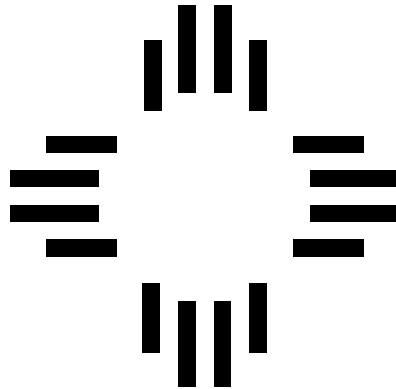


# **New Mexico Register**

**Volume XII, Issue Number 22**  
**November 30, 2001**



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

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Administrative Law Division  
2001

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# New Mexico Register

Volume XII, Number 22

November 30, 2001

## Table of Contents

### Notices of Rulemaking and Proposed Rules

#### Albuquerque/Bernalillo County Air Quality Control Board

Notice Of Hearing To Consider Updating The Stationary Source Conformity Regulation - 20.11.45 NMAC . . .1365

Notice Of Hearing To Consider Updating The Transportation Conformity Regulation - 20.11.3 NMAC . . . . .1365

#### Athletic Commission

Athletic Commission Meeting and Hearing Notice . . . . .1366

#### Environmental Improvement Board

Notice Of Public Hearing To Consider Proposed Revision Of Air Quality Regulations . . . . .1366

#### Game Commission, State

Notice of Meeting . . . . .1367

#### Human Services Department

##### Income Support Division

Notice of Public Hearing . . . . .1368

#### Livestock Board

Notice Of Rule Making Hearing And Regular Board Meeting . . . . .1369

#### Regulation And Licensing Department

##### Construction Industries Division

Hoisting Operator’s Licensure Examining Council Meeting . . . . .1369

#### Water Quality Control Commission

Notice Of Public Meeting And Public Hearing To Consider Proposed Amendments to 20.6.2 NMAC—

Ground Water Discharge Permit Public Notice Requirements . . . . .1369

### 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

**A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered**

#### Children, Youth and Families Department

8 NMAC 2.2 R Requirements for Participation in the Child and Adult Care Food Program . . . . .1371

8 NMAC 2.3 R Requirements for Participation in the Summer Food Service Program . . . . .1371

\* 8.17.2 NMAC R Requirements Governing Registration of Non-Licensed Family Child Care Homes . . . . .1371

\* 8.2.2 NMAC N Requirements for Participation in the Child and Adult Care Food Program . . . . .1371

\* 8.2.3 NMAC N Requirements for Participation in the Summer Food Service Program . . . . .1380

\* 8.17.2 NMAC N Requirements Governing Registration of Non-Licensed Family Child Care Homes . . . . .1385

#### Educational Retirement Board

\* 2.82.1 NMAC Rn & A Educational Retirement - General Provisions . . . . .1388

\* 2.82.2 NMAC Rn & A Membership . . . . .1389

\* 2.82.3 NMAC Rn & A Member and Administrative Unit Contributions . . . . .1390

\* 2.82.4 NMAC Rn & A Service Credit . . . . .1390

\* 2.82.5 NMAC Rn & A Retirement Benefits . . . . .1390

**Engineers and Surveyors, Board of Licensure for Professional**

16 NMAC 39.1 R General Provisions—Professional Engineering and Surveying—Organization and Administration . . . . .1391
16 NMAC 39.3 R Engineering - Certificates of Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements . . . . .1391
16 NMAC 39.4 R Incidental Practice . . . . .1391
16 NMAC 39.5 R Surveying—Applications, Examinations, Practice of Surveying, Seal of License . . . . .1391
16 NMAC 39.7 R Misc. - Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates & Disciplinary Action . . . . .1391
16 NMAC 39.8 R Code of Professional Conduct - Engineering and Surveying . . . . .1391
\* 16.39.1 NMAC N General Provisions - Professional Engineering and Surveying - Organization and Administration . . . . .1391
\* 16.39.3 NMAC N Engineering - Certificates of Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee and Endorsements . . . . .1394
\* 16.39.4 NMAC N Incidental Practice . . . . .1397
\* 16.39.5 NMAC N Surveying - Applications, Examinations, Practice of Surveying, Seal of Licensee . . . . .1398
\* 16.39.7 NMAC N Misc. - Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action . . . . .1399
\* 16.39.8 NMAC N Code of Professional Conduct - Engineering and Surveying . . . . .1400

**Game and Fish, Department of**

\* 19.30.6 NMAC A Predator Management . . . . .1402

**Higher Education, Commission on**

\* 5.3.12 NMAC Rn & A Instructional Funding . . . . .1402

**Livestock Board**

21 NMAC 35.5 R Cattle Rest Stations . . . . .1405
\* 21.35.5 NMAC N Cattle And Sheep Rest Stations . . . . .1406

**Nursing, Board of**

\* 16.12.2 NMAC A Nurse Licensure . . . . .1407
\* 16.12.3 NMAC A Nursing Educational Programs . . . . .1420

**Public Safety, Department of**

Training and Recruiting Division

Law Enforcement Academy

\* 10.29.9 NMAC A Police Officer . . . . .1421

**Water Quality Control Commission**

\* 20.6.4 NMAC A Standards For Interstate And Intrastate Surface Waters . . . . .1422

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

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## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE/ BERNALILLO COUNTY AIR QUALITY CONTROL BOARD (AQCB)

#### NOTICE OF HEARING TO CONSIDER UPDATING THE STATIONARY SOURCE CONFORMITY REGULATION

On January 9, 2002, at 6:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold a public hearing and a public meeting in the Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, One Civic Plaza, 400 Marquette Avenue NW, located at Fifth and Marquette NW, in downtown Albuquerque, NM. Note that a separate hearing on another matter will take place immediately prior to this hearing and this may create some delay for the 6:15 PM scheduled start time.

The purpose of the hearing is to hear testimony on the proposed Board Regulation 20.11.45 NMAC, Stationary Source Conformity. The proposed changes relate to ensuring that when air quality permits and registrations are issued to new and modified sources of carbon monoxide in Bernalillo County that the carbon monoxide emissions allocated to the source are consistent with the Carbon Monoxide Maintenance Plan for Albuquerque/Bernalillo County, New Mexico. The Maintenance Plan was approved by the U.S. Environmental Protection Agency on May 24, 2000 in the Federal Register (Vol. 65, No. 101, pages 33455 -33461). The Maintenance Plan establishes air pollution budgets for highway mobile sources, off-road mobile sources, area sources, and major stationary sources. The proposed regulation will establish procedures for issuing new and modified air quality permits to ensure that stationary source emissions conform to the carbon monoxide budgets for certain area sources such as emergency/auxiliary generators and minor stationary sources and for major stationary sources such as power plants. If the regulation is approved by the Board, this regulation may then be adopted as a modification of the State Implementation Plan for air quality and will become federally enforceable.

The Air Quality Control Board is the federally-delegated air authority for Albuquerque and Bernalillo County and has

responsibility for compliance with the federal Clean Air Act. This local delegation allows the Board to ensure that local air pollution sources comply with these standards through administration and enforcement of the Clean Air Act and the New Mexico Air Quality Control Act.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons desiring to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, §9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Any persons desiring to present technical testimony should submit a written notice of intent to: Attn: January Hearing Record, Mr. Isreal Tavarez, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, One Civic Plaza, 400 Marquette Avenue NW, in advance of the hearing. The notice shall include:

- Name and qualifications of each technical witness;
- Identification of whether the witness is a proponent, opponent or interested person;
- Description of the nature of the anticipated testimony;
- Anticipated length of each witness' presentation;
- Identification of the specific aspects of the proposed action to which testimony will be directed and provide any alternative language proposals, where appropriate;
- And list and describe technical exhibits anticipated to be offered in connection with the witness' testimony.

In addition, written statements to be incorporated into the public record should be sent to above Post Office Box address, be received by the close of business on January 4, 2002, and must identify the individual submitting the statement.

Interested persons may obtain a copy of the proposed regulations at the Environmental Health Department Office in Room 3023, One Civic Plaza, Albuquerque, NM, or call Mr. Dan Warren at (505) 768-2600.

**NOTICE TO PERSONS WITH DISABILITIES:** If you have a disability and require

special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice), 768-2617 (FAX) or 768-2482 (TTY), as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

### ALBUQUERQUE/ BERNALILLO COUNTY AIR QUALITY CONTROL BOARD (AQCB)

#### NOTICE OF HEARING TO CONSIDER UPDATING THE TRANSPORTATION CONFORMITY REGULATION

On January 9, 2002, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold a public hearing and a public meeting in the Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, One Civic Plaza, 400 Marquette Avenue NW, located at Fifth and Marquette NW, in downtown Albuquerque, NM.

The purpose of the hearing is to receive testimony on the proposed revision of Board Regulation 20.11.3 NMAC, Transportation Conformity. The proposed changes relate to ensuring that when air quality credits are taken for certain measures to demonstrate conformity of transportation plans to the New Mexico State Implementation Plan for Air Quality that these measures will receive priority attention during implementation. Affected measures include transportation control measures, crucial transportation projects, and crucial land use measures. If regulation changes are approved by the Board, these changes may then be adopted as a modification of the State Implementation Plan for air quality and will become federally enforceable.

The Air Quality Control Board is the federally-delegated air authority for Albuquerque and Bernalillo County and is responsible for compliance with the federal Clean Air Act. This local delegation allows the Board to ensure that local air pollution sources comply with these standards through administration and enforcement of the Clean Air Act and the New Mexico State Air Quality Control Act.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons desiring to testify may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Any persons desiring to present technical testimony should submit a written notice of intent to: Attn: January Hearing Record, Mr. Dan Warren, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, One Civic Plaza, 400 Marquette Avenue NW, in advance of the hearing. The notice shall include:

- Name and qualifications of each technical witness;
- Identification of whether the witness is a proponent, opponent or interested person;
- Description of the nature of the anticipated testimony;
- Anticipated length of each witness' presentation;
- Identification of the specific aspects of the proposed action to which testimony will be directed and provide any alternative language proposals, where appropriate;
- And list and describe technical exhibits anticipated to be offered in connection with the witness' testimony.

In addition, written statements to be incorporated into the public record should be sent to the above Post Office Box address, be received by the close of business on January 4, 2002, and must identify the individual submitting the statement. Interested persons may obtain a copy of the proposed regulations at the Environmental Health Department Office in Room 3023, One Civic Plaza, Albuquerque, NM, or call Mr. Dan Warren at (505) 768-2600.

**NOTICE TO PERSONS WITH DISABILITIES:** If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, Albuquerque/Bernalillo County Government Center, 768-2600 (Voice), 768-2617 (FAX) or 768-2482 (TTY), as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

## NEW MEXICO ATHLETIC COMMISSION

### Athletic Commission Meeting and Hearing Notice

Notice is hereby given that the New Mexico Athletic Commission will convene a public rule hearing at the Jack Candelaria Facility (Community Center) 400 San Jose SE, Albuquerque on January 12, 2002, at 2:00 p.m. A regularly scheduled meeting will follow the rule hearing. During the regular meeting, the Commission may enter into Executive Session to discuss licensing matters.

The purpose of the hearing is to repeal the Commission's current rules and regulations in the New Mexico Administrative Code: Title 15, Chapter 6, entitled "Boxing and Prizefighting" (15 NMAC 6). The Commission will replace them with revised and rewritten Commission rules and regulations reformatting and renumbered to conform to the current NMAC requirements and entitled 15.6 NMAC "Boxing, Wrestling, and Martial Arts". Following are the names of the rules in 15.6 NMAC: 15.6.1 NMAC - "General Provisions"; 15.6.2 NMAC - "Contracts"; 15.6.3 NMAC - "Tickets For Contest And Exhibition"; 15.6.4 NMAC - "Duties And Conduct of Licensees"; 15.6.5 NMAC - "Requirements To Safeguard Health"; 15.6.6 NMAC - "The Ring Officials"; 15.6.7 NMAC - "The Premises, Its Facilities And Equipment"; 15.6.8 NMAC - "Conduct Of Boxing Contests"; 15.6.9 NMAC - "Scoring System"; 15.6.10 NMAC - "Boxing Classes And Championships"; 15.6.11 NMAC - Special Rules For Wrestling"; 15.6.12 NMAC - "Contest Rules For Full Contact Karate And Kick Boxing"; 15.6.13 NMAC - "Closed Circuit Telecasts"; 15.6.14 NMAC - "Fees"; 15.6.15 NMAC - "Drugs And Foreign Substances - Penalties"; 15.6.16 NMAC - "Disciplinary Actions"; and 15.6.17 NMAC - "Licensure Provisions" and Part 19 - "Uniform Requirements For Professional Boxing".

Persons desiring to present their views on the proposed rule may write to request draft copies from the Commission office at 2055 S. Pacheco, Suite 400, Santa Fe, New Mexico 87505, call (505) 476-7124; or view and download the proposed rules and regulations on the Commission's Website at [http://www.rld.state.nm.us/b&c/athletic\\_commission.htm](http://www.rld.state.nm.us/b&c/athletic_commission.htm). All written comments must be submitted to the Commission office no later than January 2, 2002, in order for the Commission members to receive and review the comments prior to the hearing. Persons wishing to present

their comments at the hearing will need seven (7) copies for distribution to the Commission and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Commission office at (505) 476-7124 at **least** one week prior to the hearing/meeting or as soon as possible.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF AIR QUALITY REGULATIONS

- 20.2.72 NMAC - *Construction Permits*
- 20.2.73 NMAC - *Notice of Intent and Emissions Inventory*
- 20.2.77 NMAC - *New Source Performance Standards*
- 20.2.78 NMAC - *Emission Standards for Hazardous Air Pollutants*
- 20.2.82 NMAC - *Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants*

The New Mexico Environmental Improvement Board will hold a public hearing on January 11, 2002 at 9:00 a.m. at City County Government Center, One Civic Plaza, 9th Floor Committee Room Albuquerque, New Mexico. The purpose of the hearing is to consider proposed revisions to the definition of "Potential Emission Rate" in 20.2.72 NMAC - *Construction Permits*, and 20.2.73 NMAC - *Notice of Intent and Emissions Inventory*, and proposed revisions to 20.2.77 NMAC - *New Source Performance Standards*, 20.2.78 NMAC - *Emission Standards for Hazardous Air Pollutants* and 20.2.82 NMAC - *Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants*.

The proponent of this regulatory change is the New Mexico Environment Department.

The New Mexico Legislature revised the definition of the term "potential emission rate" in the Air Quality Control Act during the 2001 Regular Session. The Department's proposal is limited to revision of the definition of this term in 20.2.72 NMAC - *Construction Permits* and 20.2.73

NMAC- *Notice of Intent and Emissions Inventory* to match the new definition in the Air Quality Control Act.

In addition to this proposal, the Environmental Improvement Board will consider revision of the following air quality regulations: 20.2.77 NMAC- *New Source Performance Standards*, 20.2.78 NMAC - *Emission Standards for Hazardous Air Pollutants* and 20.2.82 NMAC- *Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants*. Parts 77, 78 and 82 are to be revised to incorporate by reference the federal requirements promulgated by the EPA from April 2, 2000 to September 1, 2001.

The proposed regulation may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150 Santa Fe, NM. Copies of the proposed revisions may be obtained by contacting Mary Hilbert at (505) 955-8032 or Lany Weaver at (505) 955-8090 or by visiting the Department's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us). Follow the links to the Air Quality Bureau's page. Written comments regarding the proposed revisions may be addressed to Ms. Hilbert or Ms. Weaver at Air Quality Bureau, P.O. Box 26110, Santa Fe, NM, 87502. The deadline to submit comments or questions regarding the Department's proposed revisions is December 15, 2001.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 74-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person for whom the witness(es) will testify;
- identify each technical witness the person 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;
- include the text of any recom-

mended modifications to the proposed regulatory change; and  
 - list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on December 31, 2001, and should reference the name of the regulation and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Maria Voyles, Office of the Environmental Improvement Board,  
 Harold Runnels Building, 1190 St. Francis Drive, Room N-2150, Santa Fe, NM. 87505

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 Cliff Hawley by December 28, 2001. Mr. Hawley's telephone number is (505) 827-2850. He is Chief of the Program Support Bureau, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM, 87502. (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.)

Copies of the agenda and the proposed regulations will be provided in alternative forms, e.g. audiotape, if requested by December 20, 2001.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

ss/Dr. Hilary A. Noskin, Chair (Acting)

**NEW MEXICO STATE  
 GAME COMMISSION**

**NOTICE OF MEETING**

The State Game Commission will meet at the Best Western Motel Stevens Inn, River Walk Room, 1829 S. Canal in Carlsbad, New Mexico 88220 on November 19, 2001, 9:00 a.m. - 5:00 p.m.

A Training Workshop for Commission,

Director, and Assistant Directors, will be held November 18, 2001 from 1:00-5:00 in the Guadalupe Room 1:00 p.m. - 5:00 p.m.

The proposed agenda may be found by accessing the web site of the New Mexico Department of Game and Fish at [www.gmfsh.state.nm.us](http://www.gmfsh.state.nm.us) or by contacting the office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico or by calling 476-8008.

NOTE: Persons attending this Commission meeting who wish to address the Commission regarding agenda items appearing in Old Business and New Business must fill out and submit to the recording secretary an agenda discussion request card available at the table with the agenda copies.

Those who desire to address the Commission and who claim to represent an organization must provide the following information:

The number of members in the organization, frequency of the organization's meeting and either a signed statement from that organization's president that states the organization has discussed the topic and approved the position that the representative is presenting, or proof that they are a registered lobbyist for the organization.

**Proposed agenda items include:**

AGENDA ITEM NO. 1. Meeting Called to Order

AGENDA ITEM NO. 2. Roll Call

AGENDA ITEM NO. 3. Approval of Minutes (September 21, 2001)

AGENDA ITEM NO. 4. Training Workshop for Commission.

