule is to clearly describe violations and the complaint process.

[16.30.5.6 NMAC – Rp 16 NMAC 30.5.6, 9/6/2001]

16.30.5.7 DEFINITIONS: All terms defined in this section shall have the same meaning as terms defined in the Parental Responsibility Act, Sections 41-5A-1 through –13 NMSA 1978.

A. "HSD" means the New Mexico Human Services Department.

B. "Statement of Compliance" means a certified statement from HSD stating that an applicant or regis-

trant is in compliance with a judgment and order for support.

C. "Statement of Non-Compliance" means a certified statement from HSD stating that an applicant or registrant is not in compliance with a judgment and an order for support.

[16.30.5.7 NMAC – Rp 16 NMAC 30.5.7, 9/6/2001]

16.30.5.8 COMPLAINTS: Disciplinary proceedings against a registered New Mexico architect may be instituted by a sworn complaint of any person, including members of the board. Complaint forms shall be obtained from the board office or the board's web site and shall be reviewed by the enforcement subcommittee of the rules and regulations committee. Complaint forms shall be confidential pursuant to Subsection D of Section 61-15-5 NMSA 1978. The enforcement subcommittee shall have the authority to initiate investigations and determine whether sufficient evidence exists to support the issuance of a Notice of Contemplated Action. If such sufficient evidence exists, the enforcement subcommittee may vote to issue a Notice of Contemplated Action. If the enforcement subcommittee deems the action was a minor violation, it may close the matter with an advisory letter.

[16.30.5.8 NMAC – Rp 16 NMAC 30.5.8, 9/6/2001]

16.30.5.9 SETTLEMENT AGREEMENTS: For all non-parental responsibility actions:

A. The enforcement subcommittee may enter into a settlement agreement prior to the subcommittee's vote for or prior to the issuance of a Notice of Contemplated Action. The settlement agreement is subject to approval by the board.

B. The board shall require an acknowledgement of disciplinary action for all violations.

C. The board shall require an admission of guilt in a settlement agreement for any non-minor violation.

D. The board may report the settlement agreement to the relevant computer database(s).

[16.30.5.9 NMAC – N, 9/6/2001]

16.30.5.10 NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS ("NCARB") CERTIFICATE REVOCATION: The board shall have the right to review and to suspend or revoke a New Mexico registration granted on the basis of NCARB certification should the certification be revoked by NCARB as a result of a disciplinary action. The individual shall have the right to apply for reinstatement of New Mexico registration of and when the NCARB certification has been restored.

[16.30.5.10 NMAC – Rp 16 NMAC 30.3.10.13, 9/6/2001]

16.30.5.11 VIOLATIONS: Architect, as defined in Subsection A of 61-15-2 NMSA 1978, means any individual registered under the Architectural Act to practice architecture. A person using any designation tending to imply to the public that the person is an architect is in violation of Subsection B (5) of Section 61-15-10 NMSA 1978 unless:

A. That person is duly registered to do so under the provisions of the Architectural Act;

B. The title containing the designation is allowed by rule of the board; or

C. The title containing the designation does not imply that the person using the designation, when describing occupation, business name or services, is offering to perform architectural services.

[16.30.5.11 NMAC – Rp 16 NMAC 30.5.9, 9/6/2001]

16.30.5.12 PARENTAL RESPONSIBILITY ACT:

A. Disciplinary action: If an applicant or registrant is not in compliance with a judgment and order for support, the board:

(1) Shall deny an application for registration;

(2) Shall deny the renewal of a registration; and

(3) Has grounds for suspension or revocation of the registration.

B. Certified list: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board registrants and applicants. Upon the later receipt of an application for registration or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and registrants who are on the certified list and the action the board has taken in connection with such applicants and registrants.

C. Initial action: Upon determination that an applicant or registrant appears on the certified list, the board shall:

(1) Commence a formal proceeding under Subsection D of 16.30.5.12 NMAC to take appropriate action under Subsection A of 16.30.5.12 NMAC; or

(2) For current registrants only, informally notify the registrant that the registrant's name is on the certified list and that the registrant must provide the board with a subsequent Statement of Compliance from HSD by the earlier of the date of application for registration renewal or a specified date not to exceed sixty days. If the registrant fails to provide this statement, the board shall commence formal proceedings under Subsection D of 16.30.5.12 NMAC.

D. Notice of Contemplated Action: Prior to taking any action specified in Subsection A of 16.30.5.12 NMAC, the board shall serve upon the applicant or registrant a written notice stating that:

(1) The board has grounds to take such action, and that the board shall take such action unless the registrant or applicant mails a letter (certified mail, return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or provides the board within thirty (30) days of the date of the notice, with a Statement of Compliance from HSD.

(2) If the applicant or registrant disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or registrant should contact the HSD Child Support Enforcement Division.

E. Evidence and proof: In any hearing under 16.30.5.12 NMAC, relevant evidence is limited to the following:

(1) Statement of Non-Compliance is conclusive evidence that requires the board to take action under Subsection A of 16.30.5.12 NMAC, unless:

(2) The applicant or registrant provides the board with a subsequent Statement of compliance which shall preclude the board from taking action under this rule.

F. Order: When a disciplinary action is taken under this rule solely because the applicant or registrant is not in compliance with a judgment and order for support, the order shall state the application or registration shall be reinstated upon presentation of a subsequent Statement of compliance. The board may also include any other conditions necessary to comply with board requirements for re-applications or reinstatement of lapsed registrations.

G. Procedures: Procedures under 16.30.5.12 NMAC shall be governed by the Uniform Licensing Act, Sections 61-1-1 through –33 NMSA 1978.

[16.30.5.12 NMAC – Rp 16 NMAC 30.5.10, 9/6/2001]

HISTORY OF 16.30.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: BEA 68-1, Architectural Law And Rules

And Regulations, 7-1-68.
BEA 69-1, Architectural Law And Rules And Regulations, 6-17-69.
BEA 70-1, Architectural Law And Rules And Regulations, 7-28-70.
BEA 74-1, Roster Of Registered Architects Laws Rules Regulations, 8-30-74.
BEA 78-1, Board Of Examiners For Architects, 9-19-78.
NMBEA 85-1, Architectural Act Rules And Regulations, 2-7-85.
NMBEA 86-1, Architectural Act Rules And Regulations, 4-9-86.
NMBEA 88-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 6-22-88.
NMBEA 89-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 11-28-89.
Regulation No. NMBEA 90-1, State Of New Mexico Board Of Examiners For Architects Rules And Regulations, 8-14-90.
NMBEA Rule 4, NCARB Examinations, 6-23-80.

History of Repealed Material:
16 NMAC 30.5, Enforcement - Repealed, 9-6-01.

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 30 ARCHITECTS
PART 6 MINIMUM STANDARDS FOR THE PRACTICE OF ARCHITECTURE IN NEW MEXICO

16.30.6.1 ISSUING AGENCY: New Mexico Board of Examiners for Architects.
[16.30.6.1 NMAC – Rp 16 NMAC 30.6.1, 9/6/2001]

16.30.6.2 SCOPE: Provisions for Part 6 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.
[16.30.6.2 NMAC – Rp 16 NMAC 30.6.2, 9/6/2001]

16.30.6.3 STATUTORY AUTHORITY: Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board…may make rules not inconsistent with law."
[16.30.6.3 NMAC – Rp 16 NMAC 30.6.3, 9/6/2001]

16.30.6.4 DURATION: Permanent.
[16.30.6.4 NMAC – Rp 16 NMAC 30.6.4, 9/6/2001]

16.30.6.5 EFFECTIVE DATE: September 6, 2001, unless a different date is cited at the end of the section. [16.30.6.5 NMAC – Rp 16 NMAC 30.6.5, 9/6/2001]

16.30.6.6 OBJECTIVE: The objective of this rule is to clearly outline the minimum standards of practice expected from an individual registered as a New Mexico architect.
[16.30.6.6 NMAC – Rp 16 NMAC 30.6.6, 9/6/2001]

16.30.6.7 DEFINITIONS: [Reserved.]
[16.30.6.7 NMAC – Rp 16 NMAC 30.6.7, 9/6/2001]

16.30.6.8 DESIGN AND CONSTRUCTION DOCUMENTS:

A. Programming:

(1) Definition: To create or assist the owner in creating a project's design parameters and over-all scope including priorities, goals, budget, data, concepts and general needs.

(2) The architect must be able to:

(a) Prepare a program, presentations, reports and periodic reviews for owners and consultants;

(b) Summarize and evaluate data and requirements; and

(c) Form an educated opinion of probable costs and adequacy of the owner's budget.

B. Site and environmental analysis:

(1) Definition: Site analysis includes land planning, urban design and environmental evaluation of the physical, economic and social impact of proposed land use including but not limited to on the environment, ecology, traffic and population patterns, zoning site constraints, adequacy of site for parking and loading, etc., and utility availability.

(2) The registrant must be able to select, organize and evaluate pertinent data that leads to a conceptual design in coordination with the owner's program while conforming to the project's requirements.

C. Schematic design:

(1) Definition: From the owner-approved program, the development of solutions to satisfy technical and aesthetic requirements with an updated opinion of probable cost.

(2) The registrant must be able to prepare, from the program, alternative preliminary design concepts, presentation drawings and models and form an updated opinion of probable cost.

D. Building cost analysis:

(1) Definition: Evaluation of probable construction cost.

(2) The registrant must be able to:

(a) Make computations based on area and volume and quantity surveys based on the project's specific requirements; and

(b) Evaluate the proposed costs for accuracy and fairness.

E. Code research:

(1) Definition: Assurance of a project's compliance with federal, state and local regulation requirements.

(2) The registrant must be able to research and document codes and guidelines to assure a specific project's compliance with law and should be knowledgeable of procedures to obtain relief or variances.

F. Design development:

(1) Definition: Based on the owner-approved schematic design, creating the size and character of the entire project including selection of materials and engineering systems with an updated opinion of probable cost for the owner's further approval.

(2) The registrant must be able to:

(a) Prepare detailed development drawings from schematic design documents;

(b) Develop schedules and outline specifications, the project's systems, with estimates for construction time and construction cost; and

(c) Form updated opinions of probable cost.

G. Construction documents:

(1) Definition: the description in graphic form of all the essentials of the work done in concurrence with the written specifications and the provision to the owner of an updated opinion of probable cost and, if relevant, the suggestion that alternative bids should be considered.

(2) The registrant must:

(a) Be able to prepare accurate, consistent, complete and understandable construction documents and effectively coordinate consultant's drawings; and

(b) Understand the responsibilities and liabilities arising from the issuance of construction documents.

H. Engineering systems coordination:

(1) Definition: Responsibility for coordinating with consulting engineers in the selection, design and/or coordination of all building systems including traditional engineering systems.

(2) The registrant must be knowledgeable of how systems work, including system benefits and limitations, availability, cost and space requirements necessary, and must know when it is necessary to engage engineering professionals and other professionals or consultants.

I. Specifications and materials research:

(1) Definition: The evaluation and selection of materials or products, based on appropriateness, durability, aesthetic quality, initial cost, maintenance and the project's standard of quality.

(2) The registrant must:

(a) Have the ability to assess materials, including familiar items in unusual applications; and

(b) Be able to communicate in graphic and written form to all parties, in logical and orderly sequence, the requirements of the construction process.

J. Document checking and coordination:

(1) Definition: Cross-checking construction documents and drawings of other consultants for accuracy and compatibility.

(2) The registrant must be able to assure accuracy and compatibility of all construction documents for a project.

[16.30.6.8 NMAC – Rp 16 NMAC 30.6.8.1, 9/6/2001]

16.30.6.9 CONSTRUCTION ADMINISTRATION:

A. Bidding and contract negotiation

(1) Definition: Assist the client in establishing and administering bidding procedures, issuing addenda, evaluating proposed substitutions, reviewing the qualifications of bidders, analyzing bids or negotiating proposals and making recommendations for the selection of contractors.

(2) The registrant should make clear what the registrant's role shall be in each of the following steps:

(a) The bid/award process;

(b) The analysis and evaluation of bids;

(c) Settling protests to bid acceptability; and

(d) The role of lending institutions.

B. Construction - office phase

(1) Definition: Processing contractor's applications for payment, preparing change orders, reviewing shop drawings and samples and interpreting construction documents.

(2) The registrant must be able to:

(a) Timely process applications for payment;

(b) Evaluate requests for changes and prepare change orders; and

(c) Interpret and attempt to resolve conflicts relating to the contract documents and resolve disputes.

C. Construction - observation phase

(1) Definition: Assurance that contractor's work conforms to requirements of contract documents, that standards of workmanship are upheld, and that all work conforms to required codes. It includes the interpretation of contract documents, clarification of design intent, and the resolution of conflicts.

(2) The registrant must have an understanding of contract documents and must be able to:

(a) Evaluate quality of materials and workmanship;

(b) Analyze construction timetables and produce progress reports;

(c) Interpret contract documents;

(d) Evaluate dispute resolution alternatives;

(e) Monitor and receive all data, warranties and releases required by the contract documents; and

(f) Undertake a completion inspection with verification that the work was completed in accordance with the contract documents.

[16.30.6.9 NMAC – Rp 16 NMAC 30.6.8.2, 9/6/2001]

16.30.6.10 DESIGN/BUILD WHERE THE ARCHITECT IS ALSO THE CONTRACTOR: Unless a contractual relationship is stated otherwise, an architect is responsible for the minimum competencies of construction administration in a design/build project.

[16.30.6.10 NMAC – N, 9/6/2001]

16.30.6.11 PROJECT MANAGEMENT: means defining goals; coordinating tasks and scheduling, assessing all discrepancies and performance of corrective actions, maintaining design quality; closing out project records and agreements; and performing project evaluations. It includes owner notification of any additional services that may be required prior to their need.

[16.30.6.11 NMAC – Rp 16 NMAC 30.6.8.3, 9/6/2001]

HISTORY OF 16.30.6 NMAC:

History of Repealed Material:
16 NMAC 30.6, Minimum Standards For The Practice Of Architecture In New Mexico - Repealed, 9-6-01.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.15.2.17 NMAC

8.15.2.17 PAYMENT FOR SERVICES: The State pays child care providers according to standard practice for the child care industry, which is to pay for monthly slot availability based upon the child's enrollment with the provider as reflected in the Child Care Placement Agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the Child Care Placement Agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the ten (10) day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The Department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Before and After School Care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (Part time 1).

F. Before and After School care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (Full time).

G. Before and After School Care provided for 5 hours or less per week are paid at the 25% rate (Part time 3) regardless of provider type.

H. Monthly Reimbursement Rates

	Licensed Child Care Centers							
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	~~[$458.26]~~ $467.84	~~[$328.46]~~ $352.60	~~[$343.70~~] $350.88	~~[$246.35]~~ $264.45	~~[$229.13]~~ $233.92	~~[$164.23]~~ $176.30	~~[$114.57]~~ $116.96	~~[$82.12]~~ $88.15
Toddler	~~[$388.96]~~ $417.19	~~[$312.40]~~ $345.00	~~[$291.72]~~ $312.89	~~[$234.30]~~ $258.75	~~[$194.48]~~$ 208.60	~~[$156.20]~~ $172.50	~~[$ 97.24]~~ $104.30	~~[$78.10]~~ $86.25
Pre-School	~~[$363.66]~~ $386.48	~~[$291.50]~~ $322.50	~~[$272.75]~~ $289.86	~~[$218.63]~~ $241.88	~~[$181.83~~] $193.24	~~[$145.75]~~ $161.25	~~[$90.92]~~ $96.62	~~[$72.88]~~ $80.63
School Age	~~[$313.50]~~ $337.11	~~[$279.40]~~ $311.75	~~[$235.13]~~ $252.83	~~[$209.55]~~ $233.81	~~[$156.75~~] $168.56	~~[$139.70]~~ $155.88	~~[$78.38]~~ $84.28	~~[$69.85]~~ $77.94
	Licensed Group Homes (Capacity: 7-12)							
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	$370.48	~~[$319.00]~~ $324.38	$277.86	~~[$239.25]~~ $243.29	$185.24	~~[$159.50~~] $162.19	$92.62	~~[$79.75]~~ $81.10
Toddler	~~[$314.60]~~ $335.40	~~[$297.00]~~ $320.00	~~[$235.95]~~ $251.55	~~[$222.75]~~ $240.00	~~[$157.30]~~ $167.70	~~[$148.50]~~ $160.00	~~[$78.65]~~ $83.85	~~[$74.25]~~ $80.00
Pre-School	~~[$310.42]~~ $329.55	~~[$291.50]~~ $315.00	~~[$232.82]~~ $247.16	~~[$218.63]~~ $236.25	~~[$155.21]~~ $164.78	~~[$145.75]~~ $157.50	~~[$77.61]~~ $82.39	~~[$72.88]~~ $78.75
School Age	~~[$289.74]~~ $325.00	~~[$262.46]~~ $305.00	~~[$217.31]~~ $243.75	~~[$196.85]~~ $228.75	~~[$144.87]~~ $162.50	~~[$131.23]~~ $152.50	~~[$72.44]~~ $81.25	~~[$65.62]~~ $76.25
	Licensed Family Homes (Capacity: 6 or less)							
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	$365.20	~~[$259.82]~~ $320.00	~~[$273.90~~] $273.90	~~[$194.87]~~ $240.00	$182.60	~~[$129.91~~] $160.00	$91.30	~~[$64.96]~~ $80.00
Toddler	~~[$302.94]~~ $325.08	~~[$222.20~~] $315.00	~~[$227.21]~~ $243.81	~~[$166.65]~~ $236.25	~~[$151.47]~~ $162.54	~~[$111.10]~~ $157.50	~~[$75.74]~~ $81.27	~~[$55.55]~~ $78.75
Pre-School	~~[$292.16]~~ $324.17	~~[$212.96]~~ $310.00	~~[$219.12]~~ $243.13	~~[$159.72]~~ $232.50	~~[$146.08]~~ $162.09	~~[$106.48]~~ $155.00	~~[$73.04]~~ $81.04	~~[$53.24]~~ $77.50
School Age	~~[$273.90]~~ $319.28	~~[$201.30]~~ $300.00	~~[$205.43]~~ $239.46	~~[$150.98]~~ $225.00	~~[$136.95]~~ $159.64	~~[$100.65]~~ $150.00	~~[$68.48]~~ $79.82	~~[$50.33]~~ $75.00
	Registered Homes and In-Home Child Care							
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	$278.74	~~[$239.80]~~ $258.00	$209.06	~~[$179.85]~~ $193.50	$139.37	~~[$119.90]~~ $129.00	$69.69	~~[$59.95]~~ $64.50
Toddler	$264.00	~~[$216.92]~~ $217.69	$198.00	~~[$162.69]~~ $163.27	$132.00	~~[$108.46]~~ $108.85	$66.00	~~[$54.23]~~ $54.42
Pre-School	$242.00	~~[$207.24]~~ $220.00	$181.50	~~[$155.43]~~ $165.00	$121.00	~~[$103.62]~~ $110.00	$60.50	~~[$51.81]~~ $55.00
School Age	$242.00	$198.00	$181.50	$148.50	$121.00	$99.00	$60.50	$49.50

I. The Department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider. Providers located in the three Metropolitan Statistical Areas of the state as determined by the U.S. Census Bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos and Dona Ana counties. All other providers receive the rural rate.

J. The Department pays a differential rate to former Gold and Silver Licensed providers and providers holding national accreditation status. Former Gold and Silver licensed providers receive an additional $66.00 per month and $33.00 per month, respectively, for full time care above the base reimbursement standard. In order to continue at these reimbursement rates a provider must meet and maintain former Gold and Silver licensing requirements. If a former Gold or Silver licensed provider fails to meet the former Gold and Silver licensing requirements this could result in the provider reimbursement reverting to the base reimbursement standard. Providers holding national accreditation status receive an additional $66.00 per month for full time care above the base reimbursement standard. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this could result in the provider reimbursement reverting to the base reimbursement standard.

K. The Department pays a differential rate equivalent to 10% of the applicable full-time rate to providers who provide full-time care during non-traditional hours. Providers who provide part-time care during non-traditional hours will be paid a differential rate subject to the proration schedule delineated in 8.15.2.17 (D) NMAC.

L. If a significant change occurs in the client's circumstances, (for example, an increase or decrease in income or a change in work schedule) the child care placement agreement is modified and the rate of payment is adjusted. The Department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

M. The Department conducts parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the Department are sanctioned. Providers must provide all relevant information requested by the Department during an audit.

N. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC B Rp 8.15.2.17 NMAC, 08-01-01; A, 09/01/01]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

2 NMAC 110.2, Small Cities Community Development Block Grant, is being repealed in it entirety and being renumbered, reformatted and replaced with the new part 2.110.2 NMAC to conform with the current NMAC requirements, effective 8-30-2001.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

TITLE 2: PUBLIC FINANCE
CHAPTER 110: LOCAL GOVERNMENT GRANTS
PART 2: SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT

2.110.2.1 ISSUING AGENCY: Department of Finance and Administration Local Government Division.
[2.110.2.1 NMAC – Rp 2 NMAC 110.2.1, 08-30-01]

2.110.2.2 SCOPE: All counties and incorporated municipalities, except the Cities of Albuquerque, Las Cruces, Santa Fe and Rio Rancho.
[2.110.2.2 NMAC – Rp 2 NMAC 110.2.2, 08-30-01]

2.110.2.3 STATUTORY AUTHORITY: Title 1 of the Housing and Community Development Act of 1974, as amended.
[2.110.2.3 NMAC – Rp 2 NMAC 110.2.3, 08-30-01]

2.110.2.4 DURATION: **Permanent**.
[2.110.2.4 NMAC – Rp 2 NMAC 110.2.4, 08-30-01]

2.110.2.5 EFFECTIVE DATE: August 30, 2001, unless a different date is cited at the end of a section.
[2.110.2.5 NMAC – Rp 2 NMAC 110.2.5, 08-30-01]

2.110.2.6 OBJECTIVE: The objective of Part 2 of Chapter 110 is to establish procedures to be used by counties and incorporated municipalities when applying for a Small Cities Community Development Block Grant.
[2.110.2.6 NMAC – Rp 2 NMAC 110.2.6, 08-30-01]

2.110.2.7 DEFINITIONS:

A. "Council" means the New Mexico Community Development Council.

B. "Department" means the Department of Finance and Administration.

C. "Division" means the Local Government Division.

D. "Low and moderate income person" is a member of a household whose income would qualify as "very low income" under the Section 8 Housing Assistance Payments Program. Section 8 limits are based on 50 percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to 80 percent of the county median income.

E. "CDBG" means the Small Cities Community Development Block Grant Program.

F. "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000.

G. "Program Income" means amounts earned by a unit of general local government or its subrecipient that were generated from the use of CDBG funds.

H. "Slum Area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area in which there is a predominance of buildings or other improvements which are found by the local governing body by reason of 1) dilapidation, 2)deterioration, 3) age, or 4) obsolescence, 5) inadequate provision for ventilation, light, air, sanitation or open spaces, 6) overcrowding, 7) the existence of conditions which endanger life or property, or 8) any combination of such factors, to contribute to either ill health, the transmission of disease, infant mortality, juvenile delinquency or crime, and to be detrimental

to the public health, safety, morals or welfare.

I. "Blighted Area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty low layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present conditions and use.

J. "Units of Local Government": Any incorporated municipality or county

K. "Councils of Governments": A regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

L. "Water Association": Political subdivisions of the State organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and Sanitation District Act".

[2.110.2.7 NMAC – Rp 2 NMAC 110.2.7, 08-30-01]

2.110.2.8 INTRODUCTION

A. The New Mexico Community Development Council is responsible for allocating grants under the Small Cities Community Development Block Grant (CDBG) Program to assist local communities with basic infrastructure and community development needs.

B. These application regulations will govern the FY 2002 CDBG appropriation from the U.S. Department of Housing and Urban Development.

C. As part of their administrative responsibility, the Council and the Local Government Division will continue to provide technical assistance to prospective applicants and grantees. The nature of these programs requires a thorough outreach effort to ensure that units of local government are aware of program requirements.

D. The Council and the Division assure local entities and citizens of the State of New Mexico that Public comment will be solicited should the Council choose to make any substantial changes to these Application Regulations.

[2.110.2.8 NMAC – Rp 2 NMAC 110.2.8, 08-30-01]

2.110.2.9 PROGRAM OBJECTIVES

A. The Small Cities CDBG Program was established under Title I of the Housing and Community Development Act of 1974, as amended, in order to assist communities in providing essential community facilities, providing decent housing for residents, promoting economic development, and maintaining a suitable living environment.

B. State and national objectives of the CDBG Program require that assistance be made available for activities that address at least one of the following:

(1) benefit principally low and moderate income families.

(2) aid in the prevention or elimination of slums or blight.

(3) meet other community development needs of recent origin having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs.

C. The State encourages successful applicants to award a fair share of contracts and subcontracts to small, minority, and women's businesses and to commit itself to hire locally for any employment opportunities that will be created as a result of project funding.

[2.110.2.9 NMAC – Rp 2 NMAC 110.2.9, 08-30-01]

2.110.2.10 ELIGIBLE APPLICANTS

A. All counties and incorporated municipalities are eligible to apply except: the City of Albuquerque, the City of Las Cruces, the City of Santa Fe and the City of Rio Rancho who cannot apply since they receive funding directly from the Department of Housing and Urban Development (Title I, Section 106) as entitlement cities.

B. Other entities such as water associations, sanitation districts, public nonprofit groups, etc., cannot apply directly for assistance.

C. However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.

D. Indian pueblos and tribes receive funding directly from the Department of Housing and Urban Development (Title I, Section 107). Native American Tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3rd St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923.

[2.110.2.10 NMAC – Rp 2 NMAC 110.2.10, 08-30-01]

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES

A. Applicants may apply for funding assistance under the following categories:

(1) Community Infrastructure
(2) Housing
(3) Public Service Capital Outlay
(4) Economic Development
(5) Emergency
(6) Colonias
(7) Planning

B. Eligible activities under each of the categories are listed below.

C. Community Infrastructure: Eligible activities may include, but are not limited to, the following:

(1) real property acquisition
(2) construction and/or rehabilitation of the following:
(a) water systems
(b) sewer systems
(c) municipal utilities
(d) roads
(e) streets
(f) highways
(g) curbs
(h) gutters
(i) sidewalks
(j) storm sewers
(k) street lighting
(l) traffic control devices
(m) parking facilities
(n) solid waste disposal facilities.

D. Housing : Eligible activities may include, but are not limited to, the following:

(1) real property acquisition
(2) rehabilitation
(3) clearance
(4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing
(5) provision of public facilities to increase housing opportunities

(6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs

(7) certain types of housing modernization

(8) temporary relocation assistance

(9) code enforcement

(10) historic preservation activities

(11) a maximum of $20,000 in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public Service Capital Outlay: Eligible activities may include, but are not limited to, such items as:

(1) real property acquisition

(2) construction or improvement of community centers

(3) senior citizen centers

(4) nonresidential centers for the handicapped such as sheltered workshops

(5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic Development: The Economic Development Category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The Emergency Fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) An appropriate state agency must concur and provide written verification and adequate documentation with the applicant's assessment of the life threatening situation and the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, as defined in Section 2.110.2.7, Subsection L; are eligible to apply directly for planning grants only. Water associations are not subject to the comprehensive plan standard and may apply for development of other eligible planning studies. Grant assistance from the CDBG program must be used for a comprehensive plan, if a community or county does not have a current comprehensive plan (adopted or updated within the last five years) and that includes at a minimum the following six elements:

(1) Land use

(2) Housing

(3) Transportation

(4) Infrastructure

(5) Economic development, and

(6) Implementation, a compilation of programs and specific actions to be completed in a stated sequence.

(7) Development of additional elements of a comprehensive plan may include but are not limited to:

(a) Drainage

(b) Parks, recreation and open space

(c) Tourism

(d) Growth management

(e) Fiscal impact analysis

(f) Intergovernmental cooperation

(g) Social Services

(8) If the entity has a current comprehensive plan, it may apply for funding assistance for any of the following:

(9) Data gathering analysis and special studies

(10) Base mapping, aerial photography, geographic information systems, or global positioning satellite studies.

(11) Improvement of infrastructure capital improvement plans and individual project plans.

(12) Development of codes and ordinances, to further refine the implementation of the comprehensive plan.

(13) Other functional or comprehensive planning activities.

(14) Related citizen participation or strategic planning processes.

(15) Applicants may apply for funding assistance throughout the year as long as funds are available.

I. Colonias

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias setaside are municipalities and counties located within 150 miles of the U.S.- Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply.

(b) lack of adequate sewage systems.

(c) lack of decent, safe and sanitary housing.

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC – Rp 2 NMAC 110.2.11, 08-30-01]

2.110.2.12 OTHER ELIGIBLE ACTIVITIES

A. Administrative costs associated with implementing a program such as preparing environmental reviews, and other costs for services are eligible activities.

B. Although the costs of conducting program audits are considered an eligible activity, it is recommended that they be paid by the applicant in order to expedite grant closeout.

C. Applicants may use 15% of a CDBG funding request and subsequent grant for public service program activities including those concerned with:

(1) employment

(2) crime prevention

(3) child care

(4) drug abuse prevention

(5) education

(6) energy conservation

(7) welfare and recreation

D. The Community Development Council may pledge future CDBG allocations to guarantee repayment of loans to nonentitlement cities and counties for CDBG eligible projects in accordance with Section 108 of the Housing and Community Development Act of 1974, as amended.

[2.110.2.12 NMAC – Rp 2 NMAC 110.2.12, 08-30-01]

2.110.2.13 INELIGIBLE ACTIVITIES: The following are among the activities that are not eligible for CDBG funding assistance:

A. construction or rehabilitation of buildings used for the general conduct of government, such as city halls or county courthouses.

B. general operation and maintenance expenses associated with public facilities or services;

C. income maintenance;

D. housing allowance payments and mortgage subsidies;

(1) expenditures for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration, voter transportation or other political activities;

(2) costs involved in the preparation of applications and securing of funding.

[2.110.2.13 NMAC – Rp 2 NMAC 110.2.13, 08-30-01]

2.110.2.14 RURAL ALLOCATION

A. A minimum of fifteen percent (15%) of the CDBG allocation will be awarded to counties with a population of less than 25,000 and municipalities with a population of less than 3,000.

B. Rural applicants will compete among themselves for assistance in the Community Infrastructure, Housing, and Public Service Capital Outlay categories.

C. Rural and nonrural applicants will compete for funding from the Economic Development, Emergency, Planning and Colonias categories on an equal basis.

[2.110.2.14 NMAC – Rp 2 NMAC 110.2.14, 08-30-01]

2.110.2.15 PROGRAM REQUIREMENTS SECTION A: Public Participation Requirements - Applicants must provide opportunities for public participation in the development of community development goals, objectives, and applications for funding assistance by undertaking the following activities:

A. provide for and encourage citizen participation within their areas of jurisdiction with particular emphasis on participation by persons of low and moderate income;

B. provide citizens with reasonable and timely access to local meetings, information, and records relating to proposed and actual use of funds;

C. provide for technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals;

D. {Special Note}: the level and type of assistance is to be determined by the applicant; and

E. provide for public hearings to obtain citizen participation and respond to proposals and questions at all stages.

F. Prior to selecting a project and submitting an application for CDBG funding assistance, eligible applicants must conduct at least one public hearing for the following purposes:

(1) to advise citizens of the amount of CDBG funds expected to be made available for the current fiscal year;

(2) to advise citizens of the range of activities that may be undertaken with the CDBG funds;

(3) to advise citizens of the estimated amount of CDBG funds proposed to be used for activities that will meet the national objective to benefit to low and moderate income persons;

(4) to advise citizens of the proposed CDBG activities likely to result in displacement, and the unit of general local government's anti-displacement and relocation plans;

(5) to obtain recommendations from citizens regarding the community development and housing needs of the community;

(a) after considering all recommendations and input provided at the public hearing(s), the county commission or city/town/village council must select one project for which to submit an application for funding assistance at an official public meeting.

(b) the applicant must conduct a second public hearing to review program performance, past use of funds and make available to the public its community development and housing needs including the needs of low and moderate income families and the activities to be undertaken to meet such needs.

(c) this public hearing may occur subsequent to the submission of the application for funding assistance.

(d) public hearing notices must be published in the non-legal section of newspapers and in other local media.

(e) evidence of compliance with these regulations must be provided with each application, i.e., hearing notice, minutes of public meetings, list of needs and activities to be undertaken, etc.

(f) amendments to goals, objectives, and applications are also subject to public participation.

(6) Provide for timely written answers to written complaints and grievances within 15 working days where practicable.

(7) Identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate.

[2.110.2.15 NMAC – Rp 2 NMAC 110.2.15, 08-30-01]

2.110.2.16 PROGRAM REQUIREMENTS Section B: Each CDBG application must meet at least <u>one</u> of the three national objectives which are herein described.

A. Low and Moderate Income Benefit - An activity identified as principally benefiting (51%) persons of low and moderate income will be considered eligible only if it meets one of the criteria below:

(1) the activity must be carried out in a neighborhood or area consisting predominantly of persons of low and moderate income and provide services to such persons.

(2) the activity must involve facilities designed for use by a specific group of people or clientele predominantly of low and moderate income; or

(3) the activity must add or improve permanent residential structures which will be occupied by low and moderate income households upon completion; or

(4) the activity must involve creating or retaining jobs, the majority of which must be for persons of low and moderate income.

(5) the above can be substantiated with data from:

(a) the most recent low and moderate income data from the U.S. Census (See Attachment E).

(b) a special survey conducted using HUD approved methodology.

(c) income eligibility requirements consistent with HUD approved income limits.

B. Prevention or Elimination of Slums or Blight - An activity identified as aiding in the prevention or elimination of a slum or blighted area must meet all of the following criteria:

(1) the area must be designated by the applicant and must meet a definition of a slum, blighted, deteriorated or deteriorating area under State or local law (See definitions section of regulations);

(a) For the purpose of meeting this criterion, it is not necessary to follow the formal procedures under State law for designating a slum or blighted area. However, the definition of slum, blighted, etc. must be incorporated in State or local law.

(b) There must be a substantial number of deteriorated or deteriorating buildings or public improvements throughout the area.

(2) As a "safe harbor," HUD will consider this criterion to have been met if either of the following conditions prevail in the area:

(a) at least one quarter of all the buildings in the area must be in

a state of deterioration, since State law does not specifically indicate the percentage of deteriorated or deteriorating buildings required to qualify the area;

(b) or, public improvements throughout the area are in a general state of deterioration; and

(c) it is insufficient for only one type of public improvement, such as the sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.

(3) Documentation must be maintained by the applicant on the boundaries of the area and the condition which qualified it as a slum.

(4) The activity must address one or more of the conditions which contributed to the deterioration of the area.

(5) To comply with this objective on a spot basis outside of a slum or blighted area the proposed activity must be designated to eliminate, specific conditions of blight or physical decay.

(6) The proposed activity must be limited to;

(a) acquisition

(b) clearance

(c) relocation

(d) historic preservation

(e) and rehabilitation of buildings

(f) but, only to the extent necessary to eliminate specific conditions detrimental to public health and safety.

C. Urgent Need - An activity identified as meeting community development needs having a particular urgency will be considered only if the applicant certifies the following:

(1) that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health and welfare of the community.

(2) that the condition(s) to be alleviated is of recent origin, i.e., it developed or became critical within 18 months preceding the certification by the applicant.

(3) that the applicant is unable to finance the activity on its own and other sources of funding are not available.

(4) In addition, verification of the urgency of the need must be provided with written documentation by the appropriate state agency.

[2.110.2.16 NMAC – Rp 2 NMAC 110.2.16, 08-30-01]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of Applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing or public service capital outlay.

(1) Eligible colonias and planning applicants may submit an additional application for funding.

(2) Requests for assistance from eligible applicants in the economic development, emergency and planning categories can be submitted at any time, subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

B. Single Purpose Application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint Applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive Division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the Division upon request, may take a significant period of time.

D. Applications Limit - Applications are limited to the amount of funding necessary to complete a basic, meaningful and targeted project within a 24 month period.

(1) Applications may not exceed $400,000 in FY 2002 or $500,000 in FY 2003, and planning applications may not exceed $25,000.

(2) If, after conducting the required public hearing, an applicant determines that the previous year's CDBG application is still a priority, the applicant may ask the Council to reconsider the previous year's application.

(3) The applicant need only submit a current year's resolution, updated project budget and schedule and any other information required by Division staff.

E. Threshold Requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements must be met by the application deadline.

(1) Fourth and older year grants must be officially closed or closed pending audit.

(2) Third year grants must have a minimum of 85% funds drawndown.

(3) Second year grants must have a minimum of 60% funds drawndown.

(4) First year grants must have an executed grant agreement and the Environmental Review completed and Authority to Use Grant Funds issued, (HUD form 701516), if needed.

(a) In addition, construction grants must have an executed engineer/architect contract.

(b) Housing grants must have guidelines approved by the Division.

(c) Planning grants must have executed a professional services agreement or assigned in-house staff to prepare the plan.

(5) Audit and monitoring findings, especially in general program administration for CDBG projects, must be resolved

(6) Any grantee with two or more active grants in 2002in the infrastructure, public service, capital outlay and housing categories cannot apply for funding assistance. Beginning with 2003 cycle, any grantee with one or more active grants in the infrastructure, public service, capital outlay and housing categories cannot apply for funding assistance.

(7) The following setaside categories are exempt from threshold requirement: Planning, Economic Development, Emergency, Colonias and water association pilot planning program.

F. Matching Requirements - In order to assist the Council in making funding resources go further and to ensure there is a local investment in applications submitted to the Council for funding consideration, the following will be required:

(1) rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) consistent with Section 26 of these regulations, all applications in the economic development category must provide at least two private dollars for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the Council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget.

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

G. Matching Loan Fund - In order to assist communities who do not have the resources to comply with the matching requirement for their project, a matching fund is available to provide money at appropriate interest rates.

(1) The Council will use NMCA reversions as a funding source for the loan fund.

(2) Payment Schedules will be developed by the Division with appropriate payment amounts and due dates.

H. Other Funding Commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

[2.110.2.17 NMAC – Rp 2 NMAC 110.2.17, 08-30-01]

2.110.2.18 APPLICATION PROCEDURES AND CONTENT – The application packet provided by Local Government Division will be used for Infrastructure, Housing, Public Service, Capital Outlay, Colonias, Emergency Categories, Economic Development and Planning.

A. An applicant must submit an original and four copies of each application to the Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, and one copy to the appropriate Council of Governments.

B. Applications must be received at the Local Government Division by 5 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed.

[2.110.2.18 NMAC – Rp 2 NMAC 110.2.18, 08-30-01]

2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS

A. Upon receipt of applications, Division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

B. Applications will be forwarded to Councils of Governments and appropriate state agencies for technical review and comment. Review agencies include the Environment Department, Energy, Minerals and Natural Resources Department, State Highway and Transportation Department, Department of Health, State Engineer's Office, State Agency on Aging, Economic Development Department, Department of Human Services, and State Fire Marshal.

C. Applicants will be allowed to make presentations to the Council and Division staff at an official Council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

D. Division staff will receive comments from state agencies and Councils of Governments regarding specific projects.

E. The Council and Division have developed the following rating criteria for evaluation of CDBG applications submitted for funding consideration: Infrastructure, Housing, Public Service, Capital Outlay and Colonias Applications

(1) Description and Need — (23 points) Extent to which the project is needed. The more severe the need as documented in the application, the higher the score. Colonias applicants must provide documentation to substantiate that a majority of the following conditions exist in the project area::

(a) lack of potable water.

(b) lack of an adequate sewage system

(c) lack of safe, sanitary housing

(d) source documentation must also be provided.

(2) Benefit to Low and Moderate and Appropriateness – (23 points) Extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender

(b) addresses the prevention or removal of slum or blighting conditions

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) Leveraging — (14 points) Extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score..

(4) Citizen Participation- (5 points) Extent to which the applicant:

(a) has provided opportunities for public participation in the identification of community development needs.

(b) pledges opportunities for active citizen participation during the project, where applicable; and

(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

(5) Planning – (8 points) Extent to which the applicant:

(a) has participated in the local Infrastructure Capital Improvements Plan (ICIP) submitted to the Division;

(b) ranks the project high on the ICIP list of projects; and references the project, and show consistency, to the local comprehensive plan.

(6) Feasibility/Readiness — (18 points) Extent to which the project is technically and economically feasible and ready to be implemented. (Examples of actions that can be taken prior to submission of the application to receive maximum points are::

(a) acquire necessary property;

(b) secure professional services;

(c) complete plans, specifications, or preliminary engineering report, etc.

(d) complete the environmental review process.

(7) Cost Benefit – (9 points) Number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

F. Planning Criteria Category

(1) Consistency (25 points): document the degree to which the proposed planning project is
consistent with the applicants current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan.

(2) Appropriateness (25 points): describe the impact the proposed project will have on at least one
of the three national objectives of the CDBG program.

(3) Public Involvement (25 points): describe how the planning process will involve citizens
in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan.

(4) Implementation Strategy (25 points): Describe the local commitment of resources to the
planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

G. Economic Development Rating Criteria is included in Section 2.110.2.26.

H. Site visits will be conducted as needed during the application review process to verify the information presented in an application.

I. Division staff will present its evaluations in high, medium and low groupings to the Council at least seven days prior to the allocation meeting.

J. Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC – Rp 2 NMAC 110.2.19, 08-30-01]

2.110.2.20 SELECTION OF CDBG GRANTEES BY CDC

A. The Council will review staff evaluations and recommendations and make funding decisions in an open public meeting.

B. In making its final determination, the Council will consider the past performance of the applicant in administering active CDBG projects.

C. The Council may adjust the scope and dollar amount of projects to bring the project within available funding, to enable the Council to fund additional projects or for purposes of consistency.

D. The Council may deviate from staff rankings, if the council by majority vote determines and substantiates that any of the following conditions apply:

(1) IN ORDER NOT TO FUND A PROJECT RECOMMENDED BY STAFF; other funding sources for the project are available.

(2) IN ORDER TO FUND A PROJECT NOT RECOMMENDED BY STAFF

(a) the health and safety of area residents is at stake;

(b) funding committed to the project from other sources may be jeopardized;

(c) significant economic benefits will be realized if the project is implemented;

(d) the need for the project is critical.

E. The Council will fund the full amount requested for projects ranked in the top ten (10%) non-setaside of applications received each year.

F. The Council may not consider funding projects ranked in the bottom thirty-five (35%) of non-setaside applications received each year

G. The Council will make funding determinations by a majority vote.

H. The Council may waive or adjust any state-imposed rule or requirement relative to project selection and administration of the CDBG Program as long as the waiver will not result in violation of state or federal statutes or regulations or penalize other applicants.

I. The Council may transfer funds from the economic development and emergency setasides at any time if there is limited demand for funding in these categories. The transferred funds or any reversions from previously approved projects may be used to fund projects which were submitted for funding previously.

[2.110.2.20 NMAC – Rp 2 NMAC 110.2.20, 08-30-01]

2.110.2.21 REVERSIONS, SUPPLEMENTAL FUNDING AND UNDERRUNS

A. The purpose of this section is to provide guidance to the Council, Division staff, applicants, and grantees in terms of the referenced situations.

B. Reversions and Supplemental Funding - When funds are reverted from a previously approved project grant or additional funds are made available for any other reason, the Council may decide that the funds will:

(1) be added to the Emergency Fund;

(2) be returned to the category of the program from which it was awarded;

(3) go into any other category;

(4) take other action as deemed appropriate.

C. Underruns - On occasion, upon completion of the approved activities, a balance of funds remains after all payments have been made. This balance of funds referred to as an underrun shall be handled as follows: if the grantee has not accomplished all work called for in the original application submitted for funding consideration, the grantee may request Division staff to approve the expenditure of underrun funds for a portion or all of the remaining work.

(1) if appropriate justification and sufficient funding exist, Division staff may approve the request for use of underrun funds and amend the grant agreement accordingly.

(2) a negative decision may be appealed to the Council.

D. If the grantee proposes to undertake activities not included in the approved application, the grantee may request Council approval to expend underrun funds for other eligible activities. The Council may approve the request if appropriate justification and sufficient funding exist.

E. If the Council disapproves a request for use of an underrun, associated funds shall revert to the Council for disposition.

F. The processes described above for handling underruns are intended to encourage the grantee to use the most cost efficient means possible to construct projects funded by the Council. Grantees shall not take advantage of this process by inflating initial funding requests.

[2.110.2.21 NMAC – Rp 2 NMAC 110.2.21, 08-30-01]

2.110.2.22 PROGRAM INCOME

A. The Council will require that grantees pay CDBG program income to the State, except that grantees will be permitted to retain program income only if they always use the income for CDBG eligible activities upon approval of a program income utilization plan.

B. Program income received by the State will be placed in the economic development category.

C. Program income retained by grantees shall be used to fund CDBG eligible activities and must meet CDBG requirements.

[2.110.2.22 NMAC – Rp 2 NMAC 110.2.22, 08-30-01]

2.110.2.23 CITIZEN ACCESS TO RECORDS: Citizens and units of general local government will be provided with reasonable access to records regarding the past use of CDBG funds.
[2.110.2.23 NMAC – Rp 2 NMAC 110.2.23, 08-30-01]

2.110.2.24 NM COMMUNITY ASSISTANCE FUNDS. The Community Development Council will allocate and administer New Mexico Community Assistance underrun funds in accordance with the provisions of the Community Assistance Act.
[2.110.2.24 NMAC – Rp 2 NMAC 110.2.24, 08-30-01]

2.110.2.25 [RESERVED]
[2.110.2.25 NMAC – Rp 2 NMAC 110.2.25, 08-30-01]

2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM GUIDELINES. Within the context of the CDBG Program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

A. Goals and Objectives: The State's CDBG economic development goals and objectives include:

(1) creating or retaining jobs for low- and moderate-income persons:

(2) preventing or eliminating slums and blight;

(3) meeting urgent needs;

(4) creating or retaining businesses owned by community residents;

(5) assisting businesses that provide goods or services needed by, and affordable to low- and moderate-income residents;

(6) providing technical assistance to promote any of the activities under 26.1.1 through 26.1.5 above.

B. Eligible Activities: CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the Federal Rules and Regulations governing the Community Development Block Grant Program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that Section and rehabilitation activities listed in Section 570.202.

C. Financing Policies and Techniques: The New Mexico CDBG Program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

(1) offer a negotiated period for repayment of principal and interest.

(2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted.