November 19, 2001

AGENDA ITEM NO. 1. Meeting Called to Order

AGENDA ITEM NO. 2. Roll Call

AGENDA ITEM NO. 3. Approval of Agenda

AGENDA ITEM NO. 4. Introduction of Guests

AGENDA ITEM NO. 5. Consent Agenda

OLD BUSINESS

AGENDA ITEM NO. 6A. Establishing the 2002-2003 Big Game Seasons; Amending 19.31.8 NMAC - Presented by Luis Rios/Glenn Case. The Department will present its recommendation to amend the Big Game Rule (19.31.8 NMAC) for the 2002-2003 Season. Harvest recommendations for elk in Big Game Units 12, 13, 14, 18, 21B, 22A, 23, 24, for turkey in the Valle Vidal and for oryx on military lands will be presented. Recommendations will also be presented to amend private land elk hunting season dates. Access initiative elk licenses for the Valles Caldera National Preserve, as well as removing the Rule that closes Subunit 6B to hunting for big game will be presented. For further information, contact the Division of Wildlife at 505-476-8038.

AGENDA ITEM NO. 6B. Application Procedures for Bear Entry in Certain Areas. 19.31.3 NMAC Hunting and Fishing License and Permits - Presented by Dan Brooks/Luis Rios. The Department will follow up recommendations to open bear hunting on certain wildlife areas and other designated areas. Recommendations will include creating special bear hunting opportunities similar to the deer entry hunt strategy.

#### NEW BUSINESS

AGENDA ITEM NO. 7. Revocations - Presented by Dan Brooks. The State Game Commission will consider the Hearing Officers recommendations and any written exceptions filed.

AGENDA ITEM NO. 8. 19.31.2 NMAC Hunting and Fishing License Revocation - Presented by Dan Brooks. The Department will recommend changing this regulation. The recommendation presented will modify existing regulations (rules) to allow Notices of Commission Contemplated Action to be sent out by the Director if the Department has sufficient evidence and belief that a person has accumulated 20 or more violation points. Commission approval would not be necessary to initiate the revocation process.

AGENDA ITEM NO. 9. Lesser Prairie-Chicken Management Plan - Presented by Luis Rios/Bill Dunn. The Department will present for approval by the Commission, Long Range and Operational Plans for Management of Lesser Prairie-chickens in New Mexico. The Long Range Plan includes a review of what is known about this species and the direction the Department will take with conservation and management efforts. The

Operational Plan contains specific tasks, schedules, and budgets for accomplishing the goal of the Long Range Plan. For more information, contact the Division of Wildlife at 505-476-8038.

AGENDA ITEM NO. 10. Depredation Assistance (19.30.2 NMAC). Big Game Depredation Damage Stamp Fee - Presented by Dan Brooks. The Department is proposing amendments to 19.30.2 NMAC to include charging a stamp fee for every big game license issued or sold.

AGENDA ITEM NO. 11. License Fee's and Permit's (19.30.9 NMAC). Presented by Dan Brooks

The Department is proposing to open this rule to allow the NM State Game Commission to change the Big Game Depredation Damage Stamp fee if the amendment to 19.30.2 NMAC is approved.

AGENDA ITEM NO. 12. Request from the La Cueva Volunteer Fire Department for a place to construct a building to house a fire truck at the Seven Springs Fish Hatchery. Presented by Tom Bennion, La Queva Volunteer Fire Department Member.

AGENDA ITEM NO. 13. Donation of Land to State Game Commission. Presented by Scott Brown

The Department is recommending that the donation of land, approximately 57 acres, to the NM State Game Commission by Dr. Albert G. Simms be accepted. This would be contingent on results of contaminants assessment.

AGENDA ITEM NO. 13A. Approval of Short Term Lease Agreement for Tower Operators on Green Mountain. Presented by Scott Brown. The Department is requesting approval of short-term lease agreements with current operators of radio, television and telecommunications towers currently in place on Green Mountain on the Colin Neblett Wildlife Area.

AGENDA ITEM NO. 13B. Approval of Purchase Agreement for the Purchase of Water Rights at Santa Rosa. Presented by Scott Brown. The Department is recommending that the Purchase Agreement be approved and signed.

AGENDA ITEM NO. 14. Commission/Department Discussion

AGENDA ITEM NO. 15. General Public Comments: (Comments limited to 3 min-

utes.)

AGENDA ITEM NO. 16. Closed Executive Session

NOTE: The meeting will be adjourned upon completion of the agenda or up to those items that time allows. Any items not discussed will be on the following meeting's agenda.

The Agenda is subject to change up to 24 hours prior to the scheduled meeting date and time as deemed necessary by the Chairman. To inquire about agenda changes, please contact the Office of the Director at (505) 476-8008.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the agenda and minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

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## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the Food Stamp Program and the Cash Assistance Program. The hearing will be held at 9:00 am on December 31, 2001. The hearing will be held at the Human Services Department Law Library, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 200 on the second level.

The Department proposes to revise Food Stamp and Cash Assistance Program rules to implement Quarterly Reporting requirements based on a federal waiver of Food Stamp change reporting requirements. These requirements will include households with earned income or a recent history of earnings to be placed on separate change reporting requirements. Households placed in Quarterly Reporting will be certified for 12 months and required to report changes every three months by use of a form instead of an application and interview process.



The Department additionally proposes to revise Food Stamp Program rules to address federal changes to the Food Stamp Program. The revision includes pro-ration of ineligible alien and alien sponsor income to the household, notification to households of missed interviews, requirement to provide social security numbers, restrictions on shortening certification periods, exclusion of diversion payments as income, allowing certain payments on the principal of durable goods as a deduction from business expenses and elimination of the vehicle as a resource. The Department will also make revisions to shelter expense section of the rules to include rules for allowance of the Standard Utility Allowance when expenses are shared with another household.

The Department proposes additional changes to the Cash Assistance Program to include time limit for benefit groups to meet work program requirements if closed for less than 12 months and sanction policy if noncompliance is cured during the notice of adverse action time period."

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Department toll free at 1-800-432-6217, TDD 1-800-609-4TDD (4833), or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling toll free 1-800-432-6217.

Individuals not wishing to attend the hearing may send written or recorded comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing. Please send comments to:

Robin Dozier Otten, Deputy Secretary  
Human Services Department  
P.O. Box 2348 Pollon Plaza  
Santa Fe, NM 87504-2348

You may send comments electronically to:  
[Sharon.Regensberg@state.nm.us](mailto:Sharon.Regensberg@state.nm.us)

### **EFFECTIVE DATE**

February 1, 2002

## **NEW MEXICO LIVESTOCK BOARD**

### **NOTICE OF RULE MAKING HEARING AND REGULAR BOARD MEETING**

**NOTICE IS HEREBY GIVEN** that a rule making hearing and regular Board meeting will be held on Thursday December 6, 2001, at Albuquerque Hilton 1901 University Blvd., NE, Albuquerque, New Mexico, at 9:00 a.m in the Colorado Room. The Board will consider rules covering: Livestock Inspection District Lines, rules governing Meat Inspection and animal health regulations, renumber and reformat of rules to conform to the current NMAC format and other matters of general business

Copies of rules can be obtained by contacting John Wortman, Executive Director, New Mexico Livestock Board, 300 San Mateo, N. E., Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Interested persons may submit their views on the proposed rules to the Board at the above address and/or may appear at the scheduled hearing and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

## **NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION**

### **HOISTING OPERATOR'S LICENSURE EXAMINING COUNCIL MEETING**

Notice is hereby given that the Hoisting Operator Licensure Examining Council will hold its regular meeting on Friday, January 18, 2002. The meeting will begin at 2:30 p.m. in the Construction Industries Division Conference Room, 1650 University NE – Suite 201-A in Albuquerque, New Mexico. Council Members will consider agenda items and discuss other business that may require action. A copy of the Agenda may be obtained from any CID Office. Anyone needing special accommodations is requested to notify the Program Administrator at 505-841-8020 - 1650 University NE-Suite 201, Albuquerque, New Mexico of such needs at least ten days prior to the meeting.

## **NEW MEXICO WATER QUALITY CONTROL COMMISSION**

### **NOTICE OF PUBLIC MEETING AND PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.2 NMAC – GROUND WATER DISCHARGE PERMIT PUBLIC NOTICE REQUIREMENTS**

The New Mexico Water Quality Commission will hold a public meeting beginning on January 8, 2002 at 9:00 a.m. in the Old Senate Chambers on the Second Floor, Room 238, in the Bataan Memorial Building located at 407 Galisteo Street, Santa Fe New Mexico. Immediately following the meeting, a hearing will be held to consider proposed amendments to Sections 20.6.2.7, 3106, 3108, 3109, 5003, and 5101 NMAC. The proposal is to amend the public notice requirements of the Water Quality Control Commission Regulations for ground water discharge permits and to remove or replace obsolete dates. The New Mexico Environment Department is the proponent of the proposed amendments.

The proposal may be viewed on the Department's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us) or during regular business hours in the office of the Commission Secretary, 1190 St. Francis Drive, Room N-4075, Santa Fe, New Mexico.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6, the Guidelines for Water Quality Control Commission Regulation Hearings, and other specific statutory procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings may be obtained from Maria Voyles at the Commission's office, Room N-2150, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2425.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the hearing.

Persons desiring to present technical testimony at the hearing must file with the Commission a written notice. The written notice shall:

- identify the person for whom technical testimony will be presented;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness;
- state the anticipated duration of the testimony of each witness;
- include the text of any recommended modifications to the proposed amendment; and
- list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

The deadline for filing written notices shall be December 28, 2001, at 5:00 p.m. Written notices must be filed in the Commission's office and should reference 20.6.2 NMAC and the date of 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. translator or sign-language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by December 26, 2001, at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2850 (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.) Copies of the proposed amendment will be available in alternative forms, e.g. audiotape, if requested by December 17, 2001.

The Commission may deliberate and rule on the proposed amendments at the close of the hearing.

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## **End of Notices and Proposed Rules Section**

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## Adopted Rules and Regulations

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

8 NMAC 2.2 Requirements for Participation in the Child and Adult Care Food Program is repealed effective 11-30-01 and repromulgated as 8.2.2 NMAC, Requirements for Participation in the Child and Adult Care Food Program effective 11-30-01.

8 NMAC 2.3 Requirements for Participation in the Summer Food Service is repealed effective 11-30-01 and repromulgated as 8.2.3 NMAC, Requirements for Participation in the Summer Food Service effective 11-30-01.

8.17.2 NMAC Requirements Governing Registration of Non-Licensed Family Child Care Homes, is repealed effective 11-30-01 and repromulgated as 8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes effective 11-30-01.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### TITLE 8: SOCIAL SERVICES CHAPTER 2: FOOD ASSISTANCE AND SUPPORT PART 2: REQUIREMENTS FOR PARTICIPATION IN THE CHILD AND ADULT CARE FOOD PROGRAM

**8.2.2.1 ISSUING AGENCY:** Children, Youth and Families Department (CYFD).  
[8.2.2.1 NMAC – Rp 8 NMAC 2.2.1, 11-30-01]

**8.2.2.2 SCOPE:** This policy applies to all CYFD staff who work with the Child and Adult Care Food Program and to participating sponsoring organizations.  
[8.2.2.2 NMAC – Rp 8 NMAC 2.2.2, 11-30-01]

**8.2.2.3 STATUTORY AUTHORITY:** Code of Federal Regulations, 7 CFR Part 226, Section 17 of the National School Lunch Act.  
[8.2.2.3 NMAC – Rp 8 NMAC 2.2.3, 11-30-01]

**8.2.2.4 DURATION:** Permanent  
[8.2.2.4 NMAC – Rp 8 NMAC 2.2.4, 11-30-01]

**8.2.2.5 EFFECTIVE DATE:**  
November 30, 2001  
[8.2.2.5 NMAC – Rp 8 NMAC 2.2.5, 11-30-01]

**8.2.2.6 OBJECTIVE:** To establish regulations for administration of the Child and Adult Care Food Program, including requirements for participating organizations.  
[8.2.2.6 NMAC – Rp 8 NMAC 2.2.6, 11-30-01]

**8.2.2.7 DEFINITIONS:**

A. "Act" means the National School Lunch Act, as amended.

B. "Administrative costs" means costs incurred by an institution related to planning, organizing, and managing a food service under the Program and allowed by the state agency financial management instruction.

C. "Adult" means, for the purposes of the collection of social security numbers as a condition of eligibility for free or reduced-price meals, any individual 21 years of age or older.

D. "Adult day care center" means any public or private nonprofit organization or any proprietary Title XIX or Title XX center (as defined in this section) which (a) is licensed or approved by federal, state or local authorities to provide non-residential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis and (b) provides for such care and services directly or under arrangement made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.

E. "Adult day care facility" means a licensed or approved adult day care center under the auspices of a sponsoring organization.

F. "Adult participant" means a person enrolled in an adult day care center who is functionally impaired (as defined in this section) or 60 years of age or older.

G. "Advanced payment" means financial assistance made available to an institution for its Program cost prior to the month in which such costs will be incurred.

H. "Child care center" means any public or private nonprofit organization, or any proprietary Title XX center, as defined in this section, required to be licensed and which provides non-residential child care services and supervision for less than 24 hours a day to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for disabled children. Child care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

I. "Child care facility" means a licensed or approved child care center, day care home or outside-school-hours care center under the auspices of a sponsoring organization.

J. "Children" means:  
(1) Persons 12 years of age and under,  
(2) Children of migrant workers 15 years of age and under, and

(3) Mentally or physically handicapped persons, as defined by the state, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under.

K. "Claiming percentage" means the ratio of the number of enrolled participants in an institution in each reimbursement category (free, reduced-price, or paid) to the total of enrolled participants in the institution.

L. "Component" means one of four food categories of the USDA Meal Pattern Requirements arranged by age group, including:

- (1) Milk,
- (2) Meat/Meat Alternates,
- (3) Bread/Bread Alternates, and
- (4) Fruits/Vegetables.

M. "Creditable foods" means foods used to meet the requirements for a reimbursable meal. Foods are creditable based on the following:

- (1) Nutrient content,
- (2) Customary function in a meal,
- (3) USDA regulations,
- (4) The Food and Drug Administration's (FDA) Standards of Identity,

(5) State Agency policies, which includes the non creditable foods list as defined in .

N. "Current income" means income received during the month prior to application for free or reduced-price meals and multiplied by 12. If such income does not accurately reflect the household's annual income, income shall be based on

the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

O. "Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

P. "Department" means the New Mexico Children, Youth and Families Department.

Q. "Disallowance" means the monetary repayment to the state agency resulting from a meal or meals that have been determined ineligible for reimbursement due to:

(1) Failure to record meals, types of food and amounts prepared, in the Menu Record Book;

(2) Meals which lack one or more required components;

(3) Meals which contain a non creditable food as a required component; or

(4) The menu records and/or food receipts indicate that not enough food was served, or recorded as served, to have given each participant the required minimum portion size of each component. The state agency uses the USDA Food Buying Guide to determine how many servings of each component were available.

R. "Documentation" means the completion of information to determine the eligibility for free and reduced price meals.

S. "Enrolled child" means a child whose parent or guardian has submitted annually to an institution a signed document which indicates that the child is enrolled for child care. In addition, for the purposes of calculations made by sponsoring organizations of family day care homes in accordance with Code of Federal Regulations 7 CFR 226.13(d)(3)(ii) and 226.13(d)(3)(iii), "enrolled child" (or "child in attendance") means a child whose parent or guardian has submitted a signed document which indicates the child is enrolled for child care; who is present in the day care home for the purpose of child care; and who has eaten at least one meal during the claiming period.

T. "Enrolled participant" means an "Enrolled child" (as defined in this section) or "Adult participants" (as defined in this section).

U. "Family" means, in the case of children, a group of related or non related individuals, who are not residents of an institution or boarding house, but who are living as one economic unit or, in the case of adult participants, the adult partici-

pant, and if residing with the adult participant, the spouse and dependent(s) of the adult participant.

V. "Family Style Meals Service" means a style of meal service in which both adults and children participate in setting the table, serving the food, eating together and cleaning up after the meal.

W. "FDPIR" means Food Distribution Programs on Indian Reservations.

X. "Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

Y. "FNS" means the Food and Nutrition Service of USDA.

Z. "FNSRO" means the appropriate Regional Office of the Food and Nutrition Service.

AA. "Food service equipment assistance" means Federal financial assistance formerly made available to State agencies to assist institutions in the purchase or rental of equipment to enable institutions to establish, maintain or expand food service under the Program.

AB. "Food service management company" means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals with or without milk for use in the Program.

AC. "Food Stamp household" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

AD. "Free meal" means a meal served under the Program to (a) a participant from a family which meets the income standards for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or qualified TANF reciprocity, is a Head Start participant, belongs to a FDPIR household, or to (c) an adult participant who is automatically eligible for free meals by virtue of food stamp reciprocity or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of (a), (b) or (c), neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

AE. "Functionally impaired adult" means chronically impaired disabled persons 18 years of age or older, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, who are physically or mentally impaired to the extent that their capacity for independence and their ability

to carry out activities of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using telephones and directories, or using a post office. Marked limitations refer to the severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

AF. "Household" means "family" as defined in U of this section.

AG. "Income standards" means the family size and income standards prescribed annually by USDA for determining eligibility for free and reduced-price meals under the National School Lunch Program and the School Breakfast Program.

AH. "Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants from organizations or individuals.

AI. "Independent center" means a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

AJ. "Infant cereal" means any iron-fortified dry cereal specially formulated for and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

AK. "Infant formula" means any iron-fortified infant formula intended for dietary use as sole source of food for normal healthy infants served in liquid state at manufacturer's recommended dilution.

AL. "Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the state agency to assume final administrative and financial responsibility for Program operations.

AM. "Meals" means food which is served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part.

AN. "Medicaid participant" means an adult participant who receives assistance under Title XIX of the Social

Security Act, the Grant to States for Medical Assistance Programs-Medicaid.

AO. "Menu Record Book" means the official record which is used to document the types of food served and the quantities used to meet USDA Meal Pattern requirements by sponsoring organizations of Child Care Centers, Adult Day Care Centers, After school hours programs and Head Starts, as well as by sponsors participating in the Summer Food Service Program.

AP. "Milk" means pasteurized fluid types of unflavored or whole flavored milk, low-fat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (8 months up to 1 year of age), "milk" means unflavored whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

AQ. "Non creditable foods" (also called "Other Foods" or "Extras") means foods that do not meet the criteria for a creditable food, as determined by the state agency, and appear on the CYFD/FNB non creditable foods list. A meal may contain both creditable and non creditable foods. Non creditable foods are allowed to supply calories to meet the energy needs of growing children or to improve acceptability of the rest of the meal. However, non creditable foods may not be used to meet the meal pattern requirements.

AR. "Non pricing program" means an institution in which there is no separate identifiable charge made for meals served to participants.

AS. "Non profit food service" means all food service operations conducted by the institution principally for the benefit of enrolled participants for which all of the Program reimbursement funds are used solely for the operations or improvements of such food service.

AT. "Non reimbursable" means those meals for which a sponsor cannot receive the established reimbursement rate.

AU. "Non residential" means that the same participants are not maintained in care for more than 24 hours on a regular basis.

AV. "Not recommended foods" means creditable foods which are generally higher in fat, sugar and salt than recommended foods of the same food group.

AW. "OIG" means the Office of the Inspector General, which is the

federal enforcement agency of the Department of Justice.

AX. "Operating costs" means expenses incurred by an institution in serving meals to participants under the program, and allowed by the State agency financial management institution.

AY. "Outside-school-hours care center" means a public or private non-profit organization, or a proprietary Title XX center, as defined in this section ("Proprietary Title XX center"), licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the program as independent centers or under the auspices of a sponsoring organization.

AZ. "Participants" means "Children" or "Adult participants" as defined in this section.

BA. "Pricing program" means an institution in which a separate identifiable charge is made for meals served to participants.

BB. "Program" means the Child and Adult Care Food Program authorized by section 17 of the National School Lunch Act, as amended.

BC. "Program payments" means financial assistance in the form of start-up payments, advance payments, expansions funds or reimbursement paid or payable to institutions for operating costs and administrative costs.

BD. "Proprietary Title XIX center" means any private, for profit center (a) providing non-residential adult day care services for which it receives compensation from amounts granted to the States under title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual re-application for Program participation.

BE. "Proprietary Title XX center" means any private, for-profit center (a) providing non residential child or adult day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act and (b) in which Title XX beneficiaries were not less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, in the calendar month preceding initial application or annual re-application for Program participation.

BF. "Recommended foods" means creditable foods, as determined by the state agency, which are naturally low in fat, sugar and salt. They are generally less processed than other foods of the same component.

BG. "Reduced-price meal"

means a meal served, and reimbursed, under the Program to a participant from a family which meets the income standards for reduced-price school meals.

BH. "Reimbursement" means federal financial assistance paid or payable to institutions for Program costs within the rates assigned by USDA.

BI. "Reimbursable meals" means those meals that are served as a unit and meet the following requirements: a) the USDA Meal Pattern Requirements; b) Federal regulations; and c) State Agency policies relating to creditable and reimbursable meals.

BJ. "SSI participant" means an adult participant who receives assistance under Title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program.

BK. "Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in; (a) one or more day care homes; (b) a child care center, outside-school-hours care centers, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any child care center, adult day care center and outside-school-hours care center which is part of the same legal entity as the sponsoring organization, and which are proprietary Title XX centers, as defined in this section.

BL. "Start-up payments" means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing or expanding a food service program in day care homes and initiating successful Program operations.

BM. "State" means the State of New Mexico.

BN. "State agency" means the Children, Youth and Families Department

BO. "Suspension" means the discontinuance of Program benefits, including claim reimbursement, for a specific time period up to 12 months due to non compliance with significant program or Self Certification Registration Requirements. Once the non compliance is corrected the suspension is lifted and program participation can begin again. Appeal rights are

given at time of suspension.

BP. "TANF assistance unit" means any individual or group of individuals which is currently certified to receive assistance under the Temporary Assistance to Needy Families Program in a state where the standard of eligibility for TANF benefits does not exceed the income eligibility guidelines for free meals under this part.

BQ. "Termination" means the cancellation of the Child and Adult Care Food Program agreement between a participating sponsor and the State agency or between a sponsoring organization of day care homes and a participating day care home provider. Terminations of day care home providers by a sponsor may be "for cause" or "for convenience," and appeal rights are given.

(1) Terminations for cause result from serious non compliance(s) with Program regulations or Self Certification Registration Requirements or for fraudulent activity committed by the provider.

(2) Terminations for convenience result from a mutual agreement between the provider and the sponsor to transfer the provider to another sponsor, or because of a request from a provider to voluntarily terminate their agreement. If the provider chooses to terminate their agreement, they must wait thirty days before signing an agreement with another sponsor. If a provider is transferred to another sponsor under mutual consent, the thirty day waiting period is waived, but the provider cannot claim with the new sponsor until the following month, and may only request a transfer once a year.

BR. "Title XVI" means Title XVI of the Social Security Act which authorizes the Supplemental Security Income for the Aged, Blind, and Disabled Program-SSI.

BS. "Title XIX" means Title XIX of the Social Security Act which authorizes the Grants to States for Medical Assistance program-Medicaid.

BT. "Title XX" means Title XX of the Social Security Act.

BU. "Uniform Federal assistance regulations" means the U.S. Department of Agriculture's regulations, 7 CFR part 3015, establishing Department-wide policies and standards for administration of grants and cooperative agreements.

BV. "Verification" means a review of the information reported by institutions to the state agency regarding the eligibility of participants for free or reduced-price meals, and at State discretion, any other information required on the application which is defined as "Documentation" in subsection R of 8.2.2.7 NMAC. However, if a food stamp case number is

provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household; or, for an adult participant, if a food stamp case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp household or is a current SSI or Medicaid participant.

[8.2.2.7 NMAC – Rp 8 NMAC 2.2.7, 11-30-01]

#### **8.2.2.8 APPLICATION APPROVAL, RENEWAL AND DENIAL:**

A. The Children, Youth and Families Department (CYFD)/ Family Nutrition Bureau (FNB) may enter into an agreement with any non-profit (501- (c) (3) organization or proprietary Title XX organization which meets the established criteria.

B. CYFD does not enter into an agreement with any new applicant sponsoring organization of family day care homes which does not meet the new sponsor criteria established by the Family Nutrition Bureau. The criteria for candidates of sponsorship of family day care homes are as follows: The new applicant must:

(1) Demonstrate the need for a new sponsorship by supplying a list of fifty eligible family child care homes which have expressed an interest in participating in the CACFP;

(2) Submit documents to establish financial stability and accountability;

(3) Demonstrate their method for covering non-program related costs;

(4) Document an adequate level of staffing to administer the CACFP and to provide a responsible sponsor representative, and a sub-office in the service area within the state of New Mexico, for program clients and state agency staff during normal working hours;

(5) Submit a training plan, describing how the sponsor ensures administrative staff are trained in program requirements;

(6) Provide assurance that they will not employ an individual in a responsible administrative capacity who has been convicted of embezzlement or any similar crimes that would have a harmful effect on the administration of the program;

(7) Submit a copy of the organization's by-laws, detail of the organization's structure, officers of the organization and a list of their responsibilities;

(8) Submit information about the organization's board of directors, including their responsibility in program management, their role in approving or determining

fiscal actions and the relationship of board members to others in the organization;

(9) Provide assurance that they will not recruit or allow participation of any child care provider who is terminated from participation in CACFP for cause by another sponsoring agency, unless CYFD has granted prior approval under 8.17.2.13 NMAC for that child care provider to participate; and

(10) Submit a complete and accurate application for sponsorship.

C. Any non-profit organization, or proprietary Title XX center, wishing to participate as a sponsoring organization in the Child and Adult Care Food Program completes and submits an application packet that includes at a minimum: a management plan, an administrative budget, non-discrimination and non-pricing policy statement, signed agreement, certificate of authority, copy of current letter to households, civil rights questionnaire, certification regarding lobbying, copy of family day care home sponsor's appeal procedures and internal policies and procedures, public release statement, an affidavit or certification statement that the organization has not been terminated from any publicly funded program for failure to comply with that program's requirements and documentation that all institutions under the sponsor are in compliance with licensing, registration and other approval provisions. In addition, all current and prospective sponsoring organizations must be able to demonstrate that they are; Financially viable, Administratively capable, and Have internal controls in place to ensure accountability.

(1) For proprietary Title XX centers, documentation is submitted that they are currently providing non residential day care services for which they receive compensation under Title XX of the Social Security Act, and certification that not less than 25 percent of the enrolled participants in each such center during the most recent calendar month were Title XX beneficiaries.

(2) Institutions are notified by the state agency of approval or denial of their application for sponsorship in writing within 30 days of filing a complete and correct application. If an institution submits an incomplete application, the state agency will notify the institution-of the incomplete application and provide te technical assistance. CYFD will renew the agreement with a sponsoring organization upon approval of the institution's renewal application.

(3) Applications for participation by all interested or current sponsors of child care centers, adult day care centers, after-school-hours-programs, Head Starts and sponsoring organizations of day care

homes are required to be submitted annually, unless program approval has been granted for two or three year terms, in which case only appropriate renewal forms need to be submitted. All information required for approval is submitted with the application or renewal forms.

(4) Initial and renewal applications for the fiscal year beginning October 1 are submitted to CYFD by August 15, and no later than September 30 of that year.

(5) Renewal applications submitted after September 30 will be approved effective the date all required documents are submitted and may result in loss of reimbursement.

D. CYFD does not enter into an agreement with any applicant institution which CYFD determines to have been seriously deficient at any time in its operation of any federal child nutrition program, except that CYFD may enter into an agreement with such an institution when, with FNS concurrence, it is determined that all deficiencies have been corrected.

E. CYFD terminates the program agreement with any institution which it determines to be seriously deficient in the operation of the Program, and which fails to satisfactorily and permanently correct the seriously deficient status by the date prescribed by CYFD.

(1) CYFD provides an institution at least 60 days to correct problems before terminating the institution for being seriously deficient.

(2) FNB notifies FNS within 15 days of the termination of an institution for failure to correct a serious deficiency. The organization is placed on a national list of seriously deficient institutions.

(3) Serious deficiencies which are grounds for denial of applications and for termination of program participation include, but are not limited to, any of the following:

(a) Non-compliance with the applicable bid procedures and contract requirements of federal child nutrition program regulations;

(b) Submission of false information to CYFD;

(c) Failure to return to CYFD any advance payments which exceeded the amount earned for serving eligible meals;

(d) Failure to maintain adequate records;

(e) Failure to adjust meal orders to conform to variations in the number of participants;

(f) Claiming of Program payments for meals not served to participants;

(g) Service of a significant number of meals which did not include required quantities of all meal components;

(h) Continued use of food service management companies that are in violation of health codes;

(i) Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan;

(j) History of administrative or financial mismanagement in any federal child nutrition program;

(k) Claiming of Program payments for meals served by a proprietary Title XX center during a calendar month in which less than 25 percent of enrolled participants were Title XX beneficiaries;

(l) Failure of sponsoring organizations of day care homes to implement appropriate procedures, as defined by federal regulation, for determining tier classifications of family day care homes; or

(m) Failure to respond to state agency requests for investigations of integrity report findings.

[8.2.2.8 NMAC – Rp 8 NMAC 2.2.8, 11-30-01]

#### **8.2.2.9 INSTITUTIONAL APPEAL:**

A. The Children, Youth and Families Department Hearing process and the Family Nutrition Bureau Appeal Policy will be followed by institutions for the following state actions:

(1) A denial of an institution's application for participation;

(2) A denial of an application submitted by a sponsoring organization on behalf of a facility;

(3) A termination of the participation of an institution or facility;

(4) A suspension of an institution's agreement;

(5) A denial of an institution's application for start up funds;

(6) A denial of advance payment;

(7) A denial of all or part of a claim for reimbursement, except for late submission as stated in 7 CFR 226.10(e);

(8) A denial of forwarding an exception request by an institution or sponsoring organization for payment of a late claim or a request for upward adjustment to a claim to FNS; or

(9) A demand for the remittance of an overpayment, or any other action affecting the participation of an institution in the Program or the institution's claim for reimbursement.

B. The appeal procedures are made available in writing each year to all institutions at the time of application for participation in the program and at any time after that upon request.

C. Appellants receive notice of decisions rendered in a timely manner and of a fair and impartial hearing before an independent official at which the

institution may be represented by legal counsel.

D. The determination by the state review official is the final administrative determination afforded to the appellant.

E. Appeals are not allowed on decisions made by FNS on requests for exceptions to the claims submission deadlines as stated in 7 CFR 226 10 (e), or on requests for upwards adjustments to claims.

[8.2.2.9 NMAC – Rp 8 NMAC 2.2.9, 11-30-01]

#### **8.2.2.10 PROGRAM ASSISTANCE AND REVIEW:**

A. The Children, Youth and Families Department, Family Nutrition Bureau provides at least annual training and technical assistance, as needed, to sponsoring organizations.

(1) CYFD/FNB conducts ongoing program reviews of sponsoring organizations to assess compliance with state and federal guidelines for operating the Child and Adult Care Food Program. The state agency may conduct a review of any institution, at any time, without prior notification in order to ascertain program compliance.

(2) CYFD/FNB annually reviews at least one-third of all sponsoring organizations.

(3) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 providers will be reviewed at least once every three years. Reviews of sponsoring organizations will include reviews of at least 15 percent of their child care, adult day care and outside-school-hours care centers and 10 percent of their day care homes. More than 10 percent of day care home providers may be reviewed if necessary.

(4) Sponsoring organizations with more than 200 homes will be reviewed at least once every two years. Reviews of such sponsoring organizations will include reviews of at least 10 percent of the first 200 homes, 5 percent of the next 800 homes, and 2.5 percent of all homes in excess of 1,000 homes.

B. Reviews are conducted for newly participating sponsoring organizations with five or more child care or adult day care facilities, and all home sponsoring organizations, within the first 90 days of program operations.

(1) CYFD conducts pre-approval visits to all new private institutions prior to approval of their applications

(2) CYFD conducts additional visits to any institution participating in the

Program which the state agency has determined to have a history of significant deficiencies.

(3) CYFD conducts initial reviews of all newly participating center sponsors within six months of program approval.

(4) CYFD conducts reviews of for-profit centers at least every other year.

(5) CYFD reviews all center sponsors at least once every three years.

(6) CYFD reconciles at least one full month of a center's claim as a sample during administrative reviews.

(7) CYFD provides technical assistance to center staff at least yearly and upon request.

C. CYFD conducts follow up visits of sponsors found to be seriously deficient within 60 days of the notification to the sponsor of a seriously deficient status. [8.2.2.10 NMAC – Rp 8 NMAC 2.2.10, 11-30-01]

**8.2.2.11 COMPLAINT AND REFERRAL PROVISIONS:** CYFD promptly investigates complaints received by the public or other state offices as well as irregularities noted in connection with the operation of the Program, and takes appropriate action to correct any irregularity or deficiency.

A. CYFD maintains a file of all such investigations and related actions taken.

B. CYFD, while conducting complaint or referral investigations of approved sponsors or facilities, determines compliance with the child care licensing regulations (8.16.2 NMAC) and registration Standards (8.17.2 NMAC) used to establish eligibility.

C. Institutions found to be in non compliance receive written notice and are required to correct all violations. CYFD makes the determination that the institution has corrected all violations.

D. CYFD terminates Program participation of institutions if serious violations are not corrected within 60 calendar days of written notification to the institution. The offending institution is provided with notice of fair hearing right

E. CYFD immediately terminates participation of providers when the health and safety of the children is imminently threatened.

F. When CYFD observes, during investigations, violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed or other approved capacity, CYFD promptly refers such violations to the approved authority.

G. CYFD denies reim-

bursement to providers for program meals served to attending children in excess of the licensed or other approved capacity.

[8.2.2.11 NMAC – Rp 8 NMAC 2.2.11, 11-30-01]

**8.2.2.12 FINANCIAL MANAGEMENT:**

A. CYFD approves all institution administrative budgets submitted with the application.

(1) CYFD approves all budget adjustment requests with adequate justification.

(2) CYFD approves all changes made to the Management Plan.

(3) Institutions are responsible for accounting for costs correctly and for maintaining sufficient supporting documentation to demonstrate that costs claimed have been incurred, are allowable to the program and comply with State policies, financial management requirements and with FNS Instruction 796-2, Revision 3.

(4) Program costs which are not properly documented and recorded pursuant to generally accepted accounting principles, State agency financial management requirements, the Federal Acquisition Regulations, Part 31 (for profit centers) the applicable OMB Circulars and FNS Instruction 796-2, Revision 3, are unallowable.

B. CYFD approves applications and issues start-up payments to eligible sponsoring organizations, and monitors the use of these payments.

C. CYFD approves applications and issues advance payments to eligible sponsoring organizations, and monitors the use of these payments.

(1) CYFD recovers outstanding start-up and advance payments from institutions which, in the opinion of the State agency, are not able to earn these payments.

(2) CYFD issues Termination Payments when an institution voluntarily (termination for convenience) or involuntarily (termination for cause) ceases program operation, per FNS Instruction 796-2, Revision 3.

D. Claims for reimbursement are submitted by institutions by the tenth of the month following the month being claimed and report information in accordance with the financial management system established by CYFD.

(1) Each institution certifies that the claim is correct and that records are available to support the claim.

(2) Independent proprietary Title XX centers submit a list of the eligible children with beginning and ending contract dates to validate that not less than 25 percent of enrolled participants were Title XX beneficiaries in the month claimed. CYFD will

randomly require proprietary Title XX centers to submit copies of contracts of eligible children claimed to validate the 25 percent requirement.