(3) leverage capital by reducing risk for commercial lenders and by taking a subordinate

(4) security/collateral position.

(5) provide more favorable rates and terms than are generally available through conventional sources.

D. Project Requirements: Project requirements for eligible CDBG economic development assistance include, but are not limited to:

(1) specific employment commitments for low and moderate income residents, generally with no more than $15,000 in CDBG funds being used for each job created or retained.

(2) the creation of jobs within a reasonable time frame, usually not more than six months from grant approval.

(3) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application.

(4) a minimum leveraging ratio of 2 new private investment dollars to 1 CDBG dollar is required,{additional leveraging will enhance a project's competitiveness}.

(5) an "Appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project.

(6) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project.

(7) Generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified.

(8) Prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

E. Program Income: The Community Development Council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the State for use in fostering critical economic development opportunities that occur throughout the State. by pooling program income at the State level more of an impact can be made on the overall economic conditions of the State. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2).

(2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.

F. Application Cycle: Applications for economic development can be made at any time, and the division staff have thirty days to review the them.

G. Pre-Application Conference: It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the LGD, Economic Development Representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires doc-

umentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the Local Government Division for a copy of the HUD Guidelines.

H. APPLICATION REQUIREMENTS (These must be included along with the regular CDBG Application, and should be submitted in lieu of question #2 in the regular application.)

(1) Economic Development Plan: The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a) Need - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.

(b) Goals - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c) Resources - What public and private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business persons deal with marketing, management, or financial planning problems

(d) Strategy - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e) Results - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

(2) Hiring and Training Plan

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b) In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the Local Government Division.

(3) Private Sector Commitments

(a) Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

(4) Public Sector Commitments

(a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds and/or other resources.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

(5) Use of CDBG Funds for Economic Development Loans (If applicable)

(a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c) Subordinated loans may be made when justifiable and appropriate.

(d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future Economic Development Setaside-eligible activities.

(6) Viability of Assisted Enterprises: Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a) A business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations. The plan should also describe the impact the CDBG project, if funded, would have on the firm's activities.

(b) A three-year to five-year operating plan forecast (profit and loss projection). Applicants may use U.S. Small Business Administration (SBA) forms or equivalent.

(c) A monthly cash

flow analysis, SBA forms or equivalent.

(d) For any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA: The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "Appropriateness" (and later, of "Impact") will necessarily be in part subjective, with the Division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

(1) NEED - (200 Points) - In analyzing an applicant's need for a project, the Division will use statistical information provided by the New Mexico Department of Labor and the U.S. Bureau of the Census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five calendar years).

(a) The data will be calculated and each applicant assigned a relative score.[10-4-85,9-30-96]

(b) The Division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico Department of Labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

(2) APPROPRIATENESS - (200 points) - Two major factors will be weighted in this ranking category: the soundness of the applicant's Economic Development Plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a) Plan and Program - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity.

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy.

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan. (It need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items.)

(iv) that the applicant has made substantial local efforts to deal with its economic development problems.

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award.

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.)

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) Hiring and Training Plan - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project.

(ii) that attention has been given to necessary supportive services for trainees needing them.

(iii) that a complete training curriculum has been developed and all training resources identified.

(iv) that responsibility has been assigned for all phases of the training program.

(v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) IMPACT - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) Leverage - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least two private non-CDBG dollars for each dollar of CDBG funds requested (a 2:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, Community A has the highest leverage ratio ($6 of non-CDBG funds for each $1 of CDBG funds, a 6:1 ratio) and Community B has a 2:1 leverage, Community A would receive the maximum score and Community B and all other applicants would be relatively scored against Community

(b) CDBG Dollars Per Job - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used

(exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the Local Government Division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or $15,000 per job created or retained.

(c) Type of Jobs - (50 Points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.

(d) Overall Economic Impact - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

(i) the size of the additional payroll expected to be generated for the jobs created or retained by the program.

(ii) the total number of jobs to be created or retained;

(iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state).

(iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.

(v) The applicant demonstrating the greatest positive impact will be scored highest. All other applicants will be ranked correspondingly.

(vi) When applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

(4) BENEFIT TO LOW AND MODERATE INCOME PERSONS - (200 points)

(a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

(b) The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.

(c) To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income.

[2.110.2.26 NMAC – Rp 2 NMAC 110.2.26, 08-30-01]

HISTORY OF 2.110.2 NMAC:

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

DFA Rule 85-3, State of New Mexico Regulations Governing the 1986 Small Cities Community Development Block Grant Program and 1985 New Mexico Community Assistance Program, 10-4-85.

DFA Rule 87-3, State of New Mexico 1988 Small Cities Community Development Block Grant Program New Mexico Community Assistance Program Application Regulations, 12-4-87.

DFA Rule 89-3, 1989 Small Cities Community Development Block Grant Program New Mexico Community Assistance Program Applications Regulations, 3-22-89.

DFA Rule 90-1, 1990 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 12-28-89.

DFA #91-1, 1991-1992 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 1-14-92.

DFA #93-1, 1993 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 7-9-93.

DFA-LGD No. 93-1, 1994 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 6-13-94.

DFA-LGD Rule No. 95-1, 1995 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 5-31-95.

DFA-LGD Rule No. 95-2, 1996 Small Cities Community Development Block Grant Application Regulations.

History of Repealed Material:

2 NMAC 110.2, Small Cities Community Development Block Grant - Repealed, 08-30-01.

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.4 NMAC, section 19.

19.31.4.19 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.18 promulgated by the State Game Commission on September 15, 1994, I, LARRY G. BELL, Director of the Department of Game and Fish, hereby declare that an emergency exists in Willow Lake in Eddy County to the extent that fish life will be destroyed by draining the lake due to sale of the Willow Lake water rights to the State of New Mexico. Therefore, the method and manner of taking game fish will be relaxed to allow use of the regular method and manner of taking game fish plus grappling, spears, gigs, bows, and seines for all licensed anglers and unlicensed juvenile anglers under the age of 12 years, with daily bag and possession limits mandated by regulation also being relaxed. Bag limits on game fish taken from Willow Lake will be unlimited. This relaxation will go into effect at 12:01 a.m., Aug 15, 2001, and will remain in effect through 11:59 p.m., Oct. 15, 2001.

[19.31.4.19 NMAC – N, 8-15-01]

NEW MEXICO DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION

This Part 7 NMAC 30.2, Title X Family Planning Services, filed October 18, 1996 is hereby repealed and replaced by 7.30.2 NMAC, effective August 30, 2001.

NEW MEXICO DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION

TITLE 7 HEALTH
CHAPTER 30 FAMILY AND CHILDREN HEALTH CARE SERVICES
PART 2 TITLE X FAMILY PLANNING SERVICES

7.30.2.1 ISSUING AGENCY: New Mexico Department of Health, Public Health Division, Family Health Bureau.

[7.30.2.1 NMAC - Rp 7 NMAC 30.2.1, 08/30/01]

7.30.2.2 SCOPE: All state agencies, or any recipients of Title X funding.
[7.30.2.2 NMAC – Rp 7 NMAC 30.2 2, 08/30/01]

7.30.2.3 STATUTORY AUTHORITY: The statutory authority for these regulations is contained in Sections 2-1-8-1 to 24-8-8, NMSA 1978 and Sections 9-7-6 and 9-7-12, NMSA 1978. The regulations are promulgated by the Secretary of the Department of Health by authority of Sections 9-7-6 and 9-7-12, NMSA 1978 and the New Mexico Family Planning Act, Sections 24-8-1 to 24-8-8, NMSA 1978. Administration is the responsibility of the Public Health Division of the Department of Health.
[7.30.2.3 NMAC – Rp 7 NMAC 30.2.3, 08/30/01]

7.30.2.4 DURATION: Permanent.
[7.30.2.4 NMAC – Rp 7 NMAC 30.2.4, 08/30/01]

7.30.2.5 EFFECTIVE DATE: August 30, 2001 unless a later date is cited at the end of a Section.
[7.30.2.5 NMAC – Rp 7 NMAC 30.2.5, 08/30/01]

7.30.2.6 OBJECTIVE: These regulations implement the federal-state relationship in Title X family planning services.
[7.30.2.6 NMAC – Rp 7 NMAC 30.2.6, 08/30/01]

7.30.2.7 DEFINITIONS:

A. "Can" is permissive and means options, suggestions, and alternatives for consideration by individual providers.

B. "Client" means any person for whom a medical record is established.

C. "Eligible persons "means all persons presenting for program services.

D. "Grantee" means the New Mexico Department of Health.

E. "May" is permissive and means options, suggestions, and alternatives for consideration by individual providers.

F. "Must "means mandatory program policy.

G. "Project "means the activities described in the grantee's grant application and supported under the approved Title X budget.

H. "Provider "means either contractor entities, provider agreement sites or grantee field offices which offer program services.

I. "Service Sites" means those entities actually providing services onsite under a provider.

J. "Shall" means a mandatory program policy.

K. "Should" means recommended program policy relating to components of family planning and project management that the provider is urged to utilize in order to fulfill the intent of Title X.
[7.30.2.7 NMAC – Rp 7 NMAC 30.2.7, 08/30/01]

7.30.2.8 GENERAL PROVISIONS:

A. FEDERAL RELATIONSHIP: The Department of Health is the Title X grantee for New Mexico. References to "grantee" in federal regulations, federal grants administration manuals, these regulations and various documents shall mean the New Mexico Department of Health.

B. CONFORMITY WITH FEDERAL REGULATIONS: These regulations are intended to be consistent with federal regulations on the Title X family planning program at 42 CFR Parts 50 and 59. Interpretation shall not be inconsistent with interpretive guidelines issued by the Bureau of Community Health Services, United States Department of Health and Human Services and the federal program guidelines as adjusted to state needs found as an appendix to these regulations.

C. OTHER REGULATIONS: These regulations are subject to the applicable provisions of other regulations as follows:

(1) General Services Department and Department of Finance and Administration Regulations with respect to the New Mexico Procurement Code.

(2) Department of Health Regulations Governing Promulgation of Regulations, and Governing Public Access to Information in the grantee's records.
[7.30.2.8 NMAC – Rp 7 NMAC 30.2.8, 08/30/01]

7.30.2.9 INTRODUCTION TO THE PROGRAM GUIDELINES: The document, Program Guidelines for Project Grants for Family Planning Services (Guidelines), has been developed by the Office of Population Affairs (OPA), U.S. Department of Health and Human Services (DHHS), to assist current and prospective grantees in understanding and utilizing the family planning services grants program authorized by Title X of the Public Health Service Act, 42 U.S.C. 300, et seq. The Office of Population Affairs also provides more detailed guidance, updated clinical information and clarification of specific program issues in the form of periodic Program Instructions to the Regional Offices. This document is organized into two parts. Part I (sections 1-6) covers project management and administration, including the grant application and award process. Part II (sections 7-11) covers client services and clinic management. Reference is made throughout the document to specific sections of the Title X law and implementing regulations, which are contained in Attachments A and B, respectively. (Reference to specific sections of the regulations will appear in brackets, e.g., [45 CFR Part 74, Subpart C].) Federal sterilization regulations are contained in Attachment C. The DHHS regional offices are listed in Attachment D. Selected other materials that provide additional guidance in specific areas are listed in Attachment E.

A. THE LAW, REGULATIONS, and GUIDELINES: To enable persons who want to obtain family planning care to have access to such services, Congress enacted the Family Planning Services and Population Research Act of 1970 (Public Law 91-572), which added Title X, "Population Research and Voluntary Family Planning Programs" to the Public Health Service Act. Section 1001 of the Act (as amended) authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)" (see Attachment A). The mission of Title X is to provide individuals the information and means to exercise personal choice in determining the number and spacing of their children. The regulations governing Title X [42 CFR Part 59, Subpart A] set out the requirements of the Secretary, Department of Health and Human Services, for the provision of family planning services funded under Title X and implement the statute as authorized under Section 1001 of the Public Health Service Act. Prospective applicants and grantees should refer to the regulations (see Attachment B). This document, Program Guidelines for Project Grants for Family Planning Services, provides a general orientation to the Federal perspective on family planning.

B. THE APPLICATION PROCESS

(1) ELIGIBILITY: Any public or nonprofit private entity located in a state is eligible to apply for a Title X family

planning services project grant [59.2, 59.3]. Grants will be made to public and non-profit private entities to foster projects most responsive to local needs. A non-profit private agency, institution, or organization must furnish evidence of its non-profit status in accordance with instructions accompanying the project grant application form. Under the law, grants cannot be made to entities that propose to offer only a single method or an unduly limited number of family planning methods. A facility or entity offering a single method can receive assistance under Title X by participating as a delegate/contract agency in an approvable project that offers a broad range of acceptable and effective medically approved family planning methods and services [59.5(a)(1)].

(2) NEEDS ASSESSMENT: An assessment of the need for family planning services must be conducted prior to applying for a competitive grant award. The needs assessment documents the need for family planning services for persons in the service area and should include:

(a) Description of the geographic area including a discussion of potential geographic, topographic, and other related barriers to service;

(b) Demographic description of the service area including objective data pertaining to individuals in need of family planning services, maternal and infant morbidity/mortality rates, birth rates and rates of unintended pregnancies by age groups, poverty status of the populations to be served, cultural and linguistic barriers to services, etc.;

(c) Description of existing services and need for additional family planning services to meet community/cultural needs;

(d) Need indicators that include rates of STDs and HIV prevalence (including perinatal infection rates) in the grantee area;

(e) Identification and descriptions of linkages with other resources related to reproductive health; and

(f) Identification and discussion of high priority populations and target areas. Grantees should perform periodic reassessment of service needs. Competitive grant applications must include a full and updated needs assessment.

(3) THE APPLICATION: The Department of Health and Human Services' Office of Population Affairs administers the Title X Family Planning Program through the DHHS Regional Offices. An annual announcement of the availability of Title X service grant funds sets forth specific application requirements and evaluation criteria. Applications must be submitted to the DHHS, Office of Grants Management for Family Planning Services on the form required by the Department. The application forms are available from the Office of Grants Management for Family Planning Services. Assistance regarding programmatic aspects of proposal preparation is available from the Regional Office. For assistance with administrative and budgeting aspects of proposal preparation, contact the Office of Grants Management for Family Planning Services. Unless otherwise instructed, applicants are to respond to the standard instructions contained in the application kit and to the Public Health Service supplemental instructions. An application must contain:

(a) a needs assessment;

(b) a narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations;

(c) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested [59.4(c)(2)] and which is consistent with the terms of Section 1006 of the Act, as implemented by regulation [59.7(b)];

(d) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project;

(e) project objectives that are specific, realistic, and measurable;

(f) other pertinent information as required [59.4(c)(4)]; and

(g) the application must address all points contained in section 59.7(a) of the regulations, which are the criteria DHHS Regional Offices will use to decide which family planning projects to fund and in what amount. The application shall not include activities that cannot be funded under Title X, such as abortion, fundraising, or lobbying activities.

(4) PROJECT REQUIREMENTS: Projects must adhere to:

(a) Section 59.5 and all other applicable provisions of the regulations, which list the requirements to be met by each project supported by Title X. (See Attachment B)

(b) The applicable requirements of these Program Guidelines for Project Grants for Family Planning Services.

(c) Other Federal regulations which apply to grants made under Title X [59.10]. For assistance in identifying other relevant regulations, contact the Regional Office.

(5) NOTICE OF GRANT AWARD: The notice of grant award will inform the grantee how long DHHS intends to support the project without requiring it to recompete for funds [59.8]. This period of funding is called the "project period." The project will be funded in increments called "budget periods." The budget period is normally twelve months, although shorter or longer budget periods may be established for compelling administrative or programmatic reasons.

(6) GRANT ADMINISTRATION: All grantees must comply with the applicable legislative, regulatory and administrative requirements described in the Public Health Service Grants Policy Statement. A copy of the Public Health Service Grants Policy Statement may be obtained from the Office of Grants Management for Family Planning Services. [7.30.2.9 NMAC – N, 08/30/01]

7.30.2.10 LEGAL ISSUES:

A. VOLUNTARY PARTICIPATION: Use by any individual of project services must be solely on a voluntary basis. Individuals must not be subjected to coercion to receive services or to use or not to use any particular method of family planning. Acceptance of family planning services must not be a requirement to eligibility for or receipt of any other service or assistance from or participation in any other programs of the provider. Provider staff shall be informed that they shall not coerce or endeavor to coerce any person regarding issues of abortion or sterilization. Personnel in violation of federal regulation at 42 CFR 50.205 may be subject to legal action.

B. CONFIDENTIALITY: Every provider must assure client confidentiality and provide safeguards for individuals against the invasion of personal privacy, as required by all applicable laws and regulations. No information obtained by the provider staff about individuals receiving services may be disclosed without the individual's written consent, except as required by law or as necessary to provide services to the individual, with appropriate safeguards for confidentiality. Information may otherwise be disclosed only in summary, statistical, or other form that does not identify the individual.

C. CONFLICT OF INTEREST: Grantees and providers must establish policies to prevent employees, consultants, or members of governing or advisory bodies from using their positions for purposes of private gain for themselves or for others.

D. LIABILITY COVERAGE: Grantees and providers must ensure

the existence of adequate liability coverage for all segments of the program funded under the grant, including all individuals providing services. Governing boards must obtain liability coverage for their members.

E. HUMAN SUBJECTS CLEARANCE (RESEARCH): Grantees and providers considering clinical or sociological research must adhere to the legal requirements governing human subjects research at 45 CFR Part 46, as applicable. Providers must advise the grantee in writing of research projects involving Title X clients or resources. Grantee in turn must advise DHHS regional office. In order to provide for the adequate discharge of this institutional responsibility, provider and grantee must furnish written assurances of compliance with DHHS policy regarding the protection of human subjects, and approval of the research by a properly constituted committee of the research entity.

F. NONDISCRIMINATION: All family planning services will be provided in accordance with all legal and constitutional requirements and grantee policy and will be provided without regard to age, gender, ethnic origin, religion, handicap, marital status, sexual preference, or number of pregnancies, except as determined by statute or as otherwise validly specified in program regulations. Services must be provided in a manner which protects the dignity and rights of the individual.
[7.30.2.10 NMAC – Rp 7 NMAC 30.2.10, 08/30/01]

7.30.2.11 NEW MEXICO POLICY:

A. MAINTENANCE OF REGULATIONS MANUAL: The grantee shall maintain a manual containing these regulations and policies governing all Title X family planning services. The grantee shall develop all relevant documents consistent with the intent of these regulations.

B. COORDINATION WITH COMMUNITIES: The grantee will promote communication and coordination with communities, community organizations, providers, consumers, client advocates and other groups in order to improve and expand the availability of family planning services, subject to available resources.

C. CONTRACTS: In fulfilling the intent of these regulations the grantee may contract with private nonprofit or public entities. The grantee shall monitor activities conducted by the provider. Monitoring of providers shall be according to written criteria, to assure the provision of high quality services and optimum use of available resources. Providers are encouraged to broaden their financial base. Third-party payments should be recovered, when available. The grantee should assist efforts to identify other funding sources.

D. PROPOSALS

(1) Any public or private non-profit entity who meets the specified criteria may submit proposals for funding in response to a request for proposals for family planning services. Providers will conduct a needs assessment as part of the application process.

(2) The grantee shall outline the application process to include the contents of the application, budget details, standards, requirements and other pertinent information.

(3) Providers awarded funds under the program must comply with guidelines, rules, regulations, and statutes governing the program.

(4) Applicants should be notified of funding decisions as soon as possible, preferably 30 days prior to the beginning of the contract period.

E. PROVIDER AGREEMENTS: Family planning services under Title X grant authority may be offered by grantee directly or by providers operating under the umbrella of the grantee. Grantee shall negotiate a written agreement with each provider and establish written standards and guidelines consistent with the appropriate sections(s) of the DHHS Program Guidelines for Project Grants for Family Planning Services for all delegated services. If a provider wishes to subcontract any of its responsibilities or services, or if special service providers are utilized, e.g., providers of fertility awareness methods including natural family planning, a written negotiated agreement approved by grantee must be maintained by the provider.

F. ACCESS: The grantee and providers will design services in such a manner as to lessen financial, geographic, and psychological barriers to access to family planning services. Providers may arrange for or provide reasonable transportation services for clients who otherwise would not have access to family planning services.

G. CULTURALLY RELEVANT: Family planning services are to be provided in a culturally relevant manner.

H. PRIORITIES: In the case of limited resources, providers shall prioritize services to emphasize women who will experience high medical risk if pregnant, particularly:

(1) Adolescent women

(2) Women over the age of 35

(3) Women with a history of pregnancy difficulties

(4) Women with pregnancies spaced less than two years apart; and

(5) Women whose income is at or below 150% of poverty.

I. RECIPIENTS OF SERVICES: Services should be extended, in many cases, beyond the immediate client to other significant persons in the client life.

J. EDUCATIONAL SERVICES FOR PARENTS: Family planning providers may provide educational services to parents to assist them to become the primary sex educators of their children.

K. VOLUNTEERS: Family planning providers may use volunteers who are appropriately screened and trained as a means of complementing family planning services. Providers shall assure that liability coverage includes use of volunteers.

L. CHILD ABUSE REPORTING: All family planning providers must comply with New Mexico's statutory reporting requirements for suspected child abuse and neglect.
[7.30.2.11 NMAC – Rp 7 NMAC 30.2.9, 08/30/01]

7.30.2.12 PROJECT MANAGEMENT:

A. STRUCTURE OF THE GRANTEE: Family planning services under Title X grant authority may be offered by grantees directly and/or by delegate/contract agencies operating under the umbrella of the grantee. However, the grantee is responsible for the quality, cost, accessibility, acceptability, reporting and performance of the grant-funded activities provided by delegate/contract agencies. Grantees must therefore have a negotiated, written agreement with each delegate/contract agency and establish written standards and guidelines for all delegated project activities consistent with the appropriate section(s) of the Program Guidelines for Project Grants for Family Planning Services, as well as other applicable requirements such as Subpart C of 45 CFR Part 74, or Subpart C of 45 CFR Part 92. If a delegate/contract wishes to subcontract any of its responsibilities or services, a written negotiated agreement that is consistent with Title X requirements and approved by the grantee must be maintained by the delegate/contractor. Delegate/contract agencies should be invited to participate in the establishment of grantee standards and guidelines.

B. PLANNING AND EVALUATION: All providers receiving Title X funds must provide services of high quality and be competently and efficiently administered. To assist in meeting these requirements, grantee must include a plan, which identifies overall goals and specific measurable objectives for the coming year. The objective may be directed to all clients or to specific groups of clients and should

be consistent with Title X objectives. The health care plan must include an evaluation component that addresses and defines indicators by which the project intends to evaluate itself. The health care plans for all providers must be incorporated into the grantee health care plan. These plans will be reviewed regularly by grantee and be updated periodically to assure project effectiveness.

C. FINANCIAL MANAGEMENT

(1) STANDARD: Grantee must maintain a financial management system that meets the standards specified in Subpart C. of 45 CFR 74 or Subpart C of 45 CFR Part 92, Administration of Grants, and complies with federal standards to safeguard the use of funds. Documentation and records of all income and expenditures must be maintained as required.

(2) Charges, Billing, and Collections: The grantee shall require providers to implement policies and procedures for charging, billing, and collecting funds for the services provided. Billing and collection procedures must meet the following requirements:

(a) Charges are based on a cost analysis of all services provided by the providers. Bills are given directly to the client or to another payment source such as Title XIX, Title XX, or private insurance.

(b) A schedule of discounts is required for individuals with family incomes between 101% and 250% of the federal poverty level based on family size, income, and other economic considerations specified in federal regulations. Fees must be waived for individuals with family incomes above this amount who, as determined by the service site director, are unable, for good cause, to pay for family planning services.

(c) Clients whose documented income is at or below 100% of poverty are not billed, although providers must bill all third parties legally obligated to pay for services.

(d) Individual eligibility for a discount must be documented in the client's record.

(e) Bills to third parties shall show total charges without applying any discount.

(f) Where reimbursement is available from Title XIX or Title XX of the Social Security Act, a written agreement is required.

(g) At the time of services, clients who are responsible for paying any fee for their services must be given bills directly. Bills to clients show total charges less any allowable discounts.`

(h) Bills for minors obtaining confidential services shall be based on the income of the minor.

(i) Reasonable efforts to collect billing including mailing of bills when client confidentiality is not jeopardized.

(j) A method for the "aging" of outstanding accounts is to be established.

(k) Clients must not be denied services or be subjected to any variation quality of services because of inability to pay. Client income should be evaluated at least annually.

(3) Financial Audit: Providers must have an annual audit performed by auditors meeting established criteria for qualifications and independence. Copies of the audits must be submitted to the grantee.

(4) Title X Family Planning clinic staff may ask that clients consider making contributions toward the cost of their services. Donations may be accepted from clients as long as the clinic can demonstrate that the donations are truly voluntary. There shall be no "schedule of donations", no billing for donations and no stated or implied coercion involved. Oral requests for donation may be made only following completion of services.

D. FACILITIES AND ACCESSIBILITY OF SERVICES

(1) Family planning facilities and services should be geographically accessible to the population served and should be available at times convenient to those seeking services, i.e., evening and/or weekend hours in addition to daytime hours. The facilities should be adequate to provide the necessary services and should be designed to ensure comfort and privacy for clients and to expedite the work of the staff. Facilities must meet applicable standards established by Federal, state and local governments.

(2) Providers must comply with 45 CFR, Part 84, which prohibits discrimination on the basis of handicap in federal assisted programs and activities, and which requires, among other things, that recipients of federal funds operate their federally assisted programs so that, when viewed in their entirety they are readily accessible to people with disabilities. Projects must also comply with any applicable provisions of the Americans Disabilities Act (42 USC 12101, et seg.).

(3) Emergency situations may occur at any time. All projects must therefore have written plans and procedures for the management of emergencies.

E. PERSONNEL

(1) The grantee requires that providers must establish and maintain written personnel policies that comply with Federal and State requirements and Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, and Title I of the Americans with Disabilities Act. These policies shall include but need not be limited to staff recruitment, selection, performance evaluation, promotion, termination, compensation, benefits, and grievance procedures. Project staff should be broadly representative of all significant elements of the population to be served by the project, and should be sensitive to and able to deal effectively with the cultural and other characteristics of the client population.

(2) The grantee shall also ensure that the project is administered by a qualified project director.

(a) That the medical care component of each provider operates under the supervision and responsibility of a medical director who is a licensed and qualified physician with special training or experience in family planning;

(b) That when health professionals other than physicians (e.g., nurse practitioners) perform delegated medical functions they do so under protocols and/or standing orders approved by the medical director;

(c) That personnel records be kept confidential;

(d) That job descriptions be available for all positions, and that these be reviewed annually and updated when necessary to reflect changes in duties;

(e) That an evaluation and review of the job performance of all provider personnel be conducted annually. Licenses of applicants for positions requiring licensure are verified prior to employment and that there is documentation that licenses are kept current.

F. TRAINING AND TECHNICAL ASSISTANCE: The providers must offer orientation and in-service training for all personnel, and must insure that all employees providing services are licensed in good standing by the appropriate licensing authority. The grantee shall provide an in-service capability and prepare a training plan for skills development and/or continuing education based on an assessment of training needs. Personnel should participate in continuing education related to their activities, including on-the-job training, workshops, institutes, and courses. Documentation of attendance should be kept for use in evaluating the scope of effectiveness of the staff training program.

G. REPORTING REQUIREMENTS: Providers must comply with the financial and other reporting requirements of 45 CFR Part 74 or 45 CFR part 92, as applicable and comply with other reporting requirements as

required by DHHS.

H. REVIEW AND APPROVAL OF INFORMATIONAL AND EDUCATIONAL MATERIALS

(1) A statewide advisory committee of five to nine members (the size of the committee can differ from these limits with written documentation and approval from the Regional Office) who are broadly representative must review and approve all informational and educational (I and E) materials developed or made available by the providers prior to their distribution to assure that the materials are suitable for the population and community for which they are intended and to assure their consistency with the purposes of Title X.

(2) This committee shall consider the educational and cultural backgrounds of the individuals to whom the materials are addressed, consider the standards of the population or community to be served with respect to such materials, review the content of the material to assure that the information is suitable for the population or community to which it is to be made available, and establish a written record of its determinations.

(3) The committee may delegate responsibility for the review of the factual, technical, and clinical accuracy technical materials (e.g., medical) to appropriate persons or groups, but final responsibility and authority for the approval of I and E materials rests with the committee.

I. COMMUNITY PARTICIPATION, EDUCATION, AND PROJECT PROMOTION

(1) Community Participation

(a) The grantee and providers shall offer, to the maximum extent feasible, an opportunity for participation in the development, implementation, and evaluation of the providers by persons broadly representative of all significant elements of the population to be served, and by persons in the community knowledgeable about the community's needs for family planning services.

(b) The Information and Education advisory committee may be utilized to serve the community participation function or a separate group may be identified. In either case, the grantee health care plan shall include a plan for community participation, and by-laws or guidelines for these activities should be prepared. The community participation committee shall meet at least annually or more often if appropriate.

(2) Community Education

(a) Each family planning provider must plan to provide for community education. This should be based on an assessment of the needs of the community and should contain an implementation and evaluation strategy. Community education can be directed toward identifying local agencies and institutions which are likely to serve significant numbers of individuals in need of family planning care, such as schools, postpartum clinics, abortion services, mental health facilities, and clinics for the management of sexually transmitted diseases. Providers should offer orientation sessions for the staffs of these related health and social services in order to help them better counsel and refer potential family planning clients.

(b) Efforts can also be directed toward more general community education about family planning, such as values clarification with regard to family planning, family life, and human sexuality. A variety of approaches should be used, depending on the objectives of the program and the intended audiences. Some examples of techniques are individual contacts by outreach workers, more formal programs or discussions for larger groups or classes, and the use of public service announcements and posters.

(c) Community education should be designed to enhance community understanding of the objectives of the program, make known the availability of service to potential clients, and encourage continued participation by persons to whom family planning may be beneficial.

(3) Program Promotion: To facilitate community awareness of and access to family planning services, providers must establish and implement planned activities whereby their services are made known to the community. In planning for program promotion, providers should review a range of strategies and assess the availability of existing resources and materials. The participation of elected, civic, health, and education leaders, youth agency representatives, as well as users of services, should be solicited. Program promotion activities should be reviewed annually, updated periodically and reflect the changing needs of the community.

J. PUBLICATIONS AND COPYRIGHT: Publications resulting from activities conducted under the grant shall be submitted to the grantee for prior approval. The word "publication" is defined to include computer software. The grantee and providers should assure that publications developed under Title X do not contain information which is contrary to program requirements or to accepted medical practice. Federal grant support must be acknowledged in any publication. Except as otherwise provided in the conditions of the grant award, the author is free to arrange for copyright without DHHS approval of publications, films, or similar materials developed from work supported by DHHS. Restrictions on motion picture film production are outlined in the Public Health Service Grants Policy Statement. Any such copyrighted materials shall be subject to a royalty-free, non-exclusive, and irrevocable license or right to the federal and state governments to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

K. INVENTIONS AND DISCOVERIES: Family planning providers must comply with Government-wide regulations, 37 CFR Part 401, which apply to the rights to inventions made under government grants, contracts and cooperative agreements.

[7.30.2.12 NMAC – Rp 7 NMAC 30.2.10, 08/30/01]

7.30.2.13 CLIENT SERVICES: Providers funded under Title X must provide medical, social, and referral services relating to family planning to all eligible clients who desire such services. Grantee should furnish guidance to providers as to those services which are required, recommended, or related to fulfill the mission and intent of Title X. The required services are those services which are stipulated either in the law or the regulations, or which are otherwise considered essential to the provision of family planning services of high quality. The recommended services are those services intended to promote the reproductive and general health care of the family planning client population. The related services are those services which are not authorized under Title X but which may be offered by providers in order to meet the specific reproduction-related health needs of the family planning client.

A. SERVICE PLANS AND PROTOCOLS

(1) The grantee will develop a service plan which identifies those services to be provided to clients under Title X. All providers must have written protocols, approved by the grantee, which detail specific procedures for the provision of each service offered. Plans must be written in accordance with these guidelines, current medical practice, and sound counseling and educational practices. The service plan must cover the services provided at initial visits, annual revisits, and other revisits, including supply and problem revisits.

(2) Under exceptional circumstances a provider may request of grantee that a particular requirement in the guidelines be waived. In submitting such a request, the provider must present epidemiologic, clinical, and other supportive data to justify the request and the duration of the

waiver. The grantee will respond to the provider within 30 days directly with approval or disapproval if this is allowable within federal guidelines, or submit a waiver request to the regional office if it agrees with the waiver request but is not authorized to grant it directly.

B. PROCEDURAL OUTLINE

(1) The services to family planning clients and the sequence in which they are delivered will depend upon the type of visit and the nature of the service requested. However, the following components must be offered to all clients at the initial visit: presentation of relevant educational materials; initial counseling; explanation of all procedures and signing of an informed consent covering examination and treatment; obtaining of a personal and family history; performance of physical examination; performance of routine and other laboratory tests; individual counseling; performance of any necessary medical procedures; provision of medications and/or supplies; exit counseling. Return visits should include an assessment of the client's health status and contraceptive technique and an opportunity to change methods. The following components must be offered to and documented on all clients at the return visit: updating history, performance of physical examination, performance of routine and other indicated laboratory tests, planned mechanism for client follow-up, performance of any necessary clinical procedures, provision of medications and/or supplies as needed, and provision of referrals as needed.

(2) For clients electing nonprescription methods of contraception or fertility awareness methods including natural family planning, the initial required medical work-up may be deferred at their request, with appropriate documentation in the medical record. Such clients should be encouraged to have health screening at return visits.

C. EMERGENCIES: Emergency situations involving clients and/or staff may occur at any time. Therefore, all providers must have written plans and procedures for the management of on-site medical emergencies (e.g., vasovagal reactions, anaphylaxis, syncope cardiac arrest, shock, hemorrhage, and respiratory difficulties) with which project staff are familiar. Written plans and procedures should also be available for emergencies requiring ambulance services and/or hospital treatment. Information and instructions on dealing with fire, natural disaster, robbery, power failure, harassment, after hours management of contraceptive emergencies and other emergency situations should also be available, and appropriate training in these areas including CPR should be provided to staff. There must be at least one individual currently certified in basic CPR available on the premises during clinic sessions. All staff must be familiar with these plans.

D. REFERRALS AND FOLLOW-UP

(1) Providers must offer all family planning services listed in section 7.30.2.14 Required Services, either on-site or by referral. When required services are to be provided by referral, the provider must establish formal arrangements with a referral agency for the provision of services and reimbursement of costs, as appropriate. Title X funds may be used to cover the cost of these referred services only if no other sources of funds are available.

(2) For other than required services, that is, services which are determined to be necessary but which are beyond the scope of the program, clients should be referred to other providers for care. Examples of such referral are: treatment for gynecologic dysplasia or malignancy, pregnancy management, family or general medical practice, general surgery, genetic testing, dentistry, mental health services, marriage/sexual counseling, services related to abortion and other social services. Service sites must maintain a list of health care providers, local health and human services departments, hospitals, voluntary agencies, and health services projects supported by other federal programs to use for referral purposes. Providers must select referral sources according to procedures which assure fairness in the referral practice and which identify resources of acceptable quality. Whenever possible, clients should be given a choice of providers from which to select.

(3) Providers must have written referral and follow-up policies/procedures. These policies must be sensitive to clients' concerns for confidentiality and privacy. The timing and manner of referral and follow-up depend upon the nature of the problem for which the referral was made. When a client is referred for non-family planning or emergency clinical care, agencies must: Make arrangements for the provision of pertinent client information to the referral provider. Agencies must obtain client's consent to such arrangements, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality; Advise client on their responsibility in complying with the referral; and counsel client on the importance of such referral and the agreed upon method of follow-up.

(4) Providers must make arrangements for the transfer (with client consent) of pertinent client information to the referral sources. In addition, internal systems should be developed to document that recommended referral appointments are made within an appropriate period of time, that these appointments are kept, that referral sources return complete pertinent client information to the provider, action taken in response to recommendations received from the referral source, and any comments the client makes about the referral. Efforts may be made to aid the client in identifying potential resources for reimbursement cost of the referral, but providers are not responsible for the cost of this care. [7.30.2.13 NMAC – Rp 7 NMAC 30.2.10, 08/30/01]

7.30.2.14 REQUIRED SERVICES:

A. APPLICABILITY: The services contained in this part must be provided by all providers funded under Title X.

B. CLIENT EDUCATION: Providers must have written plans for client education that include goals and content outlines, procedures and an evaluation strategy to ensure consistency and accuracy of information provided. Client education must be documented in the client record.

(1) Educational services must provide clients with the information they need to make informed decisions about family planning, to use specific methods of contraception and identify adverse effects, and to understand the importance of recommended screening test and other procedures involved in the family planning clinic visit. On an initial visit clients should be offered information, in language that clients can reasonably be expected to understand, about basic female and male reproductive anatomy and physiology and the value of fertility regulation in maintaining individual and family health. The range of available services and the purpose and sequence of clinic procedures should also be explained.

(2) Clients must be given information needed to make an informed choice regarding contraceptive methods, perform breast/testicular self examination; reduce the risk of transmission of sexually transmitted diseases and Human Immunodeficiency Virus (HIV). Additional education, particularly at subsequent visits, should include information on reproductive health and health promotion/disease prevention including nutrition, exercise, smoking cessation, alcohol and drug abuse, domestic violence and sexual abuse.

(3) The educational approach used should be appropriate to the patient's age, level of knowledge, language, and

socio-cultural background and presented in an unbiased manner. Providers of education should attempt to determine that information given has been understood.

(4) INFORMED CONSENT:

(a) General Consent for Services: The client's written informed voluntary consent to receive the providers' services must be signed by the client prior to his or her receiving any medical services. The form should be written in the primary language of the client or witnessed and co-signed by an interpreter. It should cover all procedures and medications to be provided.

(b) Written informed consent, specific to the contraceptive method, must be signed before a prescription contraceptive method is provided. Prior to implementation, informed consent forms should be approved the service site Medical Director. The consent forms must be written in a language understood by the client or translated and witnessed by an interpreter. To provide informed consent for contraception, the client must receive education on the benefits and risks of the various contraceptive alternatives and details on the safety, effectiveness, potential side effects, complications, and danger signs of the contraceptive method(s) of choice. Forms for each contraceptive method, including sterilization, should be part of the grantee's service plan. All consent forms should contain a statement that the client has been counseled, has read or has had explained the appropriate informational material, and has had the opportunity to ask questions of appropriate personnel. The signed informed consent must be part of the client's record. It should be renewed and updated when there is a major change in the client's health status or a change to a different contraceptive method, and routinely at subsequent visits to reflect current information about that method.

(5) When sterilization services are provided or arranged for with government funding, Federal sterilization informed consent guidelines at 42 CFR Part 50, Subpart B, must be followed (see Attachment C).

C. COUNSELING: The primary purpose of counseling in the family planning setting is to help clients resolve uncertainty, ambivalence, and anxiety in relation to reproductive health and to enhance their capacity to arrive at decisions that reflect their considered self-interest. The counseling process involves mutual sharing of information. Persons who provide counseling should be knowledgeable, objective, nonjudgmental, sensitive to the rights and differences of clients as individuals, culturally aware and able to create an environment in which the client feels comfortable discussing personal information. The counselor's knowledge should be sufficient to provide ample information regarding the risks, benefits, safety, effectiveness, potential side effects, complications, contraindications, effective use of any method, discontinuation issues and danger signs of the various contraceptive methods. Additionally, the counselor should be knowledgeable about procedures, treatment, or option being considered by the client. Documentation of counseling must be included in the client's record.

(1) Method Counseling: Post-examination counseling shall be provided. The purpose of such counseling is to assess whether the client knows the results of the physical examination and laboratory studies that may have a bearing on the choice of method(s); knows how to use and is comfortable with the contraceptive method selected and prescribed; knows the common side effects and possible complications of the method selected and what to do in case they occur; knows how to discontinue the method selected and information regarding back-up method use, including the use of certain oral contraceptives as post-coital emergency contraception, knows the planned return schedule; knows an emergency 24-hour telephone number and a location where emergency services can be obtained; and has received appropriate referral for additional services as needed.

(2) Sexually Transmitted Disease (STD) and HIV Counseling: All clients must receive thorough and accurate counseling on STDs and HIV. STD/HIV counseling refers to an individualized dialogue with a client in which there is a discussion of personal risks for STDs/HIV, and the steps to be taken by the individual to reduce risk, if necessary. Persons found to have behaviors which currently put them at risk for STD/HIV must be given advice regarding risk reduction and must be advised whether clinical evaluation is indicated. All projects must offer, at a minimum, education about HIV infection and AIDS, information on risks and infection prevention, and referral services. On an optional basis, clinics may also provide HIV risk assessment, counseling and testing by specially trained staff. When the project does not offer these optional services, the project must provide the client with a list of health care providers who can provide these services.

D. HISTORY, PHYSICAL ASSESSEMENT, AND LABORATORY TESTING

(1) History

(a) A comprehensive personal history and a pertinent history of immediate family members must be obtained on all female and male clients. This should be done at the Initial medical visit. The history must be updated at subsequent clinical visits. Histories are recommended for all male clients and are required for those requesting medical services. The comprehensive medical history must address the following areas: Allergies; immunizations, especially rubella; current use of prescription and over-the-counter medications; significant illnesses; hospitalizations; surgery; review of systems; extent of use of tobacco, alcohol, and other drugs, blood transfusions or exposure to blood products, pertinent history of immediate family members. A partner history must include injectable drug use, multiple partners, risk history of STDs and HIV and bisexuality.

(b) Histories of reproductive function in female patients must include: Menstrual history; sexual history; sexually transmitted diseases including HBV; contraceptive use; pregnancies; in utero exposure to DES, pap smear history (date of last Pap, any abnormal Pap, treatment), gynecological conditions and HIV.

(c) On medical revisits, oral contraceptive users must be asked about symptoms of embolic disease and other major complications and side effects. IUD users must be asked, in particular, about symptoms of pelvic infection

(d) The male reproductive history must include: Sexual history; sexually transmitted diseases (including HBV) fertility; in utero exposure to DES, HIV, and Urological conditions.

(2) Physical Assessment (female)

(a) Female family planning clients must have a general physical examination at the initial medical visit and annually thereafter. The examinations must include at least the following: Height; weight; blood pressure; thyroid; heart; lungs; extremities; breasts, including instruction in self-exam; abdomen; pelvic examination, including visualization of the cervix and bimanual exam; and rectal exam, as indicated.

(b) Family Planning Clinics must provide and encourage clients to use health maintenance screening procedures, initially and as indicated. Clinics must provide and stress the importance of the following to all clients: blood pressure evaluation, breast exam, pelvic examination which includes, vulvar evaluation, and bimanual exam, pap smear, colo-rectal cancer screening in individuals over 40 and STD and HIV screening, as indicated.

(c) In the case of the client who exhibits extreme fear, portions of the physical examination may be delayed

until later visits, and must be documented in record. All physical examination and laboratory test requirements stipulated in the prescribing information for specific methods of contraception must be followed. Physical examination and related prevention services should not be deferred beyond 3 months after the initial visit, and in no case may be deferred beyond 6 months, unless if in the clinician's judgement there is a compelling reason for extending the deferral. All deferrals, including the reason(s) for deferral, must be documented in the client record. Project protocols must be developed accordingly.

(3) Physical Assessment (male):Male clients requesting temporary methods of contraception are not required to have physical examination, but should be offered this service, to include: Height; weight; blood pressure; thyroid; heart; lungs; breasts, abdomen; extremities, examination of the genitals and rectum, including palpation of the prostate and instruction in self-exam of the testes. Family Planning Clinics must stress the importance of the following to male clients: blood pressure evaluation, colo-rectal cancer screening in individuals over 40 and STD and HIV screening, as indicated.

E. LABORATORY TESTING

(1) The following laboratory procedures should be done on-site for all female clients at the initial visit and must be done for those receiving prescription methods. Minimum requirements are outlined in 7.30.2.17. They may be waived if written results of these tests done within six months at another facility are available:

(a) Hemoglobin (Hgb) hematocrit (Hct)

(b) Pap smear

(c) Urinalysis (dipstick adequate) (if indicated)

(d) Gonorrhea culture for clients requesting IUD insertion

(e) In addition, pregnancy testing and gonorrhea screening must be available and provided upon request

(f) Initial laboratory procedures shall be repeated annually or as indicated

(g) Gram stains and cultures for gonorrhea, and other laboratory tests as indicated, should be available for male clients.

(2) Every effort should be made to assure that laboratory tests performed by or for the clinic are of high quality. This means that the provider should assess the credentials of laboratories with which it contracts. If laboratory testing is performed on-site, written protocols for quality control and appropriate proficiency testing are necessary.

(3) The following procedures and lab tests should be offered by the provider when medically indicated or must be provided if required in the provision of a contraceptive method.

(a) Screening for non-gonococcal sexually transmitted diseases, e.g., syphilis, chlamydia

(b) Microscopic examination of vaginal smears and wet mounts for diagnosis of vaginitis

(c) Microscopic examination and/or culture and sensitivity of urine

(d) Selected laboratory tests, e.g., blood sugar or cholesterol and lipids test for women who are potentially at high risk for oral contraceptive use

(e) Hemagglutination test for rubella, Hepatitis B testing, HIV testing

(f) Other procedures and lab tests may be indicated for some clients and may be provided on-site or by referral.

(4) NOTIFICATION OF ABNORMAL LAB RESULTS: A procedure must be established to allow for client notification and adequate follow-up of significantly abnormal laboratory results. This procedure must respect the client's request to maintain confidentiality. When initial contact is not successful, a reasonable further effort should be made, consistent with the severity of the abnormality.

(5) REVISITS

(a) Revisit schedules should be individualized, based upon the client's need for education, counseling, and medical care beyond that provided at the initial visit. Younger clients and clients initiating a new contraceptive method may need special opportunities for reassurance and clarification. On the other hand, providers should avoid antagonizing well-informed clients who are comfortable with the method being used; such clients should not be required to return for unwanted counseling or frequent supply visits.

(b) Clients initiating oral contraceptives, diaphragms or IUDs must be scheduled for a revisit within three months after initiation of the method to reinforce its proper use, to check for possible side effects, and to provide additional information as needed. Clients selecting diaphragms should be given the same option. A new client who chooses to continue a method in use upon entry to the program need not return for this early revisit unless a need for re-evaluation is determined on the basis for the findings at the initial visit.

(c) Annual revisits are mandatory for all clients and must include at a minimum the components of the history, physical examination, and laboratory procedures as previously specified. The frequency with which specific procedures are to be routinely repeated should be determined by the medical director and documented in the health care plan.

F. FERTILITY REGULATION

(1) Providers must make available, either directly or through referral, all of the DHHS approved methods of contraception.

(2) Temporary Contraception Currently, the temporary methods of contraception include barrier methods (female and male), IUDs, fertility awareness methods including natural family planning, and hormonal contraceptives. More than one method of contraception can be used simultaneously by a client and should be offered if the client requests it, and may be particularly indicated to minimize the risk of STDs/HIV and pregnancy, e.g., the use of two barrier methods, the use of a barrier method with techniques of ovulation detection. Consistent and correct use of condoms should be encouraged for all persons at risk for STDs/HIV. Current FDA guidelines as to relative and absolute contraindications, e.g., package inserts, should be followed.

(3) Permanent Contraception Projects must ascertain that the counseling and consent process assures voluntarism and full knowledge of the permanence, risks, and benefits associated with female and male sterilization procedures. Federal regulations must be met if the sterilization procedure is performed or arranged for by the provider. Sterilization information is available from the grantee.

(4) Emergency Contraception Certain oral contraceptive regimens have been found by the Federal Food and Drug Administration to be safe and effective for use as postcoital emergency contraception when initiated within 72 hours after unprotected intercourse.

G. INFERTILITY SERVICES

(1) Providers are required by law to make basic infertility services available to clients desiring such services. Infertility services, which may be supported by federal funds, are categorized as follows:

(a) Level I includes initial infertility interview, education, examination, appropriate laboratory testing (hemoglobin or hematocrit, pap smear, and culture for gonorrhea), counseling, and appropriate referral;

(b) Level II includes semen analysis, assessment of ovulatory function through basal body temperature

and/or endometrial biopsy, and postcoital testing.

(c) Level III is more sophisticated and complex than Level I and Level II services.

(2) Providers must provide Level I infertility services as a minimum. Those with infertility programs supervised by physicians with special training in infertility can offer Level II Infertility services. Level III services are considered to be beyond the scope of Title X program.

H. PREGNANCY DIAGNOSIS AND COUNSELING

(1) Providers must offer pregnancy diagnosis and counseling to all clients in need of this service. Pregnancy testing is one of the most frequent reasons for an initial visit to the family planning facility, particularly by adolescents. It is therefore important to use this occasion as an entry point for providing education and counseling about family planning.

(2) Pregnancy cannot be accurately diagnosed and staged through laboratory testing alone. Pregnancy diagnosis consists of a history, pregnancy test, and physical assessment, including pelvic examination. Providers which offer pregnancy testing on-site should have available at least one test of high sensitivity. If the medical examination cannot be performed in conjunction with laboratory testing, the client must be counseled as to the importance of receiving a physical assessment as soon as possible, preferably within 15 days. This can be done by the provider or through referral. For those clients with positive pregnancy test results who elect to continue the pregnancy, the examination may be deferred, but should be performed within 30 days. For clients with a negative pregnancy diagnosis the cause of delayed menses should be investigated. If ectopic pregnancy is suspected, the client must be referred for immediate diagnosis and therapy.

(3) Pregnant women must be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended pregnancy are to be given neutral, factual, non-directive counseling on the following alternative courses of action, and referral upon request:

(a) Prenatal care and delivery.

(b) Infant care, foster care or adoption.

(c) Pregnancy termination.

(4) Clients planning to carry their pregnancies to term should be given information about good health practices during early pregnancy. Especially, those which serve to protect the fetus during the first three months (e.g., good nutrition, avoidance of smoking, drugs, and exposure to x-rays) and referral for prenatal care.

(5) Clients who are found not to be pregnant should be given information about the availability of contraceptive and infertility services.

I. ADOLESCENT SERVICES

(1) In order to reduce barriers to access, appointments should be available on short notice to adolescents for counseling and medical services.

(2) Adolescent clients require skilled counseling and age-appropriate information. Many adolescents are seeking information and assistance in reaching personal decisions, including sexuality, interpersonal relationships, and life issues.

(3) Adolescents must be assured that all contacts with the programs are confidential and that any necessary follow-up will assure the privacy and confidentiality of the individual.

(4) Adolescents' decision-making can be enhanced with parental involvement, and parental support can help adolescents follow through with their decisions. Therefore, all counselors should encourage young clients to discuss their concerns with parents, family members, and other concerned individuals. Such family involvement must not, however, be a requirement for the receipt of family planning services.

(5) It is important not to assume that adolescents are sexually active simply because they have come for family planning services. Adolescents seeking family planning services should be informed about all methods of contraception. Abstinence is a valid and responsible option and should be discussed.

(6) Family planning services to adolescents should recognize such issues as

(a) The need to address the frequently changing situations of adolescents.

(b) The importance of education and counseling with respect to interpersonal relationships and life skills.

(c) Education regarding the responsibilities of parenting.

(d) Referring adolescents to services for sexually transmitted diseases.

(e) The fear that adolescents may have of medical procedures.

(f) Improving decisions-making skills and skills in resisting peer pressure.

(7) IDENTIFICATION OF ESTROGEN-EXPOSED OFFSPRING: The daughters and sons of women who received DES or similar hormones during pregnancy may have abnormalities of their reproductive systems or other fertility-related risks. As part of the history, clients born between 1940 and 1970 should be asked to find out whether or not their mothers took estrogens during pregnancy. Clients prenatally exposed to estrogens should receive information/education and special screening either on site or by referral.

[7.30.2.14 NMAC – Rp 7 NMAC 30.2.11, 08/30/01]

7.30.2.15 RELATED SERVICES:

A. APPLICABILITY: Since the services contained in this part are important to reproductive healthcare, it is recommended that they be provided at individual service sites.

B. GYNECOLOGIC SERVICES: Family planning programs should provide for the diagnosis and treatment of minor gynecologic problems so as to avoid fragmentation or lack of medical care for clients with these conditions. Problems such as vaginitis or urinary tract infection may be amenable to on-the-spot diagnosis and treatment, following microscopic examination of urine or vaginal secretions. More complex procedures, such as colposcopy, may be offered, provided that clinicians performing these services have specialized training.

C. SEXUALLY TRANSMITTED DISEASES (STD)

(1) The increasing incidence and prevalence of STDs, particularly among adolescents, requires that family planning projects increase their efforts to provide education and information about the more common STDs and HIV/AIDS. Providers should make available detection and treatment of the more common STDs. At-risk clients should be urged to undergo examination and treatment as indicated, either directly or by referral. When treatment is provided on-site, appropriate follow-up measures must be undertaken.

(2) Gonorrhea and chlamydia tests must be available for clients requesting IUD insertion. Test for gonorrhea, syphilis, chlamydia and HIV should be provided as indicated by client request or evidence of increased risk for infection.

(3) Grantees, contract agencies and provider agreement sites must comply with state and local STD reporting requirements.

D. SPECIAL COUNSELING: Clients should receive special counseling and referral as indicated regarding future planned pregnancies, management of a current pregnancy, sterilization, and other individual problems (e.g., genetic, nutritional, sexual, substance use and abuse, sex-

ual abuse, domestic violence) as indicated. Preconceptional counseling should be provided if the client's history indicates a desired pregnancy in the future.

E. GENETIC INFORMATION AND REFERRAL: Basic information regarding genetic conditions should be offered to family planning clients who request or are in need of such services. Extensive genetic counseling and evaluation is beyond the scope of the Title X program. Referral systems should be in place for those who require further genetic counseling and evaluation.

F. HEALTH PROMOTION/SCREENING PREVENTION: Family Planning programs should, whenever possible, provide or coordinate access to services intended to promote health and prevent disease. Programs are encouraged to assess the health problems prevalent in the populations they serve and to develop strategies to address them.

G. POSTPARTUM CARE: Family planning providers may include postpartum care for uncomplicated cases in collaboration with local agencies or institutions, which provide prenatal and/or intrapartum care. If a family planning provider undertakes responsibility for postpartum care, such care should be directed toward assessment of the woman's physical health, initiation of contraception if desired, and counseling and education related to parenting, breast-feeding, infant care, and family adjustment.

[7.30.2.15 NMAC – Rp 7 NMAC 30.2.11-13, 08/30/01]

7.30.2.16 CLINIC MANAGEMENT:

A. EQUIPMENT AND SUPPLIES: Equipment and supplies shall be safe, adequate, and appropriate to the type of care offered by the provider. Providers are expected to follow applicable Federal and state regulations regarding infection control. It is the responsibility of the medical director to assure proper selection and maintenance of equipment and supplies.

(1) Title to equipment purchased by Title X with an acquisition cost of less than $250.00 belongs to the family planning program where it is currently being used.

(2) Subject to provisions of 45 CFR Part 74, Subpart O, title to equipment with an acquisition cost of $250.00 or more purchased pursuant to a Title X contract belongs to the State of New Mexico. This equipment may continue to be used by the provider for which it was acquired even after the provider no longer receives Title X funds as long as the provider continues to offer low cost family planning services. The grantee may choose, however, to request return of the equipment in order to offer it to a current provider according to the priorities below. In such cases at least 30 days advance notice will be given by the grantee.

(3) Excess equipment purchased pursuant to a Title X contract shall be issued to Family Planning providers in the following priority.

(a) Title X Family Planning service sites

(b) Other government funded family planning service sites

(c) Other low-cost family planning service sites

(d) Other low-cost medical service sites

(4) Excess equipment purchased pursuant to a Title X contract may be issued to non-family planning clinics on a temporary basis. If new family planning programs are initiated or if existing family planning programs need replacement equipment, equipment purchased pursuant to a Title contract may be recalled by the state upon 30 days notice and reissued to family planning clinics.

(5) Equipment purchased pursuant to a Title X contract shall be returned to the state if it is no longer needed in the family planning clinic to which it was issued or for which it was obtained. In this case, the equipment may be reissued according to the priorities stated above. Title X staff shall distribute a list of all excess equipment upon request annually to all low cost family planning providers in the state. The providers may request that equipment items be issued to them. Title X staff will use the priorities listed above for the distribution of this excess equipment.

(6) Providers shall maintain a property and supplies inventory and administer a program of maintenance and repair of assets.

B. PHARMACEUTICALS

(1) Providers must operate in accordance with state and federal laws relating to security and record keeping for drugs and devices. The prescription of pharmaceuticals must be done under the direction of a physician. However, inventory, supply, and provision of pharmaceuticals may be delegated by the medical director to appropriately qualified health professionals in accordance with state laws regarding such delegation.

(2) It is essential that each facility maintain an adequate supply and variety of drugs and devices to meet the contraceptive needs of its clients. If special services are offered that require the dispensing of additional medications, these should also be part of the inventory. Each facility must maintain emergency resuscitative drugs, supplies, and equipment appropriate to the complexity of the program. These should be in a location readily accessible to the examination and treatment rooms. Facilities providing medical services shall, as a minimum, have readily available those elements needed for the treatment of vasovagal shock.

(3) Contraceptive and therapeutic pharmaceuticals must be kept in a secure place, either under direct and continuous observation or locked. Clinics which stock narcotics and tranquilizing drugs must keep records proving count of the medications at the beginning and end of each day during which drug are used. State laws with regard to accountability must be followed. If federal or state statutes pertaining to record keeping, inventory, and dispensing cannot be met by the provider, or if legal standards of good medical care in the performance of the above activities cannot be met, providers should contract for such services.

C. MEDICAL RECORD

(1) Providers must establish a medical record for every client who obtains medical services. These records must be maintained in accordance with accepted medical standards and State laws with regard to record retention. Records must be:

(a) Complete, legible and accurate, including documentation of telephone encounters of a medical nature;

(b) Signed by the physician or other appropriately trained health professional making the entry, including name and title;

(c) Readily accessible;

(d) Systematically organized to facilitate retrieval and compilation of information;

(e) Confidential;

(f) Safeguarded against loss or use by unauthorized persons

(g) Secured by lock when not in use;

(h) Available upon request to client.

(2) Content of the Client Record: The client's medical record must contain sufficient information to identify the client, indicate where and how the client can be contacted, document the clinical impression or diagnosis, and justify the treatment and end results. The required content of the medical record includes:

(a) Personal data

(b) Medical history, physical exam, laboratory test orders, results, and follow up

(c) Treatment and special instructions

(d) Scheduled revisits

(e) Allergies and untoward reactions to drug(s) recorded in a prominent and specific location

(f) Informed consents

(g) Refusal of services, and

(h) The record must also contain reports of clinical findings, diagnostic and therapeutic orders, and documentation of continuing care, referral, and follow-up. The record must allow for entries by the counseling and social service staff. Providers should maintain a problem list at the front of each chart listing identified problems to facilitate continuing evaluation and follow-up. Client financial information should be kept separate from the client medical record. If included in the medical record, client financial information should not be a barrier to client services.

(3) Confidentiality and Release of Records: A confidentiality assurance statement must appear on the client's record. The written consent of the client is required for the release of personally identifiable information, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. HIV information should be handled according to law, and kept separate whenever possible. When information is requested, providers should release only the specific information requested. Information collected for reporting purposes may be disclosed only in summary, statistical, or other form which does not identify particular individuals. Clients transferring to other providers should be provided with a copy of their record to expedite continuity of care.

D. QUALITY ASSURANCE AND AUDIT

(1) Providers must develop a quality assurance system that provides for the continued development and evaluation of their services. The quality assurance system should include:

(a) A health care plan based on community needs assessment which specifies all services to be provided routinely by the provider and which may also include additional services for specific population groups;

An established set of clinical, administrative and programmatic standards by which conformity would be maintained and a process to elicit consumer feedback;

(b) A tracking system to identify clients in need of follow-up and/or continuing care;

(c) Quality review procedures to evaluate each provider's performance, to generate feedback to providers and clients, and to initiate corrective action when deficiencies are noted; Ongoing and systematic documentation of quality assurance activities.

(2) Medical Audits to determine conformity with standards must be an ongoing activity. Periodic review of a reasonable number of client records is an essential part of quality assurance.

[7.30.2.16 NMAC – Rp 7 NMAC 30.2.14, 08/30/01]

7.30.2.17 NMAC MINIMUM REQUIREMENTS FOR ROUTINE FAMILY PLANNING MANAGEMENT

[SEE PAGE 1053]

[7.30.2.17 NMAC - Rp 7NMAC 30.2 Attachment A, 08/30/01]

History of 7.30.2 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

HED-85-3 (HSD), Regulations Governing Title X Family Planning Services, filed 08/12/85.

History of Repealed Material: 7 NMAC 30.2, Family And Children Health Care Services - Title X Family Planning Services, filed 10/18/96 **repealed,** effective 08/30/01.

Other History:

HED-85-3 (HSD), Regulations Governing Title X Family Planning Services, filed 08/12/85 renumbered and reformatted **to and replaced by** 7 NMAC 30.2, Family And Children Health Care Services - Title X Family Planning Services, filed 10/18/96.

7 NMAC 30.2, Family And Children Health Care Services - Title X Family Planning Services, filed 10/18/96; **replaced by** 7.30.2 NMAC, effective 08/30/01.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.311.3 NMAC, Section 13 which will be effective on September 1, 2001.

The Medical Assistance Division made the following amendments:

Language was added in Subparagraph (b) of Paragraph (3) of Subsection A. to include both Medicaid managed care and non-managed care.

8.311.3.13 DISPROPORTIONATE SHARE HOSPITALS: To take into account the situation of hospitals serving a disproportionate number of low-income patients with special needs, a payment will be made to qualifying hospitals.

A. **Criteria for Deeming Hospitals Eligible for a Disproportionate Share Payment:**

(1) Determination of each hospital's eligibility for a disproportionate share payment for the Medicaid inpatient utilization rate as listed below, will be done annually by the department's audit agent, based on the hospitals most recently filed cost report. Hospitals which believe they qualify under the low income utilization rate must submit documentation justifying their qualification. This documentation should be submitted to the Department by March 31 of each year.

(2) In the case of a DRG hospital with a PPS exempt specialty unit, data from the entire facility will be considered to determine DSH status.

(3) The following criteria must be met before a hospital is deemed to be eligible:

(a) **Minimum Criteria:** The hospital must have:

(i) A Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state; or

(ii) A low-income utilization rate exceeding 25 percent. (Refer to 8.311.3.13.A.(3)(b) NMAC for definitions of these criteria.)

(iii) The hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under Medicaid. In the case of a hospital located in a rural area (defined as an area outside of a Metropolitan Statistical Area (MSA), as defined by the U.S. Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform non-emergency obstetric procedures.

(iv) 8.311.3.13.A.(3)(iii) NMAC does not apply to a hospital which meets the following criteria: The inpatients are predominantly individuals under 18 years of age; or the hospital did not offer non-emergency obstetric services as of December 22, 1987.

(v) The hospi-

CONTINUED ON PAGE 1054

Legend X=Routine
(X)=If indicated

			HORMONAL CONTRACEPTIVES			IUD		DIAPHRAGM		NON-PRESCRIPTIVE METHODS
		FIRST COMPLETE VISIT, ALL METHODS	3 months after initial Rx	Every 6 months for high risk***	Every 12 months	Within 3 months of insertion	Every 12 months	Preferably within 1 month of fitting	Every 12 months	Every 12 months
A. HISTORY										
	1.General	X			Update		Update		Update	Update
	2. Method Specific	X	X	X	X	X	X	(X)	X	X
B. PHYSICAL EXAM										
	1.General	X		(X)	X		X		X	X
	2. Method Specific	X		(X)	X	X	X	Check fit	X	X
	3.Weight	X	(X)	(X)	X		X		X	X
	4.Blood Pressure	X	X	X	X		X		X	X
C. LAB										
	1.Hct &/or Hgb	X			(X)	(X)	(X)		(X)	(X)
	2.Urinalyisis**	(X)			(X)		(X)		(X)	(X)
	3.Pap smear	X			X		X		X	X
	4.GC&Chlamydia*	X			(X)****		(X)****		(X)****	(X)****
	5.Serology	(X)								
	6.Rubella Titer	(X)								
D. EDUCATION		X	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)
E. COUNSELING		X	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)

***** Gonorrhea and chlamydia test(s) must be provided to clients requesting IUD insertion.
****** Dipstick acceptable. Urinalysis Optional.
******* "High Risk" defined as woman with chronic medical conditions such as cardiovascular disease (ex. HTN), neurological conditions (ex. seizure disorder, migraine), endocrine conditions (ex. diabetes mellitus, thyroid disease), gastrointestinal conditions (ex. liver or gallbladder disease), HIV disease
******** Annual screening for GC and chlamydia strongly recommended for women 24 and under. Consider at any visit if patient has had STI exposure.

Note: This schedule provides guidance for the management of asymptomatic contraceptive users only.

tal must have, at a minimum, a Medicaid inpatient utilization rate (MUR) of one percent.

(b) **Definitions of Criteria:**

(i) Medicaid inpatient utilization: For a hospital, the total number of its Medicaid inpatient days in a cost reporting period, divided by the total number of the hospital's inpatient days in the same period. These include both Medicaid managed care and non-managed care Medicaid inpatient days.

(ii) Low-income utilization rate: For a hospital, the sum (expressed as a percentage) of the following fractions: The sum of total Medicaid inpatient and outpatient net revenues (this includes Medicaid managed care and non-managed care revenues) paid to the hospital, plus the amount of the cash subsidies received directly from State and local governments in a cost reporting period, divided by the total amount of net revenues of the hospital for inpatient and outpatient services (including the amount of such cash subsidies) in the same cost reporting period; and the total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period, less the amount of the cash subsidies received directly from the state and local governments in that period reasonably attributable to inpatient hospital services, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. If this number is zero or less than zero, then it is assumed to be zero. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for Medical assistance under an approved Medicaid state plan), that is, reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross.

(iii) The Medicaid utilization rate (MUR) is computed as follows:

MUR % = 100 x M/T

M = Hospital's number of inpatient days attributable to patients who for these days were eligible for Medical Assistance under the State Plan. These include Medicaid managed care and non-managed care days.

T = Hospital's total inpatient days

(iv) Newborn days, days in specialized wards, and administratively necessary days are included in this calculation. Additionally, days attributable to individuals eligible for Medicaid in another state are included. Medicaid inpatient days includes both Medicaid managed care and non-managed care patient days.

(v) The numerator (M) does not include days attributable to Medicaid patients 21 or older in Institutions for Mental Disease (IMD) as these patients are not eligible for Medicaid coverage in IMDs under the New Mexico State Plan and cannot be considered a Medicaid day.

B. **Inpatient Disproportionate Share Pools:** Section 1923 of the Social Security Act allows qualifying hospitals to receive a disproportionate share payment, in addition to their allowable regular claims payments and any other payments to which they are entitled. This determination is performed annually as described in 8.311.3.13.A. NMAC. Qualifying hospitals will be classified into one of 3 disproportionate share hospital pools: Teaching PPS hospitals, non-teaching PPS hospitals, and PPS-exempt (TEFRA) hospitals. Hospitals may also qualify for a payment from a 4th pool: reserve pool, as explained in this 8.311.3.13.C. NMAC below.

(1) To qualify as a teaching hospital and be eligible for the teaching hospital DSH payment, the hospital must:

(a) Be licensed by the State of New Mexico; and

(b) Reimbursed, or be eligible to be reimbursed under the DRG basis under the plan; and

(c) Have 125 or more full-time equivalent (FTE) residents enrolled in approved teaching programs.

(2) A non-teaching PPS (DRG) hospital qualifies if it is an instate acute care hospital reimbursed by or eligible to be reimbursed by prospective payment methodology.

(3) A PPS-exempt hospital (TEFRA) such as rehabilitation hospitals, children's hospitals, or free-standing psychiatric hospitals, qualify if it is reimbursed by or eligible to be reimbursed by TEFRA (Tax Equity and Finance Reduction Act) methodology as described in 8.311.3.11 NMAC of this policy.

(4) The reserve pool is to compensate DSH qualifying hospitals which have had a disproportionate shift in the delivery of services between low-income and Medicaid-covered inpatient days in any given quarter. A hospital will qualify for payment from the reserve pool if its charity ratio, as described in 8.311.3.13.A.(3)(b)(ii) NMAC, exceeds 20 percent. A qualifying hospital may receive a payment from the reserve pool in addition to its payment from one of the three other pools.

C. **Disproportionate Share Hospital Payments:**

(1) The DSH funds allocated to each pool are paid to qualifying hospitals based on the number of Medicaid discharges. These include both Medicaid managed care and non-managed care discharges. A discharge occurs when a patient dies in the hospital, is formally released from the hospital, or is transferred to another hospital or nursing home.

(2) Payments are made quarterly, with the annual amount for the pool divided into four parts, and each part distributed after the end of each quarter based on Medicaid discharges during that quarter. The quarterly payment to each hospital qualifying for DSH pools 1, 2, or 3 will be computed by dividing the number of Medicaid discharges for that hospital by the total number of Medicaid discharges from all hospitals qualifying for that DSH pool and then multiplying this pro-rata share by the quarterly allocation for the respective pool. This amount cannot exceed the OBRA 93 DSH limit, which is described in parts 8.311.3.13.E. NMAC and 8.311.3.13.F NMAC.

(3) The Medical Assistance Division will review the allocation of DSH funds prior to the start of each state fiscal year and may re-allocate funds between pools at that time in consideration of shifts in the hospital utilization of Medicaid and low-income/indigent care patients.

(4) The percentages allocated to each pool for state fiscal year 98 are as listed below. The total allocations shall be adjusted in subsequent state fiscal years based on the Medicare Prospective Payment Update Factor (MPPUF) and/or the DSH budget as defined by HSD. The base year DSH budget for state fiscal year 98 is $22,000,000.00.

(a) The Teaching PPS hospital DSH pool is 56% of the overall DSH budget, as defined by HSD.

(b) The Non-teaching PPS (DRG) hospital DSH pool is 22.5% of the overall DSH budget, as defined by HSD.

(c) The PPS-exempt hospital (TEFRA) DSH pool is 1.5% of the overall DSH budget, as defined by HSD.

(d) The reserve DSH pool is 20% of the overall DSH budget, as defined by HSD. Quarterly payments may be made directly from the reserve pool to hospitals qualifying for any of the other three DSH pools at the rate of N dollars per Medicaid discharge, where N is equal to the fraction described in 8.311.3.13.A.(3)(b)(ii) NMAC of this part minus 20%, multiplied by $1,750.

D. **Request for DSH Payment Procedures:** Hospitals must submit to the Department the number of Medicaid discharges (both managed care and fee for service discharges), which they have incurred 30 days after the end of each quarter. The Department will review the hospital's documentation supporting their discharge information. Any requests received later than 60 days from the end of the quarter will be denied as untimely.

E. **DSH Limits:**

(1) Pursuant to section 1923 (g) of the Social Security Act, a limit is placed on the payment adjustment for any hospital. A hospital's payment adjustment determined in subsections 8.311.3.13.B NMAC through 8.311.3.13.D. NMAC shall not exceed that hospital's hospital-specific DSH limit, as determined under 8.311.3.13.E. NMAC. This limit is calculated as follows:

DSH Limit = M + U

M = Cost of services to Medicaid patients, less the amount paid by the Medicaid program under the non-DSH payment provisions of this plan.

U = Cost of services to uninsured patients, less any cash payments made by them.

(2) The cost of services will include both inpatient and outpatient costs for purposes of calculating the limit. The "costs of services" is defined as those costs determined allowable under this plan. "Uninsured patients" are defined as those patients who do not possess health insurance or do not have a source of third party payment for services provided, including individuals who do not possess health insurance which would apply to the service for which the individual sought treatment. Payments made to a hospital for services provided to indigent patients made by the State or a unit of local government within the State shall not be considered to be a source of third party payment.

F. **Limitations In New Mexico DSH Allotment:** If the DSH payment amounts as described in parts 8.311.3.13.C. NMAC through 8.311.3.13.E. NMAC above, exceed in any given year, the federal determined DSH allotment for New Mexico, the DSH allocations by pool will be reduced proportionately to a level in compliance with the New Mexico DSH allotment.

[2-1-95, 1-31-96, 7-31-97; 8.311.3.13 NMAC – Rn, 8 NMAC 4.MAD.721.D.IV, 1-1-01; A, 9-1-01]

NEW MEXICO DEPARTMENT OF LABOR
EMPLOYMENT SECURITY DIVISION

This is an amendment to 11.3.400 NMAC, Sections 7 and 404. The entire Part 400 was renumbered, reformatted to comply with current NMAC requirements. Non-substantive cosmetic, grammar, spelling and stylistic changes were made to the other sections.

11.3.400.7 DEFINITIONS:— As used in 11.3.400 NMAC:

A. "Department" means the New Mexico department of labor;

B. "Secretary" means the cabinet secretary of the New Mexico department of labor or that person's official designee as provided in the department's internal policies and procedures;

C. "Division" means the employment security division of the New Mexico department of labor, formerly known as the employment security commission and formerly known as the employment security department;

D. "Bureau" means the unemployment insurance bureau of the employment security division of the New Mexico department of labor;

E. "Tax section" means the tax administration section of the unemployment insurance bureau of the employment security division of the New Mexico department of labor;

F. "The director of the employment security division" means that person or that person's official designee as provided in the department's internal policies and procedures;

G. "The unemployment insurance bureau chief" means that person or that person's official designee as provided in the department's internal policies and procedures;

H. "The assistant unemployment bureau chief for tax" means that person or that person's official designee;

I. "Contribution" means the state unemployment insurance tax imposed on employers pursuant to the Unemployment Compensation Law;

J. "Signature" means any means of signature including, but not limited to, manual, facsimile, electronic, digital or other means permitted by law.

[11.3.400.7 NMAC – N, 11 NMAC 3.400.7, 9-1-2001]

11.3.400.404 [~~TAX~~] WAGE AND CONTRIBUTION REPORTS BY EMPLOYING UNITS:—

A. [~~TAX~~] WAGE AND CONTRIBUTION REPORT FILING REQUIREMENTS:—An employer's [~~tax~~] wage and contribution report must be filed on a form prescribed by the department or a reasonable facsimile of the prescribed form on or before the last day of the month immediately following the end of the calendar quarter. If the due date falls on a Saturday, Sunday or legal holiday, the report is due on the next department business day. A [~~tax~~] wage and contribution report must be filed even though no wages were paid or no contribution or tax is due for the quarter unless the employer's liability has been terminated or suspended pursuant to NMSA 1978 Section 51-1-18 [~~NMSA 1978~~]. Each [~~tax~~] wage and contribution report must include only wages, as the term is defined in NMSA 1978 Section 51-1-42(T) [~~NMSA 1978~~], paid during the quarter being reported. Corrections of errors made on previously submitted reports must be submitted separately on a form prescribed by the department.

B. SIGNATURE REQUIREMENTS ON [~~TAX~~] WAGE AND CONTRIBUTION REPORTS: [~~Tax~~] Wage and contribution reports must be signed by the owner, partner, corporate officer or a designated representative of the employer. If the employer appoints a designated representative who is not an employee, a power of attorney authorizing the designated representative to sign the reports must be filed with the department. Unsigned or improperly signed reports that are returned to the employer for proper signature will not be considered valid or filed until they are properly signed and returned to the department.

C. WAGE DETAIL REPORTING REQUIREMENTS: Employers who [~~have to report~~] are reporting two hundred fifty [~~(250)~~] or more employees in any calendar quarter must file their quarterly wage and contribution report on magnetic media using a format prescribed by the department. Employers [~~with~~] reporting less than two hundred fifty [~~(250)~~] employees [~~to report~~] in a calendar quarter may elect to use magnetic reporting. Reports that contain extraneous information, are incomplete or otherwise prepared improperly are not acceptable and will be returned to the employer and become subject to the penalties prescribed in NMSA 1978 Section 51-1-12 [~~NMSA 1978~~].

D. ESTIMATED WAGE AND CONTRIBUTION REPORTS: If an employer fails or refuses to make reports showing what the employer claims for the amount of contributions which it believes to be due, the department's representative shall estimate the amount according to the process described in 11.3.401.404.E

NMAC. After the estimated contribution is calculated, the department shall mail a notice to the employer advising it that the department is estimating the amount of contribution due, providing the estimated amount and advising that ten days after the notice is given, the lien will be recorded. After the ten days provided in the notice has elapsed, the lien shall be recorded. Upon issuance, the department shall cause the warrant of levy and lien to be recorded in same manner as any other warrant issued by the department. If the employer does not make a showing to the satisfaction of the secretary that the estimated contribution is incorrect within thirty days after the warrant of levy and lien is filed with the county clerk, then the estimated amount shown in the warrant shall be and become the amount of the contribution due for the period stated in the warrant. If thereafter, the department should receive from the employer reports for the estimated quarters containing different amounts, the estimation of the contribution due shall not be altered, and the employer shall remain liable for the amount assessed. The information provided by the employer on the report, ES 903(B), as to individual employees shall be entered in the department's records.

E. ESTIMATION PROCESS: The estimated contribution shall be one and one-half times higher than the highest contribution reported in any quarter in the most recent two years or eight quarters in which wage reports were filed. If no wage and contribution report has been filed since the employer was determined liable or if the employer has never submitted a report to determine liability to the department, no estimations shall be done unless required to clear an unemployment insurance claim.

F. ADMINISTRATIVE ERROR: At any time, the department may correct any error the unemployment insurance assistant bureau chief for the tax section determines has been made even if notifications have been given, estimations made or contributions paid pursuant to the notifications. By way of example and not by limitation, such internal errors may be the result of an estimation that has been made after notice was mailed to an incorrect address, mailed to a deceased or incapacitated natural employer, estimations otherwise imposed without proper notice to the employer, estimations imposed due to misinformation in a wage claim which precipitated the establishment of an incorrect account, or other incidents of human or computer error or excusable neglect within the department. Estimations may be removed only pursuant to the written authorization of the unemployment insurance assistant bureau chief for the tax section.

[7-15-98; 11.3.400.404 NMAC - Rn & A, 11 NMAC 3.400.404, 9-1-2001]

NEW MEXICO ORGANIC COMMODITY COMMISSION

This Part 21 NMAC 15.1, Organic Agriculture Generally, filed July 2, 1998, is hereby repealed and replaced by 21.15.1 NMAC, effective August 30, 2001.

This Part 21 NMAC 17.58, Organic Methods of Control, filed July 2, 1998, is hereby repealed and replaced by 21.17.58 NMAC, effective August 30, 2001.

This Part 21 NMAC 18.5, Organic Production Methods and Materials, filed July 2, 1998, is hereby repealed and replaced by 21.18.5 NMAC, effective August 30, 2001.

This Part 21 NMAC 25.6, Organic Handling Operations, Inspections and Application Process, filed July 2, 1998, is hereby repealed and replaced by 21.25.6 NMAC, effective August 30, 2001.

This Part 21 NMAC 27.3, Organic Honey Production, filed July 2, 1998, is hereby repealed and replaced by 21.27.3 NMAC, effective August 30, 2001.

This Part 21 NMAC 30.1, Organic Production Methods and Materials, filed July 2, 1998, is hereby repealed and replaced by 21.30.1 NMAC, effective August 30, 2001.

This Part 21 NMAC 34.16, Organic Production Methods and Materials, filed July 2, 1998, is hereby repealed and replaced by 21.34.16 NMAC, effective August 30, 2001.

NEW MEXICO ORGANIC COMMODITY COMMISSION

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 15 AGRICULTURE GENERAL PROVISIONS
PART 1 ORGANIC AGRICULTURE GENERALLY

21.15.1.1 ISSUING AGENCY: New Mexico Organic Commodity Commission.
[21.15.1.1 NMAC - Rp 21 NMAC 15.1.1, 8/30/2001]

21.15.1.2 SCOPE: All individuals and businesses in New Mexico producing, handling, processing and selling agricultural products labeled "organic", "certified organic" or "transitional". There are additional regulations applicable to the same entities in 21.17.58 NMAC, 21.18.5 NMAC, 21.25.6 NMAC, 21.27.3 NMAC, 21.30.1 NMAC, and 21.34.16 NMAC.
[21.15.1.2 NMAC - Rp 21 NMAC 15.1.2, 8/30/2001]

21.15.1.3 STATUTORY AUTHORITY: 21.15.1 NMAC is promulgated pursuant to the provisions of the Organic Commodity Act, 76.22.1 through 76.22.28 NMSA 1978 (as amended).
[21.15.1.3 NMAC - Rp 21 NMAC 15.1.3, 8/30/2001]

21.15.1.4 DURATION: Permanent.
[21.15.1.4 NMAC - Rp 21 NMAC 15.1.4, 8/30/2001]

21.15.1.5 EFFECTIVE DATE: August 30, 2001, unless a later date is cited at the end of a section.
[21.15.1.5 NMAC - Rp 21 NMAC 15.1.5, 8/30/2001]

21.15.1.6 OBJECTIVE: 21.15.1 NMAC provides the regulatory structure for certification of agricultural products produced in New Mexico as organic, certified organic or transitional; the compilation of a list of producers of such products; and hearing processes in connection with the foregoing functions.
[21.15.1.6 NMAC - Rp 21 NMAC 15.1.6, 8/30/2001]

21.15.1.7 DEFINITIONS: The following definitions apply to this part and all other regulations the Commission adopts.

A. *Accredited laboratory.* A laboratory that has met and continues to meet the requirements specified in the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 138) for pesticide residue analyses of fresh fruit and vegetables and/or pesticide residue analysis of products derived from livestock and fowl.

B. *Act*. The Organic Commodity Act [76-22-1 to 76-22-28 NMSA 1978; as amended].

C. *Agricultural inputs.* All substances or materials used in the production, processing or handling of organic agricultural products.

D. *Agricultural product.* Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States

for human or livestock consumption.

E. *Allowed synthetic*. A substance that is included on the National List of synthetic substances allowed for use in organic production, processing or handling.

F. *Assessment.* Funds collected by the Commission as provided for under the Organic Commodity Act.

G. *Buffer zone*. An area located between a certified production operation or portion of a production operation and an adjacent land area that is not maintained under organic management. A buffer zone must be sufficient in size or other features (e.g., windbreaks or a diversion ditch) to prevent the possibility of unintended contact by prohibited substances applied to adjacent land areas with an area that is part of a certified operation.

H. *Bulk.* The presentation to consumers at retail sale of an agricultural product in unpackaged, loose form, enabling the consumer to choose the individual pieces, amount, or volume of the product purchased.

I. *Certification or certified*. A determination made by a properly accredited certifying agent that a production or processing/handling operation is in compliance with the Act and with federal regulations and laws, which is documented by a certificate of organic operation.

J. *Certified operation.* A crop or livestock production, wild-crop harvesting, or processing/handling operation or portion of such an operation that is certified by an accredited certifying agent as utilizing a system for organic production or handling as described by the Act, the Organic Food Production Act, and state and federal regulations.

K. *Commingling*. Physical contact between unpackaged organically produced and nonorganically produced agricultural products during production, transportation, storage or handling, other than during the manufacture of a multiingredient product containing both types of ingredients.

L. *Commission*. The New Mexico Organic Commodity Commission.

M. *Crop*. A plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

N. *Crop residues*. The plant parts remaining in a field after the harvest of a crop, which include stalks, stems, leaves, roots and weeds.

O. *Crop year*. The normal growing season for a crop as determined by the Commission.

P. *Cultivation.* Digging up or cutting the soil to prepare a seed bed; control weeds; aerate the soil; or work organic matter, crop residues or fertilizers into the soil.

Q. *Cultural methods*. Methods used to enhance crop health and prevent weed, pest or disease problems without the use of substances; examples include the selection of appropriate varieties and planting sites; proper timing and density of plantings; irrigation; and extending a growing season by manipulating the microclimate with greenhouses, cold frames or wind breaks.

R. *Detectable residue*. The amount or presence of chemical residue or sample component that can be reliably observed or found in the sample matrix by the current approved analytical methodology.

S. *Disease vectors*. Plants or animals that harbor or transmit disease organisms or pathogens which may attack crops or livestock.

T. *Drift*. The physical movement of prohibited substances from the intended target site onto an organic operation or portion thereof.

U. *Emergency pest or disease treatment program.* A mandatory program authorized by a Federal, State, or local agency for the purpose of controlling or eradicating a pest or disease.

V. *Field*. An area of land identified as a discrete unit within a production operation.

W. *Handle*. To sell, process, or package agricultural products, except such term shall not include the sale, transportation or delivery of crops or livestock by the producer thereof to a handler.

X. *Handler*. Any individual in the business of handling organically produced food articles.

Y. *Handling operation.* Any operation or portion of an operation that receives or otherwise acquires organically produced food articles from the producer of those organically produced food articles; prepares organically produced food articles for market; or processes, packages, transports or stores organically produced food articles.

Z. *National List.* A list of allowed and prohibited substances as provided for in section 6517 of the Organic Foods Production Act and adopted by the Commission as compiled on the last effective date of this definition.

AA. *National Organic Program.* The USDA program authorized by the Organic Foods Production Act for the purpose of implementing its provisions.

BB. *National Organic Standards Board.* A Board established by the USDA Secretary to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the National Organic Program.

CC. *Nonsynthetic (natural).* A substance that is derived from mineral, plant or animal matter and does not undergo a synthetic process.

DD. *Ombudsperson*. A member of the Commission, who has the function of facilitating communication between certified persons and the Commission.

EE. *Organic*. A term that refers to an agricultural product produced in accordance with the Act and the regulations in this document.

FF. *Organic agriculture*. A holistic production management system which promotes and enhances agro-ecosystem health, including biodiversity, biological cycles, and soil biological activity; emphasizes the use of management practices over the use of off-farm inputs; and utilizes cultural, biological and mechanical methods as opposed to synthetic materials.

GG. *Organic matter*. The remains, residues or waste products of any organism.

HH. *Organic system plan*. A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in this handbook including practices as required under this program.

II. *Organically certified operation.* An operation (farm, handler or processor) or portion of an operation, that is certified by the Commission, or by another recognized third-party certification agency, as utilizing organic productive techniques as set forth by the Commission or another NOP accredited certification program.

JJ. *Person*. An individual, group of individuals, contractor, corporation, association, organization, cooperative or other entity.

KK. *Processing.* Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

LL. *Processor.* A person who engages in the activity of processing agricultural products.

MM. *Producer.* A person who engages in the business of growing or producing food, fiber, feed and other agricultural-based consumer products.

NN. *Prohibited substance*. A

substance whose use in any aspect of organic production or handling is prohibited or not provided for in the Act, the federal Organic Foods Production Act and respective state and federal regulations.

OO. *Records*. Any information in written, visual or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act, state regulations as outlined in this handbook, and federal laws and regulations.

PP. *Residue testing*. An official or validated analytical procedure that detects, identifies and measures the presence of chemical substances, their metabolites, or degradation products in or on raw or processed agricultural products.

QQ. *Soil and water quality*. Observable indicators of the physical, chemical or biological condition of soil and water, including the presence of environmental contaminants.

RR. *Synthetic*. A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

SS. *Transitional*. An agricultural commodity that has been produced according to the New Mexico Organic Certification program standards with the sole exception that the land upon which the commodity was produced, or from which the commodity was obtained, has been free of the application of impermissible substances for at least one year (12 months) from the date of harvest of said commodity.

TT. *Unavoidable residual environmental contamination (UREC)*. Background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products that are below established tolerances.

UU. *Wild crop*. Any plant or portion of a plant that is collected or harvested from an area of land that is not maintained under cultivation or other agricultural management.

[21.15.1.7 NMAC - Rp 21 NMAC 15.1.7, 8/30/2001]

21.15.1.8 OVERVIEW

A. Creation: The 1990 New Mexico Legislature created the Organic Commodity Commission with the passage of the Organic Commodity Act, NMSA 1978, Sections 77-22-1 to 77-22-28 (as amended). The Commission was created to provide a certification program for organic food producers, processors and handlers operating in New Mexico. The legislative findings and purposes underlying the program are contained in the statute. All producers, processors and handlers seeking to utilize the "organically produced" seal offered through the Commission's certification program must comply with the Act and the standards and procedures described in the certification handbook. Additionally, all producers, processors and handlers operating in New Mexico under private certification as provided by a private, USDA-accredited certifying agent must comply with these standards.

B. Composition: The New Mexico Organic Commodity Commission is comprised of five members appointed by the Governor. The Commissioners are selected according to requirements contained in the Act.

C. The Certification Program

(1) The New Mexico Organic Commodity Act (76-22 NMSA 1978, as amended) creates the New Mexico Organic Commodity Commission (NMOCC) as an entity of competent jurisdiction and calls for this body to establish a state organic certification program, implementing the powers and responsibilities of a state organic certification program under the Organic Foods Production Act of 1990. By extension, the NMOCC certification program assumes powers and responsibilities as required by the USDA's National Organic Program and the national organic standards.

(2) The certification program is available to all producers, processors and handlers of organic commodities. The process is described in detail in the Application appendix of the handbook. Successful applicants shall receive certifications granted by the Commission. Such certification shall be classified by Producer or Handler. All certified entities will receive permission to use a designated label developed by the Commission.

(3) Certifications are revoked upon a showing of non-compliance with the certification standards. Revocation may also occur where the Commission determines that the practices or activities under review are inconsistent with the purposes of either the New Mexico Organic Commodity Act or the Federal Organic Foods Production Act of 1990.

(4) The Commission requires that all New Mexico business entities using the organic label must comply with these rules and regulations. Businesses with gross annual sales of organic product over $5000 shall be certified by a USDA accredited certifying agent. Businesses with gross annual sales of less than $5000 are exempt from certification but must still comply with all organic production and handling requirements as set forth herein and further must register with the Commission on an annual basis.

D. Categories of Certification: The Commission is authorized by law to certify production, handling and processing facilities meeting the requirements contained in the Act and the handbook. The following categories will be recognized:

(1) Organic Farm Crop Production Operation.

(2) Organic Animal Production Operation.

(3) Organic Handling and Processing Operation.

(4) Mixed Crop and Animal Operation and Mixed Production and Handling Operations.

(5) Transitional Crop Production.

[21.15.1.8 NMAC - Rp 21 NMAC 15.1.8, 8/30/2001]

21.15.1.9 STATUTORY REQUIREMENTS COMMON TO ALL CATEGORIES: The following practices are required of all participants in the NM Organic Certification Program.

A. All certified production, processing and handling operations must employ practices consistent with the purposes of the New Mexico Organic Commodity Act and the Organic Foods Production Act of 1990 contained at Title XXI, 1990 Federal Farm Bill. When in doubt consult the Acts themselves, this handbook, or contact the Commission. [Authority: NMSA 1978 section 76-22-15(D) (1990 Cum.Supp.); Organic Foods Production Act of 1990, section 2108(b)(2)(B), §2113.]

B. All certified production, processing and handling operations "... shall keep records sufficient to enable the Commission to determine by inspection and audit the accuracy of assessments paid or due to the Commission and of reports made or due to the Commission." [Authority: NMSA 1978 section 76-22-20 (1990 Cum.Supp.); Organic Foods Production Act of 1990, section 2112(d)].

C. All certified production, processing and handling operations must annually certify to the Commission that such operation has not produced, processed or handled any food article sold or labeled as organically produced or processed except in accordance with all applicable laws. [Authority: NMSA section 76-22-14(C) (1990 Cum.Supp.); Organic Foods Production Act of 1990, section 2107(a)(4)].

D. All certified produc-

tion, processing and handling operations will be annually inspected. The products of such operations may undergo periodic residue testing at the discretion of the Commission. All crops-in-the-field may be subject to pre-harvest tissue sampling. [Authority: NMSA 1978 section 76-22-13(B)(4),(5),(6) (1990 Cum.Supp.); Organic Foods Production Act of 1990, section 2107(a)(1)(B)(4),(5), section 2112 (a),(b)].

E. certified production, processing and handling operations shall maintain appropriate care of physical facilities and machinery and adopt management practices, as demonstrated through records, to prevent the mixing of organic and non-organic products and to prevent penetration of a certified area by prohibited or restricted substances. [Authority: Organic Foods Production Act of 1990, section 2107 (b)(1)(c)].

F. certified production, processing and handling operations shall remit an annual application fee to the Commission for their certification. In addition, they will be assessed annually based on one half of one percent of their gross sales. Certified entities may also be assessed a supplemental fee. [Authority: NMSA 1978 sections 76-22-14(A),16,17 (1990 Cum.Supp.); Organic Foods Production Act of 1990, section 2107(a)(10)].

G. applicants must establish an Organic Production Plan. [Authority: NMSA 1978 section 76-22-13 (1990 Cum.Supp.); Organic Foods Production Act of 1990, section 2107(a)(2)].