(3) All valid claims are paid within 45 calendar days of receipt. Within 15 calendar days of receipt of any incomplete or incorrect claim which must be revised for payment, the state agency notifies the institution as to why and how such claim must be revised.

(4) All records to support the claim are retained for a period of three years after the submission of the final claim for the fiscal year to which they pertain.

(5) All accounts and records pertaining to the Program are made available, upon request, to representatives of CYFD, USDA and of the US General Accounting Office for audit or review.

E. CYFD ensures that payment is not made for meals served to participants attending in excess of the authorized capacity of the institution.

F. CYFD maintains a financial management system in accordance with the Uniform Federal Assistance Regulations, 7 CFR part 3015, and FNS Instruction 796-2, Revision 3 to identify allowable program costs and establish standards for institutional record keeping and reporting.

[8.2.2.12 NMAC – Rp 8 NMAC 2.2.12, 11-30-01]

**8.2.2.13 AUDIT REQUIREMENTS:**

A. Audits of sponsoring organizations are conducted in accordance with the Office of Management and Budget Circulars A-133 and A-110 and the U.S. Department of Agriculture's Uniform Federal Assistance Regulations (7 CFR Part 3015). Title XIX and Title XX proprietary institutions not subject to organization-wide audits are audited by the state agency at least once every two years.

B. In accordance with CYFD policies, audits are due to CYFD no later than nine months after the close of the sponsoring organization's fiscal year.

[8.2.2.13 NMAC – Rp 8 NMAC 2.2.13, 11-30-01]

**8.2.2.14 PAYMENT PROVISION:**

A. Congress assigns rates of reimbursement for centers, annually, on the basis of family-size and income information reported by each institution.

B. Institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, participants from families meeting the eligibility standards for reduced-price meals, and participants from families not meeting such guide-



lines.

C. The method used by the state agency to reimburse providers participating in the Program is meals times rates payment.  
[8.2.2.14 NMAC – Rp 8 NMAC 2.2.14, 11-30-01]

**8.2.2.15 CLAIMS AGAINST INSTITUTIONS:** CYFD disallows any portion of a claim for reimbursement and recovers any payment to an institution not properly payable. CYFD notifies all institutions of the reasons for any over claim or demand for repayment, and allows the institution full opportunity to submit evidence on appeal as provided in section 9 of this policy.

[8.2.2.15 NMAC – Rp 8 NMAC 2.2.15, 11-30-01]

**8.2.2.16 INSTITUTION OPERATIONAL PROVISIONS:**

A. Each sponsoring organization is solely responsible for the administrative and financial management of the program, including the actions of their employees. Sponsoring organizations may not use independent contractors to manage the program.

B. Each sponsoring organization provides adequate supervisory and operational personnel for monitoring and management of the program.

C. Each sponsoring organization establishes procedures to collect and maintain all necessary program records as described in the Code of Federal Regulations, 7 CFR 226.15 e(1), (3), (4), (7), (8), (9), (10), (11), and (12).

D. Sponsoring organizations of day care homes maintain their provider, participant, meal attendance, monitoring visits and claim payment records in an electronic format using a state agency approved computer data base program. Sponsors submit their data electronically on a regular basis and as requested by CYFD in a format compatible with CYFD's data base program.

E. Each sponsoring organization is required to maintain appropriately staffed offices and phone lines for access by program clients and CYFD staff.  
[8.2.2.16 NMAC – Rp 8 NMAC 2.2.16, 11-30-01]

**8.2.2.17 SPONSORING ORGANIZATION PROVISIONS:**

A. Sponsoring organizations of day care homes monitor the Program at all day care homes under their respective jurisdiction according to the schedule outlined in 7 CFR 226.16 d (1), (2), (3), and (4). Additionally, sponsors are

required to review each day care home participating with the organization at least four times during the provider's application year and follow the prescribed procedures for various types of home visits to be completed, in addition to the requirements listed in 7 CFR 226.16(d).

B. Sponsoring organizations of day care homes maintain information concerning dates and amount of disbursement to each day care home and information concerning the dates and location of each day care home review.

C. Sponsoring organizations of day care homes provide payments of claim reimbursement funds to their day care home providers within five working days of receipt of funds from CYFD.

D. Sponsoring organizations of day care homes maintain their data on providers, program participants, monitoring visits, meal attendance and claim payments made to providers, in a CACFP software system approved by the state agency in order to provide consistent data reporting. Sponsoring organizations of day care homes respond to CYFD inquiries regarding possible duplicate participants and/or providers, monitoring visits that appear to be out of compliance and any other program integrity questions in a timely manner.

E. Sponsoring organizations of child care and adult day care facilities provide adequate supervision and monitoring of the program at all child care and adult day care facilities under their jurisdiction and according to federal regulations 7 CFR 226.16(d) and (e).

(1) Child care centers are state licensed, have tribal or military approval and comply with federal regulations 7 CFR 226.17.

(2) Adult day care centers are state licensed, have tribal or military approval and comply with federal regulations 7 CFR 226.19a.

(3) Outside-school-hours care centers are state licensed, have tribal or military approval and comply with federal regulations 7 CFR 226.19.

(4) Family day care homes are state licensed or registered, have tribal or military approval, and comply with federal regulations 7 CFR 226.18.

[8.2.2.17 NMAC – Rp 8 NMAC 2.2.17, 11-30-01]

**8.2.2.18 REQUIREMENTS FOR MEALS:**

A. Each meal served in the Program complies with USDA meal patterns as outlined in federal regulations 7 CFR 226.20 and with the Family Nutrition Bureau creditable foods list.

(1) Non-creditable foods are not used to meet the meal pattern component requirement. Some foods which are non-creditable are: hot dogs, sausage, bologna, salami, and other sausage type lunch meats and doughnuts. All items which are asterisked (\*) on the non creditable list supplied by CYFD are also not reimbursable, and their purchase price is subtracted from total food costs by CYFD review staff during administrative and other on site reviews.

(2) Infants are provided with meals which follow USDA meal pattern for infants. Meals are not reimbursed if parents provide any components of an infant meal, with the exception of milk/formula as follows: The provider/center is responsible for providing one milk-based formula only. The parent is notified in writing of the availability of this formula. If the parent elects to use a different formula which the parent provides, the infant may still be claimed for reimbursement if the infant is at least four months old and is receiving other components at the same meal. Care givers can not deviate from the infant meal pattern without a doctor's written statement which specifies what foods to allow or not allow for the individual infant.

B. Special dietary needs and requirements of children are met, with the approval of a medical authority. This includes, but is not limited to, diabetic diets, high calorie, lower calorie, mechanically altered, and substitutions for food allergies and/or intolerance. This does not include enteral/parenteral formulas which may be covered by medical insurance or Medicare/Medicaid. Providers are not permitted to interpret diet orders, rather the order must specify any texture modifications, foods to be eliminated and which foods to substitute for the eliminated foods, and other diet modifications.

C. Child Nutrition (CN) Labeled products are not required for CACFP programs, and do not necessarily meet the meal requirements for the state agency creditable foods list. For combination food items purchased which do not have a CN label, the sponsor must provide a product analysis sheet from the manufacturer.

D. Breeding on creditable meat items, such as chicken nuggets, is not counted as a bread alternate unless a CN label identifies that the breeding meets the required bread alternate amount.

E. Family Style Meal Service (FSMS) or a modified version thereof, where all required components of the meal are placed on the table at the start of the meal and children are encouraged to take a portion from each meal component, is required at all CACFP centers and homes,

unless there is a documented reason why FSMS cannot be implemented.

F. Institutions, with the exception of family day care homes, document on a daily basis the type and number of meals served in the Menu Record Book provided by CYFD.

(1) Family day care home providers document on a daily basis the types and number of meals served to enrolled children on an approved attendance sheet.

(2) Meals served by family day care home providers, including components, are recorded on the menu records which are approved by CYFD.

(3) Family day care home providers are not required to document quantities served, but are required to offer at least the minimum required portion size of each component for each meal.

(4) Family day care home providers are required to specify the times when approved meals are regularly served. Meal service is required to begin within fifteen minutes before or after of the documented meal times as documented on the provider-sponsor agreement.

[8.2.2.18 NMAC – Rp 8 NMAC 2.2.18, 11-30-01]

#### **8.2.2.19 FOOD SERVICE MANAGEMENT COMPANIES:**

A. Institutions which contract with a food service management company remain responsible for ensuring that the food service operation conforms to its agreement with CYFD.

B. All procurement of meals from food service management companies adhere to the procurement standards set forth in 7 CFR 226.22, Procurement Standards.

C. Institutions with Program meal contracts of an aggregate value in excess of \$10,000 formally advertise such contracts and comply with the federal procedures in 7 CFR 226.21, which are intended to prevent fraud, waste and program abuse.

D. The institution and the food service management company enter into a standard contract as required in 7 CFR 226.6(I).

E. A copy of the contract between each institution and the food service management company is submitted to CYFD prior to the beginning of Program operations under the subject contract.

F. Proposed additional provisions to the standard contract are submitted to CYFD for approval.

[8.2.2.19 NMAC – Rp 8 NMAC 2.2.19, 11-30-01]

#### **8.2.2.20 FREE AND REDUCED-PRICE MEALS:**

A. Each institution submits, at the time the institution applies for Program participation, a written policy statement concerning free and reduced-price meals to be uniformly used in all child care and adult day care facilities under its jurisdiction.

B. Institutions are not approved for participation unless the free and reduced price policy statement, in New Mexico called the Non-Pricing Policy Statement, has been approved. The policy statement is provided by CYFD and included with each initial application.

C. Each institution annually provides the information media serving the area from which the institution draws its attendance with a public release.

(1) The public release issued by all institutions, other than sponsoring organizations of day care homes, includes the USDA Income Eligibility Guidelines for Free and Reduced-Price Meals.

(2) The public release issued by sponsoring organizations of day care homes includes the Income Eligibility Guidelines for Reduced-Price Meals.

(3) The public release issued by all institutions announce the availability of meals at no separate charge and state that meals are available to all participants without regard to race, color, national origin, sex, age or disability.

D. All institutions, other than sponsoring organizations of day care homes, distribute applications for free and reduced-price meals to the families of participants enrolled in the institution.

(1) Sponsoring organizations of day care homes distribute free and reduced-price applications to day care home providers who wish to enroll their own children in the Program and, upon request, to parents of children in Tier 2 providers' homes wishing to receive Tier 1 rates.

(2) Applications for free and reduced price meals are made available by CYFD and are completed according to 7 CFR 226.23(e)(1).

(3) Completed applications for free and reduced-price meals are valid for 12 months and are completed annually.

(4) Free and reduced price applications will include:

(a) Names of all household members;

(b) The signature of an adult member of the household

(c) Social security number of the adult household member signing the application or an indication that the adult household member does not possess one;

(d) Household income received

by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income.

(5) For a child who is a member of a food stamp or FDPIR household only the following is required:

(a) The name(s) and appropriate food stamp or FDPIR case number(s); and

(b) The signature of an adult member of the household.

(6) For a child in a Tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals, the following is required:

(a) The name(s), appropriate case number(s) (if the program utilizes case numbers), and the name(s) of the qualifying program(s) for the child(ren), and the signature of an adult member of the household; or

(b) If the sponsoring organization or day care home possesses it, official evidence of the household's participation in a qualifying program (submission of a free and reduced price application by the household is not required in this case).

(7) For a child who participates in Head Start, only the official Head Start enrollment document which certifies that the child is eligible based on income guidelines, is required.

(8) For an adult participant who is a member of a food stamp or FDPIR household or is an SSI or Medicaid participant, as defined in this section, only the following is required:

(a) The name(s) and appropriate food stamp or FDPIR case number(s) for the participants or the adult participant's SSI or Medicaid identification number, as defined in this section, and

(b) The signature of an adult member of the household.

(9) Additional documentation requirements for Tier 1 classifications is required as outlined in the Final Rule of the Improved Targeting of Day Care Home Reimbursement regulations.

E. Institutions distribute a letter to households or guardians of enrolled participants in order to inform them of the procedures regarding eligibility for free and reduced-price meals. Letters to households are provided by CYFD and are completed according to 7 CFR 226.23(e)(2).

[8.2.2.20 NMAC – Rp 8 NMAC 2.2.20, 11-30-01]

#### **8.2.2.21 VERIFICATION OF PROVIDER ELIGIBILITY:**

A. CYFD conducts verification of eligibility for free and reduced-price meals on an annual basis, in accordance with federal regulations 7 CFR 226.23(h).

B. Sponsoring organizations of Family day care homes are responsible for verifying the income eligibility for providers who are classified as Tier 1 based on household income.

[8.2.2.21 NMAC – Rp 8 NMAC 2.2.21, 11-30-01]

### 8.2.2.22 MONETARY SANCTIONS AND PENALTIES:

A. CYFD imposes monetary sanctions in the form of an over claim for deficiencies cited at child care centers which involve ineligible meals, lack of adequate milk purchases, and for failure to record appropriate food production amounts in the Menu Record Book. In addition, center sponsors are required to spend at least 70% of the monthly reimbursement on direct food costs and 30% on non food costs. Lower food cost percentages are approved on an individual basis.

(1) Lack of documentation to verify sufficient milk purchases to meet the required portion size for each age group, as documented in the menu record book and claimed for any month reviewed, results in a disallowance. In the case of centers using family style dining, documentation is only required to show purchases of milk were sufficient to meet 85 percent of the total required portion size at each main meal claimed for the month. The difference between the required amount of milk, based on portion size requirements, and the total verified purchases, is disallowed at the price per unit purchased.

(2) Lack of documentation in the form of receipts, invoices or other documents to show that all reimbursements received in a current fiscal year are spent on the meal service and for the benefit of the participants will result in any unspent monies being rolled over into a food service account for use in the next fiscal year.

(3) Reimbursement for meals, or snacks, claimed which lacked components is disallowed.

(4) Reimbursement for meals or snacks claimed which include non creditable foods as one of the required meal components, is disallowed.

(5) Reimbursement for meals claimed when food production and recorded amounts prepared indicate there was not enough food prepared to provide the minimum serving size for all meals claimed for eligible children at that meal service, is disallowed. Reimbursement for those meals in excess of what the food production amounts

would satisfy, based on food production calculations using the Food Buying Guide, is disallowed.

(6) Reimbursement for meals claimed when there is insufficient, or lack of, documentation of the quantity and types of foods served, is disallowed.

(7) Reimbursement for meals claimed in excess of two main meals and one supplement, or two supplements and one main meal per child, per day, is disallowed.

(8) Reimbursement for meals claimed when meal count reports are not properly completed, or when any other required documentation to support the meals claimed, is not available, is disallowed. Reimbursement for meals claimed in excess of verified meal counts is disallowed.

(9) Reimbursement for meals served during unapproved meal time periods is disallowed.

(10) Reimbursement for individual meals claimed in excess of recorded attendance or authorized capacity is disallowed.

(11) Reimbursement for all meals claimed for any month by for-profit Title XX centers when less than 25 percent of enrolled participants are Title XX beneficiaries, is disallowed.

B. CYFD imposes over claims, in the form of repayment of one month's administrative monies, on sponsoring organizations of family day care homes for each of the following deficiencies:

(1) Failure to complete four monitoring visits per provider per program year,

(2) Failure to conduct required types of visits during the program year, including,

(a) Two of the four visits are conducted during a meal service, including snacks.

(b) One supper visit is conducted if the provider is approved for suppers.

(c) One weekend visit is conducted if the provider is approved for weekend meals.

(d) Two of the four visits are unannounced, except in remote rural areas where only one of the four visits is to be unannounced. At least one of the unannounced visits is conducted during a meal service. Different types of visits may be combined, i.e., weekend and meal.

(e) A 28 day follow up visit is conducted for all new program participants.

(3) Failure to ensure that no more than six months elapse between monitoring visits.

(4) Continued reimbursement of providers who fail to attend the required annual training hours, including two hours

of specific CACFP related training, during their twelve month program year.

(5) Failure to ensure that no more than 20 percent of sampled providers during an administrative review are out of compliance and reimbursed for ineligible children or ineligible meals.

(6) Failure to ensure that no more than 20 percent of providers visited during an administrative review are out of compliance with daily menu and attendance record keeping requirements.

(7) Failure to complete and document 3% (or a minimum of 3) parent audits of total providers on a monthly basis as part of the organization's quality assurance and integrity efforts.

C. CYFD imposes monetary sanctions in the form of over claims to sponsoring organizations of family day care homes for the following deficiencies:

(1) Reimbursement paid for meals served to ineligible children;

(2) Reimbursement paid for ineligible meals or meals served during unapproved time periods;

(3) Reimbursement paid for meals served that do not follow the USDA meal pattern as described in 7 CFR 226.20, and the state agency non creditable foods list;

(4) Reimbursement for meals served to children not properly enrolled;

(5) Reimbursement paid for meals served to providers' own children without current and complete Income Eligibility Applications on file;

(6) Reimbursement paid for meals at Tier 1 rates to providers who are incorrectly classified as Tier 1. The difference between Tier 1 and Tier 2 reimbursement paid to providers, is disallowed; and

(7) Reimbursement paid for meals at Tier I rates served by Tier II providers who do not have adequate Tier I eligibility documentation for non resident children.

D. Over claims are imposed on Family day care home providers for not maintaining daily menu and attendance records, for claiming meals when eligible enrolled children are not present, for claiming meals which do not meet meal pattern requirements, or when non resident children are not present at the meal service for which providers' own children are claimed. Any provider found to have committed fraud is terminated from program participation and may be subject to criminal prosecution.