H. All applicants for certification shall be permitted to appeal an administrative determination denying a requested certification. All certified operations may appeal any adverse administrative determination by the Commission. [Authority: NMSA 1978 section 76-22-13(B)(3) (1990 Cum.Supp.); Organic Foods Production Act of 1990, section 2107(a)(1)(B)(3)].

[21.15.1.9 NMAC - Rp 21 NMAC 15.9.1, 8/30/2001]

21.15.1.10 FARM CROP PRODUCTION CERTIFICATION STANDARDS

A. These standards must be complied with for a farm or part of a farm to be certified for organic production by the Commission. These standards are in addition to those contained in 21.15.1 NMAC, section 9, "Statutory Requirements Common to All Certification Categories."

B. Admissibility

(1) Farms, fields and split operations: Certification may be on a whole farm or on a field by field basis. The Commission encourages farmers to certify their entire operation. In certain situations, this will not be feasible. NMOCC allows split organic/conventional operations, if and only if the operator can demonstrate that they possess the physical and managerial ability to prevent contamination and/or commingling. Equipment used in conventional fields must be cleaned prior to use in organic fields. The Commission strongly suggests that the same crops not be grown in the organic and conventional fields; if this is done, an additional inspection may be required to verify adequate separation and accounting, and the cost of this additional inspection will be borne by the client.

(2) Three-year rule: A farm or field may be certified for organic production only when it can be demonstrated that an application of prohibited materials or the use of prohibited production practices has not occurred during the year of production or at any time during the three years (36 months) immediately preceding the harvest. An exception may be granted where:

(a) the application of the prohibited substance is caused by drift or involuntary mechanism;

(b) the organic producer demonstrates, by clear and convincing evidence, that no intentional application has occurred; and,

(c) the organic producer demonstrates, by evidence, that the background residue in the soil, from the known contaminant, does not exceed 5 percent of applicable federal tolerance levels.

(d) See Transitional Status below (paragraph 4 of subsection B of 21.15.1.10 NMAC) for additional exception.

(3) Status Rotation Prohibited: A farm or field, once granted certified status, may not be rotated into conventional production. If prohibited materials or practices are used, see paragraph 2 of subsection B of 21.15.1.10 NMAC.

(4) Transitional Status: A field or whole farm may be granted the status of Transitional, provided that all production standards and requirements are met, as described in this handbook and in the national standards, with the sole exception that: the land has been free from prohibited material input for a period of at least one year. This status may be used for two years for any given field or farm. At the end of this period, the field or farm must request Certified Organic status to continue in the program. Producers using the Transitional label may not use the word organic to describe their operation or products.

(5) Buffer Zone: There must exist adequate physical barriers or a 25 foot (8 meter) minimum distance between organic crops and conventionally grown crops to maintain the organic integrity of certified fields. The Commission reserves the right to require additional buffering where unusual circumstances warrant it.

C. The Organic Farm Production Plan

(1) Purpose: The purpose of the Organic Farm Production Plan is to provide the Commission and the farmer with an agreed upon document which addresses at least the following issues:

(a) a description of farm practices and procedures to be performed in the management of the farm, including known or estimated frequencies;

(b) a list of all substances to be used as inputs, including information on the input source, composition and usage locations;

(c) a description of the record keeping system to be used;

(d) a description of practices and procedures used to prevent contamination and/or commingling;

(e) additional information as deemed necessary by the Commission.

(2) The statutory requirement that all applications made to the Commission must contain an Organic Plan is satisfied by completely filling out the application forms and noting any appropriate additional information.

D. Testing - Soil Nutrient Testing

(1) During the initial on-site inspection of first time applicants, the inspector shall collect a representative sample of soil from an appropriate cropping area, which shall be noted in the inspection report. This sample shall be returned to the commission along with the inspection report. The commission shall have the sample analyzed for standard nutrient, structural and chemical characteristics, at a commercial analysis laboratory. In some cases, the applicant may have had soil analysis done prior to the inspection; in such cases, the inspector will determine the equivalency of the analysis done to determine whether it satisfies this requirement. If equivalency is found, the inspector will not take a sample for analysis.

(2) The cost of the analysis will be billed to the client. Failure to pay this bill prior to the issuance of a certification will result in the commission withholding the certification pending payment.

(3) Every subsequent third year, a new soil sample will be taken by the inspector and submitted as above. This sample will be analyzed and billed as

above. Failure to pay this bill will result in the commission revoking the certification.

(4) Tissue Testing: For certain crops (i.e. fruit and nut trees), a tissue test may be a more appropriate indicator of soil nutrient status and availability. In such a case, a tissue sample will be taken by the inspector in an appropriate manner and will be expeditiously submitted to the agency for analysis. Subsequent third year testing shall also be done with tissue samples.

(5) Residue Testing and GMO Testing: In accordance with state and federal laws and regulations, the commission will develop and institute and residue sampling procedure. In addition to chemical residues, the presence of materials produced by excluded methods (genetically modified organisms) may be investigated.

E. Harvest, Post-harvest Handling and Transportation

(1) All harvesting must be done in accordance with these standards. Equipment also used to harvest conventional crops must be thoroughly cleaned prior to the organic harvest, and the cleaning must be documented in the farm records.

(2) All post-harvest handling must be in accordance with these standards. Product must be packed in containers that do not compromise the organic status. Re-use of corrugated carton boxes previously used to contain conventional agricultural products is prohibited. Product may be packed in re-used organic product corrugated carton boxes, in new boxes, in plastic lugs and totes (provided they are clean and have not contained any prohibited materials).

(3) Transportation to market in any vehicle is allowed; however, due to the likelihood that the vehicle has hauled many different materials, some of which are likely prohibited for contact with organic product, vehicles must be thoroughly inspected and cleaned if necessary prior to transportation of organic products. The Commission will ask for documentation that the above policy was followed. Producers are advised to document cleaning specifications and frequencies in their farm records.

F. Production Methods and Materials: Wild Plants: An Organic Plan for the harvesting of wild crops shall:

(1) designate the area from which the wild crop will be gathered or harvested;

(2) include a three year history of the management of the area showing that no prohibited substances have been applied to the designated area for a period of three years immediately preceding the harvest of the wild crop;

(3) include a plan for the harvesting or gathering of the wild crops assuring that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop;

(4) include provisions that the producer will apply no prohibited substances.

G. Production Methods and Materials: Greenhouse

(1) Existing standards apply as expressed elsewhere in the Commission's regulations;

(2) Nitrate testing is to be conducted on growing plants on a case by case basis;

(3) Air and water quality must meet all applicable federal and state standards.

(4) Any nonorganic production must not occur in the same production unit as the organic production.

H. Production Methods and Materials: Sprouts. Admissibility is the same as for other crops. Basic criteria include:

(1) Seeds must be certified organic origin;

(2) Seeds may be treated with the following methods/materials to prevent food-borne pathogens:

(a) Heat;

(b) Hydrogen peroxide, periacetic acid;

(c) Ozone products and processes;

(d) Any other substances that are approved and appear on the National Organic Program Material Lists.

(3) Water must meet all certification standards (i.e. potable water, as defined by the criteria of the Safe Drinking Water Act). Seeds or growing sprouts shall not be rinsed or immersed in water with chemicals capable of releasing chlorine in solution in excess of federal water quality guidelines;

(4) Growing media must be free of contaminants and prohibited materials, whether soil or soil-less media is used;

(5) Any fertilizers, soil amendments, sanitizers and disinfectants not on the National List are prohibited and shall not be applied to the water or growing media. Soluble fertilizers shall not be used unless determined by a competent reviewer to meet all federal organic production requirements;

(6) Pest management must primarily be preventative;

(7) Light source may be artificial or natural.

I. Production Methods and Materials: Mushrooms

(1) Organic mushrooms may be grown indoors or outdoors.

(2) Mushrooms grown indoors: Mushrooms grown indoors shall comply with all provisions of these standards, except such operations shall be allowed to plant organic mushrooms after demonstrating to the Commission's satisfaction that:

(a) The operation shall be managed organically throughout the entire growing period of the fungus to be sold as organic;

(b) No prohibited substances will compromise the integrity of the organic mushroom production system;

(c) Organic mushroom houses shall be operated and labeled as distinct units from any conventional mushroom houses on the same site;

(d) All sources of substrate and spawn shall be documented in the Organic Plan:

(e) Un-composted substrate from agricultural sources, including grain, straw, etc., shall be organically produced. Sawdust of wood products used for substrate must be obtained from sources that have not been treated with materials prohibited for use in organic production.

(f) The Commission may require testing of substrate for residues of prohibited materials, with the cost of such testing borne by the producer.

(g) Organically produced spawn must be used when commercially available. If documented as unavailable, non-organic spawn may be used.

(h) The mushroom strains and any substrates must not be produced by excluded methods.

(i) Sanitizers and disinfectants not found on the National List of allowed substances shall not be applied to mushroom crops or growing substrates. Chlorine (bleach) may be used for sanitizing equipment and facilities, but may not be applied to crops or substrate in concentrations above maximum recommended disinfection limit of the Safe Water Drinking Act.

(3) Mushrooms grown outdoors: Mushrooms grown outdoors shall comply with all provisions of these standards, except such operations shall be allowed to plant organic mushrooms after demonstrating to the Commission's satisfactions that:

(a) The operations shall be managed organically throughout the entire growing period of the fungus to be sold as organic.

(b) All sources of trees and spawn shall be documented.

(c) To be used as substrate for organic mushrooms, logs shall be

organically produced or be sourced from sites documented to have not been treated with prohibited substances for a minimum of three years prior to harvest of the logs for mushroom production.

(d) Organically produced spawn must be used when commercially available. If organically produced spawn is documented to be unavailable, nonorganic spawn may be used.

(e) The mushroom strains and log substrates must not be produced through excluded methods.

J. Records and Record Keeping: In addition to information submitted to the certification agent in the Organic Plan, producers shall keep the following records, as applicable:

(1) Records, including receipts, of all applied substances, including fertilizers, soil amendments, pest and disease control substances, growth regulators and weed control agents.

(a) Records should give the location, date, application rates, brand name, manufacturer's name, and name and address of applicator.

(b) All materials listed with conditions for use must be noted with a description of use, according to the annotations in the National List and in these standards. Practices that are listed as regulated or restricted must be described.

(2) Records of all purchased seeds, including cover crop seeds, with documentation of attempts to source organic or untreated seeds, as applicable.

(3) Records of all purchased seedlings and/or planting stock, including documentation of attempts to source organic stock, as applicable.

(4) Crop harvest records per field or production unit, storage records, names of buyers, and gross organic sales for the certified operation. Wholesale sales must have invoices with lot numbers keyed to field and/or bin numbers, or other audit trail system as approved by the Commission.

(5) Records that document the management of buffers, including but not limited to: their location; whether crops are grown in the buffer; buffer crop harvest, storage and sales; actions taken to prevent commingling non-certified buffer crops with organic crops.

(6) Copies of notices sent to neighbors, highway officials, etc. regarding the operation's organic status.

(7) Documentation or evidence that packages, storage containers and transport vehicles used for organic crops are suitable for organic packaging and/or organic product transport.

Additional records as required by the Commission, as in: Neighboring Land Use Statements, Custom Operator Affidavits, etc.

(8) Producers shall retain copies of all applicable records for five years from the date when the record was generated, in compliance with the National Organic Program standards.

K. National Materials List: The United States Department of Agriculture's National Organic Program is the final authority for compiling the National List of Allowed and Prohibited Substances. This list is based on the following criteria: all natural materials are allowed unless specifically listed as prohibited; all synthetic materials are prohibited unless specifically listed as allowed. The Commission adopts the National List as it is compiled on the latest effective date of this subsection.

L. Synthetic substances allowed for use in organic crop production:

(1) As algaecide, disinfectants and sanitizers, including irrigation system cleaning systems:

(a) Alcohols: Ethanol, Isopropanol.

(b) Chlorine materials, except that residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act: Calcium hypochlorite, Chlorine dioxide; Sodium hypochlorite.

(c) Soap-based algaecide/demisters.

(2) As herbicides, weed barriers, as applicable:

(a) Soap-based herbicides – for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops;

(b) Mulches: Newspaper or other recycled paper, without glossy or colored inks; Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC).

(3) As compost feedstocks: Newspaper or other recycled paper, without glossy or colored inks.

(4) As animal repellants: Ammonium soaps – large animal repellant only, no contact allowed with soil or edible portion of crop.

(5) As insecticides:

(a) Ammonium carbonate – for use as bait in insect traps only, no direct contact with soil or crop;

(b) Boric acid – structural pest control, no direct contact with organic foods or crops;

(c) Elemental sulfur;

(d) Lime sulfur – including calcium polysulfide;

(e) Oils, horticultural – narrow range oils as dormant, suffocating and summer oils;

(f) Soaps, insecticidal;

(g) Sticky traps/barriers.

(6) As insect attractants: pheromones.

(7) As rodenticides:

(a) Sulfur dioxide – underground rodent control only (smoke bombs);

(b) Vitamin D3.

(8) As slug or snail bait: none.

(9) As plant disease control:

(a) Coppers, fixed – copper hydroxide, copper oxide, copper oxychloride, includes products exempted from EPA tolerance; provided that copper based materials must be used in a manner that minimizes accumulation of copper in the soil and shall not be used as herbicides;

(b) Copper sulfate – substances must be used in a manner that minimizes accumulation of copper in the soil;

(c) Hydrated lime;

(d) Lime sulfur;

(e) Oils, horticultural – narrow range oils as dormant, suffocating and summer oils;

(f) Potassium bicarbonate;

(g) Elemental sulfur;

(h) Streptomycin, for fire blight control in apples and pears only;

(i) Tetracycline (oxytetracycline calcium complex) for fire blight control only;

(10) As plant or soil amendments:

(a) Aquatic plant extracts (other than hydrolyzed) – extraction process limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction;

(b) Elemental sulfur;

(c) Humic acids – naturally occurring deposits, water and alkali extracts only;

(d) Lignin sulfonate – chelating agent, dust suppressant, floatation agent;

(e) Magnesium sulfate – allowed with a documented soil deficiency;

(f) Micronutrients – not to be used as a defoliant, herbicide or desiccant; those made from nitrates or chlorides are not allowed; soil deficiency must be documented by testing:

(g) Soluble boron products;

(h) Sulfates, carbonates, oxides or silicates of zinc, copper, iron, manganese, molybdenum, selenium and cobalt.

(i) Liquid fish products – can be pH adjusted with sulfuric, citric or phosphoric acid; the amount of acid used shall not exceed the minimum needed to lower the pH to 3.5;

(j) Vitamins B1, C and E.

(11) As plant growth regulators: ethylene, for regulation of pineapple flowering.

(12) As floating agents in postharvest handling:

(a) Lignin sulfonate;

(b) Sodium silicate – for tree fruit and fiber processing.

(13) As synthetic inert ingredients as classified by the Environmental Protection Agency, for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances: EPA List 4 – Inerts of Minimal Concern.

M. Nonsynthetic substances prohibited for use in organic crop production:

(1) Ash from manure burning;

(2) Arsenic;

(3) Lead salts;

(4) Sodium fluoaluminate (mined);

(5) Strychnine;

(6) Tobacco dust (nicotine sulfate);

(7) Potassium chloride – unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil;

(8) Sodium nitrate.

N. Synthetic substances allowed for use in organic livestock production:

(1) As disinfectants, sanitizers and medical treatments as applicable:

(a) Alcohols: Ethanol, disinfectant and sanitizer only, prohibited as feed additive; Isopropanol, disinfectant only.

(b) Aspirin – approved for health care use to reduce inflammation;

(c) Chlorine materials – disinfecting and sanitizing facilities and equipment; residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act: Calcium hypochlorite; Chlorine dioxide; Sodium hypochlorite.

(d) Chlorohexidine – allowed for surgical procedures conducted by a veterinarian; allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness;

(e) Electrolytes – without antibiotics;

(f) Glucose;

(g) Glycerin – allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils;

(h) Iodine;

(i) Hydrogen peroxide;

(j) Magnesium sulfate;

(k) Oxytocin – use in postparturition therapeutic applications;

(l) Parasiticides: Ivermectin – prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder livestock when organic system plan-approved preventative management does not prevent infestation; milk or milk products from a treated animal cannot be labeled as organic for 90 days following treatment; in breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period of breeding stock;

(m) Phosphoric acid – allowed as an equipment cleaner, provided that no direct contact with organically managed livestock or land occurs;

(n) Biologics – vaccines.

(2) As topical treatment, external parasiticide or local anesthetic as applicable:

(a) Iodine;

(b) Lidocaine – as a local anesthetic; use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals;

(c) Lime, hydrated (bordeaux mixes) – not permitted to cauterize physical alterations or deodorize animal wastes;

(d) Mineral oil – for topical use and as a lubricant;

(e) Procaine – as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals;

(f) Copper sulfate.

(3) As feed supplements: milk replacers – without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals;

(4) As feed additives:

(a) Trace minerals, used for enrichment or fortification when FDA approved, including: Copper sulfate; Magnesium sulfate.

(b) Vitamins, used for enrichment or fortification when FDA approved.

(5) As synthetic inert ingredients as classified by the Environmental Protection Agency, for use with nonsynthetic substances or a synthetic substance listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances: EPA List 4 – Inerts of Minimal Concern.

O. Nonsynthetic substances prohibited for use in organic livestock production: Strychnine.

P. Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups)":

(1) Nonsynthetics allowed:

(a) Acids: Alginic; Citric – produced by microbial fermentation of carbohydrate substances; Lactic;

(b) Bentonite;

(c) Calcium carbonate;

(d) Calcium chloride;

(e) Colors, nonsynthetic sources only;

(f) Dairy cultures;

(g) Diatomaceous earth – food filtering aid only;

(h) Enzymes – must be derived from edible, nontoxic plants, nonpathogenic fungi or nonpathogenic bacteria;

(i) Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservatives;

(j) Kaolin;

(k) Magnesium sulfate, nonsynthetic sources only;

(l) Nitrogen – oil-free grades;

(m) Oxygen – oil-free grades;

(n) Perlite – for use only as a filter aid in food processing;

(o) Potassium chloride;

(p) Potassium iodide;

(q) Sodium bicarbonate;

(r) Sodium carbonate;

(s) Waxes – nonsynthetic: Carnauba wax; Wood resin.

(t) Yeast – nonsynthetic; grown on petrochemical substrate and sulfite waste liquor is prohibited: Autolysate; Bakers; Brewers; Nutritional; Smoked – nonsynthetic smoke flavoring process must be documented.

(2) Synthetics allowed:

(a) Alginates;

(b) Ammonium bicarbonate – for use only as a leavening agent;

(c) Ammonium carbonate – for use only as a leavening agent;

(d) Ascorbic acid;

(e) Calcium citrate;

(f) Calcium hydroxide;

(g) Calcium phosphates (monobasic, dibasic and tribasic);

(h) Carbon dioxide;

(i) Chlorine materials – disinfectant and sanitizing food contact surfaces, except that residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act: Calcium hypochlorite; Chlorine dioxide; Sodium hypochlorite.

(j) Ethylene – allowed for postharvest ripening of tropical fruit;

(k) Ferrous sulfate – for iron enrichment or fortification of foods when required by regulation or recommended (independent organization);

(l) Glycerides (mono and di) – for use only in drum drying of food;

(m) Glycerin – produced by hydrolysis of fats and oils;

(n) Hydrogen peroxide;

(o) Lecithin – bleached;

(p) Magnesium carbonate – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(q) Magnesium chloride – derived from sea water;

(r) Magnesium stearate – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(s) Nutrient vitamins and minerals, in accordance with federal guidelines in 21 CFR 104.20, Nutritional Quality Guidelines For Foods;

(t) Ozone;

(u) Pectin (low-methoxy);

(v) Phosphoric acid – cleaning of food-contact surfaces and equipment only;

(w) Potassium acid tartrate;

(x) Potassium tartrate made from tartaric acid;

(y) Potassium carbonate;

(z) Potassium citrate;

(aa) Potassium hydroxide – prohibited for use in lye peeling of fruits and vegetables;

(bb) Potassium iodide – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(cc) Potassium phosphate – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(dd) Silicon dioxide;

(ee) Sodium citrate;

(ff) Sodium hydroxide – prohibited for use in lye peeling of fruits and vegetables;

(gg) Sodium phosphates – for use only in dairy foods;

(hh) Sulfur dioxide – for use only in wine labeled "made with organic grapes", provided that the total sulfite concentration does not exceed 100 ppm;

(ii) Tocopherols – derived from vegetable oil when rosemary extracts are not a suitable alternative;

(jj) Xanthan gum.

Q. Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients:

(1) Any nonorganically produced agricultural product may be used in accordance with the restrictions specified in the section and when the product is not commercially available in organic form.

(2) Cornstarch (native);

(3) Gums – water extracted only (arabic, guar, locust bean, carob bean);

(4) Kelp – for use only as a thickener and dietary supplement;

(5) Lecithin – unbleached;

(6) Pectin (high-methoxy).

R. Amending the National List

(1) Any person may petition the National Organic Standards Board for the purpose of having a substance evaluated by the Board for recommendation to the USDA Secretary for inclusion on or deletion from the National List.

(2) A person petitioning for amendment of the National List should contact USDA/NOP for details.

S. Other Generic and Brand Name Lists: In addition to the National Materials List, there is a list developed by the Organic Materials Review Institute (OMRI), which list covers both generic types of materials and specific brand names. OMRI does technical reviews of materials against the National List specifications, and for the purpose of these regulations is considered a competent reviewer. For specific generic material or brand name information, persons should visit the OMRI website at: www.omri.org. Hard copies of the OMRI list are also available from the Commission for a small fee.

[21.15.1.10 NMAC - Rp 21 NMAC 15.1.10, 8/30/2001]

21.15.1.11 FEES AND ASSESSMENTS

A. Application fee: all applicants, regardless of category, must remit a $125.00 application fee with the completed application. Applications without accompanying fees shall be deemed incomplete and the applicant shall be notified that the application will not be further processed without the fee. Applicants applying for dual categories (crop and processor, animal and processor, but not crop and animal) must pay two fees, except where total annual gross sales of organic product are less than $50,000.00 and all handling/processing is performed by the certified producer; in such cases only one fee will be required. Annual update applications must also be accompanied by a $125.00 fee payment. Annual update applications sent in after the announced due date will be subject to a $75.00 late fee, in addition to the regular application fee of $125.00

B. All operations receiving certification from the Commission must also remit annually by March 15 an assessment based on gross sales of organic products for the calendar year just ended. The Commission shall send out a reminder notification of the assessment obligation in January.

(1) Producers, processors and handlers shall be assessed at a rate of one-half of one percent (½ percent) of total annual gross sales of organically produced agricultural products, except:

(2) As provided for in the Organic Commodity Act, at 76.22.16 (d), the Commission may, following notice and comment, adjust the assessment rate up or down by no more than one hundred percent.

(3) As provided for in the Organic Commodity Act, at 76.22.17, the Commission may authorize a supplemental assessment, which shall not exceed one-fourth of one percent (¼ percent) of total annual gross sales of organically produced agricultural products.

C. Collection of Assessments: all assessment shall be collected directly by the Commission and shall be deposited into the Organic Market Development Fund.

[21.15.1.11 NMAC - Rp 21 NMAC 15.1.14, 8/30/2001]

21.15.1.12 EXEMPTED AND

EXCLUDED CATEGORIES

A. A production or handling/processing operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales total $5,000.00 or less annually is exempt from certification and from submitting an organic system plan, but must comply with the applicable organic production and handling requirements, record keeping requirements, and must annually register with the Commission.

(1) Registration of exempt business will require the annual filing of a registration application and a fee of $50.00.

(2) Registered exempt businesses must be available for inspection and audit by the Commission during regular business hours.

(3) Annual registration update applications sent in after the announced due date will be subject to a $25.00 late fee, in addition to the regular registration fee of $50.00.

B. A handling operation that is a retail food establishment or portion thereof and that handles organically produced agricultural products but does not process them is exempt from certification as provided for by the USDA's National Organic Program.

C. A handling operation or portion thereof that only handles agricultural products that contain less than 70 percent organic ingredients by total finished-product weight (excluding water and salt) is exempt from certification as provided for by the USDA's National Organic Program.

D. A handling operation or portion thereof that only identifies organic ingredients on the information panel is exempt from certification as provided for by the USDA's National Organic Program.

E. A handling operation that meets 25.15.1.12 A or 25.15.1.12 B above must maintain the records sufficient to:

(1) Prove that ingredients identified as organic were organically produced and handled, and;

(2) Verify quantities produced from such ingredients.

F. A handling operation or portion thereof is excluded from the requirements of certification, except for the requirements for the prevention of commingling and contact with prohibited substances, if such operation or portion thereof only sells organic agricultural products labeled as "100 percent organic", "organic" or "made with organic (specified ingredients or food groups)" that:

(1) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation, and;

(2) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

G. A handling operation that is a retail food establishment of portion thereof that processes, on the premises of the retail food establishment, raw and ready-to-eat food from agricultural products that were previously labeled as "100 percent organic", "organic" or "made with organic (ingredients or food groups)" is excluded from the certification requirements, except:

(1) Requirements for the prevention of contact with prohibited substances;

(2) Labeling provisions.

H. Any operation exempt under the above guidelines must maintain business records related to their organic operation and/or sales and such records must be maintained for no less than 3 years beyond their creation and the operation must allow representatives of the Commission and of USDA's National Organic Program access to the records for inspection and copying during normal business hours, for the purpose of determining compliance with the applicable regulations.
[21.15.1.12 NMAC – N, 8/30/2001]

HISTORY of 21.15.1 NMAC:
Pre-NMAC History:
None.

History of the Repealed Material:
21 NMAC 15.1, Organic Agriculture Generally, filed 07/02/98, repealed effective 08/30/2001.

NEW MEXICO ORGANIC COMMODITY COMMISSION

TITLE 21 AGRICULTURE & RANCHING
CHAPTER 17 PEST, DISEASE AND WEED CONTROL
PART 58 ORGANIC METHODS OF CONTROL

21.17.58.1 ISSUING AGENCY: New Mexico Organic Commodity Commission.
[21.17.58.1 NMAC - Rp 21 NMAC 17.58.1, 8/30/2001]

21.17.58.2 SCOPE: All individuals and businesses in New Mexico producing, handling, processing and selling agricultural products labeled "organic", "certified organic" or "transitional". There are additional regulations applicable to the same entities in 21.15.1 NMAC, 21.18.5 NMAC, 21.25.6 NMAC, 21.27.3 NMAC, 21.30.1 NMAC, and 21.34.16 NMAC.
[21.17.58.2 NMAC - Rp 21 NMAC 17.58.2, 8/30/2001]

21.17.58.3 STATUTORY AUTHORITY: 21.17.58 NMAC is promulgated pursuant to the provisions of the Organic Commodity Act, 76.22.1 through 76.22.28 NMSA 1978 (as amended).
[21.17.58.3 NMAC - Rp 21 NMAC 17.58.3, 8/30/2001]

21.17.58.4 DURATION: Permanent.
[21.17.58.4 NMAC - Rp 21 NMAC 17.58.4, 8/30/2001]

21.17.58.5 EFFECTIVE DATE: August 30, 2001, unless a later date is cited at the end of a section.
[21.17.58.5 NMAC - Rp 21 NMAC 17.58.5, 8/30/2001]

21.17.58.6 OBJECTIVE: 21.17.58 NMAC provides regulations and guidelines on methods of pest, disease and weed control allowed and prohibited in organic production.
[21.17.58.6 NMAC - Rp 21 NMAC 17.58.6, 8/30/2001]

21.17.58.7 DEFINITIONS:

A. *Beneficial insect.* Insects that only harm pest insects and do not harm people, plants or pets.

B. *Biological or botanical insecticides/pesticides.* Insecticides/pesticides derived from plant or animal sources that are selective, biodegradable and less harmful to the environment generally than synthetic insecticides.

C. *Control*. Any method that reduces or limits damage by populations of pests, weeds or diseases to levels that do not significantly reduce productivity.

D. *Crop rotation*. The practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years, so that crops of the same species or family are not grown repeatedly without interruption on the same field. Perennial cropping systems employ means such as alley cropping, intercropping and hedgerows to introduce biological diversity in lieu of crop sequencing.

E. *Mulch.* Any material, such as wood chips, leaves, straw, paper or plastic (on the National List), that serves to suppress weed growth, moderate soil temperature, or conserve soil moisture.

F. *Pesticide.* Any substance which alone, in chemical combina-

tion, or in any formulation with one or more substances is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136(u) *et seq*).
[21.17.58.7 NMAC - Rp 21 NMAC 17.58.7, 8/30/2001]

21.17.58.8 PEST CONTROL

A. Insects and Similar Pests: The use of the following methods and materials is permitted:

(1) Augmentation or introduction of predators or parasites of the pest species;

(2) Development of habitat for natural enemies of the pest species;

(3) Nonsynthetic, nontoxic controls such as lures, traps and repellants (garlic sprays are considered repellants);

(4) Insecticidal soaps, provided they do not also contain any prohibited materials;

(5) If the above is insufficient to control the pest species, biological or botanical substances may be applied, provided that: the producer implement measures to evaluate and mitigate the effects of repetitive use of the same or similar materials on pest resistance and shifts in pest type, and the substance is used according to label directions. Biological and botanical substances that may be used include, but are not limited to: Bt, neem, pyrethrum, rotenone, sabadilla. The substance used must not have been produced through excluded methods.

(6) Horticultural oils are allowed as dormant, suffocating and summer oils; including petroleum based oils used on woody plants for dormant and summer pest control, except that a petroleum based material allowed as a pesticide is prohibited for use as an herbicide, and except that aromatic petroleum solvents are specifically prohibited.

(7) Other substances as dictated by the National Organic Program.

B. Pest and Pathogen Control in Soil: Crop rotation, organic matter management and good field sanitation are encouraged as preventative measures to reduce pest and pathogen levels in soils. Soil borne disease and pest organisms may also be controlled through soil solarization, provided that any plastic or similar materials used in the process is fully removed from the soil and not turned in to the soil.
[21.17.58.8 NMAC - Rp 21 NMAC 17.58.9, 8/30/2001]

21.17.58.9 DISEASE CONTROL: Disease Control: The use of the following methods and materials is permitted:

A. Use of resistant and/or tolerant plant varieties;

B. Crop rotation;

C. Field sanitation measures;

D. Copper, as copper hydroxide, copper oxide, copper oxychloride, provided they are managed in a way that prevents excessive accumulation, and not as herbicides;

E. Fungicidal and cryptocidal soaps, plant preparations, vinegar and other natural substances;

F. Hydrogen peroxide;

G. Potassium bicarbonate;

H. Elemental sulfur;

I. Other substances as dictated by the National Organic Program.
[21.17.58.9 NMAC - Rp 21 NMAC 17.58.8, 8/30/2001]

21.17.58.10 WEED CONTROL: The use of the following methods and materials is permitted:

A. Cultural practices which limit weed development (crop rotations, green manures, fallow, etc.);

B. Mulching with fully biodegradable materials;

C. Mowing;

D. Livestock grazing;

E. Hand weeding and mechanical cultivation;

F. Flame, heat or electrical means;

G. Plastic or other synthetic mulches, provided that they are removed from the field at the end of the growing or harvest season;

H. Corn-gluten pre-emergent herbicide, as approved by a competent reviewer.
[21.17.58.10 NMAC - Rp 21 NMAC 17.58.10, 8/30/2001]

21.17.58.11 CROP ROTATION

A. Yearly rotation of annual crops based on plant families is strongly encouraged. Farmers may elect to grow the same annual crop on the same field for up to three years provided that they can demonstrate good soil fertility management practices and provided that the on-site inspection does not reveal any serious problems brought on by non-rotation. It will be the farmer's duty to specify, in the annual re-certification application, what measures are being taken to maintain and augment soil health. Recommended measures include compost application, foliar feeding, mulching, etc.

B. Under specific conditions, a farmer may elect to grow the same annual crop on the same field for an additional three years (for a total of six years). These conditions include: yearly soil and/or tissue tests for the fields in question; demonstration of soil health and productivity through records including yields, crop quality and listed management practices.

C. In no case will an extension be granted beyond six years. Fields may not be left fallow for one year and then considered to be back at the start of the six-year time frame. The NMOCC reserves the right to require additional measures beyond those listed above, and the right to deny the requested extensions based on information, or the lack thereof, contained in the application materials and inspection reports.
[21.17.58.4 NMAC - N, 8/30/2001]

HISTORY of 21.17.58 NMAC:
Pre-NMAC History:
None

History of Repealed Material:
21 NMAC 17.58, Pest, Disease and Weed Control, filed 07/02/98, repealed effective 08/30/2001.

NEW MEXICO ORGANIC COMMODITY COMMISSION

TITLE 21 AGRICULTURE & RANCHING
CHAPTER 18 SEEDS, FEEDS, AND FERTILIZERS
PART 5 ORGANIC PRODUCTION METHODS AND MATERIALS

21.18.5.1 ISSUING AGENCY: New Mexico Organic Commodity Commission.
[21.18.5.1 NMAC - Rp 21 NMAC 18.5.1, 8/30/2001]

21.18.5.2 SCOPE: All individuals and businesses in New Mexico producing, handling, processing and selling agricultural products labeled "organic", "certified organic" or "transitional". There are additional regulations applicable to the same entities in 21.15.1 NMAC, 21.17.58 NMAC, 21.25.6 NMAC, 21.27.3 NMAC, 21.30.1 NMAC, and 21.34.16 NMAC.
[21.18.5.2 NMAC - Rp 21 NMAC 18.5.2, 8/30/2001]

21.18.5.3 STATUTORY AUTHORITY: 21.18.5 NMAC is promulgated pursuant to the provisions of the Organic Commodity Act, 76.22.1 through 76.22.28 NMSA 1978 (as amended).
[21.18.5.3 NMAC - Rp 21 NMAC 18.5.3, 8/30/2001]

21.18.5.4 DURATION: Permanent.

[21.18.5.4 NMAC - Rp 21 NMAC 18.5.4, 8/30/2001]

21.18.5.5 EFFECTIVE DATE: August 30, 2001, unless a later date is cited at the end of a section.
[21.18.5.5 NMAC - Rp 21 NMAC 18.5.5, 8/30/2001]

21.18.5.6 OBJECTIVE: 21.18.5 NMAC describes regulations pertaining to seed and fertilizer allowed and prohibited in certified organic agriculture, as specified by the Organic Commodity Act, 76.22.1 – 76.22.28 NMSA 1978.
[21.18.5.6 NMAC - Rp 21 NMAC 18.5.6, 8/30/2001]

21.18.5.7 DEFINITIONS:

A. *Annual seedling*. A plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted.

B. *Commercially available*. The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system or organic production or handling, as determined by the certification agent in the course of reviewing the organic plan. The United States Department of Agriculture's National Organic Program may determine a more detailed and precise definition in the future; at such time these regulations will be amended.

C. *Compost*. The product of a carefully managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil.

D. *Excluded methods*. Refers to a variety of methods used to genetically modify or engineer organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene and changing the position of genes when achieved by recombinant DNA technology).

E. *Fertilizer*. A single or blended substance containing one or more recognized plant nutrients, which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

F. *Inert ingredient*. Any substance (or group of substances with similar chemical structures if designated by the Environmental Protection Agency) other than an active ingredient which is intentionally included in any pesticide product used in organic crop or livestock production and handling.

G. *Planting stock*. Any plant or plant tissue, including seeds, rhizomes, shoots, leaf or stem cutting, roots or tubers, used in plant production or propagation, but excluding annual transplants.

H. *Transplant.* A seedling that has been removed from its original place of production, transported, and replanted.
[21.18.5.7 NMAC - Rp 21 NMAC 18.5.7, 8/30/2001]

21.18.5.8 ORGANIC MATTER:

A. Compost use is permitted and encouraged. Compost used on certified operations must not have been made with any intentional synthetic ingredient, such as synthetic urea used to bring carbon and nitrogen into optimum ratio. Composting is allowed as a way of treating conventionally produced plant and animal remains and by-products prior to soil application. Records must be kept for purchased composts used on certified farms. See Resources section at end of handbook for sources of compost and composting information.

B. Animal manure use is permitted provided: All animal manure sources and management practices are recorded and clearly documented; and careful completion of field history and soil amendment forms contained in application is observed.

(1) Composted Manure: Can be produced on the farm. If imported, it must be demonstrated to be, by clear and convincing evidence, free of impermissible contaminants.

(2) Fresh, aerated, anaerobic, or "sheet composted" manures may only be used:

(a) on perennial crops not for human consumption;

(b) if incorporated into the soil not less than 120 days prior to the harvest of a product whose edible portion has direct contact with the soil or soil particles;

(c) if incorporated into the soil not less than 90 days prior to the harvest of a product whose edible portion does not have direct contact with the soil or soil particles;

(d) if applied when the soil is sufficiently warm and moist to ensure microbial digestion.

C. The use of the following types of organic matter are permitted:

(1) Green manures and crop residues;

(2) peat moss;

(3) straw;

(4) seaweed;

(5) and other similarly derived materials;

(6) composted food and forestry by-products that are free of contaminants are permitted.

D. The use of the following types of organic matter are restricted and may be used only where demonstrated to be, by clear and convincing evidence, free of contaminants.

(1) alfalfa meal;

(2) cottonseed meal;

(3) soybean meal;

(4) sawdust;

(5) and blended products containing these substances.
[21.18.5.8 NMAC - Rp 21 NMAC 18.5.8, 8/30/2001]

21.18.5.9 MINERAL NUTRIENTS

A. In general, all mined minerals are allowed for use. This list includes but is not limited to: humates, gypsum, soft-rock phosphate, sul-po-mag, limestone, greensand and others. Low solubility mined substances are allowed; high solubility mined substances must be justified by soil or crop tissue analysis.

B. Additionally, the following sources of minerals are allowed: wood ash (allowed but not recommended), bone meal, blood meal, fish meal, and other similarly derived products.

C. Due to high soil alkalinity and a predisposition to high salt levels in most New Mexico soils, sodium nitrate is prohibited.
[21.18.5.9 NMAC - Rp 21 NMAC 18.5.9, 8/30/2001]

21.18.5.10 FOLIAR APPLICATIONS:

A. In addition to good soil nutrient management practices, plant nutrient needs may be addressed through foliar applications of permitted materials. The foliar application of the following materials is permitted:

(1) Liquid or powdered seaweed extract or other non-fortified marine by-products;

(2) Plant or animal based growth regulators and other plant or animal products;

(3) Plant and/or animal preparations, biodynamic preparations, microbial activators, bacterial inoculants, and mycorrhizae, etc.

(4) Natural and approved adjuvants, wetting agents and other spray performance enhancers.

B. The foliar application

of the following materials is prohibited:

(1) Synthetic adjuvants, wetting agents, and the like;

(2) Mineral suspensions such as silica.

[21.18.5.10 NMAC - N 8/30/2001]

21.18.5.11 SEEDS, SEEDLINGS, PERENNIAL PLANTING STOCK

A. The producer must use organically grown seeds and planting stock, except (excluding annual seedlings) when the required stock is not commercially available in organic form, and the producer can document attempts to locate the stock from organic sources; in such a case, non-organic, un-treated seed or planting stock may be used but must be noted in the producer's records.

B. Non-organically produced seeds and planting stock, excluding annual seedlings, that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available;

C. Annual seedlings must be organically produced, either by the producer planting them or by another certified organic producer; except that non-organically produced annual seedlings may be used to produce an organic crop when a temporary variance has been granted in accordance with the guidelines of the USDA/NOP.

D. Perennial transplants (root stock) may be from any source, but crops labeled as organically produced must be from plants that have been under organic cultivation for at least 12 months prior to harvest.

E. Seeds, annual seedlings and planting stock treated with prohibited substances may be used to produce an organic crop when the application of the materials is a requirement of Federal or State phytosanitary regulations; in this case, the producer must contact the Commission as soon as they are aware of the issue and must provide the Commission with full information on the case.

[21.18.5.11 NMAC - Rp 21 NMAC 18.5.10, 8/30/2001]

21.18.5.12 OTHER: Microbes used in the production of inputs used to produce organically produced farm crop products must occur naturally and not as the result of genetic engineering.

[21.18.5.1 NMAC - N, 8/30/2001]

HISTORY of 21.18.5 NMAC:

Pre-NMAC History:
None.

History of Repealed Material:
21 NMAC 18.5, Seeds, Feeds and Fertilizers, filed 07/02/98, repealed effective 08/30/2001.

NEW MEXICO ORGANIC COMMODITY COMMISSION

TITLE 21 AGRICULTURE & RANCHING
CHAPTER 25 AGRICULTURAL MARKETING, PROCESSING AND INSPECTIONS
PART 6 ORGANIC LABELING AND MARKETING, PROCESSING/HANDLING OPERATIONS, APPLICATION PROCESS AND INSPECTIONS

21.25.6.1 ISSUING AGENCY: New Mexico Organic Commodity Commission.

[21.25.6.1 NMAC - Rp 21 NMAC 25.6.1, 8/30/2001]

21.25.6.2 SCOPE: All individuals and businesses in New Mexico producing, handling, processing and selling agricultural products labeled "organic", "certified organic" or "transitional". There are additional regulations applicable to the same entities in 21.15.1 NMAC, 21.17.58 NMAC, 21.18.5 NMAC, 21.27.3 NMAC, 21.30.1 NMAC, and 21.34.16 NMAC.

[21.25.6.2 NMAC - Rp 21 NMAC 25.6.2, 8/30/2001]

21.25.6.3 STATUTORY AUTHORITY: 21.25.6 NMAC is promulgated pursuant to the provisions of the Organic Commodity Act, 76.22.1 through 76.22.28 NMSA 1978 (as amended).

[21.25.6.3 NMAC - Rp 21 NMAC 25.6.3, 8/30/2001]

21.25.6.4 DURATION: Permanent.

[21.25.6.4 NMAC - Rp 21 NMAC 25.6.4, 8/30/2001]

21.25.6.5 EFFECTIVE DATE: August 30, 2001, unless a later date is cited at the end of a section.

[21.25.6.5 NMAC - Rp 21 NMAC 25.6.5, 8/30/2001]

21.25.6.6 OBJECTIVE: 21.25.6 NMAC describes regulations pertaining to the labeling and marketing of organic products, certified organic processing/handling operations, the annual on-site inspection process and the application process.

[21.25.6.6 NMAC - Rp 21 NMAC 25.6.6, 8/30/2001]

21.25.6.7 DEFINITIONS:

A. *Audit trail*. Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as "100 percent organic", the organic ingredients of any agricultural product labeled as "organic" or "made with organic (specified ingredients)" or the organic ingredients of any agricultural product containing less than 50 percent organic ingredients identified as organic in an ingredients statement.

B. *Handle*. To sell, process, or package agricultural products, except such term shall not include the sale, transportation or delivery of crops or livestock by the producer thereof to a handler.

C. *Handler*. Any individual in the business of handling organically produced food articles.

D. *Handling operation*. Any operation or portion of an operation that receives or otherwise acquires organically produced food articles from the producer of those organically produced food articles; prepares organically produced food articles for market; or processes, packages, transports or stores organically produced food articles.

E. *Information panel*. That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size of other package attributes.

F. *Ingredient*. Any substance used in the preparation of an agricultural product that is still present in the final commercial product as consumed.

G. *Ingredients statement*. The list of ingredients contained in a product shown in the common and usual names in the descending order of predominance.

H. *Inspector*. Any person retained or used by a certifying agent to conduct inspections of certification applications or certified production or handling operations.

I. *Inspection*. The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the applicable state and federal regulations.

J. *Label*. A display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk con-

tainer containing an agricultural product, except for package liners or a display of written, printed or graphic material which contains only information about the weight of the product.

K. *Labeling.* All written, printed or graphic material accompanying an agricultural product at any time or written, printed or graphic material about the agricultural product displayed at retail stores.

L. *Lot.* Any number of containers that contain an agricultural product of the same kind located in the same conveyance, warehouse, or packing house and which are available for inspection at the same time.

M. *Market information*. Any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters and signs, distributed, broadcasted, or made available outside of retail outlets that are used to assist in the sale or promotion of a product.

N. *Nonagricultural substance.* A substance that is not a product of agriculture, such as a mineral or a bacterial culture, that is used as an ingredient in an agricultural product, including any substance, such as gums, citric acid, or pectin, that is extracted from, isolated from, or a fraction of an agricultural product, so that the identity of the agricultural product is unrecognizable in the extract, isolate, or fraction.

O. *Processing.* Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

P. *Processor.* A person who engages in the activity of processing agricultural products.

[21.25.6.7 NMAC - Rp 21 NMAC 25.6.7, 8/30/2001]

21.25.6.8 LABELING AND MARKETING

A. Use of the term "organic" and its derivates:

(1) The term "organic" may only be used on labels and in labeling of agricultural products that have been produced and handled in accordance with these regulations and with the USDA's National Organic Program regulations.

(2) Products for export that are produced and certified to foreign organic standards or foreign contract buyer requirements, may be labeled in accordance with the foreign standards or buyer requirements, provided the shipping containers and shipping documents meet the labeling requirements specified by the USDA's National Organic Program standards.

(3) Organic livestock feeds must be labeled as described in part 21.25.6.8.2.5 below.

(4) All products labeled as "100% organic" or "organic" and all ingredients identified as "organic" in the ingredient statement of any product must not:

(a) Be produced using excluded methods (i.e. genetic engineering);

(b) Be produced using sewage sludge;

(c) Be processed using ionizing radiation;

(d) Be processed using aids not approved on the National List of Allowed and Prohibited Substances, except that processed products labeled "100% organic" must be processed only using organically produced processing aids;

(e) Contain sulfites, nitrates or nitrites added during the production or handling process, except that wine containing sulfites may be labeled "made with organic grapes";

(f) Be produced using nonorganic ingredients when said ingredients are available in organic form;

(g) Include organic and nonorganic forms of the same ingredient.

B. Labeling Categories: Label categories are segregated according to percent of ingredients that are certified organic agricultural products:

(1) Products sold, labeled or represented as "100 percent organic": finished product must contain, by weight or volume, 100% organically produced raw or processed agricultural product. Example: milled flour, labeled "100% organic whole wheat flour";

(2) Products sold, labeled or represented as "organic": finished product must contain (by weight or volume, excluding water and salt) not less than 95% organically produced raw or processed agricultural products. The remaining 5% or less must consist of nonagricultural products or nonorganically produced agricultural products approved in the National List of Allowed and Prohibited Substances and must not contain or have been created using excluded methods, sewage sludge or ionizing radiation.