E. Family day care home providers are considered seriously deficient by the sponsoring organization for the following non compliances discovered during monitoring visits:

(1) The provider is found not at home, during stated hours of child care, on three consecutive unannounced visits and the absences are not excused;

(2) Chronic non compliance with Program regulations, including menu and record keeping requirements, on three consecutive visits during the Self Certification registration period;

(3) Chronic non compliance with significant health and safety Requirements for Registration of Non Licensed Family Child Care Homes, 8.17.2 NMAC, during the Self Certification period;

(4) Failure to comply with the annual training requirements, as stated in the Requirements Governing Registration of Non-Licensed Family Child Care Homes, by the time of the annual renewal of the provider's Self Certification Registration. Non resident child(ren) found not at home, during stated hours of care, on three consecutive visits are disenrolled from the Program by the sponsor and the provider is not allowed to claim the child(ren) until verification of attendance by sponsor.

F. Family Day Care Home providers are terminated from program participation only after being notified of their seriously deficient status, given the opportunity to appeal, and if corrective action measures are not implemented to permanently correct the serious deficiency after a reasonable period of time. Terminated providers are placed on a National Seriously Deficient list and may only participate again with approval from the Regional Office of FNS.

[8.2.2.22 NMAC – Rp 8 NMAC 2.2.22, 11-30-01]

### 8.2.2.23 OTHER NUTRITION PROVISIONS:

A. Sponsor and participant Nutrition Education and Training is provided by CYFD as an integral part of the Child and Adult Care Food Program administration in New Mexico.

(1) Nutrition education activities are conducted in child care centers on a monthly basis and these activities are documented and submitted by the center staff to the Family Nutrition Bureau on forms provided by CYFD.

(2) Nutrition education activities are included as part of the developmentally appropriate program provided by Family Day Care Home providers.

B. Center sponsors and family day care home providers are discouraged from utilizing reusable dishes and silverware at meal services unless a written plan is submitted which warrants the use of disposable food service items.

C. A sample of center

menus are reviewed annually by CYFD staff to ensure nutritional quality and variety of meals served.

(1) Menu reviews which identify repetitive meals and/or lack of variety may require the center to contract for services with a licensed or registered dietician/nutritionist to correct the deficient menus.

(2) CYFD provides sample menus to assist the center in providing varied and nutritious meals.

[8.2.2.23 NMAC – Rp 8 NMAC 2.2.23, 11-30-01]

### HISTORY OF 8.2.2 NMAC:

HISTORY OF REPEALED MATERIAL:  
8 NMAC 2.2, Requirements for Participation in the Child and Adult Care Food Program - repealed, 11-30-01.

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### TITLE 8: SOCIAL SERVICES

#### CHAPTER 2: FOOD ASSISTANCE AND SUPPORT

#### PART 3: REQUIREMENTS FOR PARTICIPATION IN THE SUMMER FOOD SERVICE PROGRAM

**8.2.3.1 ISSUING AGENCY:** Children Youth and Families Department (CYFD)  
[8.2.3.1 NMAC – Rp 8 NMAC 2.3.1 NMAC, 11-30-01]

**8.2.3.2 SCOPE::** This policy applies to all CYFD staff who work with the Summer Food Service Program and to participating sponsoring organizations.  
[8.2.3.2 NMAC – Rp 8 NMAC 2.3.2, 11-30-01]

**8.2.3.3 STATUTORY AUTHORITY:** Code of Federal regulations, 7 CFR Part 225, Section 13 of the National School Lunch Act.  
[8.2.3.3 NMAC – Rp 8 NMAC 2.3.3, 11-30-01]

**8.2.3.4 DURATION:** Permanent  
[8.2.3.4 NMAC – Rp 8 NMAC 2.3.4 , 11-30-01]

**8.2.3.5 EFFECTIVE DATE:** November 30, 2001  
[8.2.3.5 NMAC – Rp 8 NMAC.2.3.5, 11-30-01]

**8.2.3.6 OBJECTIVE:** To establish regulations for administration of the Summer Food Service Program, including require-

ments for participating sponsoring organizations.

[8.2.3.6 NMAC – Rp 8 NMAC 2.3.6, 11-30-01]

### 8.2.3.7 DEFINITIONS:

A. "Academic-Year NYSP" means that portion of the National Youth Sports Program operating drug awareness and counseling programs during the months October through April, as authorized under Public Law 100-690, the Anti-Drug Abuse Act of 1988.

B. "Act" means the National School Lunch Act, as amended.

C. "Administrative costs" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

D. "Adult" means, for the purposes of the collection of social security numbers as a condition of eligibility for Program meals, any individual 21 years of age or older.

E. "Advance payments" means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

F. "Areas in which poor economic conditions exist" means (a) the local areas from which a site draws its attendance in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined (1) by information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, (2) by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or (3) from other appropriate sources, or (b) an enrollment program in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals as determined by approval of applications in accordance with 7 CFR Part 225.15(f).

G. "Camps" means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

H. "Children" means (a) persons 18 years of age and under, and (b) persons over 18 years of age who are deter-

mined by a state educational agency or a local public educational agency of a state to be mentally or physically handicapped and who participate in a public or non profit private school program established for the mentally or physically handicapped.

I. "Component" means one of four food categories of the USDA Meal Pattern Requirements arranged by age group, including: 1) Milk, 2) Meat/Meat Alternates, 3) Bread/Bread Alternates, and 4) Fruits and Vegetables.

J. "Continuous school calendar" means a situation in which all or part of the student body of a school is (a) on a vacation for periods of 15 continuous school days or more during the period October through April and (b) in attendance at regularly scheduled classes during most of the period May through September.

K. "Costs of obtaining food" means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

L. "Creditable foods" means foods used to meet the requirements for a reimbursable meal. Foods are creditable based on the following: 1) Nutrient content, 2) Customary function in a meal, 3) USDA regulations, 4) Food and Drug Administration's (FDA) Standards of Identity, and 5) State agency policies, which include non-creditable foods list as defined in subsection DD of 8.2.3.7 NMAC.

M. "Department" means the NM Children, Youth and Families Department

N. "Disallowance" means the monetary repayment to CYFD resulting from a meal or meals that have been determined ineligible.

O. "Documentation" means the completion of the following information on a free meal application:

(1) Free and reduced priced applications will include:

(a) Names of all household members;

(b) The signature of an adult member of the household;

(c) Social security number of the adult household member signing the application or an indication that the adult household member does not possess one;

(d) Household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income.

(2) For a child who is a member

of a food stamp household or Food Distribution Programs on Indian Reservations (FDPIR), only the following is required;

(a) The name(s) and appropriate food stamp or FDPIR case number(s), and,

(b) The signature of an adult member of the household.

P. "Family" means a group of related or unrelated individuals who are not residents of an institution or boarding house but who are living as one economic unit.

Q. "Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending September 30 of the following year.

R. "FNS" means the Food and Nutrition Service of USDA.

S. "FNSRO" means the appropriate Regional Office of the Food and Nutrition Service.

T. "Food service management company" means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in 7 CFR Section 225.15. Food service management companies may be:

(1) public agencies or entities;

(2) private, nonprofit organizations; or

(3) private, for-profit companies.

U. "Food stamp household" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

V. "Homeless feeding site" means a feeding site whose primary purpose is to provide shelter and one or more regularly scheduled meal services per day to homeless families and which is not a residential child care institution as defined in paragraph (c), definition of "school", 7 CFR Section 210.2 of the National School Lunch Program regulations.

W. "Household" means "family" as defined in this Section.

X. "Income accruing to the Program" means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from federal, state and local governments, from food sales to adults, and from any other source including cash donations or grants. Income accruing to the Program is deducted from combined operating and administrative costs.

Y. "Income standards" means the family-size and income standards prescribed annually by the Secretary of

USDA for determining eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

Z. "Meals" means food which is served to children at a food service site and which meets the nutritional requirements set out in this Part.

AA. "Menu record book" means the official record which is used to document the types of food served and the quantities used to meet the USDA Meal pattern requirements by sponsors participating in the Summer Food Service Program.

BB. "Milk" means whole milk, low-fat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

CC. "Needy children" means children from families whose incomes are equal to or below USDA's Guidelines for Determining Eligibility for Reduced Price School Meals.

DD. "Non creditable foods" (also called "other foods" or "extras") means foods that do not meet the criteria for a creditable food, as determined by the state agency, and appear on the CYFD/FNB Non Creditable Foods list. A meal may contain both creditable and non creditable foods. Non creditable foods may be served to supply calories to meet the energy needs of growing children, or to improve acceptability of the rest of the meal. However, non creditable foods may not be used to meet the meal pattern requirements.

EE. "NYSP" means the National Youth Sports Program administered by the National Collegiate Athletic Association.

FF. "NYSP feeding site" means a site which qualifies for Program participation on the basis of free meal applications taken from enrolled children and at which all of the children receiving Program meals are enrolled in the NYSP.

GG. "OIG" means the Office of the Inspector General, which is the federal enforcement agency of the Department of Justice.

HH. "Operating costs" means the cost of operating a food service under the Program.

(1) Operating costs include; the cost of obtaining food, labor directly involved in the preparation and service of food, cost of non food supplies, rental and use allowances for equipment and space and cost of transporting children in rural areas to

feeding sites in rural areas.

(2) Operating costs exclude; the cost of the purchase of land, acquisition or construction of buildings, alteration of existing buildings, interest costs, the value of in-kind donations and administrative costs.

II. "Private non profit" means tax exempt under the Internal Revenue Code of 1986, as amended.

JJ. "Private non profit organization" means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) which meets the definition of "private nonprofit" in this Section, and which:

(1) Administers the Program at no more than 25 sites, with not more than 300 children being served at any approved meal service at any one site or, with a waiver granted by the State in accordance with 7 CFR Section 225.6(b)(6)(iii) of this Part, not more than 500 children being served at any approved meal service at any one site;

(2) Operates in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of the current year that such authority or unit of government will operate the Program in the current year except that, if a school food authority or local, municipal, or county government has served that area in the prior year's Program, the private nonprofit organization may only sponsor the Program in that area if it receives a waiver from the state agency in accordance with 7 CFR Section 225.6(a)(3)(iv)(13);

(3) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(4) Provides ongoing year-round activities for children or families;

(5) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(6) Meets applicable state and local health, safety, and sanitation standards.

KK. "Program" means the Summer Food Service Program for Children authorized by Section 13 of the National School Lunch Act.

LL. "Program funds" means federal financial assistance made available to state agencies for the purpose of making Program payments.

MM. "Program payments" means financial assistance in the form of start-up payments, advance payments, or reimbursement paid to sponsors for operating and administrative costs.

NN. "Rural" means (a) any area in a county which is not a part of a Metropolitan Statistical Area or (b) any

"pocket" within a Metropolitan Statistical Area which, at the option of the state agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

OO. "School food authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food service management company registration and bid procedure requirements, 'school food authority' also means any college or university which participates in the Program.

PP. "Self-preparation sponsor" means a sponsor which prepares the meals that will be served at its site(s) and does not contract with a food service management company for unitized meals, with or without milk, or for management services.

QQ. "Session" means a specified period of time during which an enrolled group of children attend camp.

RR. "Site" means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

SS. "Special account" means an account which a state agency may require a vended sponsor to establish with the state agency or with a federally insured bank. Operating costs payable to the sponsor by the state agency are deposited in the account and disbursement of monies from the account must be authorized by both the sponsor and the food service management company.

TT. "Sponsor" means a public or private non-profit school food authority, a public or private non profit residential summer camp, a unit of local, municipal, county or state government, a public or private non profit college or university currently participating in the NYSP, or a private non profit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. In addition "sponsor" may also mean a public or private non-profit college or university which participates in the NYSP during the months of October through April and is approved to participate in the Program. Sponsors are referred to in the Act as "service institutions".

UU. "Start-up payments" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food

service, and to establish effective management procedures for such a service. These payments are deducted from subsequent administrative cost payments.

VV. "State" means the state of New Mexico.

WW. "State agency" means the New Mexico Children, Youth and Families Department.

XX. "TANF assistance unit" means any individual or group of individuals which is currently certified to receive assistance under the Temporary Assistance to Needy Families program in a state where the standard of eligibility for TANF benefits does not exceed the income standards for free meals under the National School Lunch Program (7 CFR Part 245).

YY. "Vended sponsor" means a sponsor which purchases from a food service management company the unitized meals, with or without milk, which it will serve at its site(s); or a sponsor which purchases management services, subject to the limitations set forth in Section 7 CFR 225.15, from a food service management company.

[8.2.3.7 NMAC – Rp 8 NMAC 2.3.7, 11-30-01]

#### 8.2.3.8 APPLICATION APPROVAL, RENEWAL AND DENIAL:

A. C Y F D / F a m i l y Nutrition Bureau (FNB) enters into agreement with any non profit (501-c-3) organization which meets the established USDA program criteria in 7 CFR 225 and subsection B of 8.2.3.8 NMAC.

B. Any non-profit organization wishing to participate as a sponsoring organization in the Summer Food Service Program completes and submits annually an application that includes at a minimum: a management plan, an administrative and operational budget, a non-discrimination statement, non-pricing policy statement, certificate of authority, civil rights questionnaire, certification regarding lobbying, signed agreement to participate, meal site information and public release statement.

(1) CYFD informs all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors by February 1 of the deadline date for submitting a written application for participation in the Program.

(2) CYFD informs all applicant sponsoring organizations by February 1 of the procedure for applying for advance operational and administrative costs payments.

(3) Within 30 days of receiving a complete and correct application, CYFD notifies the applicant of its approval or disapproval. If an incomplete application is

received, CYFD notifies the applicant within 30 days of receipt of an incomplete application and provides technical assistance for the purpose of completing the application.

C. CYFD uses the following order of priority in approving applicants to operate sites which propose to serve the same area of enrolled children:

(1) Applicants which are public or non-profit school food authorities;

(2) All other government sponsors and private nonprofit organizations that successfully administered the program in a prior year;

(3) New government sponsors; and

(4) New private non profit organizations.

D. CYFD reviews each applicant's administrative budget as a part of the application approval process in order to assess the applicant's ability to operate in compliance within the federal regulations and within its projected reimbursement. [8.2.3.8 NMAC – Rp 8 NMAC 2.3.8, 11-30-01]

#### **8.2.3.9 PROGRAM MONITORING AND REVIEW:**

A. CYFD conducts Program monitoring and provides Program assistance to sponsors during on site reviews.

(1) Pre-approval visits are conducted by CYFD staff for all new sponsors and sites, to assess the applicant's site potential for successful Program operations and to verify information provided in the application.

(2) Sponsor and site reviews of sponsors are conducted to ensure compliance with Program regulations, USDA's nondiscrimination regulations and any other applicable Department requirements.

(3) Follow-up reviews of sponsors and sites are conducted as necessary.

(4) CYFD develops and implements a monitoring system to ensure that sponsors, site personnel, and any applicable food service management company receive a copy of all review reports which indicate Program violations and which could result in any Program meal disallowance or over claim.

B. Documentation of Program assistance and the results of such assistance are maintained by CYFD in the sponsor program file.

C. As a part of the review of any vended sponsor which contracts for the preparation of meals, CYFD inspects the food service management company's facilities for compliance with applicable laws.

D. CYFD develops moni-

tor review forms and distributes them to all approved sponsors during the annual spring sponsor training.

E. CYFD may also conduct, or arrange to have conducted, inspections of self-preparation and vended sponsors' food preparation facilities, inspections of food service sites, and meal quality tests.

F. CYFD establishes a financial management system in accordance with the Department's Uniform Financial Assistance Regulations and Food and Nutrition Service guidance. CYFD provides guidance on these financial management standards to all sponsors during the annual spring training.

[8.2.3.9 NMAC – Rp 8 NMAC 2.3.9, 11-30-01]

#### **8.2.3.10 PROGRAM ASSISTANCE TO SPONSORS:**

A. Prior to the beginning of Program operations, CYFD provides training in all applicable areas of Program administration to sponsor personnel, food service management company representatives, auditors, and health inspectors who will participate in the Program.

B. CYFD develops and makes available to sponsors, prior to program operation, all necessary Program materials, during the annual spring training, to enable applicant sponsors to prepare adequately for the Program.

C. CYFD, with the assistance USDA, develops and makes available to all sponsors minimum food specifications and model meal quality standards which are to be part of all contracts between vended sponsors and food service management companies.

[8.2.3.11 NMAC – Rp 8 NMAC 2.3.11, 11-30-01]

#### **8.2.3.11 AUDIT REQUIREMENTS:**

A. Audits of Sponsoring Organizations shall be conducted in accordance with the Office of Management and Budget Circulars A-133 and A-110 and the U.S. Department of Agriculture's Uniform Federal Assistance Regulations (7 CFR Part 3015).

B. Audits are due to CYFD no later than nine months after the close of the sponsoring organization's fiscal year.

[8.2.3.11 NMAC – Rp 8 NMAC 2.3.11, 11-30-01]

#### **8.2.3.12 CORRECTIVE ACTION AND COMPLAINT INVESTIGATIONS:**

A. CYFD promptly investigates complaints received or irregularities noted in conjunction with the operation of the Program and takes appropriate action to

correct any irregularity or deficiency. CYFD maintains a file of all such investigations and related actions taken.

B. Whenever CYFD observes violations during the course of a site review, the sponsor is required to take corrective action. A high level of meal service violations requires specific immediate corrective action to be followed by the sponsor. CYFD conducts a follow-up visit to assess if specified corrective action has been taken.

C. CYFD may terminate the participation of a sponsor site if the sponsor fails to take action to correct Program violations cited in a state agency review report within the time frames established by the corrective action plan.

D. CYFD immediately terminates the participation of a sponsor's site if, during a review, a determination is made that the health or safety of the participating children is imminently threatened. If the site is vended, CYFD notifies the food service management company providing meals to the site within 48 hours of the termination action.

E. Except for residential camps, sponsors are restricted to one meal service per day when

any food service site is determined to be in violation of the time restrictions for meal service and corrective action is not taken within a reasonable time as determined by CYFD.

F. Sponsors who fail to plan, prepare or order meals with the objective of serving only one meal per child per site at each meal service may result in CYFD disallowing the number of meals prepared or ordered in excess of the number of children normally served at each site.

G. Meal service violations observed during the conduct of an site review may result in disallowance of all meals observed to be in violation and served to children.

H. CYFD disallows meals which are served in excess of a site's approved level.

[8.2.3.12 NMAC – Rp 8 NMAC 2.3.12, 11-30-01]

#### **8.2.3.13 CLAIMS AGAINST SPONSORS:**

CYFD disallows any portion of a claim for reimbursement and recovers any payment to a sponsor not properly payable under 7 CFR 225.12. CYFD may consider claims for reimbursement not properly payable if a sponsor's records do not justify all costs and meals claimed. CYFD notifies sponsors of the reasons for any disallowance or demand for repayment and notifies all sponsors of the CYFD right to hear-

ing process.

[8.2.3.13 NMAC – Rp 8 NMAC 2.3.13, 11-30-01]

#### **8.2.3.14 REQUIREMENTS FOR SPONSOR PARTICIPATION:**

A. Sponsors submit a written application to CYFD for participation in the Program in accordance with federal and state requirements by April 15 and no later than June 15.

B. Applicants eligible to participate as sponsoring organizations include:

(1) Public or nonprofit private school food authorities;

(2) Public or nonprofit private residential summer camps;

(3) Units of local, municipal, county, or State governments;

(4) Public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program; and

(5) Private nonprofit organizations.

C. No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposed to conduct a food service;

(2) Can demonstrate it has not been found to be seriously deficient in operating the Program or has not been terminated from any federal, state or local program for non compliance with that program's requirements.

(3) Conducts a regularly scheduled food service for children from areas in which poor economic conditions exist, or qualifies as a camp or homeless feeding site;

(4) Provides adequate supervisory and operational personnel for overall monitoring and management of each site;

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program;

(6) Certifies that all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served; and

(7) Enters into a written agreement with the State Agency upon application approval.

[8.2.3.14 NMAC – Rp 8 NMAC 2.3.14, 11-30-01]

#### **8.2.3.15 MANAGEMENT RESPONSIBILITIES OF SPONSOR:**

A. Sponsors operate the food service in accordance with provisions set forth in federal regulations, any instructions and handbooks issued by FNS, and any instructions and handbooks issued by the state agency.

B. Each sponsoring organization is solely responsible for the administrative and financial management of the program. Sponsoring organizations may not contract out for management of the program.

C. Sponsors, to the maximum extent feasible, utilize their own food service facilities or obtain meals from a school food service facility.

D. Based on approval of its application, or any adjustment in the approved levels of meal service for its sites, vended sponsors shall inform their food service management company of the approved level at each site for which the food service management company will provide meals.

E. Sponsors plan for and prepare, or order, meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed, and to reduce the resultant waste, sponsors may claim reimbursement for second meals which do not exceed two percent of the number of first meals served to children for each meal type during the claiming period.

F. Sponsors maintain accurate records which justify all costs and meals claimed. The sponsor's records are available at all times for inspection and audit by representatives of USDA, the Inspector General of the United States, and CYFD for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year. All final claims are submitted to CYFD within 60 days following the last day of the month covered by the claim.

G. Sponsors conduct Program training sessions for administrative and site personnel and do not allow any site to operate until personnel have attended at least one of these training sessions.

(1) Sponsors visit each of their sites at least once during the first week of Program operation and promptly take actions that are necessary to correct any site deficiencies.

(2) Sponsors review food service operations at each site at least once during the first four weeks of Program operations, and thereafter maintain a reasonable level of site monitoring.

(3) When a site is approved for

more than one meal service, such as breakfast and lunch, the sponsor shall follow the requirements of paragraph one and two of subsection G of 8.2.3.15 NMAC for the lunch meal service and conduct one additional monitoring visit for the other meal service within the first four weeks of that meal service operation.

H. Sponsors annually announce in the media serving the area from which it draws its attendance, the availability of free meals.

I. Each sponsoring organization must provide adequate supervisory and operational personnel for monitoring and management of the program.

J. Each sponsoring organization must establish procedures to collect and maintain all necessary program records as described in 7 CFR 225.15 (c).

K. Each sponsoring organization is required to maintain appropriately staffed offices and phone lines to permit accessibility by program clients and CYFD staff.

[8.2.3.15 NMAC – Rp 8 NMAC 2.3.15, 11-30-01]

#### **8.2.3.16 MEAL SERVICE REQUIREMENT:**

A. Each meal served in the Program complies with USDA meal patterns as outlined in federal regulations 7 CFR 225.16 (d) and with CYFD/FNB creditable foods list.

(1) Non-creditable foods are not used to meet the meal pattern component requirement. Some foods which are non creditable are: hot dogs, sausage, bologna, salami, and other sausage type lunch meats, and doughnuts. Designated items on the non creditable list supplied by CYFD are also not reimbursable and their purchase price is subtracted from total food costs during administrative reviews.

(2) Infants may be served and claimed only with prior approval from CYFD.

B. Special dietary needs and requirements of children with special dietary requirements are met, with approval by medical authority. This includes, but is not limited to: diabetic diets, high calorie, lower calorie, mechanically altered, and substitutions for food allergies and/or intolerance. This does not include enteral/parenteral formulas which may be covered by medical insurance or Medicare/Medicaid.

C. Child Nutrition (CN) Labeled products are not required for the Summer Food Service Program and do not necessarily meet the meal requirements as established by the state agency. However, if CN products are used, a copy of the CN label must be maintained in the sponsor



menu record file:

(1) For combination food items purchased which do not have a CN label, the sponsor must provide a product analysis sheet from the manufacturer indicating the amount of each food component per serving.

(2) Pizza products with a CN label that identifies the food components, including the meat alternate, are acceptable.

D. Breading on creditable meat items, such as chicken nuggets, is not counted as a bread alternate unless a CN label identifies that the breading meets the required bread alternate amount.

E. Institutions will document on a daily basis the type of meals and amounts of food used to prepare the meals, in the Menu Record Book provided by CYFD.

F. Milk invoices will indicate that sufficient milk was purchase to provide 8 ounces of milk for at least 90% of the meals claimed which required milk to be served.  
[8.2.3.16 NMAC – Rp 8 NMAC 2.3.16, 11-30-01]

**8.2.3.17 NUTRITION EDUCATION REQUIREMENT:** - Sponsoring organizations provide nutrition education activities at each meal site and submit copies of the activities with their claims for reimbursement.  
[8.2.3.17 NMAC – Rp 8 NMAC 2.3.17, 11-30-01]

**8.2.3.18 SANCTIONS AND PENALTIES:**

A. CYFD does not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any federal child nutrition program and was seriously deficient in its operation of any such program.

B. CYFD terminates the Program agreement with any sponsor which it determines to be seriously deficient in its operation of the Program.

C. CYFD imposes sanctions in the form of a meal disallowance for the following;

(1) Failure to record meals, types of food and amounts prepared, in the Menu Record Book;

(2) Meals which lack one or more required components;

(3) Meals which contain non creditable foods as a required component; or

(4) The menu records and/or food receipts indicate that not enough food was served, or recorded as served, to have given

each participant the minimum portion size of each component. The State agency uses the USDA Food Buying Guide to determine how many servings of each component were available. If the number of servings available is less than the number of participants served as listed on the Menu Record Book, the difference is the number of meals disallowed.

(5) Lack of CN labels or Product Analysis sheets for commercially prepared food products.

[8.2.3.18 NMAC – Rp 8 NMAC 2.3.18, 11-30-01]

**8.2.3.19 APPEALS AND HEARINGS:**

A. CYFD has established general fair hearing and appeals procedures to be followed by sponsors appealing:

(1) A denial of an application for participation,

(2) A denial of a sponsor’s request for an advance payment,

(3) A denial of a sponsor’s claim for reimbursement,

(4) CYFD’s refusal to forward to Food and Nutrition Service an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim.

(5) A claim against a sponsor for remittance of a payment,

(6) The termination of the sponsor or a site; a denial of a sponsor’s application for a site,

(7) A denial of a food service management company’s application for registration, or

(8) The revocation of a food service management company’s registration.

B. Appeal procedures are made available in writing annually to all sponsoring organizations at the time of application for participation in the Program, and are included with the approval letters for participation, claims for reimbursement, at the time of a meal.

[8.2.3.19 NMAC – Rp 8 NMAC 2.3.19, 11-30-01]

**HISTORY OF 8.2.3 NMAC:**

**HISTORY OF REPEALED MATERIAL:**

8 NMAC 2.3, Requirements for Participation in the Summer Food Service Program – repealed, 11-30-01

**NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 17 NON-LICENSED  
CHILD CARE**

**PART 2 REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES**

**8.17.2.1 ISSUING AGENCY:** Children, Youth and Families Department.

[8.17.2.1 NMAC – Rp 8.17.2.1 NMAC, 11/30/01]

**8.17.2.2 SCOPE:** All Family Child Care Homes within the State of New Mexico who are intending to participate in the Child and Adult Care Food Program or the Child Care Assistance Program.

[8.17.2.2 NMAC – Rp 8.17.2.2 NMAC, 11/30/01]

**8.17.2.3 STATUTORY AUTHORITY:**

The requirements (regulations) set forth herein, are established pursuant to the state and federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, Parts 255, 256, 257 Title 4-E these regulations are promulgated by authority of Section 9-7-7 and 9-7-12 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the Child and Adult Care Food Program (CACFP) and Child Care Assistance Programs (CCAP) are not health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978.

[8.17.2.3 NMAC – Rp 8.17.2.3 NMAC, 11/30/01]

**8.17.2.4 DURATION:** Permanent.

[8.17.2.4 NMAC – Rp 8.17.2.4 NMAC, 11/30/01]

**8.17.2.5 EFFECTIVE DATE:**

November 30, 2001 unless a later date is cited at the end of a section.

[8.17.2.5 NMAC – Rp 8.17.2.5 NMAC, 11/30/01]

**8.17.2.6 OBJECTIVE:**

The objective of 8.17.2 NMAC is to establish standards and procedures to permit independent care givers who are not required to be licensed as family child care homes under state regulations to participate in the federal Child and Adult Care Food Program (CACFP) and the state and federal Child Care Assistance Programs (CCAP) through self-certification and registration.

[8.17.2.6 NMAC – Rp 8.17.2.6 NMAC, 11/30/01]

**8.17.2.7 DEFINITIONS:**

A. “Child” means any person twelve (12) years old or younger; children of migrant workers fifteen (15) years old or younger, any person with certain disabilities who is eligible under federal Child

and Adult Care Food Program standards; or any person eligible under state and federal Child-Care Assistance Programs standards.

B. "Child Care Assistance Program" means the State of New Mexico's Child Care Services Bureau which administers the federal Child Care and Development Fund (CCDF).

C. "Child and Adult Care Food Program" means the State of New Mexico's Family Nutrition Bureau which administers the federal Child and Adult Care Food Program.

D. "Emergency care giver" means someone 18 years of age or older who is authorized by the Primary Care Giver to provide care on an emergency basis 48 hours or less, on behalf of the Primary Care Giver.

E. "Infant" means a child from birth to one-year-old.

F. "Managing Agency" means the Children, Youth and Families Department (CYFD).

G. "Nonresident child" means any child who does not reside in the care giver's home.

H. "Notifiable diseases" means confirmed or suspected diseases/conditions as itemized by the New Mexico Department of Health which require immediate reporting to the Office of Epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and Acquired Immune Deficiency Syndrome.

I. "Primary care giver" means a family day care home provider 18 years of age or older who is personally providing care to non-resident children, less than 24 hours a day, in his/her own residence and has completed a Self Certification Registration form and paid the required fee.

J. "Registered Family Child Care Home" means the residence of an independent care giver who registers the home under these regulations to participate in the Child and Adult Care Food Program or as a vendor in the state and federal Child Care Assistance Programs.

K. "Resident child" means any child who resides in the home, such as provider's own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the economic unit.

L. "Second care giver" means someone 18 years of age or older who is authorized by the primary care giver and the day care home sponsoring organization to provide care in the absence of the primary caregiver and is required completed all the items required of primary care givers, including TB tests,

CRC fingerprint clearance annual training hours and initial orientation and training for participation in the CACFP and/or the Child Care Assistance Program.

[8.17.2.7 NMAC – Rp 8.17.2.7 NMAC, 11/30/01]

**8.17.2.8 APPLICATION:** An independent care giver who wants to participate in the federal Child and Adult Care Food Program and state and federal Child Care Assistance Programs must register as a family child care home provider by submitting a completed self-certification and registration agreement and paying the processing charge.

[8.17.2.8 NMAC – Rp 8.17.2.8 NMAC, 11/30/01]

**8.17.2.9 COMPLIANCE:** By completing and submitting the self-certification registration agreement, the independent caregiver certifies the care giver's home complies with these regulations. The care giver also agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the care giver.

[8.17.2.9 NMAC – Rp 8.17.2.9 NMAC, 11/30/01]

**8.17.2.10 STATE AND FEDERAL CRIMINAL RECORDS CHECKS:**

A. Criminal Records Checks (CRC) are required for all providers caring for children not related to them. Criminal records checks are not required for providers who care for only children related to them up to the fourth degree of consanguinity. The Sponsoring Organizations who register family child care home providers shall provide CRC fingerprint cards to all providers, including their employees, second care givers, or volunteers, who care for children who are not related to the provider. A request for federal background checks, along with the appropriate fee, must be submitted within one week of registration to the Children, Youth and Families Department.

B. In situations where requests for State and federal criminal records checks have been submitted but reports have not yet been received by the sponsor, those providers, second care givers and volunteers who are providing service to children may continue to provide care as long as federal clearance has been received..

C. A provider shall not be eligible for continued registration and the sponsor shall be in violation of this standard if a provider is allowed to continue to participate and receive payments after the sponsoring organization has received notification that a federal background check has

revealed information that would disqualify an individual from receiving a letter of clearance.

D. Any provider, second care giver or volunteer who has received state and federal clearance through another child care facility or sponsoring organization within one year of application for registration as a family child care provider, may not be required to undergo an additional federal background check unless the Children, Youth and Families Department believes it has cause to request it.

E. All providers, second caregivers and volunteers are subject to the provisions of 8.8.3 NMAC regarding disqualifying offenses.

[8.17.2.10 NMAC – Rp 8.17.2.10 NMAC, 11/30/01]

**8.17.2.11 RENEWAL:** Care givers must renew registrations annually by submitting a self-certification registration agreement and paying the processing charge with cashier's check or a money order.

[8.17.2.11 NMAC – Rp 8.17.2.11 NMAC, 11/30/01]

**8.17.2.12 VISITATION:** Care givers must consent to visits by the Children, Youth and Families Department or the Child and Adult Care Food Program sponsoring agency any time nonresident children are present and/or during the provider's stated normal hours of operation.

[8.17.2.12 NMAC – Rp 8.17.2.12 NMAC, 11/30/01]

**8.17.2.13 NON-COMPLIANCE:** The Children, Youth and Families Department may deny or revoke registration at any time if the care giver is not in compliance with the registration standards.

A. CYFD may revoke the registration of a provider who is terminated by a sponsoring organization, or by CYFD staff, for serious violations such as:

(1) Failure to comply with the group size and/or capacity requirement after having been suspended for this violation by the sponsoring organization;

(2) Health and safety violations which place the children in immediate danger, including:

(a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;

(b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface;

(c) Unlocked or unsecured guns in the home.

(3) Criminal records check denial;

(4) Substantiated fraudulent

activity in the CACFP or the Child Care Assistance Programs;

(5) Substantiated non-compliance with provider requirements to care for children in the registered home as defined in the enrollment documents;

(6) Substantiated abuse and/or neglect of children as determined by the Protective Services Division of CYFD or a law enforcement agency.

B. CYFD notifies all providers in writing when registration is to be revoked and affords appeal rights to any provider whose registration is revoked, as described in Policy 8.2.2, Section 9.

C. The Family Nutrition Bureau notifies the Child Care Services Bureau of any revocation of registration for a provider participating in the Child Care Assistance Programs.

D. Providers may be eligible for reinstatement of registration upon written request to CYFD and upon written approval by the Family Nutrition Bureau or the Child Care Services Bureau.

[8.17.2.13 NMAC – Rp 8.17.2.13 NMAC, 11/30/01]

#### 8.17.2.14 - 19 [RESERVED]

**8.17.2.20 REQUIRED STANDARDS:** Independent care givers will certify when they apply for registration that they comply with and maintain the standards in 8.17.2.21 through 8.17.2.24 NMAC.  
[8.17.2.20 NMAC – Rp 8.17.2.20 NMAC, 11/30/01]

#### 8.17.2.21 GROUP COMPOSITION REQUIREMENTS:

A. A caregiver will care for no more than four (4) non-resident children at any one time.

B. A caregiver will care for no more than two (2) children under two (2) years old at any one time, including the provider's own children.

C. A caregiver will care for no more than six (6) children under six (6) years old at any one time, including the provider's own children.

D. Shifts are allowed provided there are never more than four (4) non-resident children present at any one time, including change of shifts.

E. The primary care giver will be physically present and actively involved in the care of nonresident Children during the designated hours of child care as noted in the child enrollment forms, except for short absences and when another approved care giver is present. Regular outside employment is not considered a short absence.

[8.17.2.21 NMAC – Rp 8.17.2.21 NMAC,

11/30/01]

#### 8.17.2.22 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs.

D. A care giver will keep the temperature of inside areas used by children at no less than 68 degrees (Fahrenheit).

E. The home must be adequately ventilated at all times.

F. All gas-fired equipment and water heaters must have a 100% cutoff valve.

G. A caregiver must provide safe playing areas inside and outside the home.

H. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, and sharp and pointed objects in a storage area inaccessible to children.

I. The home must have a telephone or the caregiver must have applied for installation of a telephone. The caregiver must have the telephone within sixty (60) days of registration. The CYFD may waive the telephone requirement if the caregiver lives in a rural area where phone service is not available or for other circumstances as approved by CYFD.