(3) Products sold, labeled or represented as "made with organic (specified ingredients)": finished product must contain (by weight or volume, excluding water and salt) not less than 70% organically produced raw or processed agricultural products. The non-organic ingredients must not contain or have been created using excluded methods, sewage sludge or ionizing radiation.

(4) Products with less than 70% organic ingredients: final product contains less than 70% organically produced raw or processed agricultural product. Non-organic ingredient fraction not restricted as above. While exempt from certification requirements, any such product must have documentation to backup claims made on the ingredient panel of the label.

(5) Livestock feed:

(a) A raw or processed livestock feed sold, labeled or represented as "100% organic" must contain (by weight or fluid volume, excluding salt and water) not less than 100% organically produced agricultural product.

(b) A raw or processed livestock feed sold, labeled or represented as "organic" must contain only certified organic agricultural products and such feed additives and supplements as are allowed under the National Materials List (see part X of this handbook).

C. Calculating the percentage of organically produced ingredients:

(1) The percentage of all organically produced ingredients in an agricultural product sold, labeled or represented as "100% organic, "organic" or "made with organic (specified ingredients)", or that include organic ingredients, must be calculated by:

(a) Dividing the total weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of the finished product.

(b) Dividing the fluid volume of all organic ingredients (excluding water and salt) by the fluid volume of the finished product (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principle display or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of the ingredients and finished product.

(c) For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid and liquid ingredients (excluding water and salt) by the total weight (excluding water and salt) of the finished product.

(2) The percentage of all organically produced ingredients in an agricultural product must be rounded down to the nearest whole number.

(3) The percentage must be determined by the handler who affixes the

label on the consumer package and verified by the certifying agent of the handler. The handler may use information provided by the certified operation in determining the percentage.

D. Label Specifics, by Category:

(1) Agricultural products in packages labeled as "100% organic" or "organic" may display on any part of the label and on any labeling or marketing information concerning the product, the following:

(a) The term "100% organic" or "organic", as applicable, to modify the name of the product;

(b) For products labeled "organic" the percentage of organic ingredients in the product; (The size of the percentage statement must not exceed one-half the size of the largest type size on the panel on which the statement is displayed and must appear in its entirety in the same type size, style and color without highlighting.)

(c) The term "organic" to identify the organic ingredients in multiingredient products labeled "100% organic";

(d) The USDA organic seal (see section of handbook for sample);

(e) The seal, logo or other identifying mark of the Commission, which certified the production or handling operation producing the finished product and any other certifying agent which certified production or handling operations producing raw organic product or organic ingredients used in the finished product, provided that the handler producing the finished product maintain records, pursuant to state and federal requirements, verifying organic certifications of the operations producing such ingredients and further provided that such seals or marks are not individually displayed more prominently than the USDA seal.

(2) Agricultural products in packages labeled as "100% organic" or "organic" must:

(a) For products labeled "organic", identify each organic ingredient in the ingredient statement with the word "organic" or with as asterisk or other reference mark that is defined below the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.

(b) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, "Certified organic by…", or similar phrase, identify the name of the certifying agent that certified the handler of the finished product and may display the business address, Internet address or telephone number of the certifying agent in such label.

(3) Agricultural products in packages labeled as "made with organic (specific ingredients may display on any part of the label and on any labeling or marketing information concerning the product:

(a) The Statement: "Made with organic (specified ingredients)" provided the statement does not list more than three organically produced ingredients; or: "Made with organic (specified food groups)" provided the statement does not list more than three of the following food groups: beans, fish, fruits, grains, herbs, meats, nuts, oils, poultry, seeds, spices, sweeteners, vegetables or processed milk products, and further provided that all ingredients of each listed food group in the product must be organically produced; and further provided said statement appears in letters that do not exceed one-half the size of the largest type size on the panel and which appears in its entirety in the same type size, style and color without highlighting.

(b) The percentage of organic ingredients in the product. The size of the percentage statement must not exceed one-half the size of the largest type size on the panel on which the statement is displayed and must appear in its entirety in the same type size, style and color without highlighting.

(c) The seal, logo or other identifying mark of the certifying agent that certified the handler of the finished product.

(4) Agricultural products in packages labeled as "made with organic (specific ingredients)" must:

(a) In the ingredient statement, identify each organic ingredient with the word "organic" or with an asterisk or other reference mark that is defined below the ingredient statement to indicate that ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.

(b) On the information panel, below the information identifying the handler or distributor and preceded by the statement, "Certified organic by …", or similar phrase, identify the name of the certifying agent that certified the handler of the finished product and may display the business address, Internet address or telephone number of the Commission in such label.

(c) Not display the USDA seal.

(5) An agricultural product with less than 70% organically produced ingredients may only identify the organic content of the product by:

(a) Identifying each organically produced ingredient in the ingredient statement with the word "organic" or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced, and:

(b) If the organically produced ingredients are identified in the ingredient statement, displaying the product's percentage organic contents on the information panel.

(6) Agricultural products with less than 70% organically produced ingredients must not display:

(a) The USDA seal;

(b) Any certifying agent seal, logo or other identifying mark which represents organic certification of a product or product ingredient.

(7) Organic livestock feed products (both "100% organic" and "organic") may display on any package panel the following terms:

(a) The statement, "100% organic" or "organic", as applicable, to modify the name of the feed product;

(b) The USDA seal;

(c) The seal, logo or other identifying mark of the Commission, which certified the production or handling operation producing the raw or processed organic ingredients used in the finished product, provided that such seal or mark is not displayed more prominently than the USDA seal;

(d) The word "organic" or an asterisk or other reference mark which is defined on the package to identify ingredients that are organically produced. Water or salt included as ingredients cannot be identified as organic.

(8) Organic livestock feed products (both "100% organic" and "organic") must:

(a) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, "Certified organic by…" or similar phrase, display the name of the certifying agent that certified the handler of the finished product. The business address, Internet address, or telephone number of the Commission may be included in such label.

(b) Comply with other Federal agency or State feed labeling requirements as applicable.

(9) Agricultural products in other than packaged form at the point of retail sale that are sold, labeled or represented as "100% organic" or "organic":

(a) Agricultural prod-

ucts in other than packaged form may use the term "100% organic" or "organic", as applicable, to modify the name of the product in retail display, labeling and display containers, provided that the term "organic" is used to identify the organic ingredients listed in the ingredient statement.

(b) If the product is prepared in a certified facility, the retail display, labeling and display containers may use: The USDA seal; The seal, logo, or other identifying mark of the certifying agent that certified the production or handling operation producing the finished product and any other certifying agent which certified operations producing raw organic product or organic ingredients used in the finished product, provide that such seals or marks and not individually displayed more prominently than the USDA seal.

(10) Agricultural products in other than packaged form at the point of retail sale that are sold, labeled or represented as "made with organic (specific ingredients)":

(a) Agricultural products in other than packaged form containing between 70 and 95 percent organically produced ingredients may use the phrase, "made with organic (specified ingredients)" to modify the name of the product in retail display, labeling and display containers.

(b) Such statement must not list more than three organic ingredients or food groups;

(c) In any such display of the product's ingredient statement, the organic ingredients are identified as "organic".

(d) If prepared in a certified facility, such agricultural products labeled as "made with organic (specified ingredients)" in retail displays, display containers and market information may display the certifying agents seal, logo or other identifying mark.

(11) Agricultural products produced on an exempt or excluded operation: an agricultural product organically produced or handled on an exempt or excluded operation must not:

(a) Display the USDA seal or any certifying agent's seal or other identifying mark which represents the exempt or excluded operation as a certified organic operation;

(b) Be represented as a certified organic product or certified organic ingredient to any buyer.

(c) An agricultural product organically produced or handled on an exempt or excluded operation may be identified as an organic product or organic ingredient in a multiingredient product produced by the exempt or excluded operation. Such product or ingredients must not be identified or represented as "organic" in a product processed by others.

(d) Such product is subject to requirements specified in the USDA's National Organic Program standards.

(12) The USDA seal:

(a) The USDA seal described herein may only be used for raw or processed agricultural products as provided herein.

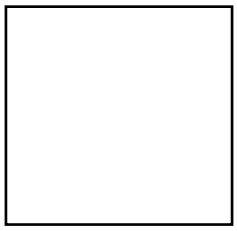
(b) The USDA seal must replicate the form and design provided and must be printed legibly and conspicuously:

(c) On a white background with a brown outer circle and with the term "USDA" in green overlaying a white upper semicircle and with the term "organic" in white overlaying the green lower half circle, or;

(d) On a white or transparent background with black outer circle and black "USDA" on a white or transparent upper half of the circle with a contrasting white or transparent "organic" on the black lower half circle.

(e) The green or black lower half circle may have four light lines running from left to right and disappearing at the point on the right horizon to resemble a cultivated field.

(f) The USDA seal:



(13) The State Seal or Logo

(a) Agricultural products labeled as "100% organic" or "organic", as applicable, may use the logo of the New Mexico Organic Commodity Commission (NMOCC; see Figure 2 below), provided that the certified entity affixing said logo to any part of a label or display materials, has a valid and current organic certification issued by this agency. Agricultural products produced and/or handled by certified organic operations in New Mexico, that are certified by a private company USDA-accredited certifying agent operating in good standing, may not have the NMOCC logo on any part of the label or display materials.

(b) The state logo

[21.25.6.8 NMAC - N, 8/30/2001]

21.25.6.9 PROCESSOR/HANDLING OPERATION CERTIFICATION STANDARDS

A. Admissibility: These standards must be complied with for a handling operation, or part of a handling operation, to be certified for organic handling by the Commission.

(1) Any business entity producing a product making organic claims on the label must have organic certification for the process. Products that are less than 70% by weight or volume, as appropriate, can only use the word organic on the ingredient statement as an adjective describing a specific raw ingredient, and are exempt from certification requirements.

(2) The Commission notes that under the applicable Federal definitions, every entity involved in the seed to table food chain is a handler except the producer. Thus all processing and packaging is "handling" under the law. While the USDA's National Organic Program specifically exempts retailers from certification, they also allow state agencies of competent jurisdiction the right to regulate that exempt category. The National Organic Program has specifically reserved the right to revisit the retail certification issue at a later date; if this happens, these standards and requirements will be revised to comply with any such national standards.

(3) Any facility wherein cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, chilling or otherwise manufacturing, including the packaging, canning, jarring, or otherwise enclosing a food article in a container, and including the display for sale of loose fresh produce, items in bulk bins, and/or re-packaged goods, is eligible for certification by the Commission, provided such facility meets all other applicable New Mexico and Federal food sanitation and health standards.

(4) Any facility that receives or otherwise acquires organically produced food articles and processes, packages, stores or transports such products, provided such facility meets all other applicable New Mexico and Federal food sanitation and

health standards, is eligible for certification by the Commission.

(5) The handler must assure the Commission, through the Organic Processing/ Handling Plan and accurate records, that organically produced products have not been exposed to any prohibited substances, even though the prohibited substances may be used on conventional products going through the facility.

B. The Organic Processing/Handling Plan

(1) All handling operations seeking to be certified by the Commission must submit a written Organic Processing/Handling Plan to the Commission with the application.

(2) The Organic Processing/Handling Plan must include a description of all of the materials, processes, facilities, and by-products of the handling operation, as well as contain provisions to ensure that food articles sold or labeled as organically produced are produced and handled in a manner consistent with the New Mexico Organic Commodity Act and the Federal Organic Foods Act of 1990.

(3) The purpose of the Organic Processing/Handling Plan is to provide the Commission and the business client with an agreed upon document which addresses at least the following issues:

(a) a description of business practices and procedures to be performed in the management of the organic operation, including known or estimated frequencies;

(b) a list of all substances to be used as ingredients, processing aids, and other inputs, including information on the input source, certification status composition and usage locations;

(c) a description of the record keeping system to be used;

(d) a description of practices and procedures used to prevent contamination and/or commingling;

(e) additional information as deemed necessary by the Commission.

(4) Mixed Production & Handling Operation: If an operation wishes to seek certification for both producing and handling, both the Organic Farm Production Plan or the Organic Livestock Production Plan and the Organic Processing/Handling Plan must be submitted. Both application fees must be paid for such double certification except where all handling is performed by the certified producer, and the annual gross sales of organically produced and handled food articles are less than $50,000 annually, in which case only one application fee need be remitted to the Commission, along with the two Organic Plans.

(5) The federal statutory requirement that all applications made to the Commission must contain an Organic Processing/Handling Plan is satisfied by completely filling out the application forms and noting any appropriate additional information.

C. Organic Handling Requirements

(1) Mechanical or biological methods, including but not limited to cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, chilling or otherwise manufacturing, including the packaging, canning, jarring, or otherwise enclosing a food article in a container, may be used to process an organically produced agricultural product for the purpose of retarding spoilage or otherwise preparing the agricultural product for market. For retail certification, this includes the display for sale of loose fresh produce, items in bulk bins, and/or re-packaged goods.

(2) Nonagricultural substances and non-organically produced agricultural products allowed by the National Organic Program (see Materials List) may be used:

(a) in or on a processed agricultural product intended to be sold, labeled or represented as "organic", if not commercially available in organic form.

(b) In or on a processed agricultural product intended to be sold, labeled or represented as "made with organic (specified ingredients or food groups)".

(3) The handler of an organic handling operation must not use in or on agricultural products intended to be sold, labeled or represented as "100 percent organic", "organic", or "made with organic (specified ingredients of food groups)", or in or on any ingredients labeled as organic:

(a) products produced with excluded methods (i.e. genetic engineering);

(b) products produced with ionizing radiation;

(c) a volatile synthetic solvent or other synthetic processing aid not allowed by the National Organic Program Materials List, except that nonorganic ingredients in products labeled "made with organic (specified ingredients or food groups)" are not subject to this requirement.

(4) All machinery must be maintained in accordance with the purposes of the New Mexico Organic Commodity Act and the Federal Organic Foods Act of 1990. This includes regular maintenance, regular cleaning and regular calibration. All aspects of machine maintenance should be scrutinized by the handler to ensure compliance with the purposes of the State and Federal Organic Acts.

(5) Storage bins may not contain any synthetic fungicides, preservatives, or fumigants. No container may be used that has previously contained a substance the use of which is inconsistent with the purposes of organic production and handling.

D. Facility Pest Management Practices

(1) The producer or handler of an organic facility must use management practices to prevent pests, including but not limited to:

(a) Removal of pest habitat, food sources and breeding areas;

(b) Prevention of access to handling facilities, and

(c) Management of environmental factors, such as temperature, light, humidity, atmosphere and air circulation, to prevent pest reproduction.

(2) Pests may be controlled through:

(a) Mechanical or physical controls including but no limited to traps, light, or sound;

(b) Lures and repellents using nonsynthetic or synthetic substances consistent with the National Organic Program Materials List.

(c) If the practices provided for in (a) and (b) immediately above are not effective to prevent or control pests, a nonsynthetic or synthetic substance consistent with the National Organic Program Materials List may be applied.

(d) If the practices provided for in (a), (b) and (c) immediately above are not effective to prevent or control facility pests, a synthetic substance not on the National Organic Program Materials List may be applied, provided that the handler and the Commission agree in advance on the substance, the method of application and measures to be taken to prevent contact of the organically produced products or ingredients with the substance used.

(e) The handler of an organic handling operation who applies a nonsynthetic or synthetic substance to prevent or control pests must update the operation's organic handling plan to reflect the use of such substances and methods of application. The updated organic plan must include a list of all measures taken to prevent contact of the organically produced products or ingredients with the substance used.

(f) Notwithstanding the practices provided for in the above paragraphs, a handler may otherwise use a sub-

stance to prevent or control pests as required by Federal, State, or local laws and regulations, provided that measures are taken to prevent contact of the organically produced products or ingredients with the substance used.

(3) Commingling and Contact With Prohibited Substances Prevention Practices: The handler of an organic handling operation must implement measures necessary to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances. The following are prohibited for use in the handling of any organically produced agricultural product or ingredient labeled in accordance with state and federal regulations:

(a) Packaging materials and storage containers or bins that contain a synthetic fungicide, preservative, or fumigant;

(b) The use or reuse of any container that has been in contact with any substance in such a manner as to compromise the organic integrity of any organically produced product or ingredient placed in those containers, unless such reuseable container has been thoroughly cleaned and poses no risk of contact of the organically produced product or ingredient with the substance used or the cleaning substances used.

(c) The handler must not co-mingle organic and non-organic products in a cold storage room, except where it is necessary. Organic products should not be stored below conventional products. There must be adequate separation of storage units and written storage procedures to assure no mixing of products.

(d) Aluminum, tin, and solder in direct contact with processed organic products is discouraged in all cases, and prohibited when the pH of the product is not between 6.7 and 7.3.

(e) The handler must not use carbon dioxide or ethylene absorbing materials in direct contact with fresh fruit. Carbon dioxide or ethylene scrubbing machinery in the cold storage is permitted.

(4) Cleaning Food Articles

(a) A bio-degradable soap followed by a clean water rinse may be used to remove field dusts and residues.

(b) SOPP and other such commonly used cleaners are prohibited. Sodium silicate or Silicate of Soda may be used to increase the density of water when necessary for floating fruit.

(5) Cleaning Machinery: All machinery and other equipment used in the handling process must be disinfected. A non-stabilizing chlorine solution is suggested. The machine must be thoroughly rinsed with clean water prior to operation.

(6) Cleaning Cold Storage Rooms: All cold storage rooms may be washed and sanitized with a chlorine solution using non-stabilizing chlorine. Rooms should be aired out prior to filling with organic products.

(7) Cleaning Drier Rooms: All drier rooms may be cleaned in a manner similar to cold storage areas. Drier racks may be cleaned in a similar manner, but should be thoroughly rinsed.

(8) Cleaning the Entire Building: In areas where entire manufacturing plants are periodically fumigated, the processor must demonstrate that no fumigants will form toxic residues on organic products.

(9) The facility wherein the handling is performed must meet all applicable State and Federal health and food safety regulations.

E. Record Keeping

(1) On Site Tagging Requirements:

(a) All organically produced food articles on the premises of a certified handling operation must bear an identification tag placed by the handler upon arrival unless a field tagging system operated in conjunction with the organic producer is used marking the food article as organically produced in the field or prior to delivery.

(b) Tagging requirements apply equally to cold storage or packing facilities.

(c) Colored card use is suggested. The card should be pre-printed with proper identification of all production and handling operations, including applicable certification information.

(2) Ingredient certification records.

(a) All ingredients for which an organic claim is made must be documented to be of certified organic origin. The handler must maintain copies of certificates and/or other appropriate documentation for all lots of ingredients for which an organic claim is made.

(b) If the ingredient was purchased directly from the producer, a copy of the producer's certification must be kept on hand and made available to the organic inspector upon request.

(c) If the ingredient was purchased from a processor/handler or from a broker, certificates and/or other appropriate documentation verifying the organic status of said lot of purchased ingredient must be kept on hand and made available to the organic inspector upon request.

(d) For ingredients purchased from other than the original producer, the processor/handler does not need to seek out the certificate of the original producer, but must have documentation from the supplier that said supplier is certified and that said lot is of certified organic origin.

(3) Production records: The processor/handler must keep on hand records of all production runs, which records must:

(a) Identify the lot number, or specific origin, of the ingredients used for that particular run and the quantities used;

(b) Identify the lot number and final quantity produced of the finished product;

(c) Allow for clear tracking from the finished product identification back to the supplier from whom said ingredients were purchased;

(d) Clearly identify the run as an organic run, if the operation is a mixed conventional/organic operation;

(e) Verify that adequate cleaning and sanitation procedures were followed in preparation for the running of that particular production run.

(4) Sales records: the processor/handler must maintain accurate records of all sales of organic processed products, including donations, barters or other arrangements which result in the movement of the organic product from the processor/handler to any other business entity. These records must be made available to the organic inspector upon request. These records are furthermore to be used to calculate the assessment due by the processor/handler at the end of a given calendar year.

(5) The complete set of records of the business must be sufficient to provide an adequate audit trail.

(6) Other records: specific to the particular business, the Commission may require the maintenance of other types of records.

[21.25.6.9 NMAC - Rp 21 NMAC 25.6.8, 8/30/2001]

21.25.6.10 MATERIALS LIST

A. Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups)":

(1) Nonsynthetics allowed:

(a) Acids: Alginic; Citric – produced by microbial fermentation of carbohydrate substances; Lactic;

(b) Bentonite;

(c) Calcium carbonate;

(d) Calcium chloride;

(e) Colors, nonsynthetic sources only;

(f) Dairy cultures;

(g) Diatomaceous earth – food filtering aid only;

(h) Enzymes – must be derived from edible, nontoxic plants, nonpathogenic fungi or nonpathogenic bacteria;

(i) Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservatives;

(j) Kaolin;

(k) Magnesium sulfate, nonsynthetic sources only;

(l) Nitrogen – oil-free grades;

(m) Oxygen – oil-free grades;

(n) Perlite – for use only as a filter aid in food processing;

(o) Potassium chloride;

(p) Potassium iodide;

(q) Sodium bicarbonate;

(r) Sodium carbonate;

(s) Waxes – nonsynthetic: Carnauba wax; Wood resin.

(t) Yeast – nonsynthetic; grown on petrochemical substrate and sulfite waste liquor is prohibited: Autolysate; Bakers; Brewers; Nutritional; Smoked – nonsynthetic smoke flavoring process must be documented.

(2) Synthetics allowed:

(a) Alginates;

(b) Ammonium bicarbonate – for use only as a leavening agent;

(c) Ammonium carbonate – for use only as a leavening agent;

(d) Ascorbic acid;

(e) Calcium citrate;

(f) Calcium hydroxide;

(g) Calcium phosphates (monobasic, dibasic and tribasic);

(h) Carbon dioxide;

(i) Chlorine materials – disinfectant and sanitizing food contact surfaces, except that residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act: Calcium hypochlorite; Chlorine dioxide; Sodium hypochlorite.

(j) Ethylene – allowed for postharvest ripening of tropical fruit;

(k) Ferrous sulfate – for iron enrichment or fortification of foods when required by regulation or recommended (independent organization);

(l) Glycerides (mono and di) – for use only in drum drying of food;

(m) Glycerin – produced by hydrolysis of fats and oils;

(n) Hydrogen peroxide;

(o) Lecithin – bleached;

(p) Magnesium carbonate – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(q) Magnesium chloride – derived from sea water;

(r) Magnesium stearate – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(s) Nutrient vitamins and minerals, in accordance with federal guidelines in 21 CFR 104.20, Nutritional Quality Guidelines For Foods;

(t) Ozone;

(u) Pectin (low-methoxy);

(v) Phosphoric acid – cleaning of food-contact surfaces and equipment only;

(w) Potassium acid tartrate;

(x) Potassium tartrate made from tartaric acid;

(y) Potassium carbonate;

(z) Potassium citrate;

(aa) Potassium hydroxide – prohibited for use in lye peeling of fruits and vegetables;

(bb) Potassium iodide – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(cc) Potassium phosphate – for use only in agricultural products labeled "made with organic (specified ingredients or food groups)", prohibited in agricultural products labeled "organic";

(dd) Silicon dioxide;

(ee) Sodium citrate;

(ff) Sodium hydroxide – prohibited for use in lye peeling of fruits and vegetables;

(gg) Sodium phosphates – for use only in dairy foods;

(hh) Sulfur dioxide – for use only in wine labeled "made with organic grapes", provided that the total sulfite concentration does not exceed 100 ppm;

(ii) Tocopherols – derived from vegetable oil when rosemary extracts are not a suitable alternative;

(jj) Xanthan gum.

B. Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients:

(1) Any nonorganically produced agricultural product may be used in accordance with the restrictions specified in the section and when the product is not commercially available in organic form.

(2) Cornstarch (native);

(3) Gums – water extracted only (arabic, guar, locust bean, carob bean);

(4) Kelp – for use only as a thickener and dietary supplement;

(5) Lecithin – unbleached;

(6) Pectin (high-methoxy).

C. Amending the National List

(1) Any person may petition the National Organic Standards Board for the purpose of having a substance evaluated by the Board for recommendation to the USDA Secretary for inclusion on or deletion from the National List.

(2) A person petitioning for amendment of the National List should contact USDA/NOP for details.

D. Other Generic and Brand Name Lists: In addition to the National Materials List, there is a list developed by the Organic Materials Review Institute (OMRI), which list covers both generic types of materials and specific brand names. OMRI does technical reviews of materials against the National List specifications, and for the purpose of these regulations is considered a competent reviewer. For specific generic material or brand name information, persons should visit the OMRI website at: www.omri.org. Hard copies of the OMRI list are also available from the Commission for a small fee.
[21.25.6.1 NMAC - N, 8/30/2001]

21.25.6.11 APPLICATION REVIEW, INSPECTION PROCESS AND APPLICATION DECISION PROCESS

A. Initial Application Review

(1) Upon receipt of an original application, agency staff will log the receipt of the application and then review the application for completeness, and to determine if any obvious barriers to certification exists (both considered an initial non-compliance). If no non-compliance is found, the application is further processed. If a non-compliance is encountered, the application is put on hold pending:

(a) In the case of incomplete applications, a letter will be sent to the applicant asking for the missing information. If no response is received within

four weeks, a second letter will be sent to the applicant by return-receipt mail and the process for refunding the application fee shall be initiated.

(b) In the case of obvious barriers that would preclude certification, a letter will be sent to the applicant explaining the barrier and returning the application fee and the original application. The applicant shall have four weeks in which to make a rebuttal.

(2) Upon receiving this initial notice of non-compliance, the applicant may:

(a) In the case of incomplete applications, return the requested information for further review and possible acceptance;

(b) In the case of obvious barriers precluding certification, rebut the conclusion of the Commission related to the barrier, in writing, by the specified date. The Commission will review the rebuttal and either accept the argument and the application, or reject both.

(3) Upon receipt of requested information, the Commission will review the information supplied to determine if it satisfies the Commission's request and whether the application can be accepted.

(a) In the case where the information supplied is determined to satisfy the request, the application will be further processed.

(b) In the case where the information supplied is determined not to satisfy the request, the application will be returned and the process for refunding the application fee will be initiated.

B. Inspection Scheduling

(1) Following acceptance of an application, the agency shall assign the application to a qualified organic inspector. The inspector shall contact the applicant and set up a date and time for the on-site inspection. The initial on-site inspection will be conducted within a reasonable time following a determination to accept an application, but may be delayed up to six months in order that the inspection be conducted when the land, facilities and activities that demonstrate compliance or capacity to comply can be observed. The applicant is required to be present and to cooperate with the inspector. The inspector, following the inspection, shall write a report and submit the report to the commission.

(2) The commission may request that the inspector take samples for testing, which may be soil, waste, crop, or other appropriate matter. Such sampling will be done at the time of the initial inspection or the annual re-inspection, as appropriate. The commission may further require subsequent testing. The applicant or certified operation will surrender the samples requested without demand for payment or other consideration.

C. Inspection Procedure

(1) The commission shall conduct an initial on-site inspection of each production unit, facility and site that produces or handles organic products and that is included in an operation for which certification is requested. Each on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

(2) The commission may conduct additional on-site inspections of applicants for certification and certified operation to determine compliance with state and federal regulations.

(3) Additional inspections may be announced or un-announced at the discretion of the commission.

(4) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when land, facilities and activities that demonstrate the operation's compliance with or capacity to comply with the applicable state and federal regulations can be observed, except that this requirement does not apply to unannounced on-site inspections.

(5) Verification of information: the on-site inspection must verify:

(a) the operation's compliance or capability to comply with applicable regulations;

(b) that all information submitted during the application process accurately reflects the practices used or to be used by the applicant or certified operation;

(c) That prohibited substances have not been and are not being applied to the operation through means which may include the collection and testing of soil, water, waste, seeds, plant tissue and plant, animal and processed product samples.

(6) Exit interview: the inspector will conduct an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector must also address the need for any additional information as well as any issues of concern.

(7) Documents to the inspected operation:

(a) at the time of inspection the inspector shall provide the operation's authorized representative with a receipt for any samples taken by the inspector. There shall be no charge to the inspector for the samples taken.

(b) a copy of the on-site inspection report and any test results will be sent to inspected operation by the commission.

D. Application and Inspection Report Review: Following receipt of all materials (application, inspection report, and other documents as noted in the particular case), agency staff shall review these materials for the purpose of determining the applicant's ability to comply with all requirements. The staff shall at all times make decisions based upon the factual evidence at hand and shall at all times act in a professional and objective manner.

E. Granting of Certification

(1) If the agency staff determine that the applicant is able to conduct operations in accordance to the plan and the standards, the Commission shall grant certification. The certification is a license to market organic products. The certification may include requirements for the correction of minor non-compliances within a specified time period as a condition of continued certification. The organic certificate shall specify:

(a) Name and address of the certified operation;

(b) Categories of organic operation;

(c) Unique NMOCC certification number;

(d) Effective date of certification;

(e) Name, address and telephone number of the Commission; and

(f) Original signature of the Agency Director.

(2) Once certified, an organic operation's certification continues in effect until surrendered by the organic operation or suspended or revoked by the Commission or the National Organic Program administrator. Yearly renewal of the organic plan and yearly on-site inspections are required; lack thereof shall result in suspension or revocation of the certificate.

(3) Failure to cooperate with commission requests for information; failure to cooperate with inspection staff; failure to file annual update information; failure to pay application fees and gross sales assessments; and other reasons as stated elsewhere in these and federal regulations may be grounds for an action to revoke a certification. In the event of such an action,

the holder of the certificate shall, upon written request, surrender said license to the commission.

F. Denial of Certification

(1) If the reviewing staff determine that an applicant for certification is not able to comply or is not in compliance with the applicable organic standards, the Commission shall issue a notice of non-compliance.

(a) If correction of a non-compliance is not possible, a notification of non-compliance and a notice of denial of certification may be combined in one notice. The notice of non-compliance shall provide: A description of each non-compliance; The facts upon which the notice of non-compliance are based; The date by which the applicant must rebut or correct each non-compliance and submit supporting documentation to the Commission.

(b) Upon receipt of a notice of noncompliance, the applicant may: Correct non-compliances and submit a description of the corrective actions taken with supporting documentation to the Commission; Correct non-compliances and submit a new application to another certifying agent, provided that the applicant include a complete application, notice of non-compliance for the Commission and a description of the corrective actions taken along with supporting documentation; Submit a written rebuttal to the listed non-compliance to the Commission.

(2) After issuing a notice of non-compliance, the Commission will evaluate the applicant corrective actions taken and supporting documentation submitted, or the written rebuttal, conduct further inspections if necessary, and: When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, grant certification; When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification, issue a written notice of denial of certification; Issue a written notice of denial of certification to any applicant who fails to respond to the notification of non-compliance; and provide notice of the approval or denial to the National Organic Program.

(3) A notice of denial of certification will state the reason(s) for denial and the applicant's right to:

(a) Reapply for certification as provided for in the National Organic Program;

(b) Request mediation through the agency's ombudsman;

(c) File an appeal of the denial of certification as described below.

[21.25.6.11 NMAC - Rp 21 NMAC 25.6.9 and 21 NMAC 25.6.10, 8/30/2001]

21.25.6.12 APPEAL POLICY: Anyone aggrieved by any action of the Commission has a right to appeal to a district court in an appropriate venue pursuant to New Mexico Supreme Court Rule 1-075.
[21.25.6.12 NMAC - N, 8/30/2001]

HISTORY of 21.25.6 NMAC:
Pre-NMAC History:
None.

History of the Repealed Material:
21 NMAC 25.6, Organic Labeling and Marketing, Processing/Handling Operations, Application Process and Inspections, filed 07/02/98, repealed effective 08/30/2001.

NEW MEXICO ORGANIC COMMODITY COMMISSION

TITLE 21 AGRICULTURE & RANCHING
CHAPTER 27 APIARIES (BEEKEEPING)
PART 3 ORGANIC HONEY, PROPOLIS AND BEESWAX PRODUCTION

21.27.3.1 ISSUING AGENCY: New Mexico Organic Commodity Commission.
[21.27.3.1 NMAC - Rp 21 NMAC 27.3.1, 8/30/2001]

21.27.3.2 SCOPE: All individuals and businesses in New Mexico producing, handling, processing and selling agricultural products labeled "organic", "certified organic" or "transitional". There are additional regulations applicable to the same entities in 21.17.58 NMAC, 21.18.5 NMAC, 21.25.6 NMAC, 21.27.3 NMAC, 21.30.1 NMAC, and 21.34.16 NMAC.
[21.27.3.2 NMAC - Rp 21 NMAC 27.3.2, 8/30/2001]

21.27.3.3 STATUTORY AUTHORITY: 21.27.3 NMAC is promulgated pursuant to the provisions of the Organic Commodity Act, 76.22.1 through 76.22.28 NMSA 1978 (as amended).
[21.27.3.3 NMAC - Rp 21 NMAC 27.3.3, 8/30/2001]

21.27.3.4 DURATION: Permanent.
[21.27.3.4 NMAC - Rp 21 NMAC 27.3.4, 8/30/2001]

21.27.3.5 EFFECTIVE DATE: August 30, 2001, unless a later date is cited at the end of a section.
[21.27.3.5 NMAC - Rp 21 NMAC 27.3.5, 8/30/2001]

21.27.3.6 OBJECTIVE: 21.27.3 NMAC describes regulations pertaining to the culture of organic apiaries and the production of organic bee products, including honey, propolis and beeswax.
[21.27.3.6 NMAC - Rp 21 NMAC 27.3.6, 8/30/2001]

21.27.3.7 DEFINITIONS: [Reserved]
[21.27.3.7 NMAC - Rp 21 NMAC 27.3.7, 8/30/2001]

21.27.3.8 APICULTURE

A. Bee biology and culture is sufficiently different from mammals and poultry as to warrant separate regulations regarding origin, feed, etc. The USDA/NOP has not yet developed national standards for apiculture. These standards are derived from the American Organic Standards developed by the Organic Trade Association. At such time as the USDA/NOP does develop national organic apiculture standards, these standards may change.

B. Origin: Bees may be designated as organic livestock and products obtained from them may be sold and represented as organic, if managed in accordance with organic standards for at least 60 days prior to the collection of organic apiculture products.

C. Beeswax: any beeswax used for combs or other purposes must be free from contamination. Most commercially available beeswax is contaminated due to producers' use of synthetic pesticides inside the hive. Avoid purchasing any such beeswax products. Commercial, non-organic beeswax must be tested and found residue free before being used in organic production, with documentation submitted to the Commission for review.

D. Feed and forage: bees from which organic honey and other products are harvested shall have access to forage produced in accordance with organic standards, provided that the hives are located on certified land and are not within one mile of a sanitary landfill, incinerator, power plant, or other sources of contamination as reasonably determined by the Commission. The minimum distance may be increased by the Commission, if deemed necessary, on a case-by-case basis.

E. Feeding of bee colonies where conditions require reserves to be built up for winter may be undertaken. Feeding must be carried out between the last honey harvest and the period of dormancy of the colony.

F. Feed should be derived

from organic honey or organic sugar syrup, but non-organic honey or sugar syrup is allowed on a temporary and limited basis with written justification of need and documentation of the lack of organic feed sources, and must be approved by the Commission.

G. The feeding of non-organic honey or sugar syrup is prohibited when honey supers are in place or during the 30 days preceding the placement of honey supers on the hive.

H. The health of bee colonies must be maintained by good apiary practices. These include, but are not limited to:

(1) the use of hardy breeds that adapt well to local conditions;

(2) regular renew of queen bees;

(3) regular cleaning and disinfection of equipment;

(4) use of non-contaminated foundation wax;

(5) destruction of contaminated materials;

(6) regular renewal of beeswax;

(7) availability in hives of sufficient pollen and honey.

I. The following are not allowed:

(1) acknowledging the presence of pests, parasites or diseases without efforts to restore the health of the colony;

(2) the use of synthetic pesticides that are not specifically listed in the National List of synthetic substances allowed for organic livestock production, for the prevention or control of parasites or pests;

(3) using antibiotics, sulfa products or any drug not specifically allowed by these standards or not on the National List of synthetic substances allowed for organic livestock production;

(4) use of pressure treated lumber for hive construction materials;

(5) use of chemical bee repellants;

(6) wing clipping;

(7) the cycling of hives between organic and conventional management.

J. Honey handling:

(1) an operation that processes or handles organic honey must be in compliance with all applicable organic handling requirements;

(2) if a facility processes both organic and non-organic honey, all equipment, including containers and lines used to transport and/or store honey, must be completely emptied and cleaned prior to processing organic honey;

(3) equipment that comes in contact with honey must be made of stainless steel, glass, or other food grade materials;

(4) honey extraction facility should be bee tight to prevent robbing and the spread of disease;

(5) extracting facility should be very clean and inspected annually by federal food inspectors, as applicable under other regulations;

(6) extracting facility should be well lit and should have cleaning facilities allowing for a daily wash down with copious amounts of fresh, clean, hot water;

(7) accumulated numbers of bees in extracting area should be allowed to gather and then washed down with water and disposed of or put in a nearby hive;

(8) honey barrels must be of a known origin, washed, and stored inside. If not new, they should have previously been used in food service. They should be coated with non-contaminated beeswax;

(9) floors and walls must be sealed from insects and rodents. Presence of insect pests such as flies in extracting facility shall not be permitted.

[21.27.3.8 NMAC - Rp 21 NMAC 27.3.8, 8/30/2001]

HISTORY of 21 NMAC 27.3:
Pre-NMAC History:
None.

History of the Repealed Material:
21 NMAC 27.3, Organic Honey, Propolis and Beeswax Production, filed 07/02/98, repealed effective 08/30/2001.

NEW MEXICO ORGANIC COMMODITY COMMISSION

TITLE 21 AGRICULTURE & RANCHING
CHAPTER 30 ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS
PART 1 ORGANIC PRODUCTION METHODS AND MATERIALS

21.30.1.1 ISSUING AGENCY: New Mexico Organic Commodity Commission.
[21.30.1.1 NMAC - Rp 21 NMAC 30.1.1, 8/30/2001]

21.30.1.2 SCOPE: All individuals and businesses in New Mexico producing, handling, processing and selling agricultural products labeled "organic", "certified organic" or "transitional". There are additional regulations applicable to the same entities in 21.15.1 NMAC, 21.17.58 NMAC, 21.18.5 NMAC, 21.25.6 NMAC, 21.27.3 NMAC, and 21.34.16 NMAC.
[21.30.1.2 NMAC - Rp 21 NMAC 30.1.2, 8/30/2001]

21.30.1.3 STATUTORY AUTHORITY: 21.30.1 NMAC is promulgated pursuant to the provisions of the Organic Commodity Act, 76.22.1 through 76.22.28 NMSA 1978 (as amended).
[21.30.1.3 NMAC - Rp 21 NMAC 30.1.3, 8/30/2001]

21.30.1.4 DURATION: Permanent.
[21.30.1.4 NMAC - Rp 21 NMAC 30.1.4, 8/30/2001]

21.30.1.5 EFFECTIVE DATE: August 30, 2001, unless a later date is cited at the end of a section.
[21.30.1.5 NMAC - Rp 21 NMAC 30.1.5, 8/30/2001]

21.30.1.6 OBJECTIVE: 21.30.1 NMAC Describes allowable and prohibited methods and materials to be used in certified organic livestock production.
[21.30.1.6 NMAC - Rp 21 NMAC 30.1.6, 8/30/2001]

21.30.1.7 DEFINITIONS:

A. *Animal drug*. Any drug as defined in section 201 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 321) that is intended for use in livestock, including any drug intended for use in livestock feed but not including such livestock feed.

B. *Biologics*. All viruses, serums, toxins, and analogous products of natural or synthetic origin, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment or prevention of diseases of livestock.

C. *Breeder stock*. Female livestock whose offspring may be incorporated into an organic operation at the time of their birth.

D. *Feed.* Edible materials which are consumed by livestock for their nutritional value. Feed may be concentrates (grains, pulses, extractions) or roughages (hay, silage, fodder, pasture). The term feed encompasses all agricultural commodities ingested by livestock for nutritional purposes.

F. *Feed additive*. A substance or combination of substances added to feed in micro quantities to fulfill a specific nutritional need, i.e. nutrients in the form of amino acids, vitamins and minerals.

G. *Feed supplement*. A feed used with another feed to improve the nutrient balance or performance of the total ration and intended to be: diluted with other feeds when fed to livestock; offered free choice with other parts of the ration if separately available; or further diluted and mixed to produce a complete feed.

H. *Forage*. Vegetable material in a fresh, dried, or ensiled state (pasture, hay or silage) which is fed to livestock.

I. *Livestock*. Any cattle, sheep, goat, swine, poultry or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; and including bees.

J. *Routine use of parasiticide*. The regular, planned or periodic use of parasiticides.

K. *Slaughter stock*. Any animal that is intended to be slaughtered for consumption by humans or other animals.
[21.30.1.7 NMAC - Rp 21 NMAC 30.1.7, 8/30/2001]

21.30.1.8 ANIMAL CERTIFICATION STANDARDS

A. Admissibility:

(1) Farms, fields and split operations: Certification may be on a whole farm or on a herd/flock by herd/flock basis. The Commission encourages farmers to certify their entire operation. In certain situations, this will not be feasible. NMOCC allows split organic/conventional operations, if and only if the operator can demonstrate that they possess the physical and managerial ability to prevent contamination and/or commingling. Equipment used in conventional fields must be cleaned prior to use in organic fields. The Commission strongly suggests that the same livestock not be grown in the organic and conventional fields; if this is done, an additional inspection may be required to verify adequate separation and accounting, and the cost of this additional inspection will be borne by the client.

(2) Three-year rule: A farm or field may be certified for organic production only when it can be demonstrated that an application of prohibited materials or the use of prohibited production practices has not occurred during the year of production or at any time during the three years (36 months) immediately preceding the harvest. An exception may be granted where:

(a) the application of the prohibited substance is caused by drift or involuntary mechanism; and the organic producer demonstrates, by clear and convincing evidence, that no intentional application has occurred; and,

(b) the organic producer demonstrates, by evidence, that the background residue in the soil, from the known contaminant, does not exceed 5% of any applicable federal tolerance levels.

(3) Status Rotation Prohibited: A farm or field, once granted certified status, may not be rotated into conventional production. If prohibited materials or practices are used, see (2) immediately above.

(4) Transitional Status: A field or whole farm may be granted the status of Transitional, provided that all production standards and requirements are met, as described in this handbook and in the national standards, with the sole exception that: the land has been free from prohibited material input for a period of at least one year. This status may be used for two years for any given field or farm. At the end of this period, the field or farm must request Certified Organic status to continue in the program. Producers using the Transitional label may not use the word organic to describe their operation or products.

(5) Buffer Zone: There must exist adequate physical barriers or a 25 foot (8 meter) minimum distance between organic crops and conventionally grown crops to maintain the organic integrity of certified fields. The Commission reserves the right to require additional buffering where the Commission deems warranted.

B. The Organic Animal Production Plan

(1) Purpose: the purpose of the Organic Animal Production Plan is to provide the Commission and the farmer with an agreed upon document which addresses at least the following issues:

(a) a description of production practices and procedures to be performed in the management of the operation, including known or estimated frequencies;

(b) a list of all substances to be used as inputs, including information on the input source, composition and usage locations;

(c) a description of the record keeping system to be used;

(d) a description of practices and procedures used to prevent contamination and/or commingling;

(e) additional information as deemed necessary by the Commission.

(2) Mixed Crop and Animal Production Plan: The Organic Animal Production Plan may be prepared in conjunction with an Organic Farm Crop Plan as required for organic crop producers. For one farm plan to cover both crop and animal raising, the plan must encompass both the crop production and animal production standards. Both applications must be filled out.

(3) The statutory requirement that all applications made to the Commission must contain an Organic Production Plan is satisfied by completely filling out the application forms and noting any appropriate additional information.

C. Livestock Origin (Mammals, Poultry)

(1) Livestock or edible livestock products that are to be sold, labeled or represented as organic must be from livestock under continuous organic management from birth, except:

(a) Poultry, for meat and egg production: must be from animals that have been under continuous organic management beginning no later than the second day post-hatching.

(b) Dairy animals: milk or milk products must be from animals that have been under continuous organic management for at least one year immediately prior to the production of organic milk or milk products, except that when an entire, distinct herd is converted to organic production, the producer may: For the first nine months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements; and provide 100-percent organic feed for the final 3 months; once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

(2) Nonedible products: must be from animals that have been under continuous organic management for at least one year immediately prior to harvest of the nonedible product.

(3) Breeder stock: may be obtained from non-organic source at any time, provide that if such livestock are gestating and the offspring are to be raised as organic livestock, the breeder stock must be brought into the operation prior to the start of the last third of gestation.

(4) Prohibited livestock origins:

(a) Livestock or livestock products that are removed from an organic operation and subsequently managed conventionally may not be sold or represented as organic.

(b) Breeder or dairy stock that has not been under continuous organic management since birth may not be sold or represented as organic slaughter stock.

(c) No organism produced by excluded methods may be used for any organic livestock purpose; this includes

cloned animals.

(5) The producer of the organic livestock must have a record keeping system that allows the preservation of identity of all organically managed animals and livestock products produced by the operation.

D. Organic livestock feed:

(1) The producer of organic livestock must provide the animals with a total feed ration composed of organically produced and handled agricultural products (including pasture and forage), except that non-agricultural products and synthetic substances listed below may be used as feed additives and supplements.

(2) The producer of organic livestock must not:

(a) use animals drugs to promote growth;

(b) provide feed supplements or additives in amounts above those needed for adequate nutrition and health maintenance for the species at its specific live stage;

(c) feed plastic pellets for roughage;

(d) feed formulas containing urea or manure;

(e) feed mammalian or poultry slaughter by-products to mammals or poultry;

(f) use any feed, feed additives or feed supplements in violation of the Federal Food, Drug and Cosmetic Act.

(3) All animals shall be provided with a palatable, digestible and nutritious diet appropriate to their age, weight and according to their behavioral and physiological need, to promote a positive state of health and well being and growth rate.

(4) All animals shall have access to adequate water at all times.

(5) Dry food ingredients shall be stored in such a manner as to keep them dry, clean and free from rodents, insects or other pests and contamination by prohibited substances.

(6) Permitted Supplements and Synthetic Additives:

(a) any source of feed salt;

(b) trace minerals;

(c) vitamins, accepted for enrichment or fortification, limited to those approved by the FDA for livestock use;

(d) fillers and excipients.

E. Healthcare

(1) The producer must establish and maintain preventative healthcare practices:

(a) Selection of species and breeds with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites;

(b) Provision of feed sufficient to meet nutritional requirements, including vitamins, minerals, additives or supplements;

(c) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites;

(d) Provision of conditions that allow for exercise, freedom of movement and reduction of stress appropriate to the species;

(e) Administration of vaccines and other veterinary biologics;

(f) Performance of physical alterations as needed to promote the animal's welfare, but not so as to permit increased stress levels through restriction of housing space.

(2) When the above practices are inadequate to prevent illness, the producer may administer synthetic medications specifically allowed by the National Organic Program; see list below.

(3) Ivermectin parasiticide is allowed for use on:

(a) Breeder stock, when used prior to the last third of gestation (but not during lactation) for any progeny that are to be sold or represented as organic;

(b) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold or represented as organic.

(4) The producer of organic livestock must not:

(a) Sell or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance containing a non-allowed synthetic substance, or any substance containing a non-allowed non-synthetic substance;

(b) Administer any animal drug, other than vaccinations, in the absence of illness;

(c) Administer hormones;

(e) Administer synthetic parasiticides on a routine basis;

(f) Administer synthetic parasiticides to slaughter stock;

(g) Administer animal drugs in violation of the Federal Food, Drug and Cosmetic Act;

(h) Withhold medical treatment from a sick animal in an effort to preserve the organic status of the animal. All appropriate medications must be used to restore an animal to health when organically acceptable methods fail. Livestock so treated must be clearly identified and shall not be sold or represented as organic.

F. Housing and living conditions

(1) All animals, consistent with their physiological and ethological needs, must have access, when seasonally appropriate, to sunshine, fresh air, soil, fresh plants, etc. The Commission acknowledges that certain species and breeds will not need housing or shelter above and beyond that naturally occurring in their environment;

(2) The design, construction and maintenance of housing, pens and equipment shall be such as to provide a safe environment conducive to the health and well-being of the animals and to minimize risk of fire;

(3) The Commission's or other expert advice on health and welfare aspects is sought whenever new buildings are to be constructed or existing buildings modified for use for intensive animal production;

(4) Materials used for the construction of housing, particularly pens, equipment, floors and partitions shall not be harmful to the animals and shall in all cases be capable of being thoroughly cleaned and disinfected;

(5) Constant loud noise, extremes of temperature and droughts are to be avoided. Insulation, heating, or both, shall be provided where necessary to prevent condensation and extreme fluctuations in environmental temperature;

(6) Ventilation shall ensure that air velocity, dust levels, temperature, relative humidity and gas concentrations are kept within limits that are not harmful to the animals. Where an artificial ventilation systems is used, a supply of fresh air shall be guaranteed in the event of failure of the system;

(7) All automated and mechanical equipment essential for the animals' health and well-being are inspected at least once daily. An alarm system should be provided to warn the animal keeper of the failure of any essential automated equipment;

(8) The animals shall be cared for by a sufficient number of personnel with adequate theoretical and practical knowledge, especially of the management and production system used, to be able to recognize whether the animals appear to be in good health or not, including behavioral changes and whether the total environment is adequate to keep them healthy.

G. Slaughter and post-slaughter handling:

(1) Procedures during loading, unloading, shipping, and holding prior to slaughter, must not unduly stress the ani-

mal;

(2) Slaughter must be effected under sanitary conditions, which shall usually mean USDA or NM Livestock Board approved slaughterhouses;

(3) Animals must be clearly identified in such a manner as to preclude commingling with non-certified meat. Certified animals should be slaughtered as a separate batch or otherwise kept apart from non-certified animals;

(4) Slaughter, breaking, packing and labeling must occur at organically certified processing plants, whether the processor takes ownership or not;

(5) The producer must ensure that organically produced meat does not come in contact with non-organically produced meat;

(6) The producer must ensure that organically produced meat does not come in contact with any impermissible material or substance;

(7) If any processing of meat occurs at the farm or ranch operation, the producer must detail how cross contamination is prevented and must list all animal and equipment cleaning compounds.

H. Wool

(1) There are no additional production requirements for raw wool. Wool may be harvested from any wool bearing animal. The producer must detail the manner by which the wool is harvested.

(2) For finished wool to maintain its organic status, no prohibited synthetic materials may be used in the further processing, dyeing or preparing of the wool. Any such further processing of the wool must occur at a certified organic processing operation.

I. Aquaculture

(1) At this time, NMOCC has no standards for aquaculture. The USDA/NOP is in the process of establishing national organic aquaculture standards. When those are finalized and published, they will be considered for adoption by NMOCC.

J. Recordkeeping:

(1) In addition to information submitted to the certification agent in the Organic Plan, producers shall keep the following records, as applicable:

(a) Adequate records permitting the Commission to trace each animal, or in the case of poultry, each flock, from birth to slaughter;

(b) If the livestock is used to produce a product but is not slaughtered, records should still permit the tracking of each animal (or in the case of poultry, each flock) while involved in organic production.

(c) Adequate records must exist sufficient to permit the Commission to trace the sources and amounts of all feeds, supplements, medication, etc.;

(d) Records, including receipts, of all applied substances, including fertilizers, soil amendments, pest and disease control substances, growth regulators and weed control agents used on the livestock production land units under organic management; Records should give the location, date, application rates, brand name, manufacturer's name, and name and address of applicator. All materials listed with conditions for use must be noted with a description of use, according to the annotations in the National List and in these standards. Practices that are listed as regulated or restricted must be described.

(e) Records of all purchased inputs, including feed, feed supplements, minerals, vitamins, vaccinations, etc., as well as any forage crop seeds or similar inputs, with documentation of attempts to source organic or untreated seeds, as applicable.

(f) Records of all purchased animals, including organic status, intended use (i.e. breeder stock vs. slaughter stock), seller's name and address, date of purchase and number of animals purchased;

(g) Livestock product harvest records, storage records, names of buyers, and gross organic sales for the certified operation. Wholesale sales must have invoices with lot numbers keyed to processing lot numbers, or other audit trail system as approved by the Commission.

(h) Records that document the management of buffers, including but not limited to: their location; whether forage crops are grown in the buffer; buffer crop harvest, storage and sales; actions taken to prevent commingling non-certified buffer crops with organic crops.

(i) Notices sent to neighbors, highway officials, etc. regarding the operation's organic status.

(j) Documentation or evidence that packages, storage containers and transport vehicles used for organic crops are suitable for organic packaging and/or organic product transport.

(k) Additional records as required by the Commission.

(2) Producers shall retain copies of all applicable records for five years from the date when the record was generated, in compliance with the National Organic Program standards.

(3) With the exception of poultry, if animals are not individually identified by numbered tags, each animal that is treated with an active material must be clearly identified with a tag specifying the material and date of treatment.

[21.30.1.8 NMAC - Rp 21 NMAC 30.1.8, 8/30/2001]

21.30.1.9 MATERIALS LIST

A. Synthetic substances allowed in organic production:

(1) As disinfectants, sanitizers and medical treatments as applicable:

(a) Ethanol, as sanitizer and disinfectant;

(b) Isopropanol, as disinfectant only;

(c) Aspirin;

(d) Chlorine materials (calcium hypochlorite, chlorine dioxide, sodium hypochlorite), as disinfectants and sanitizers, except that residual chlorine levels in water shall not exceed maximum residual disinfectant limit under the Safe Drinking Water Act;

(e) Chlorohexidine, for surgical procedures conducted by a veterinarian, also as a teat dip;

(f) Electrolytes, without antibiotics;

(g) Glucose;

(h) Glycerin, as a teat dip, must be produced through the hydrolysis of fats or oils;

(i) Iodine;

(j) Hydrogen peroxide;

(k) Magnesium sulfate;

(l) Ivermectin parasiticide;

(m) Phosphoric acid, as an equipment cleaner;

(n) Vaccines and biologics;

(o) Lidocaine and Procaine, as local anesthetics, with a 90 day withdrawal period for slaughter stock and 7 day withdrawal period for dairy animals;

(p) Hydrated lime (Bordeaux mixes);

(q) Mineral oil, topically and as a lubricant;

(r) Copper sulfate.

(2) As feed supplements:

(a) Milk replacers – without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals.

(3) As feed additives:

(a) Trace minerals, used for enrichment or fortification when FDA approved, including: copper sulfate; magnesium sulfate.

(b) Vitamins, used for enrichment or fortification when FDA approved;

(4) As synthetic inert ingre-

dients as classified by the Environmental Protection Agency, for use with nonsynthetic substances or a synthetic substance listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances: EPA List 4 – Inerts of Minimal Concern.

B. Amending the National List

(1) Any person may petition the National Organic Standards Board for the purpose of having a substance evaluated by the Board for recommendation to the USDA Secretary for inclusion on or deletion from the National List.

(2) A person petitioning for amendment of the National List should contact USDA/NOP for details.

C. Other Generic and Brand Name Lists: In addition to the National Materials List, there is a list developed by the Organic Materials Review Institute (OMRI), which list covers both generic types of materials and specific brand names. OMRI does technical reviews of materials against the National List specifications, and for the purpose of these regulations is considered a competent reviewer. For specific generic material or brand name information, persons should visit the OMRI website at: www.omri.org. Hard copies of the OMRI list are also available from the Commission for a small fee.
[21.30.1.9 NMAC - N, 8/30/2001]

HISTORY of 21.30.1 NMAC:
Pre-NMAC History:
None.

History of the Repealed Material:
21 NMAC 30.1, Animals and Animal Industry General Provisions, filed 07/02/98, repealed effective 08/30/2001.

NEW MEXICO ORGANIC COMMODITY COMMISSION

TITLE 21 AGRICULTURE & RANCHING
CHAPTER 34 DAIRY AND EGG PRODUCERS
PART 16 ORGANIC PRODUCTION METHODS AND MATERIALS

21.34.16.1 ISSUING AGENCY: New Mexico Organic Commodity Commission.
[21.34.16.1 NMAC - Rp 21 NMAC 34.16.1, 8/30/2001]

21.34.16.2 SCOPE: All individuals and businesses in New Mexico producing, handling, processing and selling agricultural products labeled "organic", "certified organic" or "transitional". There are additional regulations applicable to the same entities in 21.15.1 NMAC, 21.17.58 NMAC, 21.18.5 NMAC, 21.25.6 NMAC, 21.27.3 NMAC, and 21.30.1 NMAC.
[21.34.16.2 NMAC - Rp 21 NMAC 34.16.2, 8/30/2001]

21.34.16.3 STATUTORY AUTHORITY: 21.34.16 NMAC is promulgated pursuant to the provisions of the Organic Commodity Act, 76.22.1 through 76.22.28 NMSA 1978 (as amended).
[21.34.16.3 NMAC - Rp 21 NMAC 34.16.3, 8/30/2001]

21.34.16.4 DURATION: Permanent.
[21.34.16.4 NMAC - Rp 21 NMAC 34.16.4, 8/30/2001]

21.34.16.5 EFFECTIVE DATE: August 30, 2001, unless a later date is cited at the end of a section.
[21.34.16.5 NMAC - Rp 21 NMAC 34.16.5, 8/30/2001]

21.34.15.6 OBJECTIVE: 21.34.16 NMAC describes allowable and prohibited methods and materials for use in certified organic dairy and egg production.
[21.34.16.6 NMAC - Rp 21 NMAC 34.16.6, 8/30/2001]

21.34.16.7 DEFINITIONS: [RESERVED]
[21.34.16.1 NMAC - Rp 21 NMAC 34.16.7, 8/30/2001]

21.34.16.8 ORGANIC DAIRY PRODUCTION STANDARDS

A. Feed, healthcare and housing requirements are as outlined in 21.30.1 NMAC, with exceptions as noted;

B. Animal origins: Dairy animals: milk or milk products must be from animals that have been under continuous organic management for at least one year immediately prior to the production of organic milk or milk products, except that when an entire, distinct herd is converted to organic production, the producer may:

(1) For the first nine months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements; and

(2) Provide 100-percent organic feed for the final 3 months.

(3) Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

C. Milk animals must drink water with nitrate levels below 10mg nitrate nitrogen per liter, and their drinking water must meet all state and federal requirements concerning bacteria and other microbial contaminants;

D. All sanitation requirements for milk handling equipment shall be observed and milk shall be tested for bacteria, etc. Somatic cell counts must be at or below state standards;

E. Milk equipment sanitizers and udder washes must be approved substances. If local regulations require the use of an un-approved substance, such requirement shall be noted in writing to the Commission, and all equipment receiving such treatment shall be subject to at least two more rinses that usually required for the substance used.
[21.34.16.1 NMAC - Rp 21 NMAC 34.16.8, 8/30/2001]

21.34.16.9 ORGANIC EGG PRODUCTION STANDARDS

A. Feed, healthcare and housing requirements are as outlined in 21.30.1 NMAC, with exceptions as noted;

B. Animals intended for organic egg production must have been under continuous organic management beginning no later than the second day post-hatching.

C. Eggs should be free of manure, but routine washing is discouraged.
[21.34.16.9 NMAC - Rp 21 NMAC 34.16.9, 8/30/2001]

HISTORY of 21.34.16 NMAC:
Pre-NMAC History:
None.

History of the Repealed Material:
21 NMAC 34.16, Organic Production Methods and Materials, filed 07/02/98, repealed effective 08/30/2001.

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection I of 15.2.1.8 NMAC, which outlines the requirements for applicants who make application to the Commission to conduct a horse race meeting in the state of New Mexico.

15.2.1.8 COMMISSION

A. PURPOSE:

(1) The New Mexico Racing Commission created by the Act, Section 60-

1-3. B., New Mexico Statutes, 1978, Annotated, is charged with implementing, administering and enforcing the Act. It is the intent of the Commission that the rules of the Commission be interpreted in the best interests of the public and the jurisdiction.

(2) Through these rules, the Commission intends to encourage agriculture, the horse breeding industry, the horse training industry, tourism and employment opportunities in this jurisdiction related to horse racing and to control and regulate pari-mutuel wagering in connection with that horse racing.

B. GENERAL AUTHORITY:

(1) The Commission shall regulate each race meeting and the persons who participate in each race meeting.

(2) To the extent permitted by the Act the Commission may delegate to the agency director and the stewards all powers and duties necessary to fully implement the purposes of the Act.

C. MEMBERSHIP AND MEETINGS:

(1) The State Racing Commission shall consist of five members, no more than three of who shall be members of the same political party. They shall be appointed by the governor, and no less than three of them shall be practical breeders of racehorses within the state. Each member shall be an actual resident of New Mexico and of such character and reputation as to promote public confidence in the administration of racing affairs.

(2) The Commission shall meet at the call of the chair, as requested by a majority of the members or as otherwise provided by statute. Notice of the meetings must be given and the meetings must be conducted in accordance with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA, 1978.

(3) If it is difficult or impossible for a Racing Commission member to attend a meeting of the Racing Commissioners, that member may participate in the meeting by telephone. The telephone shall be a speakerphone that allows all Commission members and the public to hear all speakers at the meeting.

(4) A majority of the Commission constitutes a quorum. When a quorum is present, a motion before the Commission is carried by an affirmative vote of the majority of the Commissioners present at the meeting.

(5) A Commission member may not act in the name of the Commission on any matter without a majority vote of a quorum of the Commission.

D. ANNUAL REPORT: The Commission shall submit an annual report as prescribed by statute.

E. EMPLOYEES:

(1) The Commission shall employ an agency director who shall employ other employees necessary to implement, administer and enforce the Act.

(2) The agency director shall maintain the records of the Commission and shall perform other duties as required by the Commission. Except as otherwise provided by a rule of the Commission, if a rule of the Commission places a duty on the agency director, the agency director may delegate that duty to another employee of the Commission. The Commission and the agency director may not employ or continue to employ a person:

(a) who owns a financial interest in an association in this jurisdiction;

(b) who accepts remuneration from an association in this jurisdiction;

(c) who is an owner, lessor or lessee of a horse that is entered in a race in this jurisdiction; or

(d) who accepts or is entitled to a part of the purse or purse supplement to be paid on a horse in a race held in this jurisdiction.

(3) Commission employees shall not wager in any pari-mutuel pool at any facility or through any pari-mutuel system subject to the jurisdiction of the Commission.

(4) Commission employees shall not participate in any gaming activity conducted by an Association during working hours on scheduled workdays.

F. POWER OF ENTRY:

(1) A member or employee of the Commission, a steward, a peace officer or a designee of such a person may enter any area on association grounds or other place of business of an association at any time to enforce or administer the Act or Commission rules.

(2) No licensee may hinder a person who is conducting an investigation under, or attempting to enforce, or administer, the Act or Commission rules.

G. SUBPOENAS:

(1) A member of the Commission, the agency director, the stewards, the presiding officer of a Commission proceeding or other person authorized to perform duties under the Act may require by subpoena the attendance of witnesses and the production of books, records, papers, correspondence and other documents.

(2) Any aggrieved person or any licensee or license holder against whom allegations of violations of racing statutes or rules have been made shall have the right to have subpoenas and subpoenas duces tecum issued as of right prior to the hearing to compel discovery as provided in these rules and to compel the attendance of witnesses and the production of relevant physical evidence upon making written and timely request therefor to the Commission or hearing officer; the issuance of such subpoenas after the commencement of the hearing rests in the discretion of the Commission or the hearing officer.

(3) A member of the Commission, the agency director, a presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.

(4) If a person fails to comply with a subpoena issued on behalf of the Commission, the Commission or agency director may invoke the aid of the appropriate court in requiring compliance with the subpoena. For a person compelled to appear before the Commission under this section, the Commission shall pay expenses in accordance with the statutory provisions for state employees. The Commission reserves the right to bill the expenses to parties requiring the appearance of the subpoenaed person.

H. RECORDS:

(1) Inspection and copying of Commission records are governed by the provisions of the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12.

(2) Except as otherwise authorized by statute, or regulation, all original records of the Commission shall be maintained in the offices of the Commission. No person may remove an original record from the offices of the Commission without the approval of the agency director.

(3) To inspect Commission records, a person must make a written request to the appointed records official and to receive copies must pay all costs for copying within the limits set by the Public Records Act.

I. ISSUANCE OF LICENSE TO CONDUCT A RACE MEETING AND ALLOCATION OF RACE DATES:

(1) The Commission shall allocate race dates to each association in accordance with the Act and these rules. An association shall apply to the Commission for a license and racing dates not later than June 1st for all proposed racing meets and dates to be run in the succeeding calendar year. Applications shall not be received or amended after this date except by approval of a majority of the Commission. The application must contain the information

required by statute and the Commission. After the request is filed, the Commission may require the association to submit additional information. The Commission may limit, condition or otherwise restrict any license to conduct horse racing or a horse race meeting in the State of New Mexico.

(2) The burden of proof is on the association to demonstrate that its receipt of a license to conduct a race meet and the allocation of the race dates will be in the public interest and will achieve the purposes of the Act.

(3) In issuing licenses for race meetings and allocating race dates under this section, the Commission may consider the following factors: public interest, health of the industry, safety and welfare of participants, and the criteria for licensure to conduct a race meet set forth in the Act and in these rules.

(4) The association shall be obligated to conduct pari-mutuel racing, except in the case of emergencies, on each race date allocated. Any change in race dates must be approved by the Commission. In the case of emergencies the stewards may authorize cancellation of all or a portion of any race day.

(5) All applicants for an initial license to conduct horse racing or a horse race meeting in the state of New Mexico shall submit the following information to the Commission in the form of a verified application, including an original and six (6) copies:

(a) The name of the applicant and indicate whether it is an individual, firm, association, partnership, corporation or other legal entity.

(b) The names, residences, and nationalities of individual applicants or members of a partnership, association or firm.

(c) If the applicant is a corporation, the following information must be furnished, and if the applicant is a parent or subsidiary of another corporation, the following information must be furnished for each entity:

(i) The year in which the corporation was organized, its form of organization and the name of the state under the laws of which it was organized. Articles of Incorporation and bylaws must also be submitted.

(ii) The classes of capital stock authorized, the amount authorized, and the amount outstanding as of the date not less than fifteen (15) days prior to the filing of the application.

(iii) The name and address of each person who owns of record or is known by the applicant to own beneficially, ten (10) percent or more of any class of capital stock. This can be indicated as name and address; class of stock owned; type of ownership whether of record or beneficial; amount owned; percent of the class of stock.

(iv) Outline briefly the dividend rights, voting rights, liquidation rights, preemptive rights, conversion rights, and redemption provisions. If the rights of holders of such stock may be modified other than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(v) If organized as a corporation within the past five (5) years, furnish the names of the promoters, the nature and amount of anything of value received or to be received by each promoter directly or indirectly from the applicant and the nature and amount of any assets, services, or other consideration therefore received or to be received by the applicant.

(vi) List the names of all directors and executive officers and all persons chosen to become directors or executive officers. Indicate all other positions and offices held by each such person, and the principal occupation during the past five (5) years of each persons to become a director or executive officer. For the purposes of this subparagraph, "executive officer" means the president, vice-president, secretary and treasurer, and any other person who performs policy-making, supervisory, administrative, or financial functions for the applicant.

(vii) Describe in detail the financial arrangements, which have been made for acquisition and operation of racing facilities, including the nature and source of any funds or other property, real or personal, which may be used in this connection.

(viii) Identify in detail the source(s) and terms of any loans, loan commitments, lines of credit, pledges, stock subscriptions, and any other source of funds which may be used in the acquisition or operation of racing facilities.

(ix) State in detail the terms of any proposed purchase of stock or assets in a current licensee.

(x) State whether a substantial portion of the assets or of the capital stock is encumbered by any short-term or long-term debt. Explain fully and state the names and addresses of parties holding security interests or promissory notes from the applicant and the stockholders, where the stock is pledged as security, and outline the terms of and submit the agreements creating the security interests.

(xi) Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year.

(xii) Applicant must submit with application a current financial statement for each director, executive officer, manager, and stockholders owning ten (10) percent or more of the outstanding shares in any corporate applicant.

(xiii) All financial information shall be accompanied by an unqualified opinion of a duly licensed certified public accountant, or if the opinion is given with qualifications, the reasons for the qualifications must be stated.

(xiv) For applicants other than corporation, list the names and addresses of all executive officers and managerial officers. Indicate positions and offices held by each person named and their principal occupation(s) during the past five years.

(xv) State whether any director, executive officer, manager, or stockholder has ever been convicted of a crime and describe the circumstances of the convictions.

(xvi) Describe any pending legal proceedings to which the applicant or any of its subsidiaries or parent corporations is involved, or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted and the principal parties thereto.

(xvii) State in complete detail whether the applicant, or any director, executive officer, stockholder or manager has owned an interest in or has been employed by any firm, partnership, association or corporation previously licensed to conduct a race meeting in any jurisdiction.

(xviii) State actual legal description of a proposed site for racing facilities, names and addresses of the titleholders to the real property and names and addresses of all personal holding mortgages or other security interests in the property.

(xvix) State the number of miles from the nearest population center, and describe briefly the transportation facilities serving that population center.

(xx) State the exact dimensions of the track proposed. Submit at least one copy of the architect's drawings showing detail of the proposed

construction. If a grandstand is in existence, describe the size and type of construction.

(xxi) Describe the efforts to be made to insure the security safety and comfort of patrons and license holders.

(xxii) State the availability of fire protection and adequacy of law enforcement and police protection.

(xxiii) State the parking lot capacity and describe the construction and type of parking facilities.

(xxiv) State the number and type of construction of stables, other barn areas, forecourt and paddock areas, indicating capacities and fire prevention facilities for all areas.

(xxv) Describe the facilities for owners, trainers, jockeys, grooms and other racing personnel.

(xxvi) State the arrangements for food and drink concessions indicating the names and addresses of concessionaires and the terms of the concession contracts.

(xxvii) Describe any concessions, clubs or other special facilities, existing or proposed, for patrons.

(xxviii) Indicate by actual dates the racing days requested by applicant.

(xxix) Indicate the kind of racing to be conducted.

(xxx) Describe the proposed pari mutuel operation in general and indicate in particular the terms of the pari mutuel ticket sales.

(xxxi) Describe climatic conditions prevalent during the proposed racing season.

(xxxii) Indicate the population of the local area, and the growth trend. Indicate the potential market including tourists, transients and patrons from neighboring areas.

(xxxiii) Indicate the principal sources of local income, showing the percentage from farming and ranching, industrial, professional services, military and other governmental sources.

(xxxiv) Describe the effect of competition with other racetracks in and out of the state and with other sports or recreational facilities in the area.

(xxxv) Indicate what effect opposition from area residents may have on the economic outlook for the proposed track.

(6) A new complete primary application as required in Subsection I, Paragraph (5) of 15.2.1.8 NMAC is also required if any of the following events occur:

(a) If the effective controlling interest of any licensee is transferred or conveyed.

(b) If any involuntary transfer of either tangible real or personal property or corporate stock gives the effective control of the licensee to the transferee.

(c) In the event that a transfer under subparagraphs (a) and (b) occurs after the granting of racing dates, the transferee shall immediately apply to the Commission for a hearing to show cause why the transferee should be permitted to continue racing under the current grant of racing dates.

(d) Failure to make application within ninety (90) days of the date of the proposed transfer shall be grounds for revocation of license.

(7) A race meet licensee that has been licensed for the previous year, must submit to the Commission a renewal application, on a form provided by the Commission, containing the following information:

(a) Complete listing of officers, directors of corporation, and secondary lender affiliates;

(b) Proposed race dates and simulcast race dates;

(c) At the time of annual request for racing dates, when the Commission in its discretion determines that the licensee should supply current information.

(d) Current financial statements;

(e) Changes to articles of incorporation and bylaws;

(f) List of concessionaires and contract services;

(g) Changes from original application, or last renewal application, in mortgagee of real property;

(h) Insurance policies;

(i) Any other changes from original primary application.

(8) The Commission in addition to any other legally sufficient reason, may disapprove, deny, refuse to renew, suspend, or revoke a license to conduct horse racing or a horse race meeting in the state of New Mexico if any person having any direct or indirect interest in the applicant or in the licensee, or any nature whatsoever, whether financial, administrative, policy-making or supervisory:

(a) has been convicted of a felony under the laws of New Mexico, the laws of any other state or the laws of the United States, unless sufficient evidence of rehabilitation has been presented to the Commission;

(b) has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, unless sufficient proof of rehabilitation has been presented to the Commission;

(c) has violated or attempted to violate any law or regulation with respect to racing in any jurisdiction, unless sufficient proof of rehabilitation has been presented to the Commission;

(d) has consorted or associated with bookmakers, touts or persons of similar pursuits, unless sufficient proof of rehabilitation has been presented to the Commission;

(e) is consorting or associating with bookmakers, touts or persons of similar pursuits;

(f) is financially irresponsible as found or determined by the Commission; or,

(g) is a past or present member of or participant in organized crime as such membership or participation may be found or determined by the Commission.

[15.2.1.8 NMAC – Rp, 15 NMAC 2.1.8, 03/15/2001; A, 08/30/2001]

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection E, Paragraph (6) of 15.2.2.8 NMAC, which provides for the staffing requirements of ambulances at the racetracks any time they are open for racing or exercising and adding Section 10 to 15.2.2 NMAC which details the procedures for racetracks to follow when offsetting monies to be used for capital improvements made at their facilities pursuant to state statute

15.2.2.8 ASSOCIATIONS:

A. GENERAL DUTY:

(1) An association, its officers, directors, officials and employees shall abide by and enforce the Act and the rules and orders of the Commission and stewards.

(2) An association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The Commission may grant an exemption if the Commission determines that: the association's proposal substantially satisfies the purpose of the requirement; the exemption is in the best interests of the race horses, the racing industry and the citizens of this jurisdiction.

B. FINANCIAL REQUIREMENTS: INSURER OF THE RACE MEETING

(1) Approval of a race meeting by the Commission does not establish

the Commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

(2) An association shall agree to indemnify, save and hold harmless the Commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(3) An association shall provide the Commission with a certificate of liability insurance as required by the Commission.

(4) An association shall maintain one or more trust accounts in financial institutions insured by the FDIC or other federal government agency for the deposit of nominations and futurity monies and those amounts deducted from the pari mutuel handle for distribution to persons other than the association according to the Act and commission rules. An association may invest nominations and futurities monies paid by owners in a U.S. Treasury Bill or other appropriate U.S. Government financial instrument instead of an account in a financial institution, in which case the provisions of this Rule shall apply to such instrument.

(5) An association shall keep its operating funds and other funds that belong exclusively to the association separate and apart from the funds in its trust accounts and from other funds or accounts it maintains for persons other than itself, such as a horsemen's book account.

(6) An association shall employ proper accounting procedures to insure accurate allocation of funds to the respective purses, parties and organizations and detailed records of such accounts shall be made available to the Commission or its staff on demand in connection with any Commission audit or investigation.

(7) An association shall insure that sufficient funds for the payment of all purses on any race day are on deposit in a trust account at least two business days before the race day and shall provide the Commission with documentation of such deposits prior to the race day. Exceptions to this subsection may be made by the Commission or the Agency Director for good cause shown.

(8) An association shall add all interest accrued on funds in a trust account to the balance in the account and distribute the interest proportionally to those for whom the funds are held.

(9) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari mutuel handle are distributed according to the Act and Commission rules and not otherwise.

(10) An association and its managing officers shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the Act, Commission rules, association rules and race conditions.

C. BOND REQUIREMENTS:

(1) An association shall file with the Commission a bond or other security payable to the New Mexico Racing Commission in an amount determined by the Commission for pari mutuel racing and in either case not more than the financial liability of the association license throughout the race meeting for which the association license is requested.

(2) The bond shall be executed by the applicant and a surety company or companies authorized to do business in this jurisdiction, and conditioned upon the payment by the association licensee of all taxes and other monies due and payable pursuant to statutory provisions and all monies due from horsemen's accounts and payable, presentation of winning tickets, the licensee will distribute all sums due to the patrons of pari mutuel pools.

(3) The financial liabilities incurred by the association licensee in the form of real estate mortgages shall not be included in the determination of the bond amount.

D. FINANCIAL REPORTS:

(1) The Commission may require periodic audits to determine that the association has funds available to meet those distributions for the purposes required by the Act, Commission rules, the conditions and nomination race program of the race meeting and the obligations incurred in the daily operation of the race meeting.

(2) An association shall file a copy of all tax returns, a balance sheet and a profit and loss statement.

(3) An association shall file with the Commission an unaudited balance sheet and profit and loss statement as required by the Commission. Those submissions must be in a format, which conforms to the requirements set out in the association license application.

(4) An association shall file an annual audit with the Commission within 60 days after the association's fiscal year-end. The Commission, upon good cause shown, may extend the time for filing.

E. FACILITIES AND EQUIPMENT: FACILITIES FOR PATRONS AND LICENSEES:

(1) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

(2) An association shall provide and maintain adequate restroom facilities for the patrons and licensees.

(3) An association shall provide an adequate supply of free drinking water.

(4) An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(5) During a race performance, the association shall provide a first aid room equipped with at least two beds and other appropriate equipment; the services of at least one physician or certified emergency medical technician (EMT).

(6) An association shall provide two properly equipped ambulances, ready for immediate duty at any time the racetrack is open for racing or exercising. The ambulance shall be staffed with one certified paramedic **or an intermediate EMT (as long as physician is on the grounds). [~~and t~~] T**he other staff will be certified EMTs. If the ambulance is being used to transport an individual, the association may not conduct a race until a properly equipped and staffed ambulance is in place, or a physician is on duty.

(7) Unless otherwise approved by the Commission or the stewards, an ambulance shall follow the field at a safe distance during the running of races.

(8) The ambulance must be parked at an entrance to the racing strip except when the ambulance is being used to transport an individual or when it is following the field during the running of a race.

(9) An association shall provide adequate office space for the use of the stewards and other Commission personnel as required by the Commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the Commission.

(10) An association shall promptly post Commission notices in places that can be easily viewed by patrons and licensees.

(11) An association shall ensure that all concessions provide prompt and efficient service to the public at all race meets or simulcast performances. The associations shall specifically ensure that concessions have adequate staff and inventory to provide prompt and efficient service to the public.

(12) All concession items and prices showing size of food quantities, beverages, etc., and prices for the previous two years are to be submitted to the Commission for approval a minimum of thirty (30) days prior to the first day of the

race meet.

F. OFFICIALS' STANDS: An association shall provide adequate stands for officials to have a clear view of the racetrack. The location and design of the stands must be approved by the Commission.

G. AUDIO AND VISUAL EQUIPMENT:

(1) An association shall provide and maintain in good working order a communication system between the: stewards' stand; racing office; tote room; jockeys' room; paddock; test barn; starting gate; weigh in scale; video camera locations; clocker's stand; racing veterinarian; track announcer; location of the ambulances (equine and human); other locations and persons designated by the Commission.

(2) An association shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

(3) An association shall provide two electronic photofinish devices with mirror image to photograph the finish of each race and record the time of each horse in at least hundredths of a second. The location and operation of the photofinish devices must be approved by the Commission before its first use in a race. The association shall promptly post a photograph of each photofinish for win, place or show in an area accessible to the public. The association shall ensure that the photofinish devices are calibrated before the first day of each race meeting and at other times as required by the Commission. On request by the Commission, the association shall provide, without cost, a print from a negative of a photofinish to the Commission. Photofinish negatives of each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the Commission.

(4) An association shall provide a videotaping system approved by the Commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review shall be provided in the stewards' stand. The location and construction of video towers must be approved by the Commission.

(5) A camera and a timer, designated by the Commission, shall be at the starting gate and shall videotape and show to the public the pre-race loading of all horses into the starting gate and shall continue to videotape them until the field is dispatched by the starter.

(6) One camera, designated by the Commission, shall videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted and the equipment has been removed from the horse.

(7) The stewards may, at their discretion, direct the video camera operators to videotape the activities of any horses or persons handling horses prior to, during or following a race.

(8) Races run on an oval track must be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

(9) An association shall, upon request, provide to the Commission, without cost, a copy of a videotape of a race.

(10) Videotapes recorded prior to, during and following each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the Commission.

(11) An association shall provide a viewing room in which, on approval by the stewards, an owner, trainer, jockey or other interested individual may view a videotape recording of a race.

(12) Following any race in which there is an inquiry or objection, the association shall display to the public on designated monitors the videotaped replays of the incident in question which were utilized by the stewards in making their decision.

H. RACETRACK

(1) The surface of a racetrack, including the cushion, subsurface and base, must be designed, constructed and maintained to provide for the safety of the jockeys and horses.

(2) Prior to the first race meeting at an association racetrack, a licensed surveyor shall provide to the Commission a certified report of the grade and measurement of the distances to be run.

(3) Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

(4) The surveyor's report must be approved by the Commission prior to the first race day of the meeting.

(5) An association shall provide an adequate drainage system for the racetrack.

(6) An association shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The association shall provide back-up equipment for maintaining the track surface.

(7) An association that conducts races on a turf track shall maintain an adequate stockpile of growing medium; provide a system capable of adequately watering the entire turf course evenly.

I. RAILS

(1) Racetracks, including turf tracks, shall provide inside and outside rails, including gap rails, designed constructed and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the Commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 42 inches above the top of the cushion. The inside rail shall be no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

J. STARTING GATES

(1) During racing hours, an association shall provide at least two operable padded starting gates, which have been approved by the Commission.

(2) An association shall make at least one starting gate and qualified starting gate personnel available for schooling during designated training hours.

(3) If a race is started at a place other than in a chute, the association shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

K. DISTANCE MARKERS

(1) An association shall provide starting point markers and distance poles in a size and position that is clearly seen from the stewards' stand.

(2) The starting point markers and distance poles must be marked as follows:

1/4 poles	Red and white horizontal stripes
1/8 poles	Green and white horizontal stripes
1/16 poles	Black and white horizontal stripes
220 yards	Green and white
250 yards	Blue
300 yards	Yellow
330 yards	Black and white
350 yards	Red
400 yards	Black
440 yards	Red and white
550 yards	Black and white horizontal stripes
660 yards	Green and white horizontal stripes
770 yards	Black and white horizontal stripes
870 yards	Blue and white horizontal stripes

L. LIGHTING

(1) An association shall provide lighting for the racetrack and the

patron facilities that are adequate to ensure the safety and security of the patrons, licensees and horses. Lighting to ensure the proper operation of the videotape and photofinish equipment must be approved by the Commission.

(2) An association shall provide adequate additional lighting in the stable area as required by the Commission.

(3) If an association conducts racing at night, the association shall maintain a back-up lighting system that is sufficient to ensure the safety of race participants and patrons.

M. EQUINE AMBULANCE

(1) An association shall provide an equine ambulance staffed by trained personnel on association grounds on each day that the racetrack is open for racing or training.

(2) The ambulance must be properly ventilated and kept at an entrance to the racing strip when not in use.

(3) The ambulance must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ambulance must be able to navigate on the racetrack during all weather conditions; transport a horse off the association grounds.

(4) The ambulance must be equipped with large, portable screens to shield a horse from public view; ramps to facilitate loading a horse; adequate means of loading a horse that is down; a rear door and a door on each side; a padded interior; a movable partition to initially provide more room to load a horse and to later restrict a horse's movement; a shielded area for the person who is attending to the horse; an adequate area for the storage of water and veterinary drugs and equipment.

(5) An association may not conduct a race unless an equine ambulance or an official veterinarian-approved substitute is readily available.

(6) The equine ambulance, its supplies and attendants and the operating procedures for the equine ambulance must be approved by the official veterinarian.

N. BARNS

(1) An association shall provide barns containing a sufficient number of stalls to accommodate all horses approved to race and all other horses approved to be on the grounds. The association's stable area configuration and facilities must be approved by the Commission.

(2) An association shall ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.

(3) An association shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 by 10 feet.

(4) An association shall provide an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area daily. The association shall ensure that refuse from the stalls and other refuse is kept separate.

O. TEST BARN

(1) An association shall provide a test barn for taking specimens of urine, blood or other bodily substances or tissues for testing.

(2) The test barn must be equipped with a walk ring that is large enough to accommodate ten horses; at least three enclosed stalls that permit observation of the collection process and provide for the protection of collection personnel; facilities and equipment for the collection, identification and storage of samples; a wash rack that is large enough to accommodate three horses at the same time; hot and cold running water; clean water buckets supplied by the trainer for each horse.

(3) An association shall limit access to the test barn to persons, authorized by the official veterinarian, for the conduct of commission authorized tasks such as practicing veterinarians in the performance of their obligations, employees of the official veterinarian, Commissioners and their designees. In addition, no more than two (2) persons representing the stable of a horse required to be tested may accompany that horse into the test barn. All persons entering the test barn must wear a valid license in plain view. All entrances shall be locked or guarded at all times.

P. ISOLATION AREA

(1) An association shall provide an isolation area for the care and treatment of a horse that is ordered isolated by the racing veterinarian or the official veterinarian.

(2) The isolation area must be approved by the official veterinarian.

Q. OPERATIONS: SECURITY

(1) An association conducting a race meeting shall maintain security controls over its premises. Security controls are subject to the approval of the Commission.

(2) An association shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

(3) An association shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(4) Unless otherwise authorized by the Commission, an association shall provide continuous security in the stable area during all times that horses are stabled on the grounds. An association shall require any person entering the stable area to display valid credentials issued by the Commission or a visitor's pass issued by the association (See Subsection R Paragraph (1) of 16.47.1 NMAC). An association shall provide security fencing around the stable area in a manner that is approved by the Commission.

(5) On request by the Commission, an association shall provide a list of the security personnel, including the name, qualifications, training, duties, duty station and area supervised by each employee.

(6) Each day, the chief of security for an association shall deliver a written report to the stewards regarding occurrences on association grounds on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the stewards a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

R. FIRE PREVENTION

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

(2) Not later than three days before the first day of a race meeting, an association shall deliver to the Commission a copy of the state or local fire marshal's certification regarding the association's compliance with fire safety regulations or the fire marshal's plan of corrections. The certification or plan must be based on an inspection of the association grounds conducted by the fire marshal not more than 30 days before the first day of a race meeting.

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

occupied by a horse.

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

S. INSECT AND RODENT CONTROL: An association and the licensees occupying the association's barn area shall cooperate in procedures to control insects, rodents or other hazards to horses or license es.

T. PERFORMANCES:

(1) The hours of racing, the number of races per race day and the post time for the first race of each race day are subject to the approval of the Commission.

(2) An association shall deliver to the Commission for approval a copy of the proposed stakes schedule, proposed purse schedule and first condition book for a race meeting at least 60 days before the first day of the race meeting. Following Commission approval, any changes to the purse or stakes schedules, or condition book must be approved by the Commission. The association shall deliver to the Commission, upon publication, a copy of each subsequent condition book.

U. COMPLAINTS:

(1) An association shall designate a location and provide personnel who shall be readily available to the public to provide information or receive complaints.

(2) An association shall promptly notify the Commission of a complaint regarding an alleged violation of the Act or a rule of the Commission; an alleged violation of ordinances or statutes; accidents or injuries; unsafe or unsanitary conditions for patrons, licensees or horses.

V. EJECTION AND EXCLUSION:

(1) An association shall immediately eject from the association grounds a person who is subject to such an exclusion order of the Commission or stewards and notify the Commission of the ejection.

(2) An association may eject or exclude a person for any lawful reason. An association shall immediately notify the stewards and the Commission in writing of any person ejected or excluded by the association and the reasons for the ejection or exclusion.

W. STAKES AND ESCROW REQUIREMENTS:

(1) The association shall provide the Commission with a copy of written race conditions for stakes races prior to distribution and a copy of the job description of the nomination secretary assigned to the stakes races program. The job description shall be acknowledged and signed by the nomination secretary and filed with the Commission.

(2) The original race conditions nomination blank for stakes races shall be considered a binding contract between the association or sponsor and the nominator. The approved nomination blank must be signed by the nominator and filed with the association. The nomination blank must contain all conditions under which fees are due and payable; the race will be conducted, providing for trials or divisions, if any; supplemental purses are added; monies will be retained by the association for advertisement, administration and commissions; terms or conditions which refunds, if any, will be made; and all other conditions pertaining thereto.

(3) Unless otherwise approved by the Commission, prior to the closing of nominations, the association shall file with the Commission a copy of escrow provisions made by the association or sponsor with the horsemen's bookkeeper or other person(s) authorized to receive payments on behalf of the nominators utilizing a federally insured financial institution to maintain the escrow account for all payments made to the stakes race. Any added or supplemental purse monies advertised or otherwise stated in the written race conditions shall be deposited in the escrow account no later than the deadline date for the first eligibility payment for that stakes race, unless otherwise approved by the Commission.

(4) If the deadline for a nomination payment falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(5) For all nomination races the association shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of all horses nominated, distinguishing those horses which remain eligible. The list shall be distributed within 45 days, but not later than 14 days prior to the next payment after the due date of each nomination and sustaining payment and shall include the name of the race; the name of each horse, or the name of the sire and dam; name(s) of the owner(s) of each horse; and itemization of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and advertised deductions for advertising, administration and commissions retained by the association and the next scheduled payment date and amount.

(6) Between 14 and 21 days prior to a payment due date for all nomination races, the association shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a courtesy notice of the next scheduled payment due date and amount of the payment. The nominator is responsible for making timely payments.

(7) Within 30 days after each eligibility or payment date, and the date horses pass the entry box, the association shall provide a copy of the escrow report to the Commission. The escrow report shall include the financial institution representative; the names and nominators; the total number of entries; the names of horses remaining eligible; an itemization of the amount of payments and added money received including totals; the amount of interest accrued to date; the name(s) of the person(s) currently authorized to make withdrawals; the amount and date of each withdrawal, if any; each deduction from monies received (e.g. uncollected checks, advertising, administrative and commissions costs); and the stated reason for each withdrawal or deduction. Notice of not less than two persons, whose signatures are required for a withdrawal, shall be filed with the Commission.

(8) In all cases the association shall be responsible for the payment of purse monies for any stakes race conducted at its licensed facility.

[15.2.2.8 NMAC – Rp, 15 NMAC 2.2.8, 03/15/2001; A, 08/30/2001]

15.2.2.10 CAPITAL IMPROVEMENTS

A. GENERAL AUTHORITY:

(1) Capital improvements made on licensed racing premises with state funds offset from the amount of taxes due pursuant to Section 60-1-15, NMSA 1978, shall be utilized only for the improvement of horse racing facilities for the benefit of the public, breeders and horse owners and shall be intended to increase the revenue to the state from the increases in pari mutuel wagering and tourism which result from the improvements.

(2) No capital improvement for which an offset from state taxes is requested shall be made unless it is a capital investment subject to depreciation under the United States Internal Revenue Code and is approved in advance by the Commission.

(3) It is the responsibility of the licensee requesting the offset of state taxes to establish that the proposed capital improvement qualifies as a capital investment subject to depreciation under the United States Internal Revenue Code.

B. COMMISSION REQUIREMENTS:

(1) Each Commission member and the Agency Director shall inspect all facilities, grounds and areas of each licensed racetrack in New Mexico annually

for the purpose of identifying the need for capital improvements for those areas.

(2) The Commission shall annually adopt or revise a schedule of priorities of areas in need of immediate capital improvements for each licensed racetrack. Licensees and any other individuals or organizations may submit to the Commission recommendations for the schedule of priorities. The Commission Chairman may appoint committees as are necessary to prepare the schedule of priorities. All committee meetings shall be open meetings.

(3) In adoption of the schedule of priorities, the Commission shall give due consideration to the needs of the public, breeders and horse owners and shall balance those needs in the allocation of priorities.

(4) The Commission shall adhere to the schedule of priorities in the approval of capital improvement projects applied for by the licensees.

C. PROCEDURES:

(1) A licensee shall submit to the Commission, on application forms provided by the Commission, proposals for capital improvement projects for which an offset of state taxes will be requested. Applications shall contain, but are not limited to, the following information:

(a) Licensed racetrack at which project is proposed.

(b) Person(s) supervising the proposal and project.

(c) Total cost of project.

(d) Amount of total cost to be offset by state tax revenues.

(e) Amount of total cost to be paid by other funds and sources of those funds.

(f) Complete description of project and timetable for construction.

(g) Estimated timetable of requests for offsets by state tax revenues.

(h) Proof of compliance with Section 60-1-15(B), NMSA 1978 that the project qualifies under the Internal Revenue Code as a capital investment subject to depreciation.

(2) For any capital improvement project in which the requested offset from state taxes equals or exceeds 50 percent of the total purchase or construction price, the licensee shall obtain and submit to the Commission at least three written bids from suppliers or licensed contractors, where applicable.

(3) At the next regularly scheduled Commission meeting, the Commission shall review, reject, modify or condition each proposal, or return the application for additional information. Then, at the subsequent scheduled Commission meeting, the Commission shall approve each capital improvement proposal reviewed.

(4) The Commission shall approve only the bid of the lowest bidder, unless the licensee requests in writing that a particular bid be accepted, in which case the Commission may approve the licensees recommended bidder if it finds extraordinary circumstances which call for the acceptance of that bidder and additionally finds that acceptance of that bidder would be in the best interests of racing in New Mexico. The Commission shall give preference to New Mexico contractors and suppliers, as defined in Section 13-4-2, NMSA 1978, in selecting bids, provided that the bid for a project of the New Mexico contractor or supplier does not exceed ten (10) percent over the amount of the lowest bid.

(5) When special circumstances warrant, or when unexpected cost overruns are incurred, the Commission may consider a capital improvement retroactively.

(6) When the licensee's in-house maintenance work force is accepted as the low bidder in a capital improvement project, any cost overrun beyond the highest bid price may not be allowed as an offset and must be paid by the licensee. A cost overrun performed by in-house maintenance above the original bid price and below the highest bidder price must be approved by the Commission before the work is accomplished.

(7) Following the completion of any capital improvement project for which an offset of state taxes was requested and approved, the Commission, or designee, shall inspect the project and any recommended future projects.

D. TAX LIABILITIES: All taxes assessed pursuant to the provisions of Section 60-1-15, NMSA 1978, shall be paid to the Racing Commission at the time set by law, unless a capital expenditure project or the financing of term investment in capital improvements has been previously approved by the Commission and the licensee is entitled by such previous approval to offset the amount of the taxes then due. If no previous approval for a project or financing has been made, the full amount of taxes due shall be paid. If previous approval for a project or financing has been made and the licensee is entitled to offset the amount of the taxes then due, the licensee may offset such taxes due and shall account to the Commission for such offset from taxes due.

[15.2.2.10 NMAC - N, 08/30/2001]

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection E, Paragraph (1) of 15.2.5.14 NMAC to allow the Agency Director discretion in referring race appeals directly to the Commission and bypassing the Race Review Committee.

15.2.5.14 PROTESTS, OBJECTIONS AND INQUIRIES:

A. STEWARDS TO INQUIRE: The stewards shall take cognizance of foul riding and, upon their own motion or that of any racing official or person empowered by this chapter to object or complain, shall make diligent inquiry or investigation into such objection or complaint when properly received.

B. RACE OBJECTIONS:

(1) An objection to an incident alleged to have occurred during the running of a race shall be received only when lodged with the clerk of scales, the stewards or their designees, by the owner, the authorized agent of the owner, the trainer or the jockey of a horse engaged in the same race.

(2) An objection following the running of any race must be filed before the race is declared official, whether all or some riders are required to weigh in, or the use of a "fast official" procedure is permitted.

(3) The stewards shall make all findings of fact as to all matters occurring during an incident to the running of a race; shall determine all objections and inquiries, and shall determine the extent of disqualification, if any, of horses in the race. Such findings of fact and determination shall be final for pari mutuel payout purposes.

C. PRIOR OBJECTIONS:

(1) Objections to the participation of a horse entered in any race shall be made to the stewards in writing, signed by the objector, and filed not later than one hour prior to post time for the first race on the day which the questioned horse is entered. Any such objections shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter.

(2) An objection to a horse which is entered in a race may be made on, but not limited to, the following grounds or reasons:

(a) a misstatement, error or omission in the entry under which a horse is to run;

(b) the horse, which is entered to run, is not the horse it is represented to be at the time of entry, or the age was erroneously given;

(c) the horse is not qualified to enter under the conditions specified for the race, or the allowances are improperly claimed or not entitled the horse, or the weight to be carried is incorrect under the conditions of the race;

(d) the horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in these rules;

(e) the horse was entered without regard to a lien filed previously with the racing secretary.

(3) The stewards may scratch from the race any horse, which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

D. PROTESTS:

(1) A protest against any horse, which has started in a race, shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race. If the incident upon which the protest is based occurs within the last two days of the meeting, such protest may be filed with the Commission within 48 hours exclusive of Saturdays, Sunday or official holidays. Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for the protest.

(2) A protest may be made on any of the following grounds:

(a) any grounds for objection as set forth in this chapter;

(b) the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers of the horses, which started the race;

(c) a jockey, trainer, owner or lessor was ineligible to participate in racing as provided in this chapter;

(d) the weight carried by a horse was improper, by reason of fraud or willful misconduct;

(e) an unfair advantage was gained in violation of the rules;

(f) the disqualification of a horse(s).

(3) Notwithstanding any other provision in this article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged provided that the stewards are satisfied that the allegations are bona fide and verifiable.

(4) No person shall file any objection or protest knowing the same to be inaccurate, false, untruthful or frivolous.

(5) The Commission may fine any license holder an amount of up $2,500 after considering protest, if based on the evidence they determine that the protest is frivolous, unreasonable or unnecessary.

(6) If a license holder who appealed fails to appear for any scheduled hearing without providing five days prior notice, the Stewards or the Commission may impose costs.

(7) The stewards may order any purse, award or prize for any race withheld from distribution pending the determination of any protest. In the event any purse, award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to such purse, award or prize, the stewards or the Commission may order such purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be subject to fines and suspension.

E. RACE REVIEW COMMITTEE:

(1) If a timely objection concerning a race is filed in accordance with the rules, the Agency Director **[~~shall~~]** **may** refer the objection to the Race Review Committee who shall consist of three members appointed by the Commission. The Agency Director shall issue and send, or deliver, to the objecting party a Notice of Hearing stating the date, time and place at which the Race Review Committee will hear the appeal. The Notice of Hearing shall also be sent, or delivered, to any trainer or owner the placement of whose horse may be affected by the outcome of the appeal. The Race Review Committee shall review the official tape or tapes of the race. Affected parties shall be given the opportunity to state their positions to the Committee.

(2) The Committee shall state its conclusions as to the merits of the objection and shall make a recommendation to the Commission as to whether to uphold the stewards' determination, or to revise the order of finish. The Commission shall then make the final determination as to the order of finish. The Race Review Committee and the Commission may only address the issues raised in the appeal filed.

[15.2.5.14 NMAC - Rp, 15 NMAC 2.5.14, 03/15/2001; A, 08/30/2001]

NEW MEXICO RACING COMMISSION

This is an amendment to Paragraphs (4), (5), (6) and (7), Subsection C of 15.2.6.9 NMAC to rectify the inconsistency between the levels of use of therapeutic medications and the penalties for violations of the levels.

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES: Upon a finding of a violation of these medication and prohibited substances rules, the stewards shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and impose penalties and disciplinary measures consistent with the recommendations contained therein. The guidelines and recommended penalties shall be provided to all license holders by attachment to this section. Provided, however, that in the event a majority of the stewards determine that mitigating circumstances require imposition of a lesser penalty they may impose the lesser penalty. In the event a majority of the stewards wish to impose a greater penalty or a penalty in excess of the authority granted them, then, and in such event, they may impose the maximum penalty authorized and refer the matter to the Commission with specific recommendations for further action.

A. UNIFORM CLASSIFICATION GUIDELINES: The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

(1) Class 1 - Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

(2) Class 2 - Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in

a race horse. The following groups of drugs are in this class:

(a) Opiate partial agonists, or agonist-antagonists.

(b) Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects.

(c) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS).

(d) Drugs with prominent CNS depressant action.

(e) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects.

(f) Muscle blocking drugs which have a direct neuromuscular blocking action.

(g) Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine).

(h) Snake venoms and other biologic substances which may be used as nerve blocking agents.

(3) Class 3- Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

(a) Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class).

(b) A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine).

(c) Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines.

(d) Primary vasodilating/hypotensive agents.

(e) Potent diuretics affecting renal function and body fluid composition.

(4) Class 4- This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

(a) Non-opiate drugs which have a mild central analgesic effect.

(b) Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects:

(i) Drugs used solely as topical vasoconstrictors or decongestants.

(ii) Drugs used as gastrointestinal antispasmodics.

(iii) Drugs used to void the urinary bladder.

(iv) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

(c) Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5.

(d) Mineralocorticoid drugs.

(e) Skeletal muscle relaxants.

(f) Anti-inflammatory drugs—those that may reduce pain as a consequence of their anti-inflammatory actions, which include::

(i) Non-steroidal anti-inflammatory Drugs (NSAIDs), except for those specifically approved by the Commission, — aspirin-like drugs..

(ii) Corticosteroids (glucocorticoids).

(iii) Miscellaneous anti-inflammatory agents.

(g) Anabolic and/or androgenic steroids and other drugs.

(h) Less potent diuretics.

(i) Cardiac glycosides and antiarrhythmics including:

(i) Cardiac glycosides.

(ii) Antiarrhythmics agents (exclusive of lidocaine, bretylium and propanolol).

(iii) Miscellaneous cardiotonic drugs.

(j) Topical anesthetics—agents not available in injectable formulations..

(k) Antidiarrheal agents.

(l) Miscellaneous drugs including:

(i) Expectorants with little or no other pharmacologic action.

(ii) Stomachics.

(iii) Mucolytic agents

(5) Class 5 - Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

B. PENALTY RECOMMENDATIONS (in the absence of mitigating circumstances)

(1) Class 1 - One to five years suspension and at least $5,000 fine and loss of purse.

(2) Class 2 - Six months to one year suspension and $1,500 to $2,500 fine and loss of purse.

(3) Class 3 - Sixty days to six months suspension and up to $1,500 fine and loss of purse.

(4) Class 4 - Fifteen to 60 days suspension and up to $1,000 fine and loss of purse.

(5) Class 5 - Zero to 15 days suspension with a possible loss of purse and/or fine.

C. MEDICATION RESTRICTIONS:

(1) A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.

(2) Drugs or medications in horses are permissible, provided: the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; the maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

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

(4) Phenylbutazone: The use of phenylbutazone shall be permitted under the following conditions:

(a) Any horse to which phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

(b) The permitted

quantitative test level of Phenylbutazone or oxyphenbutazone shall **[~~not exceed~~]** **be administered in such dosage amount that the official test sample shall test less than** 5 micrograms per milliliter of plasma.

(5) Furosemide (Salix)

(a) Furosemide **(Salix)** may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, Furosemide **(Salix)** shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(b) The use of Furosemide **(Salix)** shall be permitted under the following circumstances on association grounds where a detention barn is utilized: Furosemide **(Salix)** shall be administered no less than three hours prior to post time for the race for which the horse is entered. A horse qualified for a Furosemide **(Salix)** administration must be brought to the detention barn within time to comply with the three-hour administration requirement specified above. The dose administered **in such dosage amount that the official test sample** shall **~~not~~ test less than [~~exceed~~]** 250 milligrams nor be less than 100 milligrams. After treatment, the horse shall be required by the Commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or Commission security supervision until called to the saddling paddock.

(c) The use of Furosemide **(Salix)** shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: Furosemide **(Salix)** shall be administered no less than three hours prior to post time for the race for which the horse is entered; the Furosemide **(Salix)** dosage administered shall not exceed 250 milligrams nor be less than 100 milligrams; the trainer of the treated horse shall cause to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the Commission: the racetrack name, the date and time the Furosemide **(Salix)** was administered to the entered horse; the dosage amount of Furosemide **(Salix)** administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the Furosemide **(Salix)**.

(d) Bleeder List. The official veterinarian shall maintain a bleeder list of all horses, which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.

(e) The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.

(f) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.

(g) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal and only after remaining on the bleeder list for a minimum of sixty (60) days.

(h) A horse, which has been placed on a bleeder list in another jurisdiction, may be placed on a bleeder list in this jurisdiction by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction.

(6) Flunixin: In addition to Phenylbutazone and Furosemide, Flunixin may be administered in such dosage **[~~as to not exceed~~]** **amount that the official test sample shall test less than** 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(7) Meclofenamic Acid: In addition to Phenylbutazone and Furosemide, Meclofenamic Acid may be administered in such dosage **[~~as to not exceed~~]** **amount that the official test sample shall test less than** 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(8) Acepromazine: The use of Acepromazine shall be permitted under the following conditions:

(a) Any horse to which Acepromazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Acepromazine shall not exceed 25 nannograms per milliliter of urine, or its blood equivalent.

(9) Albuterol: The use of Albuterol shall be permitted under the following conditions:

(a) Any horse to which Albuterol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Albuterol shall not exceed 1 nannogram per milliliter of urine, or its blood equivalent.

(10) Atropine: The use of Atropine shall be permitted under the following conditions:

(a) Any horse to which Atropine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Atropine shall not exceed 10 nannograms per milliliter of urine, or its blood equivalent.

(11) Benzocaine: The use of Benzocaine shall be permitted under the following conditions:

(a) Any horse to which Benzocaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Benzocaine shall not exceed 50 nannograms per milliliter of urine, or its blood equivalent.

(12) Mepivacaine: The use of Mepivacaine shall be permitted under the following conditions:

(a) Any horse to which Mepivacaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Mepivacaine shall not exceed 10 nannograms per milliliter of urine, or its blood equivalent.

(13) Procaine: The use of Procaine shall be permitted under the following conditions:

(a) Any horse to which Procaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs

which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Procaine shall not exceed 10 nannograms per milliliter of urine, or its blood equivalent.

(14) Promazine: The use of Promazine shall be permitted under the following conditions:

(a) Any horse to which Promazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Promazine shall not exceed 25 nannograms per milliliter of urine, or its blood equivalent.

(15) Salicylates: The use of Salicylates shall be permitted under the following conditions:

(a) Any horse to which Salicylates have been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs which may be present in the blood or urine sample.

(b) The permitted quantitative test level of Salicylates shall not exceed 750 micrograms per milliliter of urine, or its blood equivalent.

D. PENALTY RECOMMENDATIONS (in the absence of mitigating circumstances):

(1) A verbal warning for the first positive test within a 12-month period in the following levels:

(a) 5.0 micrograms per milliliter to 5.5 micrograms per milliliter in one drug of Phenylbutazone or Oxyphenbutazone; or

(b) 1.0 microgram per milliliter to 1.1 microgram per milliliter of Flunixin; or

(c) 1.0 microgram per milliliter to 1.1 microgram per milliliter of Meclofenamic Acid.

(2) A written warning for one positive test within a 12-month period in the following levels:

(a) 5.6 micrograms per milliliter to 9.9 micrograms per milliliter in one drug of Phenylbutazone or Oxyphenbutazone; or

(b) 1.1 microgram per milliliter to 1.2 microgram per milliliter of Flunixin; or

(c) 1.1 microgram per milliliter to 1.2 microgram per milliliter of Meclofenamic Acid.

(3) A fine for one positive test within a 12-month period in the following levels:

(a) $200 for 10.0 micrograms per milliliter and above for combined total amount of Phenylbutazone and Oxyphenbutazone; or

(b) $200 for 1.2 micrograms per milliliter of Flunixin; or

(c) $200 for 1.2 micrograms per milliliter of Meclofenamic Acid; or

(d) $300 for 5.0 micrograms per milliliter or more of either Phenylbutazone or Oxyphenbutazone in combination with 1.2 micrograms or more of either Flunixin or Meclofenamic Acid; or

(e) $200 for 5.6 to 5.9 micrograms per milliliter in one drug of Phenylbutazone, or Oxyphenbutazone, and 1.0 to 1.1 micrograms per milliliter of Flunixin or Meclofenamic Acid**.**

(4) The penalties for a second violation within a twelve-month period are as follows:

(a) A second violation of Paragraphs (1) or (2) shall be a fine of $200.

(b) A second violation of Paragraphs 3(a), 3(b), or 3(c) shall be a fine of $400.

(c) A second violation of Paragraph 3(d) shall be a fine of $600.

(5) The penalties for a third violation within a twelve-month period are as follows:

(a) A third violation of Paragraphs (1) or (2) shall be a fine of $400.

(b) A third violation of Paragraphs 3(a), 3(b), or 3(c) shall be a $400 fine, disqualification, and loss of purse.

(c) A third violation of Paragraph 3(d) shall be a fine of $900, disqualification, and loss of purse.

(6) The penalties for a fourth violation within a twelve-month period are as follows:

(a) A fourth violation of Paragraphs (1) or (2) shall be a fine of $400, disqualification, and loss of purse.

(b) A fourth violation of Paragraphs 3(a), 3(b), or 3(c) shall be a fine of $1,000, loss of purse,_disqualification, and a thirty day suspension.

(c) A fourth violation of Paragraph 3(d) shall be a fine of $1,500, loss of purse, disqualification, and a thirty day suspension.

(7) For the fifth violation within a 12 month period of Paragraphs (1) or (2), shall be a fine of $1,000, loss of purse, disqualification, and a thirty day suspension.

(8) A positive test of two permitted non-steroidal anti-inflammatory drugs found at twice the allowable level or more for two drugs shall carry the penalties of a Class IV drug positive for the trainer and attending veterinarian. Additional violations shall carry the same penalties as additional violations of a Class IV drug for the trainer and the attending veterinarian.

E. MEDICAL LABELING:

(1) No person on association ground where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

(2) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following: the name of the product; the name, address and telephone number of the veterinarian prescribing or dispensing the product; the name of each patient (horse) for whom the product is intended/prescribed; the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; the name of the person (trainer) to whom the product was dispensed.

[15.2.6.9 NMAC – Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001]

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection L, Paragraph (3) of 16.47.1.8 NMAC to conform to Section 60-1-5(E), NMSA, 1978 (Effective 07/01/2001) to allow for the licensure of persons who have been convicted of a violation of any federal or state narcotics law if sufficient evidence of rehabilitation is presented to the state racing commission.

16.47.1.8 GENERAL PROVISIONS

A. LICENSES REQUIRED: A person as defined by Subsection P, Paragraph (7) of 15.2.1.7

NMAC shall not participate in pari mutuel racing under the jurisdiction of the Commission, or be employed by an Association who is a gaming operator, without a valid license issued by the Commission.

(1) License categories shall include the following and others as may be established by the Commission: **GROUP A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. **GROUP B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **GROUP C** - supervisory racing officials. **GROUP D** - persons employed by the association, or employed by a person or concern contracting with the association to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **GROUP E** - racetrack or casino participant employees.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, $20.00 is assessed for each identification picture and badge.

Announcer	$55.00
Assistant General Manager	$80.00
Assistant Racing Secretary	$15.00
Association	$80.00
Auditor, Official	$55.00
Casino Employee	$ 5.00
Clerk of Scales	$15.00
Clocker	$15.00
Club, Racetrack	$80.00
Concession Employee	$ 5.00
Concession Operator	$80.00
Custodian of Jockey Room	$15.00
Director or Corporate Officer	$80.00
Director of Operations	$55.00
Director of Racing	$55.00
Electrician	$ 5.00
Exercise Person	$15.00
Film Employee	$ 5.00
Gateman (Admissions)	$ 5.00
General Manager	$80.00
Groom	$ 5.00
Horseman's Bookkeeper	$15.00
Identifier (Horse)	$15.00
Janitor	$ 5.00
Jockey (3 year)	$100.00
Jockey (1 year)	$80.00
Jockey (Apprentice) (3 year)	$100.00
Jockey Apprentice) (1 year)	$80.00
Jockey Agent	$55.00
Jockey Valet	$ 5.00
Laborer	$ 5.00
Official Personnel (specify position)	$ 5.00
Official Veterinarian (3 year)	$100.00
Official Veterinarian (1 year)	$80.00
Outrider	$15.00
Owner (3 year)	$100.00
Owner (1 year)	$80.00
Paddock Judge	$15.00
Pari Mutuel Employee	$ 5.00
Pari Mutuel Manager	$55.00
Placing Judge	$15.00
Photo Operator	$80.00
Photo Employee	$ 5.00
Plater	$80.00
Pony Person	$ 5.00
Racing Secretary-Handicapper	$55.00
Security Chief	$55.00
Security Staff	$ 5.00
Simulcast Company Employee	$ 5.00
Simulcast Coordinator	$55.00
Simulcast Operator	$80.00
Special Event, 1 or 2 day	$100.00
Stable Name (3 year)	$100.00
Stable Name (1 year)	$80.00
Stable Superintendent	$55.00
Starter	$55.00
Starter Assistant	$15.00
Ticket Seller (Admissions)	$ 5.00
Timer	$15.00
Totalisator Employee	$ 5.00
Totalisator Operator	$80.00
Track Maintenance, Employee	$ 5.00
Track Physician	$80.00
Track Superintendent	$55.00
Trainer (3 year)	$100.00
Trainer (1 year)	$80.00
Trainer Assistant	$55.00
Veterinarian Assistant	$15.00
Veterinarian, Practicing (3 year)	$100.00
Veterinarian, Practicing (1 year)	$80.00
Veterinarian, Racing (3 year)	$100.00
Veterinarian, Racing (1 year)	$80.00
Watchman	$ 5.00

(3) License applicants may be required to furnish to the Commission a set(s) of fingerprints and a recent photograph and may be required to be refingerprinted or rephotographed periodically as determined by the Commission. The requirements for fingerprints may be fulfilled by submission of prints or verification of such, accepted by a member jurisdiction of the Racing Commissioners' International, and obtained within two years for annual licenses and four years for three-year licenses. License applicants for owner, trainer or jockey will only need to be fingerprinted upon first application, or if there is a break of three years or more in license continuity. If the Commission determines it is necessary, reprinting will be undertaken on the basis of alleged criminal activity on the part of the owner, trainer or jockey.

B. MULTI-STATE LICENSING INFORMATION: Applicants shall be permitted to submit an Association of Racing Commissioners International, Inc. (RCI) Multi-State License Information Form and RCI fingerprint card and thereby obtain a criminal records check that can be used in other jurisdictions.

C. AGE REQUIREMENT:

(1) Applicants for licensing, except owners, must be a minimum of 14 years of age, but no one under the age of 16 may be licensed as a pony person or exercise person.

(2) A licensee must be a minimum of 14 years of age to handle a horse in the paddock.

D. CONSENT TO INVESTIGATION: The filing of an application for license shall authorize the Commission to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications, and to verify information provided by the applicant.

E. CONSENT TO SEARCH AND SEIZURE: By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state and federal law.

F. APPROVAL OR RECOMMENDATIONS BY STEWARDS: The Commission may designate categories of licenses, which shall require stewards' prior approval or recommendation. Prior approval will include Exercise Riders, Pony Riders, and Apprentice Jockeys.

G. EMPLOYER RESPONSIBILITY:

(1) The employment of any unlicensed person under the jurisdiction of the Commission is prohibited.

(2) Every employer shall report the discharge of any licensed employee in writing to the stewards, including the person's name and occupation.

H. EMPLOYER ENDORSEMENT OF LICENSE APPLICATIONS: The license application of an employee must be signed by the employer.

I. FINANCIAL RESPONSIBILITY:

(1) All persons engaged in racing shall maintain financial responsibility in matters pertaining to racing and the Parental Responsibility Act.

(2) Any person licensed by the Commission may file a financial responsibility complaint against another licensee. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due in connection with his/her operations as a licensee. A judgement from a civil court, which has been issued within one year of the date of the complaint, may be honored by the Stewards as long as at least the defendant is a licensee.

J. LICENSE REFUSAL: The Commission may refuse to issue a license and give the applicant the

option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

K. LICENSE DENIAL:

(1) The Commission may formally deny an application in accordance with these rules.

(2) An application denied, if requested by the applicant, shall be reported in writing to the applicant denied stating the reasons for denial, and the date when a reapplication may be submitted.

(3) An application denied shall be reported to the Association of Racing Commissioners International, Inc., whereby other racing jurisdictions shall be advised.

L. GROUNDS FOR REFUSAL, DENIAL, SUSPENSION, OR REVOCATION OF LICENSE:

(1) The Commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

(a) has been convicted of a felony;

(b) has been convicted of violating any law regarding gambling or a controlled dangerous substance;

(c) who is unqualified, by experience or otherwise, to perform the activities for which a license is required, or who fails to pass an examination prescribed by the Commission;

(d) has failed to disclose or falsely states any information required in the application;

(e) has been found in violation of rules governing racing in this state or other jurisdictions;

(f) has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(g) has had a license denied, suspended, or revoked by any racing jurisdiction;

(h) is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting. Interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to danger anywhere on the racetrack grounds. The fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

(i) demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused. For the purpose of this sub-section, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within thirty (30) days of the date of the notice, the applicant provides the Commission with a certified statement from the department that he/she is in compliance with a judgement and order for support;

(j) is ineligible for employment pursuant to federal or state law concerning age or citizenship.

(2) A license suspension or revocation shall be reported in writing to the applicant and the Association of Racing Commissioners International, Inc., whereby other racing jurisdictions shall be advised.

(3) Any license denied, suspended or revoked by the Commission pursuant to these rules shall state the time period for the effect of its ruling. When the action is taken for a misdemeanor or felony conviction, **[~~other than those involving narcotics or related to horse racing subject to the provisions of NMSA 1978 Section 60-1-5(E),~~]** the time period shall be the period of the licensee's or applicant's imprisonment; or if not imprisoned, the period of probation, deferral, unless the person can satisfy the Commission of sufficient rehabilitation. This rule shall also apply to licensees who voluntarily turn in their license because of, or in anticipation of, a conviction.

M. DURATION OF LICENSE:

(1) All annual licenses issued by the Commission expire December 31 of the calendar year issued. All triennial licenses expire December 31st of the third calendar year issued.

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

N. CHANGES IN APPLICATION INFORMATION:

(1) During the period for which a license has been issued, the licensee shall report to the Commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspension of 10 days or more and license revocations in other jurisdictions.

(2) A child or spouse pass, a change in current legal name, or badge replacement, requires a completed application and payment of a photo badge fee.

O. TEMPORARY LICENSES:

(1) The Commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the Commission, except at the request of a licensed trainer, and upon payment of fees by the licensed trainer, owners and lessors may be allowed a grace period of thirty (30) days upon approval of the board of stewards.

(2) The Commission may grant an Association, who is not conducting a live horse race meeting, a grace period of thirty (30) days to obtain the required licenses for its casino and simulcast employees. An Association shall provide to the Commission each month, an employment roster for all casino and simulcast employees.

P. MORE THAN ONE LICENSE: More than one license to participate in horse racing may be granted except when prohibited by these rules due to a potential conflict of interest.

Q. CONFLICT OF INTEREST:

(1) The Commission may refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the Commission or stewards find to be a conflict of interest.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

(3) A person who is licensed as an owner or trainer in a horse registered for racing at a race meeting in this jurisdiction shall not be employed or licensed as a jockey, apprentice jockey; jockey agent; racing official; assistant starter; track maintenance supervisor; jockey room custodian; valet; outrider; racing chemist, testing laboratory employee, or security personnel.

R. LICENSE PRESENTATION:

(1) A person must present an appropriate license or other authorization issued by the Commission to enter a restricted area. The Commission may issue authorization to the spouse or child of a licensed owner, trainer or jockey to enter a restricted area.

(2) The stewards may require visible display of a license while the licensee is engaged in the duty for which he/she is licensed and on the association grounds unless the licensee is mounted on a horse.

(3) A license may only be used by the person to whom it is issued.

S. TEMPORARY ACCESS AUTHORITY: Track security may authorize unlicensed persons temporary access to restricted areas. Such person shall be identified and their purpose and credentials verified and approved in writing by track security. Such authorization or cre-

dential may only be used by the person to whom it is issued.

T. KNOWLEDGE OF RULES: A licensee shall be knowledgeable of the rules of the Commission; and by acceptance of the license, agrees to abide by the rules.

U. PROTECTION OF HORSES:

(1) Each person licensed by the Commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

(2) No licensee or other person under the jurisdiction of the Commission shall subject or permit any animal under his/her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

V. RESTRICTIONS: Beginning one hour before post time, the use of cellular telephones will be prohibited in the paddock, on the racetrack surface and winner's circle until the last race is official. Cellular telephone use will also be prohibited behind the starting gate during training and racing hours. The Association shall be responsible for posting notices of the prohibition in these restricted areas.

[16.47.1.8 NMAC – Rp, 16 NMAC 47.1.8, 03/15/2000; A, 08/30/2001]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

The Taxation and Revenue Department is submitting to the State Records Center and Archives amendments to 3.1.7.12 & 13 NMAC. The amendments add language and delete language relating to general rules on formal hearings.

3.1.7.12 **STATEMENT OF GROUNDS OF A PROTEST:**

A. A statement of the grounds for a protest must include an explanation of the law and facts supporting the protest. It should include for each ground asserted the legal basis under the constitution, statute, regulation, or case law for the challenge to the assessment or other action of the department and a summary of the evidence expected to be produced. A summary of the evidence to be produced means the facts expected to be proven by testimony and documentary evidence surrounding the taxpayer's transactions that support relief under the cited legal standards. It is the facts alleged, not the evidence to prove them, that must be stated. If the taxpayer changes the legal theory or facts supporting the protest, the taxpayer must file a supplemental statement of grounds for the protest prior to the date of the hearing or, if a scheduling order has been issued, by the date set in the scheduling order. For protests filed on or after July 1, 2000, the statement of grounds for the protest must be supplemented no later than ten (10) days prior to the date of the hearing or, if a scheduling order has been issued, by the date set in the scheduling order. A prehearing statement filed in conformance with a scheduling order issued by the hearing officer will qualify as a supplemental statement of grounds for the protest.

B To accelerate the processing and review of the protest, copies of the evidence may be included with the statement of the grounds for protest. Evidence included with a protest still must be introduced and admitted at the formal hearing on the protest before it will be considered by the hearing officer.

C. Example: A taxpayer's protest of penalty and interest for late payment of gross receipts tax would be valid if it stated "Taxpayer, I.D. No. 00-123456-00-0, protests Assessment No. 1234567 issued December 14, 1993, imposing interest and penalty pursuant to Sections 7-1-67 and 7-1-69 NMSA 1978 (allegedly for late payment) on the grounds that taxpayer's payment of gross receipts tax for August, 1993, was timely delivered to the department on September 24, 1993". It would be helpful, but not necessary, to specify with submission of the statement of grounds what documentary or testimonial evidence will prove the facts alleged by the taxpayer, such as, "The date of delivery of the payment will be shown by the date of deposit on the canceled check." It would be even more helpful to attach a copy of the canceled check, which, in this circumstance, would probably permit the department to resolve the matter in the taxpayer's favor without even a hearing. The taxpayer may choose to submit the evidence at a later time, but not later than the hearing.

[3/11/94, 10/31/96; 3.1.7.12 NMAC - Rn, 3 NMAC 1.7.12, 1/15/01; A, 8/30/01]

3.1.7.13 **INFORMAL CONFERENCES:**

A. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing [~~of~~] on the protest. [~~Except in unusual cases when either the secretary or the taxpayer desires to proceed directly to a formal hearing or statement of the case under Sections 3.1.8.8 through 3.1.8.16 NMAC, an~~] Any informal conference will be scheduled at a time and place agreed to by both parties. The secretary may attend or designate a delegate to attend. Both parties may bring representatives of their own choosing to the conference, and both parties may bring any records or documents that are pertinent to the issues to be discussed. An informal conference will be vacated if the parties resolve the protest prior to the scheduled date.

B. The purpose of the informal conference is to discuss the facts and the legal issues. The result of an informal conference will usually be one of the following:

(1) an agreement that the taxpayer will withdraw all or part of the protest;

(2) an agreement that the department will abate all or part of the assessment protested, or will refund all or part of the amount of refund claimed;

(3) an agreement to enter into a closing agreement;

(4) an agreement that one or more issues will be litigated upon stipulated facts or a statement of the case;

(5) an agreement to schedule a formal hearing; or

(6) any combination of the above agreements.

C. The taxpayer or the department may be given the opportunity to provide more facts if the situation warrants. There is no statutory restriction on the number of informal conferences that may be scheduled with a taxpayer. In the event that the taxpayer fails to appear at the informal conference without reasonable notice to the secretary, the protest may be scheduled for a formal hearing without further opportunity for an informal conference.

[11/5/85, 8/15/90, 10/31/96; 3.1.7.13 NMAC - Rn & A, 3 NMAC 1.7.13, 1/15/01; A, 8/30/01]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

The Taxation and Revenue Department has filed at the State Records Center and Archives amendments to 3.1.8.8, 3.1.8.9, 3.1.8.10, 3.1.8.11, 3.1.8.14, 3.1.8.15 and 3.1.8.16 NMAC. The amendments changes language relating to the General Rules on Hearing Officer; Evidence; Record; Consequences of Failure to Comply with Orders; Prehearing Conferences; and Motions.

3.1.8.8 **GENERAL RULES ON FORMAL HEARINGS:**

A. Formal hearings are held in Santa Fe. Hearings are not open to the public except upon request of the taxpayer. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee or an attorney licensed to practice in New Mexico, certified public accountant or registered public accountant [~~licensed to practice in New Mexico~~].

B. Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing, including the right to discovery as provided in these rules.

C. An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.8 NMAC - Rn, 3 NMAC 1.8.8, 1/15/01; A, 8/30/01]

3.1.8.9 **HEARING OFFICER:**

A. Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the secretary who will be referred to herein as the hearing officer.

B. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production and/or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule formal hearings;

(9) to consider and rule upon all procedural and other motions appropriate in proceeding;

(10) to require the filing of briefs on specific legal issues prior to or after the formal hearing;

(11) to cause a complete record of proceedings in formal hearings to be made; and

(12) to make and issue decisions and orders.

C. In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any officer, employee or agent of the department.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from ex parte discussions with either party on any protested matter.

E. Disqualification of a hearing officer.

(1) When a hearing officer has substantial doubt as to whether the hearing officer has a conflicting interest, the hearing officer shall disqualify himself or herself and withdraw from the hearing by notice on the record.

(2) Whenever any party believes the hearing officer for any reason should be disqualified in a particular proceeding, such party may file with the secretary a motion to disqualify and remove the hearing officer, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose removal is sought. The hearing officer shall have 25 days from such service within which to accede or to reply to the allegations. If the hearing officer does not disqualify himself or herself within that time, the secretary shall promptly review the validity of the grounds alleged and determine whether or not the hearing officer shall be disqualified. The secretary's decision shall be final.

(3) If the hearing officer is disqualified, the secretary shall designate another person to act as hearing officer.

[11/5/85, 1/4/88, 5/24/90, 8/15/90, 10/31/96; 3.1.8.9 NMAC - Rn, 3 NMAC 1.8.9, 1/15/01; A, 8/30/01]

3.1.8.10 **EVIDENCE:**

A. The taxpayer shall have the burden of proof, except as otherwise provided by law.

B. Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable or unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as is practicable. The hearing officer shall consider all evidence admitted.

C. The hearing officer shall take [~~judicial~~] administrative notice of facts to the extent provided in the New Mexico Rules of Civil Procedure for District Courts. When any decision of the hearing officer rests, in whole or in part, upon the taking of [~~official~~] administrative notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

D. Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the hearing officer on all objections shall appear in the record.

E. Formal exception to an adverse ruling is not required.

F. When an objection to a question propounded to a witness is sustained, the examining representative may make a specific offer of what the representative expects to prove by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.10 NMAC - Rn, 3 NMAC 1.8.10, 1/15/01; A, 8/30/01]

3.1.8.11 **RECORD:** Hearings shall be electronically recorded unless the hearing officer [~~requires~~] allows recording by any alternative means approved by the New Mexico supreme court for the recording of judicial proceedings. Any party may request that a hearing be recorded by such an alternative means. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternative means will be responsible for the full cost thereof, including the provision of the original transcript to the hearing officer and copies to opposing parties.

[11/5/85, 5/24/90, 8/15/90, 10/31/96, 1/15/98; 3.1.8.11 NMAC - Rn, 3 NMAC 1.8.11, 1/15/01; A, 8/30/01]

3.1.8.14 **CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS:**

A. If a party or an officer or agent of a party fails to comply with an order of the hearing officer for the taking of a deposition or otherwise relating to discovery, the hearing officer may, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

(1) infer that the admission,

testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;

(2) rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;

(3) rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied; [~~or~~]

(4) rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown; or

(5) dismiss the protest or order that the protest be granted.

B. Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the withheld testimony, documents or other evidence.

C. Any party who previously requested the secretary to issue a subpoena may request the secretary to seek the assistance of the court in the enforcement of any subpoena issued to any person who fails to provide the information or documents requested in the subpoena under the provisions of Subsection 7-1-4D NMSA 1978.

[11/5/85, 8/15/90, 10/31/96; 3.1.8.14 NMAC - Rn & A, 3 NMAC 1.8.14, 1/15/01; A, 8/30/01]

3.1.8.15 **PREHEARING CONFERENCES:**

A. The hearing officer may, and upon motion of any party shall, direct representatives for all parties to meet with the hearing officer for a prehearing conference to consider any or all of the following:

(1) simplification and clarification of the issues;

(2) stipulations and admissions of fact and of the contents and authenticity of documents;

(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of expert, economic or technical witnesses;

(4) matters of which [~~official~~] administrative notice will be taken; and

(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

B. Prehearing conferences may be recorded in the discretion of the hearing officer.

C. The hearing officer may enter in the record an order which recites the results of the conference. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.15 NMAC - Rn, 3 NMAC 1.8.15, 1/15/01; A, 8/30/01]

3.1.8.16 **MOTIONS:**

A. After a formal hearing is scheduled on a protest [~~to an assessment or a protest of a denial by the department of a claim for refund~~], all motions shall be addressed to the hearing officer with copies to the opposing parties and shall be ruled upon by the hearing officer.

B. All written motions shall state the particular order, ruling or action desired and the grounds therefor.

C. Within [~~15~~] ten calendar days after personal service or service by facsimile transmission of any written motion, or within [~~20~~] thirteen calendar days after the motion is mailed or within such longer or shorter time as may be designated by the hearing officer, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.

[11/5/85, 8/15/90, 10/31/96; 3.1.8.16 NMAC - Rn, 3 NMAC 1.8.16, 1/15/01; A, 8/30/01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.1.1, 16.64.1.2, 16.64.1.3, 16.64.1.5, 16.64.1.6, 16.64.1.7, 16.64.1.8, 16.64.1.9, 16.64.1.10, 16.64.1.11, and 16.64.1.12 NMAC. 16.64.1 NMAC was renumbered and reformatted from 16 NMAC 64.1 to conform to the current NMAC requirements.

16.64.1.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090~~]

[6-15-96, 1-22-99; 16.64.1.1 NMAC – Rn & A, 16 NMAC 64.1.1, 09-15-01]

16.64.1.2 SCOPE: 16.64.1 NMAC applies to the Board, licensees, applicants for licensure, and the general public.

[6-15-96; 16.64.1.2 NMAC – Rn & A, 16 NMAC 64.1.2, 09-15-01]

16.64.1.3 STATUTORY AUTHORITY: 16.64.1 NMAC is adopted pursuant to the Thanatopractice Act, NMSA 1978, Section 61-32-2, 61-32-5, 61-32-6, 61-32-7, and 61-32-12, [~~and~~] the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978, and the Open Meeting Act, Section 10-15-1 et seq. NMSA 1978.

[6-15-96; 16.64.1.3 NMAC – Rn & A, 16 NMAC 64.1.3, 09-15-01]

16.64.1.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section [~~or paragraph~~].

[6-15-96; 16.64.1.5 NMAC – Rn & A, 16 NMAC 64.1.5, 09-15-01]

16.64.1.6 OBJECTIVE: 16.64.1 NMAC is to establish the requirements for Board meetings, display of certificates of licensure, inspection of public records, and minimum [~~required information on~~] requirements for documents and contracts.

[6-15-96; 16.64.1.6 NMAC – Rn & A, 16 NMAC 64.1.6, 09-15-01]

16.64.1.7 DEFINITIONS: [~~Reserved.~~]

A. "Conspicuously Displayed" means certificate of licensure and inspection results notice are collectively posted in a location where a member of the general public within the licensee's place of business will be able to observe and read the certificate of licensure and inspection results notice.

B. "Arranger(s)" means the person(s) legally entitled to order the final disposition.

[6-15-96; 16.64.1.7 NMAC – Rn & A, 16 NMAC 64.1.7, 09-15-01]

16.64.1.8 GENERAL PROVISIONS:

A. All certificates of licensure, and renewals thereof, issued by the Board shall bear the license number, with a different series for each classification of license.

B. The current license, or renewal thereof, of each establishment and crematory and inspection results notice shall be [~~prominently~~] conspicuously displayed in the establishment or crematory,

together with the current license, or renewal thereof, of each licensee.

C. Any correspondence from the Board will be mailed to a licensee at the last address shown in Board records. It shall be incumbent on each licensee to notify the Board of any change of address.
[2-7-76...9-26-93; 16.64.1.8 NMAC – Rn & A, 16 NMAC 64.1.8, 09-15-01]

16.64.1.9 BOARD MEETINGS: The Board operates in compliance with the Open Meetings Act[~~, NMSA 1978, Sections10-15-1 through 10-15-4~~].

[~~A. The Board shall hold at least two regular meetings each year at such times and places as it determines.~~]

A. Election of officers shall be held at the first regular Board meeting of each fiscal year, and may be held at any other regularly scheduled meeting of the Board, or special or emergency meeting called for that purpose.

B. Any member of the Board who, after proper notice, fails to attend three consecutive meetings of the Board shall be recommended for removal as a Board member unless such absences are considered excused. Absences will be considered excused if notice by the Board member has been given in advance of any meeting to the Chairman or Board Administrator, and [~~a majority of the Board at the meeting votes to grant an excused absence~~] the Chairman or Board Administrator announces at the meeting that notice by the Board member was given in advance of his or her inability to attend the meeting.
[2-7-76...9-26-93, 1-22-99; 16.64.1.9 NMAC – Rn & A, 16 NMAC 64.1.9, 09-15-01]

16.64.1.10 INSPECTION OF BOARD RECORDS: The Board operates in compliance with the Inspection of Public Records Act[~~, NMSA 1978, Sections 14-2-1 through 14-2-16~~].

[~~A. Except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following formal disciplinary proceedings conducted by the Board, pursuant to the Uniform Licensing Act, are matters of public record as of the time of filing with or by the Board, pursuant to the Public Records Act.~~

~~B. Letters of reprimand issued pursuant to Part 13,16 NMAC 64 shall be deemed public records.~~]

[~~C. Any citizen of this State may examine all public records in the Board's custody, provided:~~

~~(1) such person gives notice to the Administrator of the Board in accordance with the Public Records Act;~~]

A. The Board Administrator will be the custodian of the Board's records.

B. Except as otherwise provided by law, all records kept by the Board shall be available for public inspection pursuant to the Inspection of Public Records Act, except as provided herein:

(1) the contents of any examination used to examine an applicant's knowledge or competence;

(2) letters of reference;

(3) matters of opinion;

(4) complaints, and investigative files obtained during the course of an investigation or processing of a complaint, and before the vote of the Board as to whether to dismiss the compliant or to issue a Notice of Contemplated Action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq., and in order to preserve the integrity of the investigation of the complaints, records and documents that reveal confidential sources, methods, information or licensees accused, but not yet charged with a violation, such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the Board by any investigating agent or agency. Upon the completion of the investigation or processing of the complaint, AND upon the decision of the Board to dismiss the complaint or to issue a Notice of Contemplated Action, the confidentiality privilege shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection; and

(5) any other records excepted from disclosure pursuant to the Inspection of Public Records Act.

C. Only Board members and employees may access non-public records unless approved by the Board Chairman AND the Board attorney.

D. Anyone may examine all public records in the Board's custody, provided the person gives notice to the Board Administrator in accordance with the Inspection of Public Records Act.

E. The Board may charge a reasonable fee to defray copying and mailing charges for copies of public records, lists and labels [~~and verifications~~], pursuant to the Inspection of Public Records Act. The Board Administrator [~~of the Board~~] is not obligated to create lists, labels or any other materials which are not already in existence.

F. No person shall be permitted to remove original documents from the Board's office, except those in the possession of the Board Administrator [~~of the Board~~] that are needed at a meeting of the Board.
[9-27-90...9-26-93, 1-22-99; 16.64.1.10 NMAC – Rn & A, 16 NMAC 64.1.10, 09-15-01]

16.64.1.11 DOCUMENTS AND CONTRACTS:

A. All official documents and contracts of any establishment shall bear the signature of the [~~person~~] arranger(s), where applicable, and the licensee signing the document or contract as the representative of the establishment, together with [~~that person's~~] the licensee's license classification and license number, and the date the document or contract was signed by the arranger(s) and licensee. The following classification abbreviations shall be allowed:

(1) FSP - Funeral Service Practitioner

(2) Assoc FSP - Associate Funeral Service Practitioner

(3) Asst FSP - Assistant Funeral Service Practitioner

(4) FSI - Funeral Service Intern

(5) DD - Direct Disposer

B. Each establishment and crematory shall maintain copies of all official documents and contracts for funeral, direct disposition, cremation, and any other services rendered for services that fall within the scope of the license held pursuant to 61-32-1 et seq., documents shall include, but are not limited to:

(1) contracts;

(2) authorizations;

(3) permits;

(4) death certificates;

(5) embalming case reports; and

(6) cremations.

C. Each establishment shall maintain documentation with dates and times of all services rendered by the establishment, or on behalf of the establishment by the crematory or other subcontractors, up to and including final disposition.

D. Each establishment shall maintain copies of all official documents and contracts outlined in Section 16.16.1.11 NMAC at the establishment for a period of not less than seven (7) years, and shall make such documents and contracts available for inspection by the Board or it's designee.
[5-15-92...9-26-93; 16.64.1.11 NMAC – Rn & A, 16 NMAC 64.1.11, 09-15-01]

16.64.1.12 TELEPHONE CONFERENCES: Pursuant to the provisions of the Open Meetings Act, if it is difficult or

impossible for a member of the Board to attend a meeting in person, the member may participate through telephone conference. Each member participating by telephone conference must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the Board who speaks during the meeting.
[1-22-99; 16.64.1.12 NMAC – Rn & A, 16 NMAC 64.1.12, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.2.1, 16.64.2.5, and 16.64.2.8 NMAC. 16.64.2 NMAC was renumbered and reformatted from 16 NMAC 64.2 to conform to the current NMAC requirements.

16.64.2.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090~~]
[6-15-96, 1-22-99; 16.64.2.1 NMAC – Rn & A, 16 NMAC 64.2.1, 09-15-01]

16.64.2.5 EFFECTIVE DATE: January 22, 1999, unless a different date is cited at the end of a Section [~~or paragraph~~].
[6-15-96, 1-22-99; 16.64.2.5 NMAC – Rn & A, 16 NMAC 64.2.5, 09-15-01]

16.64.2.8 FEE SCHEDULE: The following schedule shall be applicable for fees collected by the Board under the Thanatopractice Act:

A.	**Funeral Service Practitioner License:**	
(1)	Application.	[~~$200.00~~] New Mexico $50.00
(2)	Licensure	New Mexico $150.00
(3)	Examination (Jurisprudence).	$50.00
(4)	Renewal.	$150.00
(5)	Penalty for Late Renewal.	$75.00
B.	**Associate Funeral Service Practitioner License:**	
(1)	Application.	[~~$200.00~~] New Mexico $50.00
(2)	Licensure	New Mexico $150.00
(3)	Examination (Jurisprudence).	$50.00
(4)	Practical and Oral Examination.	$300.00
(5)	Practical and Oral Examiner Expenses.	actuals not to exceed $500.00
(6)	Renewal.	$150.00
(7)	Penalty for Late Renewal.	$75.00
C.	**Assistant Funeral Service Practitioner License:**	
(1)	Renewal.	$150.00
(2)	Penalty for Late Renewal.	$75.00
D.	**Funeral Service Intern License – Direct Supervision:**	
[~~(1) Application for Directing and Arranging Category.~~		~~$200.00~~
~~(2) Application for Preparation/Embalming Category.~~		~~$200.00~~
~~(3) Renewal.~~		~~$150.00~~
~~(4) Penalty for Late Renewal.~~		~~$75.00~~]
(1)	Directing and Arranging Category:	
(a)	Application.	New Mexico $50.00
(b)	Licensure.	New Mexico $150.00
(c)	Renewal.	New Mexico $150.00
(d)	Penalty for Late Renewal.	New Mexico $75.00
(2)	Preparation/Embalming Category:	
(a)	Application.	New Mexico $50.00
(b)	Licensure.	New Mexico $150.00
(c)	Renewal.	New Mexico $150.00
(d)	Penalty for Late Renewal.	New Mexico $75.00
E.	**Funeral Service Intern License – General Supervision:**	
[~~(1) Application for Directing and Arranging Category.~~		~~$200.00~~
~~(2) Application for Preparation/Embalming Category.~~		~~$200.00~~
~~(3) Renewal.~~		~~$150.00~~
~~(4) Penalty for Late Renewal.~~		~~$75.00~~]
(1)	Directing and Arranging Category:	
(a)	Application.	New Mexico $50.00
(b)	Licensure.	New Mexico $150.00
(c)	Renewal.	New Mexico $75.00
(d)	Penalty for Late Renewal.	New Mexico $75.00
(2)	Preparation/Embalming Category:	
(a)	Application.	New Mexico $50.00
(b)	Licensure.	New Mexico $150.00
(c)	Renewal.	New Mexico $75.00

(d)	Penalty for Late Renewal.	$75.00
F.	**Direct Disposer License:**	
(1)	Application.	[~~$200.00~~] $50.00
(2)	Licensure	$150.00
(3)	Examination (Jurisprudence).	$50.00
(4)	Renewal.	$150.00
(5)	Penalty for Late Renewal.	$75.00
G.	**Establishment License:**	
(1)	Application.	[~~$400.00~~] $50.00
(2)	Licensure	$350.00
(3)	Renewal.	$400.00
(4)	Penalty for Late Renewal.	75.00
H.	**Crematory License:**	
(1)	Application.	[~~$400.00~~] $50.00
(2)	Licensure	$350.00
(3)	Renewal.	$400.00
(4)	Penalty for Late Renewal.	$75.00
I.	**Establishments and Crematories – Re-inspection:**	
(1)	Re-inspection.	actuals not to exceed $500.00
(2)	First non-compliance Penalty.	$300.00

(3) Second non-compliance Penalty (resulting from the First non-compliance. Third non-compliance, resulting from the Second non-compliance, will be referred to the Board with a recommendation for the issuance of a Notice of Contemplated Action). $500.00

J.	**Administrative Fees:**	
[~~(1) Application Re-submission.~~		~~$25.00~~
~~(2) Verification of Licensure.~~		~~$15.00~~]
(1)	Copying Costs.	$0.50/page
(2)	Lists of Licensees.	$10.00
(3)	Mailing Labels of Licensees.	$25.00
(4)	Return Check.	$100.00
(5)	Reinstatement from Inactive Status (in addition to the Renewal Fee).	$175.00
(6)	Other (at the discretion of the Board or its designee).	

K. [~~ALL FEES MAY BE PAID TO THE BOARD IN ANY LEGAL METHOD, AND ARE NON-REFUNDABLE.~~] The only fee that may be refunded is the Licensure Fee, as subscribed in each Subsection of 16.64.2 NMAC, only if a temporary license, if applicable, has not been issued. The Board Office will refund any amount due through the State of New Mexico refund process.

[11-21-86…9-26-93; 1-22-99; 16.64.2.8 NMAC – Rn & A, 16 NMAC 64.2.8, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.3.1, 16.64.3.5, 16.64.3.7, 16.64.3.8 and 16.64.3.9 NMAC. 16.64.3 NMAC was renumbered and reformatted from 16 NMAC 64.3 to conform to the current NMAC requirements.

16.64.3.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090~~]

[6-15-96, 1-22-99; 16.64.3.1 NMAC – Rn & A, 16 NMAC 64.3.1, 09-15-01]

16.64.3.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section [~~or paragraph~~].

[6-15-96; 16.64.3.5 NMAC – Rn & A, 16 NMAC 64.3.5, 09-15-01]

16.64.3.7 DEFINITIONS: [~~Reserved.~~]

A. "Accredited College or University" means a college or university that was accredited at the time of the applicant's graduation or completion of courses.

B. [Reserved.]

[6-15-96; 16.64.3.7 NMAC – Rn & A, 16 NMAC 64.3.7, 09-15-01]

16.64.3.8 APPLICATIONS:

A. All applications for licensure shall be on forms supplied by the Board.

B. The Board, in its sole discretion, may require an applicant for [~~license~~] licensure to present whatever evidence or affidavits as it deems necessary to establish that the applicant is qualified for licensure.

C. The Board may require applicants for licensure to personally appear before the Board at the time the application is scheduled to be considered.

D. No application shall be considered complete nor acted upon unless the appropriate fee(s), as outlined in 16.64.2.8 NMAC accompanies the application.

E. The Board Administrator [~~of the Board~~] shall issue a temporary [~~certificate of~~] funeral service [~~internship~~] intern license for direct supervision categories upon being satisfied that the applicant has met all requirements for licensure. [~~A~~] The temporary [~~certificate of funeral service internship~~] license is valid only until the next regular Board meeting, at which time the Board shall review the application.

F. The Board Administrator shall issue a temporary establishment or crematory license upon being satisfied that the applicant has met all requirements for licensure and upon successfully passing an inspection by the Board or it's designee. The temporary license is valid only until the next regular Board meeting, at which time the Board shall review the application.

G. The burden of knowing and complying with the requirements necessary for licensure rests entirely on the applicant, however the Board shall provide each applicant with copies of the applicable statutes and [~~regulations for the appropriate fee when requested to do so~~] rules.

H. Applications for licensure must be received by the Board office

by the fifteenth (15th) day of the month prior to any regularly scheduled Board meeting in order to be considered at that meeting.

I. [~~Applications~~] Applicants for licensure shall be required to provide evidence satisfactory to the Board of completion of a course or other training approved by the Board concerning contagious and infectious diseases, for the exception of:

(1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and

(2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection I of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

J. If the application for licensure is deemed to be incomplete when twelve (12) months has elapsed from the date stamped on the application and/or document the application and documents will be deemed null and void and any fees paid will be forfeited. Application and documents for licensure submitted to the Board will be considered filed as of the date stamped on the application or documents by the Board Office, which shall be the date received by the Board.

[2-7-76...6-15-96, 1-22-99; 16.64.3.8 NMAC – Rn & A, 16 NMAC 64.3.8, 09-15-01]

16.64.3.9 ACADEMIC REQUIREMENTS FOR LICENSURE: As specified in the Thanatopractice Act, to become licensed as a funeral service practitioner, a person shall be required to have satisfactorily completed at least sixty (60) semester hours {ninety (90) quarter hours} of academic and professional instruction, excluding vocational training from an accredited college or university, and excluding funeral service education for the exception of hours outlined in Subsection B of 16.64.3.9 NMAC; provided, however, that an assistant funeral service practitioner need not satisfy this requirement if the assistant funeral service practitioner has successfully completed examinations prescribed in Subsection B and C of 16.64.5.9 NMAC for practice as an associate funeral service practitioner.

A. The sixty (60) semester hours or ninety (90) quarter hours must be earned from a college or university, specified in 16.64.3.9 NMAC, [~~above,~~] in addition to the semester or quarter hours earned during attendance at an institution accredited by the American Board of Funeral Service Education, or any other successor recognized by the United States Office of Education for funeral service education.

B. Some institutions that provide funeral service education have academic programs that exceed the basic funeral service education, and, as such, offer varying types of academic degree programs. When a person has graduated from such an institution of funeral service education, only the semester or quarter hours earned in excess of the basic funeral service education requirement will be considered by the Board to satisfying the sixty (60) semester hours or ninety (90) quarter hours requirement. The number of hours that are applicable toward the requirements for the basic funeral service education and the number of hours earned in excess of such basic requirement will be determined by the Board in communication with the respective institution.

[5-15-92...9-26-96; 16.64.3.9 NMAC – Rn & A, 16 NMAC 64.3.9, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.4.1, 16.64.4.5, 16.64.4.8, 16.64.4.9, 16.64.4.10, 16.64.4.11 and 16.64.4.12 NMAC. 16.64.4 NMAC was renumbered and reformatted from 16 NMAC 64.4 to conform to the current NMAC requirements.

16.64.4.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090~~]

[6-15-96, 1-22-99; 16.64.4.1 NMAC – Rn & A, 16 NMAC 64.4.1, 09-15-01]

16.64.4.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section [~~or paragraph~~].

[6-15-96; 16.64.4.5 NMAC – Rn & A, 16 NMAC 64.4.5, 09-15-01]

16.64.4.8 GENERAL PROVISIONS: The following requirements pertain to all establishments and crematories:

A. The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable State and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.

B. The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable State and local statutes, rules, ordinances and zoning provisions, and shall be in clean condition and good repair at all times.

C. There shall be some identification visible from the street identifying the name of the establishment as licensed by the Board; provided, however, that crematories shall not be required to have visible identification.

D. Within this State there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the Thanatopractice Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September, 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the Board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

[~~E. Each establishment and crematory licensed by the Board is subject to inspection by the Board at all reasonable times without legal process.~~]

[2-7-76...6-15-96; 16.64.4.8 NMAC – Rn & A, 16 NMAC 64.4.8, 09-15-01]

16.64.4.9 MINIMUM REQUIREMENTS OF ESTABLISHMENTS [~~AND CREMATORIES~~]:

A. To be licensed by the Board, each funeral establishment shall have and maintain the following minimum requirements:

(1) A chapel in which funeral services may be conducted, which shall be at least six hundred (600) square feet (inside-wall-to-inside-wall) in size, and shall:

(a) have the capacity for seating not less than sixty (60) persons and for the proper display of a casket containing the deceased;

(b) have good ventilation;

(c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and

(2) A casket display room which shall be not less than four hundred fifty (450) square feet (inside-wall-to-inside-wall) in size and shall

(a) contain ~~[a stock of]~~ burial caskets ~~[in]~~ or a range of models and prices with not less than twelve different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and

(b) be adequately illuminated; and

(3) A preparation room which shall be not less than one hundred fifty (150) square feet (inside-wall-to-inside-wall) in size and shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation; and

(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

B. To be licensed by the Board, each commercial establishment shall have and maintain the following minimum requirements:

(1) A preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC[~~, above~~]; and

(2) An office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and

(3) Commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC[~~, above~~], provided the licensee in charge certifies to the Board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the Thanatopractice Act.

C. To be licensed by the Board, each direct disposition establishment shall have and maintain the following minimum requirements:

(1) A room for sheltering dead human bodies which shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) have a refrigeration unit [~~thermodynamically~~] thermostatically controlled with a minimum storage area of twelve and one-half (12.5) cubic feet per body;

(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors; [~~and~~]

(2) An office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and

(3) If the establishment contains burial caskets and/or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

[~~D. The following requirements pertain to crematories:~~

~~(1) Each new crematory must be inspected by the Board or its designee before opening for business; and~~

~~(2) A new crematory, upon successfully passing an inspection by the Board, may be issued a temporary license until the next regular meeting of the Board, at which time a license may be issued which is subject to annual renewal.~~]

[2-7-76...9-26-93, 1-22-99; 16.64.4.9 NMAC – Rn & A, 16 NMAC 64.4.9, 09-15-01]

16.64.4.10 LICENSEE IN CHARGE AND SEPARATE ESTABLISHMENTS:

[~~Each establishment must have in charge, full-time therein, a licensee in charge. provided, however that if any establishment is part of a multi-unit enterprise within this State, only one establishment needs to have a licensee in charge, full-time therein, as long as the establishments are within fifty (50) miles by road travel, and permission has been granted by the Board.~~

~~A. For purposes of complying with the Thanatopractice Act and 16.64 NMAC establishments are considered part of a multi-unit enterprise if they have:~~

~~(1) the same ownership; and~~

~~(2) the same management; and~~

~~(3) are generally considered the same operation, in two or more locations, with one establishment being the main establishment and any other(s) being the branch(es) of the main establishment.~~

~~B. When a licensee makes application to be in charge of more than one establishment of a multi-unit enterprise, he or she shall notify the Board as to which establishment is the main establishment and which is (are) the branch(es).~~

~~(1) While a licensed funeral service practitioner may also be licensed as a direct disposer, no person shall concurrently be the funeral service practitioner in charge of a funeral or commercial establishment and the direct disposer in charge of a direct disposition establishment.~~

~~(2) When a licensee proposes to be the licensee in charge of more than one establishment, he or she must make application, together with the proper fee, for each establishment. In determining whether a licensee may be the licensee in charge of more than one establishment, the Board shall file a rule of reasonableness with full consideration of the need for the licensee assuming full responsibility for the operation and conduct of each establishment.~~

~~C. No licensee shall be in charge of more than one establishment unless the establishments are part of a multi-unit enterprise and are within fifty (50) miles by road travel.~~

~~D. No licensee shall be the licensee in charge of any establishment which is in excess of fifty (50) miles by road travel of where he or she lives.~~]

A. Each establishment shall have in charge, full-time therein, a licensee in charge.

(1) The licensee in charge for a funeral establishment shall be a licensed funeral service practitioner, and shall live within fifty (50) miles by road travel of the establishment.

(2) The licensee in charge of a commercial establishment shall be a licensed funeral service practitioner, and shall live within fifty (50) miles by road travel of the establishment.

(3) The licensee in charge of a direct disposition establishment shall be a licensed direct disposer, and shall live within fifty (50) miles by road travel of the establishment.

B. A licensee in charge may be licensee in charge of more than one establishment provided that the requirements outlined in Subsection A of 16.64.4.10 NMAC have been met, and:

(1) the establishments are within fifty (50) miles by road travel of each other;

(2) the licensee in charge

lives within fifty (50) miles by road travel of each establishment; and

(3) application is made in accordance with the requirements outlined in 16.64.4.11 NMAC for a change in the licensee in charge.

[2-7-76...9-26-93; 16.64.4.10 NMAC – Rn & A, 16 NMAC 64.4.10, 09-15-01]

16.64.4.11 CHANGES OF ESTABLISHMENT AND CREMATORY LICENSES:

A. An establishment or crematory license is an authority granted to the person, firm partnership, corporation, association, joint venture, or other organization, or any combination thereof, and is not transferable. A change in business designation of an establishment or crematory or of a licensee in charge of an establishment may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes shall be filed with the Board on an application form prescribed by the Board, accompanied by the required fees, within thirty (30) days following any such change.

(1) Incorporation creates a new legal entity which requires a new license even though one or more stockholders, officers or directors have been previously issued a license. A license to practice funeral service or direct disposition held by a stockholder, officer of director is not authority to the corporation to operate as a funeral or direct disposition establishment.

(2) The organization of a partnership or joint venture creates a new legal entity which requires a new license, even though one or more of the partners have previously been issued a license.

(3) The dissolution of a corporation or partnership which has been issued a license, operates to terminate the license and no individual or firm may operate under such a terminated license.

(4) The change of members of a general partnership, or in the general partner membership of a limited partnership, either the addition or withdrawal of a partner or partners, establishes a new legal entity which requires a new license and such partnership cannot operate on a license of the former partnership.

(5) The change of ownership of fifty (50) percent or more of the stock in a corporation or shares in a partnership operates to terminate the license and a new license is required, even if the licensee in charge does not change.

(6) A change in the licensee in charge operates to terminate the establishment license and the establishment can continue to operate only under a new license granted by the Board and designating the new licensee in charge. The revocation, suspension, lapse or other loss of the license of the licensee in charge shall likewise cause a termination of the existing establishment license.

(7) A change in location of an establishment or crematory shall require a new establishment or crematory license.

(8) A change in the name of an establishment or crematory shall require a new establishment or crematory license.

(a) Any change in name shall not be announced, used, or in any way conveyed to the public until the new license is issued by the Board.

(b) All advertising, signs, listings, newspaper notices, as well as all stationery, business cards, etc., of an establishment or crematory licensed by the Board shall include the name of the establishment or crematory, exactly as licensed by the Board, and all references to the new name shall be changed within thirty (30) days following the Board meeting at which the new license was issued.

B. Prior to the issuance of a new license under Subsection A of 16.64.4.11 NMAC the Board may require an inspection of the establishment or crematory, however an inspection of the establishment or crematory shall be required for a change under Paragraph (7) of Subsection A of 16.64.4.11 NMAC prior to the issuance of a new license.

C. Failure to file for a change of an establishment or crematory license within the thirty (30) day period shall be grounds for termination of licenses of the establishment and the licensee in charge, or of the crematory license.

D. Upon filing for any change, the establishment or crematory shall continue to operate under its current license until the next Board meeting, provided all other provisions of the Thanatopractice Act are followed.

E. Re-inspections.

(1) The requirement for a re-inspection is based on the following:

(a) the inspector has attempted on two occasions to inspect the establishment or crematory to no avail, and would include the situation where the establishment or crematory is closed during normal business hours ~~[or]~~ and that the licensee in charge is not available within one (1) hour of contact made or attempted by the inspector; or

(b) the establishment or crematory is found to be in non-compliance with the Board's inspection requirements.

(2) A re-inspection and/or penalty fee will be imposed on any establishment or crematory if a re-inspection is required. The licensee in charge of an establishment or a crematory authority will be informed that a re-inspection and/or penalty fee is being assessed and the reason for the re-inspection.

(3) If the Board has good reason to believe that the Thanatopractice Act or 16.64 NMAC, governing the inspection requirements have been violated, a re-inspection and/or penalty fee will be assessed only if a violation exists.

[2-7-76...9-26-93; 1-22-99; 16.64.4.11 NMAC – Rn & A, 16 NMAC 64.4.11, 09-15-01]

16.64.4.12 REFRIGERATION: All bodies which are refrigerated in lieu of, or prior to, embalming shall be stored at a temperature not to exceed forty (40) degrees Fahrenheit {five (5) degrees Celsius} and shall not be taken out of refrigeration until such time as the dead human body is being prepared to be embalmed, upon final disposition, or for identification purposes only not to exceed thirty (30) minutes.

[2-6-82...9-26-93; 16.64.4.12 NMAC – Rn & A, 16 NMAC 64.4.12, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.5.1, 16.64.5.2, 16.64.5.5, 16.64.5.8 and 16.64.5.9 NMAC. 16.64.5 NMAC was renumbered and reformatted from 16 NMAC 64.5 to conform to the current NMAC requirements.

16.64.5.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 827-7013~~]

[6-15-96, 16.64.5.1 NMAC – Rn & A, 16 NMAC 64.5.1, 09-15-01]

16.64.5.2 SCOPE: 16.64.5 NMAC applies to applicants for licensure as a funeral service practitioner, associate funeral service practitioner, [~~assistant funeral service practitioner~~] and direct disposer.

[6-15-96; 16.64.5.2 NMAC – Rn & A, 16 NMAC 64.5.2, 09-15-01]

16.64.5.5 EFFECTIVE DATE: April 10, 1994, unless a different date is cited at the end of a section [~~or paragraph~~].

[6-15-96; 16.64.5.5 NMAC – Rn & A, 16 NMAC 64.5.5, 09-15-01]

16.64.5.8 GENERAL PROVISIONS:

A. The examination outlined in Subsection A of 16.64.5.9 NMAC shall be given at such times and places as

determined by the Board.

B. [~~Written~~] The examination[~~s~~] outlined in Subsection [~~A and~~] B of 16.64.5.9 NMAC may be given at any meeting of the Board, or at such other times and places determined by the Board.

C. [~~Practical and oral~~] The examinations outlined in Subsection C of 16.64.5.9 NMAC shall be given at such times and places as mutually determined by the applicant and the [~~licensee~~] Board or it's designee.

D. No applicant may take any specific examination more than twice in any six (6) month period; and an applicant must wait a minimum of thirty (30) days from the examination date prior to retaking any examination. An applicant shall pay all costs and fees to retake any examination.

E. No applicant shall be permitted to take any examination until his or her application is complete, as determined by the Board.

[2-7-76...4-10-94; 16.64.5.8 NMAC – Rn & A, 16 NMAC 64.5.8, 09-15-01]

16.64.5.9 EXAMINATIONS:

A. Each applicant for a license as a funeral service practitioner shall take a written comprehensive examination, comparable to the examination taken by graduates of funeral service education. [~~prescribed and graded by The Conference of Funeral Service Examining Boards of the United States, Inc. (Hereinafter called "The Conference", or its successor).~~]. An applicant must answer not less than 75% of the questions correctly to successfully complete the examination. The candidate shall pay all costs of the examination charged by [~~The Conference~~] examining agency together with the administrative costs of the Board. [~~Successful completion of the examination shall be determined by The Conference.~~] The pass/fail decision of the Board shall be binding.

B. Each applicant for a license as a funeral service practitioner, including any funeral service practitioner who wishes to reinstate an inactive license, associate funeral service practitioner, or direct disposer shall take a written jurisprudence examination prescribed [~~and graded~~] by the Board. An applicant must answer not less than 75% of the questions correctly to successfully complete the jurisprudence examination. An applicant who does not successfully complete the jurisprudence examination may protest to the Board, not later than the following Board meeting, if he or she feels the grading of the examination was incorrect or unfair. The decision of the Board following a protest shall be binding.

C. Each applicant for a license as an associate funeral service practitioner shall take a practical examination prescribed by the Board on one or more dead human bodies, demonstrating embalming skills at least substantially equivalent to that possessed by the average licensed funeral service practitioner; and shall take an oral examination prescribed by the Board, demonstrating a practical knowledge of funeral directing and related subject knowledge. [~~Such practical and oral examinations shall be administered by any licensed funeral service practitioner designated by the Board~~] Any licensed funeral service practitioner designated by the Board shall administer such practical and oral examinations, and the pass/fail decision of the person administering the examinations shall be binding.

[2-7-76...4-10-94; 16.64.5.9 NMAC – Rn & A, 16 NMAC 64.5.9, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.6.1, 16.64.6.2, 16.64.6.5, 16.64.6.7, 16.64.6.8, 16.64.6.9 and 16.64.6.10 NMAC. 16.64.6 NMAC was renumbered and reformatted from 16 NMAC 64.6 to conform to the current NMAC requirements.

16.64.6.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 827-7013~~]

[6-15-96, 16.64.6.1 NMAC – Rn & A, 16 NMAC 64.6.1, 09-15-01]

16.64.6.2 SCOPE: 16.64.6 NMAC applies to licensed funeral service practitioners, associate funeral service practitioners, assistant funeral service practitioners, direct disposers, and funeral service interns under general supervision.

[6-15-96; 16.64.6.2 NMAC – Rn &A, 16 NMAC 64.6.2, 09-15-01]

16.64.6.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section [~~or paragraph~~].

[6-15-96; 16.64.6.5 NMAC – Rn & A, 16 NMAC 64.6.5, 09-15-01]

16.64.6.7 DEFINITIONS:

A. "**Continuing Education**" means that education which is obtained by a licensee to develop, maintain, improve or expand skills and knowledge [~~obtained prior to licensure or to develop improved skills and acquire additional knowledge~~]. This education may be obtained through formal or informal education processes, school study, research and participation in professional, technical and occupational societies and by other similar means as authorized by the Board.

B. **"Approved Provider"** means any provider approved by the Board or it's designee.

C. **"Renewal Period"** means July 1st through June 30th.

[9-14-88...9-26-93; 16.64.6.7 NMAC – Rn & A, 16 NMAC 64.6.7, 09-15-01]

16.64.6.8 GENERAL PROVISIONS:

A. Requests for approval of continuing education activities shall be submitted to the Board on a form prescribed by the Board. [~~or may be submitted directly from an organization which sponsored an activity which a licensee attended. Certification of such continuing education shall be provided by the Board Administrator and forwarded to the licensee with the license renewal application.~~] No license renewal shall be issued without Board action if there exists any question by the Board Administrator as to the acceptance of a particular continuing education activity [~~for continuing education~~]. The burden shall be on the licensee to ascertain from the Board if [~~an~~] a continuing education activity is acceptable, and to provide proof of completion of the continuing education activity for the renewal period.

B. Ten (10) hours of continuing education shall equal one (1) continuing education unit (CEU).

C. Regardless of what part of the year a person becomes licensed, there shall be no reduction or pro-rating of continuing education hours required for the next [~~fiscal year license~~] renewal period; provided however, that any person who was first licensed during the same [~~fiscal year~~] renewal period as he or she graduated from an accredited school of funeral service education shall not be required to earn continuing education for the next [~~fiscal year license~~] renewal.

D. Any person who holds more than one license issued by the Board may use the same continuing education hours for renewal of both licenses without having to earn separate continuing education hours for each license renewal.

E. Fifty (50) percent of the annual continuing education requirement earned in excess of the annual requirement may be carried over to the next [~~year~~] renewal period.

[9-14-88...9-26-93; 16.64.6.8 NMAC – Rn & A, 16 NMAC 64.6.8, 09-15-01]

16.64.6.9 CONTINUING EDUCATION: The Board may, subject to Subsection A of

16.64.6.10 NMAC, [~~below,~~] recognize continuing education in the following areas related to Thanatopractice:

A. **Academic Activities:**

(1) completion of courses offered by accredited institutions of higher education; and

(2) completion of home study courses offered by approved sponsors of such courses.

B. **Professional Activities:**

(1) attendance at workshops, conferences, seminars and institutions of approved funeral service educational opportunities;

(2) service on a board of directors of a funeral service organization, including the [~~State~~] New Mexico Board of Thanatopractice; and

(3) published literary contributions.

C. **Public Education and Service:**

(1) conducting or participating as an instructor in school presentations and other related workshops, conferences, seminars and institutions;

(2) speeches on funeral service before religious or civic organizations; and

(3) attendance at meetings of the Board.

[9-14-88...9-26-93; 16.64.6.9 NMAC – Rn & A, 16 NMAC 64.6.9, 09-15-01]

16.64.6.10 LIMITATIONS:

A. The amount of continuing education credit the Board will recognize for any activity will be at the sole discretion of the Board, provided however, that the Board will grant credit for activities [~~approved by the Academy of Professional Funeral Service Practice to the same extent as approved by that agency,~~] offered by any approved provider of continuing education subject to the limitation imposed in Subsection B of 16.64.6.10 NMAC. [~~below~~]

B. No more than four (4) hours {.4 CEU} of continuing education credit shall be granted in any [~~fiscal year~~] renewal period for activities as outlined in Subsection C of 16.64.6.9 NMAC[~~, above~~].

C. Upon application for renewal of a license, the applicant shall furnish evidence of having completed continuing education hours to the following extent:

(1) Funeral Service Practitioners shall be required to complete ten (10) hours {1.0 CEU}.

(2) Associate Funeral Service Practitioners shall be required to complete ten (10) hours {1.0 CEU}.

(3) Assistant Funeral Service Practitioners shall be required to complete ten (10) hours {1.0 CEU}.

(4) Funeral Service Interns who are allowed to practice under the general supervision of a funeral service practitioner in any category shall be required to complete [~~four (4) hours {.4 CEU} the first year, plus one (1) additional hour {.1 CEU} for each year the funeral service intern continues to practice under general supervision, up to a maximum of seven (7) hours {.7 CEU}~~] ten (10) {1.0 CEU}.

(5) Direct Disposers shall be required to complete ten (10) hours {1.0 CEU}.

[11-21-86...9-26-93; 16.64.6.10 NMAC – Rn & A, 16 NMAC 64.6.10, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.7.1, 16.64.7.5 and 16.64.7.9 NMAC. 16.64.7 NMAC was renumbered and reformatted from 16 NMAC 64.7 to conform to the current NMAC requirements.

16.64.7.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 827-7013~~]

[6-15-96; 16.64.7.1 NMAC – Rn & A, 16 NMAC 64.7.1, 09-15-01]

16.64.7.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section [~~or paragraph~~].

[6-15-96; 16.64.7.5 NMAC – Rn & A, 16 NMAC 64.7.5, 09-15-01]

16.64.7.9 INACTIVE STATUS:

A. Any [~~funeral service practitioner~~] licensee, excluding assistant funeral service practitioner and funeral service intern licensees, who wishes to place his or her license on inactive status shall notify the Board in writing, on a form prescribed by the Board, prior to the expiration of his or her current license.

B. The Board shall determine, at its next meeting, if the inactive status of any license will be [~~allowed~~] approved.

C. Upon approval by the Board of an inactive request, the licensee shall be exempt from the payment of the yearly renewal fee during the period of inactive status.

D. No license will automatically be placed on inactive status by failure of the licensee to renew his or her license.

E. No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

F. Any licensee who has placed his or her license on inactive may, within five (5) years from the date of acceptance by the Board of the inactive status, notify the Board of his or her desire to reinstate the inactive license. Upon receipt of such notice, the Board Administrator [~~of the Board~~] shall send to the inactive licensee an application for reinstatement.

G. The applicant shall submit the application to the Board together with the applicable fee(s) and proof of completion of one (1) CEU, as outlined in 16.64.6 NMAC, for the year in which reinstatement is sought.

H. If the Board finds the application in order, the applicant shall be issued a license after successfully completing the written jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC. No person whose license is on inactive status shall practice funeral service in this State until receiving a reinstated license.

I. Any person who, after five (5) years of inactive status, desires to reinstate his or her license, must make application to the Board and comply with the same requirements as any previously unlicensed applicant.

J. If a request for reinstatement of an inactive license occurs in the same [~~fiscal year~~] renewal period, as defined in Subsection C of 16.64.6.7 NMAC, that the inactive status was granted, the applicant shall not be required to complete additional continuing education requirements in order for the inactive license to be reinstated.

[~~K. No license issued by the Board, other than a license as a funeral service practitioner, may be placed on inactive status.~~]

[9-27-90…9-26-93; 16.64.7.9 NMAC – Rn & A, 16 NMAC 64.7.9, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.8.1, 16.64.8.5 and 16.64.8.8 NMAC. 16.64.8 NMAC was renumbered and reformatted from 16 NMAC 64.8 to conform to the current NMAC requirements.

16.64.8.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090~~]

[6-15-96, 1-22-99; 16.64.8.1 NMAC – Rn

& A, 16 NMAC 64.8.1, 09-15-01]

16.64.8.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section [~~or paragraph~~].
[6-15-96; 16.64.8.5 NMAC – Rn & A, 16 NMAC 64.8.5, 09-15-01]

16.64.8.8 GENERAL PROVISIONS:

A. Each funeral service intern shall inform the Board, on quarterly reports prescribed by the Board, of the work completed by the funeral service intern, and the name(s) of the funeral service practitioner(s) who supervised each activity, and shall be for the periods as follows, until such time as the minimum requirements are met, as determined by the Board:

(1) July 1 thru September 30, inclusive;

(2) October 1 thru December 31, inclusive;

(3) January 1 thru March 31, inclusive;

(4) April 1 thru June 30, inclusive;

B. [~~All~~] Original quarterly reports shall be due at the office of the Board within thirty (30) days of the close of the quarter (faxed reports will not be accepted). Any quarter for which a report is not received by the date due shall not count as time toward the internship.

[~~C. A funeral service intern may be employed by, or receive training at, more than one establishment concurrently only if permission has been requested by the intern and granted by the Board.~~]

C. A funeral service intern may be employed by, or receive training at, more than one (1) funeral and/or commercial establishment concurrently provided that:

(1) the establishments are part of the same company;

(2) the establishments are within 50 miles by road travel of each other; and

(3) application is made, together with the application fee for each license held, thirty (30) days prior to employment or training.

D. A funeral service intern shall make it known that he or she is a funeral service intern under the supervision of a funeral service practitioner, and that he or she is not licensed as a funeral service practitioner nor the licensee in charge.

E. A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

(1) When a funeral service intern has "made arrangements" for fifty (50) funerals under direct supervision, he or she may request approval from the Board to make arrangements under general supervision. The request shall be made on an application form prescribed by the Board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (3) of Subsection E of 16.64.8.8 NMAC [~~below~~], the fees shall not be required; and

(2) When a funeral service intern has "assisted in embalming" of fifty (50) bodies under direct supervision, he or she may request approval from the Board to embalm under general supervision. The request shall be made on an application form prescribed by the Board, accompanied by the required fees; and

(3) When a funeral service intern has "assisted in the directing" of fifty (50) funerals, committal services, grave side services or memorial services under direct supervision, he or she may request approval from the Board to direct such services under general supervision. The request shall be made on an application form prescribed by the Board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (1) of Subsection E of 16.64.8.8 NMAC [~~above~~], the fees shall not be required.

F. A funeral service intern shall not practice funeral service in any category under general supervision until application is made, together with the required fees, and approval has been granted by the Board.

G. A funeral service intern shall not be required to "make arrangements" during his or her internship in order to qualify for a license as a funeral service practitioner [~~or associate funeral service practitioner~~].

H. A funeral service intern shall not be required to practice funeral service under general supervision in any category regardless of the amount of time served or work completed as a funeral service intern.

I. A funeral service intern who is practicing funeral service under general supervision in any category shall be subject to the continuing education requirements of 16.64.6 NMAC.

J. A funeral service intern may receive training under more than one (1) licensed funeral service practitioner, provided the Board is notified, in writing, of any changes within thirty (30) days following a change.

K. Any time served, and properly reported to the Board, as a resident trainee under prior law will be considered the same as time served as a funeral service intern.

L. A funeral service intern who is practicing funeral service under general supervision in any category is required to have the licensed funeral service practitioner review and co-sign all documents and contracts prepared by the funeral service intern.

M. A funeral service intern who has a change of employment shall:

(1) return the old license; and

(2) make application for each license held, together with the application fee for each license held as outlined in Subsection D and/or E of 16.64.2.8 NMAC, within thirty (30) days of the change.

[9-14-88...9-26-93, 6-15-96, 1-22-99; 16.64.8.8 NMAC – Rn & A, 16 NMAC 64.8.8, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

Renumbering and Reformatting of 16 NMAC 64.9 to 16.64.9 NMAC, and Renumbering and Reformatting of 16 NMAC 64.12 to 16.64.12 NMAC.

The Board of Thanatopractice has renumbered and reformatted its rule material in Title 16 Chapter 64, as noted above, in conformance with the current NMAC requirements. The renumbering and reformatted material will be effective 09-15-01.

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.10.1, 16.64.10.2, 16.64.10.5, 16.64.10.6, 16.64.10.7 and 16.64.10.8 NMAC. 16.64.10 NMAC was renumbered and reformatted from 16 NMAC 64.10 to conform to the current NMAC requirements.

16.64.10.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 827-7013~~]
[6-15-96; 16.64.10.1 NMAC – Rn & A, 16 NMAC 64.10.1, 09-15-01]

16.64.10.2 SCOPE: 16.64.10 NMAC applies to licensed crematories and establishment.
[6-15-96; 16.64.10.2 NMAC – Rn & A, 16 NMAC 64.10.2, 09-15-01]

16.64.10.5 EFFECTIVE DATE: September 26, 1993, unless a different date is cited at the end of a Section [~~or para-~~

~~graph~~].
[6-15-96; 16.64.10.5 NMAC – Rn & A, 16 NMAC 64.10.5, 09-15-01]

16.64.10.6 OBJECTIVE: 16.64.10 NMAC is to establish [~~to~~] the scope of practice for crematories, cremation requirements and requirement of crematories and establishments for maintaining records and disposing of cremains.
[6-15-96; 16.64.10.6 NMAC – Rn & A, 16 NMAC 64.10.6, 09-15-01]

16.64.10.7 DEFINITIONS:

A. "**Cremation**" and "**Calcination**" are considered synonymous, and means the final disposition of the dead human body to a residue of cremains.

B. "**Authorizing Agent(s)**" means the person(s) legally entitled to order the cremation.

C. "**Cremains Container**" means any container in which cremated remains may be enclosed which will avoid leakage and prevent the entrance of foreign substances.

D. "**Cremation Container**" means an enclosure in which a dead human body is placed for delivery to a crematory and subsequently cremated with the body.

E. "**Crematory Authority**" means an authorized representative of a crematory.

F. "**Urn**" means a cremains container considered to be decorative, that varies in size, styling and composition.
[11-21-86...9-26-93; 16.64.10.7 NMAC – Rn & A, 16 NMAC 64.10.7, 09-15-01]

16.64.10.8 CREMATION PRACTICES:

A. No cremation shall take place until all necessary documentation is obtained or a court order has been issued authorizing the [~~creation~~] cremation; such documentation shall include:

(1) signed authorization by the authorizing agent(s);

(2) signed permit from the Office of the Medical Investigator of the State, or its equivalent if the death occurred outside this State; provided no such permit shall be required for the cremation of fetal deaths; and

(3) any other form(s) which may be required by the crematory in order for the cremation to take place.

B. For acceptance by the crematory, a dead human body must be enclosed in an acceptable cremation container and identification of the dead body must be noted on the outside of the cremation container.

(1) A cremation container is considered acceptable if it meets or exceeds the following minimum standards:

(a) is composed of a suitable combustible material;

(b) is rigid and secure for handling with ease, which includes a rigid bottom and full dome enclosure;

(c) provides for complete covering of the enclosed dead human body; and

(2) A cremation container is considered unacceptable if it is composed of any explosive material or such other material as fiberglass, plastic resin compound, or other synthetic material not suitable for combustion in a cremation retort.

(3) Any crematory may make its own requirements as to the acceptability of a cremation container, provided they are not less than outlined in 16.64.10 NMAC, and are not otherwise in any way in violation of any statute, ordinance or rule.

C. The crematory authority may require that all pacemakers, radium implants and all explosive devises implanted in the body, or attached thereto, be removed, at the expense of the authorizing agent(s), prior to the cremation.

D. The unauthorized simultaneous cremation of more than one dead human body within the same cremation retort is specifically prohibited.

E. A crematory may simultaneously cremate more than one dead human body in the same cremation retort upon receipt of written authorization to do so from the authorizing agent(s) of each dead human body. Such written authorization shall also exempt the crematory authority from all liability in commingling the cremains of simultaneous cremation.

F. No crematory authority shall be required to simultaneously cremate more than one dead human body even if authorized by the authorizing agent(s).

G. Immediately prior to placing a dead human body into the cremation retort, the identification of the cremation container shall be verified and identification of the body shall be placed on the cremation retort panel, where it shall remain in place until the cremation is completed.

H. To the extent that is reasonably practical, all residue of each cremation shall be removed from the cremation retort, and shall not be commingled with any other cremains unless directed by the authorizing agent(s) and agreed to by the crematory authority.

I. All body prosthetics, dental work or similar items separated from any cremains shall be disposed of by the crematory authority, unless otherwise ordered by the authorizing agent(s) at the time the cremation authorization is executed.

J. Properly identified cremains shall be placed in a cremains container as directed by the authorizing agent(s) or crematory authority. The crematory authority is required to provide a cremains container of adequate size to accommodate all the cremains from each cremation unless a cremains container is furnished by the authorizing agent(s). In either case, the crematory authority shall have [~~an~~] a written agreement with the authorizing agent(s) if the cremains container is not of sufficient size to enclose the cremains.

K. Cremains may be disposed in any lawful manner by any establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent.

L. [~~A crematory authority~~] Establishments and crematories shall keep an accurate record of all cremations performed, and the place of disposition of the cremains [~~by the crematory~~], for a period of not less than [~~five (5)~~] seven (7) years.

M. Any legal forms for cremation authorization shall contain wording that will hold harmless a crematory authority, or establishment from disposing of unclaimed cremains in any lawful manner after a period of one (1) year.
[11-21-86...9-26-93; 16.64.10.8 NMAC – Rn & A, 16 NMAC 64.10.8, 09-15-01]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.11.1, 16.64.11.2, 16.64.11.5, 16.64.11.8, 16.64.11.10, 16.64.11.12 and 16.64.11.13 NMAC. 16.64.11 NMAC was renumbered and reformatted from 16 NMAC 64.11 to conform to the current NMAC requirements.

16.64.11.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] New Mexico Board of Thanatopractice.[~~, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 476-7090~~]
[2-21-97, 1-22-99; 16.64.11.1 NMAC – Rn & A, 16 NMAC 64.11.1, 09-15-01]

16.64.11.2 SCOPE: 16.64.11 NMAC applies to the Board, [~~all~~] licensees, [~~and~~] applicants for licensure, and the general public.
[2-21-97; 16.64.11.2 NMAC – Rn & A, 16 NMAC 64.11.2, 09-15-01]

16.64.11.5 EFFECTIVE DATE: February 21, 1997, unless a different date is

cited at the end of a Section [~~or paragraph~~]. [2-21-97, A, 5-11-97; 16.64.11.5 NMAC – Rn & A, 16 NMAC 64.11.5, 09-15-01]

16.64.11.8 GENERAL PROVISIONS:

A. **Inquiries Regarding Making a Complaint:** [~~Complaint may be initiated in writing by any person, including any member of the Board or Board staff.~~] Any person, including any member of the Board or Board staff, may initiate a complaint in writing. Complaints should be submitted on a form prescribed by the Board.

[~~(a) Complaints must be legible, either printed in black ink or typed.~~]

B. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Thanatopractice Act and/or 16.64 NMAC.

[2-21-97; 16.64.11.8 NMAC – Rn & A, 16 NMAC 64.11.8, 09-15-01]

16.64.11.10 COMPLAINT COMMITTEE:

A. The Board Chair will appoint a Complaint Committee consisting of at least one person, who will be a professional member on the Board. The Board Chair may also appoint to the Complaint Committee the Board Administrator and/or a Complaint Manager.

B. The Complaint Committee will handle complaints in a confidential manner as required by law.

C. The Complaint Committee will review all complaints received by the Board, conduct whatever action it deems necessary in the course of gathering information, and make recommendations for disposition of the complaint to the full Board in executive session to maintain the confidentiality of the complaint.

D. No Complaint Committee meeting will be held without the presence of the professional Board member.

E. A Complaint Committee member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate and another member will be appointed by the Chair to serve on the Committee if required.

F. For any complaint which the Complaint Committee reasonably anticipates may be referred to the Board for consideration of the issuance of a Notice of Contemplated Action, the Respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint. The foregoing notwithstanding, the Complaint Committee will not be required to provide the Respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a Notice of Contemplated Action if the Committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

G. If the Complaint Committee determines that further information is needed, it may issue investigative subpoenas, pursuant to the Uniform Licensing Act; employ an investigator, or experts, or other persons whose services are determined to be necessary, in order to assist in the processing and investigation of the complaint. The Complaint Committee will have independent authority to employ such persons, without prior approval of the Board. The Board Administrator will determine budgetary availability, and will contract for investigative services.

H. Upon completion of its review or investigation of a complaint, the Complaint Committee will present a summary of the case to the Board for the purpose of enabling the Board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.

[2-21-97, 1-22-99; 16.64.11.10 NMAC – Rn & A, 16 NMAC 64.11.10, 09-15-01]

16.64.11.12 SETTLEMENT AGREEMENT: [~~Following the issuance of a Notice of Contemplated Action,~~] The Board may enter into a settlement agreement with the respondent as a means of resolving the complaint. Any proposed settlement agreement must be approved by the Board, and must be approved further by the respondent, upon a knowing and intentional waiver by the respondent of his or her right to a hearing as provided by the Uniform Licensing Act. The settlement agreement must be signed by the respondent and respondent's attorney, if represented by an attorney. If the respondent is not represented by an attorney then the respondent must acknowledge that he/she has been advised to seek the advice of an attorney.

[2-21-97; 16.64.11.12 NMAC – Rn & A, 16 NMAC 64.11.12, 09-15-01]

16.64.11.13 NOTICE OF CONTEMPLATED ACTION:

A. All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.

B. The Chair of the Board, or his/her designee, will serve as Hearing Officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The Hearing Officer will be fully authorized to make all necessary procedure decisions on behalf of the Board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.

C. The Hearing Officer may make such orders as he/she determines may be necessary to implement the authority conferred by Subsection B of 16.64.11.13 NMAC, [~~above,~~] including, but not limited to, discovery schedules, pleading schedules, and briefing schedules.

D. No party will engage in ex-parte communications with the Hearing Officer or any member of the Board in any matter in which a Notice of Contemplated Action has been issued.

E. Licensees and applicants for licensure who have been found culpable and sanctioned by the Board will be responsible for the payment of all costs of the disciplinary proceedings.

F. Any license, including a wall certificate, issued by the Board and subsequently suspended or revoked, will be promptly returned to the Board Office, in person or by registered mail, no later than 30 days of receipt of the Board's order suspending or revoking the license.

[2-21-97; 1-22-99; 16.64.11.13 NMAC – Rn & A, 16 NMAC 64.11.13, 09-15-01]

End of Adopted Rules and Regulations Section

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SUBMITTAL DEADLINES AND PUBLICATION DATES

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No. 1	January 4	January 15
No. 2	January 16	January 31
No. 3	February 1	February 14
No. 4	February 15	February 28
No. 5	March 1	March 14
No. 6	March 15	March 30
No. 7	April 2	April 13
No. 8	April 16	April 30
No. 9	May 1	May 15
No. 10	May 16	May 31
No. 11	June 1	June 14
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No. 15	August 1	August 15
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No. 20	October 16	October 31
No. 21	November 1	November 15
No. 22	November 16	November 30
No. 23	December 3	December 14
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