J. A caregiver will post emergency numbers for the police, fire department, ambulance, and Poison Control Center by the telephone.

K. A care giver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, or other hazardous area. The fence will have one latched gate for emergency exits.

L. A care giver will install at least one working smoke detector in an appropriate area in the home.

M. A care giver will store all firearms, such as rifles and handguns, in a locked area inaccessible to children.

N. A caregiver will prohibit smoking and the consumption of alcoholic beverages or drugs when nonresident children are present.

O. The home will have at least one 2A- I OBC fire extinguisher mounted near the exit of the kitchen. It must be visible and readily available for use and in operable condition at all times.

P. A care giver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, or laundry rooms.

Q. In case of fire, the caregiver's first responsibility is to evacuate the children to safety.

R. A home will have two (2) major exits readily accessible to children.

S. Toys and objects (including high chairs) are safe, durable, easy to clean and nontoxic.

T. Children will not use a common towel or wash cloth.

U. The home will have a first aid kit stored in a convenient place inaccessible to children. The kit will contain at least Band-Aids, gauze pads, adhesive tape, scissors, soap, a thermometer and anti-septic.

V. A caregiver will inoculate all pets in the home as required by law and will keep proof of inoculations.

W. A caregiver will not change a diaper in a food preparation area. Care givers will disinfect the diaper-changing surface and wash their hands after every diaper change.  
[8.17.2.22 NMAC – Rp 8.17.2.22 NMAC, 11/30/01]

#### 8.17.2.23 MEAL REQUIREMENTS:

A. Children will not use common eating or drinking utensils.

B. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.

C. Meals must meet age-appropriate USDA requirements, including the following meal components: one (1) serving of meat or alternate; two (2) servings of fruits or vegetables; one (1) serving of bread or alternate and one (1) serving of fluid milk. A caregiver must serve whole milk to children age one to two years old.

D. A caregiver must keep a daily menu.

E. Care givers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.

F. Care givers will feed children a meal or snack every three (3) hours.

[8.17.2.23 NMAC – Rp 8.17.2.23 NMAC, 11/30/01]

#### 8.17.2.24 RECORD KEEPING REQUIREMENTS:

A. Care givers must maintain evidence of tuberculosis screening.

B. Care givers must keep an information card for each child with (1) The child's full name;

- (2) The child's birth date;
  - (3) Any known food or drug allergies or unusual physical condition;
  - (4) The name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
  - (5) The name and telephone number of the child's physician;
  - (6) Authorization from a parent or guardian for the care giver to seek professional medical care in an emergency;
  - (7) Written permission from a parent or guardian for the care giver to administer medication prescribed by a physician or requested by the parent; and,
  - (8) An immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the Department of Health.
- [8.17.2.24 NMAC – Rp 8.17.2.24 NMAC, 11/30/01]

#### **8.17.2.25 QUALIFICATIONS AND RESPONSIBILITIES:**

A. Care givers must be at least 18 years of age. All primary and second care givers must have documentation of criminal records clearance in accordance with Section 10 of these regulations.

B. All care givers must be free of any mental, emotional and physical health problems that would interfere with the appropriate care of the children.

C. The caregiver is responsible for immediately reporting to the appropriate authorities any symptoms of child abuse or neglect.

D. A caregiver will use discipline that is positive and age-appropriate. The caregiver will NOT use:

- (1) Physical punishment;
- (2) Withdrawal of food;
- (3) Restriction of rest or bathroom opportunities;
- (4) Any form of public or private humiliation, including threats of physical punishment;
- (5) Isolation; or
- (6) Any other type of punishment that is hazardous to the physical, emotional or mental state of the child.

E. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well being. Care givers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of

indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play.

F. Care givers of infants will allow them to creep, crawl or toddle and will hold them for bottle-feeding and at other times. Care givers will allow infants to eat and sleep on their own schedules.

G. Primary and secondary care givers are required to attend six (6) hours of training annually. Hours in excess of six (6), with the approval of CYFD, may be "banked" and applied toward the annual requirement for the subsequent year. Training documentation must be maintained for three (3) years and include the care giver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

[8.17.2.25 NMAC – Rp 8.17.2.25 NMAC, 11/30/01]

#### **8.17.2.26 TRANSFERABILITY OF REGISTRATION:**

A. The caregiver's registration agreement is personal, and not transferable to any other person or location.

B. If the caregiver moves to a new location or has a change of name, the caregiver must register again and pay the processing charge

[8.17.2.26 NMAC – Rp 8.17.2.26 NMAC, 11/30/01]

**8.17.2.27 APPEAL RIGHTS:** Any registered provider who is sanctioned pursuant to these regulations or has their registration revoked may appeal that decision to the Children, Youth and Family Department. The request for hearing shall be made within fifteen days of being notified of the action.

[8.17.2.27 NMAC – N, 11/30/01]

#### **HISTORY OF 8.17.2 NMAC:**

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

ISD CCAP 400, Provider Registration, 11-4-91

ISD CCAP 500, Provider Selection and Payment, 11-4-91

History of Repealed Material:

8 NMAC 17.2, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8-1-00

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes – repealed 11/30/01

## **NEW MEXICO EDUCATIONAL RETIREMENT BOARD**

This is an amendment to 2.82.1 NMAC, Section 16. This rule is being renumbered and reformatted to comply with current NMAC requirements.

#### **2.82.1.16 CONDUCT OF BUSINESS:**

A. The business affairs of the Board shall be conducted by the Director within the authority outlined by the Educational Retirement Act and Rules and Procedures of the Educational Retirement Board.

B. On behalf of the Educational Retirement Board, the Director of the Educational Retirement is hereby authorized to execute vouchers, (and delegate others to execute vouchers), buy and sell, or assign, or otherwise acquire or dispose of stocks, bonds, notes, or other securities held by the Board, and execute such other documents as may be necessary to the administration of the Educational Retirement Act.

C. Interpretation of law by formal opinion of the Attorney General shall not be obtained until the Director has first obtained approval of the Board. The Director may, however, obtain advice, either oral or written, from the Attorney General as the need may arise.

D. ~~[Any decision of the Director may be appealed by any party affected in the following manner: Any final decision of the Director may be appealed by any affected party. All appeals must comply with the following appeals procedure:~~

~~[(1) An appeal will be heard only at a regular meeting of the Board. The Board may appoint a committee for the appeal hearing.~~

~~(2) Written notice of the appeal must be received not later than 15 days prior to the date of the meeting at which such appeal is to be heard. The notice must include a list of any witnesses and any and all evidentiary documents and displays.~~

~~(3) Appellant must be present at the hearing, unless presence is waived by the appellant. An appellant may or may not be represented by counsel.~~

~~(4) Upon a majority decision of the Board the appellant shall be advised in writing within 20 days from the date of the decision.]~~

(1) Filing for a Request for Hearing - A request for an appeals hearing must be initiated by the affected party by filing a Request for a Hearing, within thirty (30) days of notice of the Director's final decision, by delivering a written request for

such a hearing to ERB's administrative offices. Filing occurs when the request is received at ERB's offices, provided, however, that where a Request for Hearing is properly addressed with sufficient postage and mailed at least three (3) days before the expiration of the thirty (30) day period within which to request a hearing, filing will be deemed timely if received by ERB, notwithstanding that receipt by ERB may occur after the thirty (30) day period.

(2) Failure to Request a Hearing - If the affected party does not request a hearing in the manner as described in 2.82.1.16(D)(1) NMAC, the decision of the Director shall be final and no further right of appeal exists.

(3) Notice of hearing - Upon receipt of a request that meets the requirements of 2.82.1.16(D)(1) NMAC, ERB shall set a hearing no later than sixty (60) days from the receipt of the Request for Hearing and send a notice by certified mail to the affected party. This notice shall include the time and place for the hearing, and inform the party that he or she must attend the hearing in person, must submit a list of all witnesses and send ERB any and all documents and displays within ten (10) days of the scheduled hearing if he or she wants such witnesses and documents to be considered in the appeal. The notice shall also state that the affected party may be represented by counsel or by themselves at the hearing. Such notice will be mailed to the affected party at least twenty (20) days prior to the date of the hearing. Witnesses not identified, and documents not submitted to ERB by the affected party within the ten (10) day period will not be considered at the hearing.

(4) The hearing - The hearing will be held by the Administrative Appeals Panel, appointed annually by the Chairman of the Board and shall consist of not less than three Board Members. The hearing will be open to the public. Notice shall be given in the manner required by the Open Meetings Act. The rules of evidence do not apply. The Panel may, in their discretion exclude incompetent, irrelevant or unduly repetitious evidence. The affected party will present their position, either with or without counsel, by oral or written statement. Failure to appear at the hearing shall result in the Director's decision deemed final. A record of the proceedings shall be made either by tape recording or by using a court reporter. The Panel may recommend to uphold or overturn the Director's decision or may continue the hearing to a future date, if, in the Panel's discretion, more evidence is needed to render a decision.

(5) Recommended decision - The Panel will issue to the Board its recom-

mended decision, based upon the record, including a findings of fact and conclusions of law, which will be filed at the ERB's offices and a copy mailed to the affected party by certified mail within fifteen (15) days of the decision. Disputes or disagreements to the recommended decision may be filed at ERB offices with supporting briefs within thirty (30) days from the issuance of the recommended decision. Such filed disputes or disagreements shall include the precise reasons for the dispute or disagreement and shall be based solely on evidence contained in the hearing record. Any dispute or disagreement not made in the manner required by this rule is waived. The Panel may submit a response to the disputes or disagreements within fifteen (15) days of the filing of such disputes or disagreements. The recommended decision of the panel will be reviewed at the next regular board meeting scheduled to occur after the running of the periods for exceptions and responses.

(6) Decision of the Board - The Board will consider only the Panel's recommended decision, disputes or disagreements to the recommended decisions and responses to them, if any. Where circumstances warrant, the Board, may review all or a portion of the hearing record. The Board will not consider any additional oral arguments, evidence or affidavits not contained in the hearing record. All deliberations and final decisions of the Board must occur in open session. The Board may uphold or overturn the recommendation of the Panel, may remand the matter to the Panel for further findings, or may modify the recommendation of the Panel, but may modify only after a review of the hearing record. Within ten (10) days of the decision, the Board will notify the affected party of its decision. The decision of the Board is final.

E. The rules and procedures of the Educational Retirement Board may be amended or expanded in the following manner:

(1) At any regular meeting, the Board may request the Director to prepare amendments or new rules for action at a subsequent meeting of the Board.

(2) The Director may, at any time, propose amendments or new rules for action at any meeting of the Board.

(3) Any proposed amendment or new rule shall be drafted by the Director and sent to each Board member with the agenda for the meeting at which the proposal will be considered, and all proposed rule changes will be sent to all administrative units, within a reasonable time, prior to being considered by the Board. [6-30-99; 2.82.1.16 NMAC - Rn & A, 2 NMAC 82.1.16, 11-30-2001]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.2 NMAC, Sections 8, 9 and 12. This rule is being renumbered and reformatted to comply with current NMAC requirements.

### 2.82.2.8 EMPLOYEES AND EMPLOYERS COVERED BY THE EDUCATIONAL RETIREMENT ACT:

A. Employers who are designated by statute as "administrative units" shall be the following schools, institutions, and agencies:

(1) all public school districts in New Mexico;

(2) the educational institutions enumerated in Article XII, Section 11 of the Constitution of New Mexico;

(3) state department of education;

(4) the educational retirement board;

(5) the New Mexico school for the visually handicapped at Alamogordo;

(6) the girls' welfare home;

(7) the New Mexico boys' school at Springer;

(8) the Los Lunas hospital and training school;

(9) technical and vocational institutes created pursuant to the Technical and Vocational Institute Act;

(10) junior colleges created pursuant to the Junior Colleges Act;

(11) and the New Mexico Activities Association. (The NMAA was added to the statute effective July 1, 1982.)

B. In addition to the administrative units enumerated in Subsection A of this section, any state institution or agency providing an educational program and employing certified school instructors shall be an administrative unit with coverage in such unit limited to certified school instructors.

C. All employees of the schools, institutions and agencies enumerated in Subsection A of this section, except for those employees enumerated in Section 11 of this rule, are either "regular" "Retired" or "provisional" members under the "Educational Retirement Act." [6-30-99; 2.82.2.8 NMAC - Rn & A, 2 NMAC 82.2.8, 11-30-2001]

### 2.82.2.9 REGULAR MEMBERS:

A. In the institutions of higher learning, technical and vocational institutes and junior colleges, "regular members" shall be all regularly employed teaching staff, whether full-time or part-time (except retired members participating

in the return to work program and exclusions under Section 11 of this rule); all regularly employed administrators, whether full-time or part-time, who hold a Bachelor's Degree of the professional equivalent thereof and who have managerial and supervisory responsibilities, (except retired members participating in the return to work program and exclusions under Section 11 of this rule); and all regularly employed nurses, whether full-time or part-time (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

B. In the public school districts and state operated schools other than colleges, "regular members" shall be all regularly employed teachers, administrators, and nurses who are holders of appropriate certificates issued by the State Department of Education, regardless of whether employed full-time or part-time, (except retired members participating in the return to work program and exclusions under Section 11 of this rule).

C. Any member except a retired member participating in the return to work program, who is regularly employed in any of the following administrative units, shall be a "regular member" if he holds a teacher's, nurse's or administrator's certificate (which is issued by the State Department of Education) at the time of commencement of employment in such administrative units:

- (1) northern New Mexico state school
- (2) N.M. boys' school
- (3) girls' welfare home
- (4) Los Lunas hospital and training school
- (5) state department of education
- (6) educational retirement board
- (7) New Mexico school for the visually handicapped
- (8) New Mexico school for the deaf
- (9) New Mexico Activities Association (was added to the Statute effective July 1, 1982).

D. Except retired members participating in the return to work program, regular membership is a condition of employment and all administrative unit employees who qualify as "regular members" must be covered under ERA, commencing with the first day of employment.

E. Except retired members participating in the return to work program, any person regularly employed, whether full-time or part-time, in any state institution or agency described in Subsection B of 2.82.2.8 NMAC, shall be a regular member if he is employed in an educational program and if he holds a certified school instruc-

tor's certificate issued by the State Board. [6-30-99; 2.82.2.9 NMAC - Rn & A, 2 NMAC 82.2.9, 11-30-2001]

**2.82.2.12 RETIRED MEMBERS:** For the purposes of the return to work program, a retired member shall be defined as any member who has retired pursuant to the Educational Retirement Act. [2.82.2.12 NMAC - N, 11-30-2001]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.3 NMAC, Section 8. This rule is being renumbered and reformatted to comply with current NMAC requirements.

### 2.82.3.8 EARNINGS COVERED:

A. A member's annual salary for the purpose of contributions to the fund and computation of the member's benefit shall consist of total remuneration to the member for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30, excluding any salary earned while employed under the return to work program of the Educational Retirement Act.

(1) Total remuneration to the member includes payment made directly to the member or to a third party on behalf of or for the benefit of the member, except that payment to the member for accrued sick leave shall not be covered for purposes of contributions or computation of retirement or disability benefits. Likewise, bonuses or incentive pay for early retirement during the four quarters preceding the member's retirement shall not be covered for contributions or benefit purposes.

(2) A lump-sum payment for accrued annual leave (vacation leave) shall be includable as annual salary only to the extent that it does not include payment for more than thirty (30) days of such leave. Thus, local administrative units shall withhold retirement contributions on lump-sum annual leave payments up to a maximum of thirty (30) days.

B. The salary paid to a member under a school bus owner/driver contract shall be covered for contributions and benefit calculation purposes.

C. Payment made to a member by an employer where services are not rendered are not subject to retirement contributions nor may such payments be used in the calculation of a retirement benefit. This rule is especially applicable in instances where the employer "buys-out" the member's contract whether or not pay-

ment is made in a lump-sum or distributed over a period of time.

D. Retirement contributions shall be made by employer and employee on base salary or earnings before the salary is reduced due to the employee and employer entering into a voluntary "cafeteria" plan.

[6-30-99; 2.82.3.8 NMAC - Rn & A, 2 NMAC 82.3.8, 11-30-2001]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.4 NMAC, Section 10. This rule is being renumbered and reformatted to comply with current NMAC requirements.

**2.82.4.10 RETURN TO WORK:** No service credit can be earned, purchased or otherwise credited for any of the time a retired member is employed by an administrative unit while the member is participating in the return to work program of the Act. While a member is participating in the return to work program, no service credit can be purchased for service previously earned or withdrawn.

[2.82.4.10 NMAC - N, 11-30-2001]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.5 NMAC, Section 15. This rule is being renumbered and reformatted to comply with current NMAC requirements.

### 2.82.5.15 RETURN TO WORK

A. [Reserved]

B. The consecutive twelve month break in service shall be calculated from the effective date of retirement until the first day of re-employment. To qualify for the return to work program, the break in service may have commenced at anytime, but must be at least 12 consecutive months directly preceding the retired member's return to work, as long as such re-employment commences on or after January 1, 2002.

C. Any and all time that a retired member has provided service to an administrative unit under the return to work program cannot be used in the calculation of retirement benefits.

D. No retired member is eligible for the return to work program of this act until they submit a signed and notarized return to work form as supplied by

ERB, verifying their eligibility for the return to work program of the Act.

E. The date of suspension for any retired member shall be the last day of the month in which the member suspended retirement.

F. A retired member who was participating in the return to work program must wait a minimum of ninety (90) days from the date of suspension before he or she can purchase any withdrawn service.

G. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required form as described in 82.5.15(D) or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the Educational Retirement Fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the Board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to the ERB that they have terminated any and all employment that would disqualify them from retirement under the Act. To requalify for the return to work program, he or she must complete the minimum twelve month break in service as described in 82.5.15 calculated from the date of reinstatement of retirement.  
[2.82.5.15 NMAC - N, 11-30-2001]

## NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS

16 NMAC 39.1, General Provisions—Professional Engineering and Surveying—Organization and Administration, filed 03-31-1998; Amendments to 16 NMAC 39.1.17.4, 16 NMAC 39.1.17.5, 16 NMAC 39.1.17.6 filed 01-04-2000 all are being repealed in its entirety due to extensive changes throughout this part (effective 01-01-2002). It is being replaced with the new part 16.39.1 NMAC, General Provisions—Professional Engineering and Surveying—Organization and Administration, filed 11-16-2001 (Effective 01-01-2002).

16 NMAC 39.3, Engineering—Certificates of Registration, Disciplines, Applications, Exams, Practice, Seal of Registrant & Endorsements, filed 03-31-98 is being repealed in its entirety due to extensive changes throughout this part. It is being replaced with the new part 16.39.3 NMAC,

Engineering—Certificates of Licensure, Disciplines, Applications, Exams, Practice, Seal of Licensee & Endorsements, filed 11-16-2001 (Effective 01-01-2002).

16 NMAC 39.4, Incidental Practice, filed 03-31-1998 and Amendment, filed 01-04-2000 is being repealed in its entirety due to extensive changes throughout this part. It is being replaced with the new part 16.39.4 NMAC, Incidental Practice, filed 11-16-2001 (Effective 01-01-2002).

16 NMAC 39.5, Surveying—Applications, Examinations, Practice of Surveying, Seal of Registrant, filed 03-31-1998 is being repealed in its entirety due to extensive changes throughout this part. It is being replaced with the new part 16.39.5 NMAC, Surveying—Applications, Examinations, Practice of Surveying, Seal of Licensee, filed 11-16-2001 (effective 01-01-2002).

16 NMAC 39.7, Misc.—Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates & Disciplinary Action, filed 03-31-1998 is being repealed in its entirety due to extensive changes throughout this part. It is being replaced with the new part 16.39.7 NMAC, Misc.—Procedures for Revocation, Suspension, Imposition of Fines, Reissuance of Certificates & Disciplinary Action, filed 11-16-2001 (Effective 01-01-2002).

16 NMAC 39.8, Code of Professional conduct—Engineering and Surveying, filed 03-31-1998 is being repealed in its entirety due to extensive changes throughout this part. It is being replaced with the new part 16.39.8 NMAC, Code of Professional conduct—Engineering and Surveying, filed 11-16-2001 (Effective 01-01-2002).

## NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS

### TITLE 16 OCCUPATIONAL & PROFESSIONAL LICENSING CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS PART 1 GENERAL PROVI- SIONS—PROFESSIONAL ENGI- NEERING AND SURVEYING ORGA- NIZATION AND ADMINISTRATION

**16.39.1.1 ISSUING AGENCY:** State Board of Licensure for Professional Engineers and Surveyors, 1010 Marquez

Place, Santa Fe, NM 87505, Telephone No. (505) 827-7561

[16.39.1.1 NMAC – Rp 16 NMAC 39. 1.1, 1/01/2002]

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

[16.39.1.2 NMAC – Rp 16 NMAC 39. 1.2, 1/01/2002]

**16.39.1.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-23-10 (B) prescribes that “The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors.”

[16.39.1.3 NMAC – Rp 16 NMAC 39. 1.3, 1/01/2002]

**16.39.1.4 DURATION:** Permanent.

[16.39.1.4 NMAC – Rp 16 NMAC 39. 1.4, 1/01/2002]

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

[16.39.1.5 NMAC – Rp 16 NMAC 39. 1.5, 1/01/2002]

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

[16.39.1.6 NMAC – Rp 16 NMAC 39. 1.6, 1/01/2002]

**16.39.1.7 DEFINITIONS [RESERVED]**  
[16.39.1.7 NMAC – Rp 16 NMAC 39. 1.7, 1/01/2002]

**16.39.1.8 THE BOARD:**

**A.** The name of this board shall be the State Board of Licensure for Professional Engineers and Surveyors hereinafter referred to as the “Board”.

**B.** The headquarters of the Board shall be at Santa Fe, New Mexico.

**C.** The official Seal of the Board shall be an embossed circular seal one and three-quarter inches in diameter consisting of two concentric circles; the outer circle to be one and three-quarter inches in diameter. The inner circle to be one and one-quarter inches in diameter. The inner circle shall contain the seal of the State of New Mexico and the words, "State of New Mexico." The words, "Board of Licensure for Professional Engineers and Surveyors", shall be contained between the two concentric circles.

**D.** The fiscal year of the Board shall be July 1, through June 30 of the following calendar year.

[16.39.1.8 NMAC – Rp 16 NMAC 39. 1.8, 1/01/2002]

#### **16.39.1.9 MEMBERS OF THE BOARD:**

Members of the Board are not employees within the meaning of that term under the Governmental Conduct Act. The members of the Board are subject to the other provisions of the Act.

[16.39.1.9 NMAC – Rp 16 NMAC 39. 1.9, 1/01/2002]

#### **16.39.1.10 MEETINGS OF THE BOARD:**

**A.** Special and emergency meetings of the Board may be called at any time by the Chair of the Board, or a majority of the Board members; and meetings of either of the two Committees may be called at any time by order of the respective Chair of the Professional Engineering Committee or the Professional Surveying Committee or a majority of the Committee members.

**B.** Proper public notice of all meetings shall be given in accordance with the provisions of the Open Meeting Act.

[16.39.1.10 NMAC – Rp 16 NMAC 39. 1.10, 1/01/2002]

#### **16.39.1.11 ORGANIZATION OF THE BOARD:**

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

**B.** Annually, at the first meeting after July 1, the Chair of the Board shall appoint from the Board's members such additional committees as may be found appropriate by the Board.

[16.39.1.11 NMAC – Rp 16 NMAC 39. 1.11, 1/01/2002]

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

**A.** The Board shall act as a whole in all administrative, financial and

personnel matters and any other activity not specifically related to the practices of engineering or surveying.

**B.** The Board shall appoint an Executive Director who shall serve as an exempt employee at the pleasure of the Board.

**C.** The Chair of the Board shall preside at all meetings; shall appoint all committees; shall sign all certificates of registration, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the Chair.

**D.** The Vice-Chair of the Board shall, in the absence or incapacity of the Chair, exercise the duties and shall possess all the powers of the Chair.

**E.** The Secretary of the Board shall co-sign all certificates of licensure.

**F.** The Executive Director shall perform and/or supervise the following for the Board and Professional Engineering and Professional Surveying Committees:

(1) Conduct and care for all correspondence in the name of the Board, the Professional Engineering Committee and the Professional Surveying Committee.

(2) Record and file all applications, certificates of licensure, examinations, licenses and revocations for both Professional Engineering and Professional Surveying Committees.

(3) Possess the official seal and affix same to all official documents upon order of the Chair of the Board.

(4) Keep a record of all meetings of the Board and Committees and maintain a proper account of the business of the Board. A draft of the meetings' minutes shall be mailed to each member for comment within two weeks after each meeting; with a final copy to be typed and furnished to each board member at the next meeting for final approval and recording.

(5) Receive and account for all funds and transfer same to State Treasurer within twenty-four hours of receipt. Only those invoices and vouchers for expenditures included in the Board's approved operating budget shall be approved and signed by the Executive Director. Approved vouchers and invoices shall be transmitted to the Department of Finance and Administration. A tabulation of each financial transaction is to be maintained on a quarterly basis and submitted to the Board at the next scheduled meeting for its information and approval. These tabulations are to be made part of the Board's minutes.

(6) Present to the Board at the first meeting of the fiscal year a report as of the preceding June 30th, of the transactions of the Board during the preceding fiscal

year, and a complete statement of the receipts and expenditures of the Board, and upon being approved by the Board, shall be included in the annual report and submitted to the Governor.

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

(8) Schedule and arrange for the administration of written examinations provided for in said Act, content of which having been approved by the Board or respective Professional Engineering or Professional Surveying Committees. When requested by the applicant, the Director shall make reasonable accommodations for the testing of an applicant with a certified disability in accordance with the provisions of the Americans with Disabilities Act and who meets the minimum qualifications in the Engineering and Surveying Practice Act and these rules. When necessary qualified assistance, approved by the Board, may be retained for conduct of examinations.

(9) Prepare the Roster and Supplemental Roster in accordance with Section 61-23-13. Include in the roster and supplement only the names of those Engineering Interns and Surveying Interns who have been enrolled during that fiscal year.

(10) Mail copies of the Roster and Supplemental Roster to each licensee. File a copy with the Secretary of State and other required agencies, and furnish copies to the public upon request and payment of a fee as determined by the Board.

(11) Report to and inquire of the National Council of Examiners for Engineering and Surveying violations of state engineering and surveying laws.

(12) Furnish to the press and state engineering and surveying societies lists of newly qualified licensees and enrolled Engineering Interns or Surveying Interns.

(13) Distribute one week in advance of each meeting, copies of the agenda of the meeting to each member of the Board.

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

(15) Direct investigations of any alleged violations or infringements of the Engineering and Surveying Practice Act. A written report covering status of protest actions and alleged violations shall be presented to the appropriate committee at each meeting. This may be in the form of appropriate commentary recorded in the minutes, supported by a separate file on the case. When necessary, qualified assistance, approved by the Board, may be retained for conduct of investigations.



(16) File formal disciplinary actions upon approval by the Board with the appropriate jurisdiction for prosecution of alleged violations of the Act and/or the Board's rules.  
[16.39.1.12 NMAC – Rp 16 NMAC 39.1.12, 1/01/2002]

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

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

**B.** The Vice-Chair shall, in the absence or incapacity of the Chair, exercise the duties and shall possess all the powers of the Chair.  
[16.39.1.13 NMAC – Rp 16 NMAC 39.1.13, 1/01/2002]

**16.39.1.14 PROCEDURES AT BOARD MEETINGS AND COMMITTEE MEETINGS:**

**A.** The order of business may be as follows:

**BOARD MEETINGS**

- (1) Approval of Agenda
- (2) Approval of Minutes
- (3) Reports of Committees
- (4) Communications
- (5) Old Business
- (6) New Business
- (7) Complaints and Violations
- (8) Adjournment

**COMMITTEE MEETINGS**

- (1) Approval of Agenda
- (2) Approval of Minutes
- (3) Reports of Sub-Committees
- (4) Communications
- (5) Old Business
- (6) New Business
- (7) Complaints and Violations
- (8) Applications
- (9) Adjournment

**B.** Roberts' Rules of Order shall generally govern the procedure of the Board and Committee meetings except as otherwise provided for in the Regulations and Rules of Procedure or the Act.

**C.** Board Members may participate in a meeting of the Board or Committees by means of a telephone conference or similar communications equipment and participation by such means shall constitute presence in person at the meeting. Participation by telephone may only occur when it is difficult or impossible for Board Members to attend.  
[16.39.1.14 NMAC – Rp 16 NMAC 39.1.14, 1/01/2002]

**16.39.1.15 ROSTER:**

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

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

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

**16.39.1.16 FEES:**

**A.** A fee will be assessed to process an application for a license to practice, for enrollment as an Engineering Intern or Surveying Intern, and for examinations.

**B.** Examination fees shall be paid no later than four (4) weeks prior to the date of the scheduled examination. Said fees are earned fees and are not refundable if the applicant should fail to appear for the examination.

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

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

[16.39.1.16 NMAC – Rp 16 NMAC 39.1.16, 1/01/2002]

**16.39.1.17 STATUS OF REGISTRATION:**

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

- (1) Retired from active practice;
- (2) at least 60 years of age; and
- (3) have been a licensee for a continuous period of 20 years, at least 10 of which must have been in New Mexico.

**B.** Licensees shall request retired status by letter. In the event the licensee on retired status desires to return to practice, the licensee shall apply to the Board, comply with the Continuing Professional Development requirements; and if approved shall pay the appropriate fee.

**C.** Professional Engineers and Professional Surveyors on "retired status" with the Board may use the titles "engineer", "surveyor", "professional engineer", "professional surveyor", PE or PS after their names and shall add "(Ret.)" or "(Retired)" after such title.

**D.** Inactive Status - A licensee shall become eligible for inactive status with a waiver of renewal fees and

professional development requirements after meeting all the following qualifications:

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

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

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

**E.** In the event a licensee on inactive status desires to return to practice within six (6) years of acquiring inactive status, the licensee shall make proper application to the Board, comply with the continuing professional development requirements (a minimum of 30 PDHs) and if approved shall pay the appropriate fee.

**F.** An inactive licensee who has enjoyed inactive status in excess of six (6) consecutive years may be readmitted to active practice of the profession only upon making proper application and completion of the requirements as prescribed by the Board. (In the event an inactive licensee does not maintain a current license in any jurisdiction for the six previous years prior to requesting active status, that person will be required to take the Principles and Practice of Engineering (PE) examination or the Principles and Practice of Land Surveying (PLS) examination.)

[16.39.1.17 NMAC – Rp 16 NMAC 39.1.17, 1/01/2002]

**HISTORY OF 16.39.1 NMAC**

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

of Procedure—Members of the Board, filed 10-28-94; Rule 100.3, Regulations and Rules of Procedure—Meeting of the Board, filed 10-28-94; Rule 100.4, Regulations and Rules of Procedure—Organization of the Board, filed 10-28-94; Rule 100.5, Regulations and Rules of Procedure—Duties of the Board, Officers of the Board, and The Executive Director, filed 10-28-94; Rule 100.6, Regulations and Rules of Procedure—Duties of the Officers of the Professional Engineering and Professional Surveying Committee, 10-28-94; Rule 100.7, Regulations and Rules of Procedure—Procedures at Board Meetings and Committee Meetings, filed 10-28-94; Rule 100.8, Regulations and Rules of Procedure—Roster; filed 10-28-94; Rule 100.9, Regulations and Rules of Procedure—Fees, filed 10-28-94; Rule 100.10, Regulations and Rules of Procedure—Status of Registration, filed 10-28-94.

**HISTORY REPEALED MATERIAL:** 16 NMAC 39.1, filed 3-31-1998, 16 NMAC 39.1.17.4, 16 NMAC 39.1.17.5, 16 NMAC 39.1.17.6, filed 01-04-2000 (effective 02-15-2000), repealed (effective 01/01/2002). Replaced by 16.39.1 NMAC, filed 11-16-2001 (effective 01/01/2002).

**POST-NMAC HISTORY:** 16 NMAC 39.1, filed 03-31-1998 (Effective 04-15-1998); 16 NMAC 39.1.17.4, 16 NMAC 39.1.17.5, 16 NMAC 39.1.17.6, filed 01-04-2000 (effective 02-15-2000).

## NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS

### TITLE 16 OCCUPATIONAL & PROFESSIONAL LICENSING CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS PART 3 ENGINEERING— CERTIFICATES OF LICENSUREE, DISCIPLINES, APPLICATIONS, EXAMS, PRACTICE, SEAL OF LICENSEE & ENDORSEMENTS

**16.39.3.1 ISSUING AGENCY:** State Board of Licensure for Professional Engineers and Surveyors, 1010 Marquez Place, Santa Fe, NM 87505, Telephone No. (505) 827-7561  
[16.39.3.1 NMAC – Rp 16 NMAC 39. 3.1, 1/01/2002]

**16.39.3.2 SCOPE:** Provisions for Part 3

apply to any person certified as an Engineer Intern, licensed as a professional engineer, or to anyone applying for certification as an Engineer Intern or licensure as a professional engineer in New Mexico.  
[16.39.3.2 NMAC – Rp 16 NMAC 39.3.2, 1/01/2002]

**16.39.3.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-23-10 (B) prescribes that “The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors.” Section 61-23-19 prescribes, “The board shall provide for the proper authentication of all documents...The board shall regulate the use of seals.”  
[16.39.3.3 NMAC – Rp 16 NMAC 39.3.3, 1/01/2002]

**16.39.3.4 DURATION:** Permanent.  
[16.39.3.4 NMAC – Rp 16 NMAC 39. 3.4, 1/01/2002]

**16.39.3.5 EFFECTIVE DATE:** January 1, 2002, unless a later date is cited at the end of a section.  
[16.39.3.5 NMAC – Rp 16 NMAC 39. 3.5, 1/01/2002]

**16.39.3.6 OBJECTIVE:** The objective of Part 3 of Chapter 39 is to clearly define the procedure for granting certificates of licensure to practice engineering or certificates as Engineer Interns, identify and provide procedures for engineering disciplines, applications and examinations, practice of engineering, seal of licensees and application by endorsement guidelines.  
[16.39.3.6 NMAC – Rp 16 NMAC 39. 3.6, 1/01/2002]

**16.39.3.7 DEFINITIONS:** Board-approved, four-year curriculum in engineering is defined as:

**A.** Engineering curriculum accredited by the Engineering Accrediting commission (EAC) of the Accreditation Board for Engineering and Technology (ABET).

**B.** Graduation from an engineering curriculum that receives ABET accreditation within three years of the applicant’s graduation.

**C.** Non-ABET accredited engineering degree curriculum with the minimum number of engineering credits as

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

**D.** Graduate degree (master or doctoral) from an engineering program where the bachelor’s degree is ABET-accredited and the candidate has completed all the BS deficiencies (confirmation letter from graduate committee), even though the applicant’s bachelor’s degree was earned in a non-engineering program.  
[16.39.3.7 NMAC – Rp 16 NMAC 39.3.7, 1/01/2002]

### 16.39.3.8 ENGINEERING DISCIPLINES:

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

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

(1) Architectural	A
(2) Aeronautical	B
(3) Civil	C
(4) Agricultural	D
(5) Electrical	E
(6) Geological	G
(7) Chemical	H
(8) Industrial	I
(9) Mechanical	M
(10) Mining	N
(11) Metallurgical	NN
(12) Petroleum	P
(13) Structural	R
(14) Nuclear	T
(15) Fire Protection	U
(16) Environmental	V
(17) Construction	W

**C.** A licensee may be listed in no more than two disciplines of engineering. Subsequent to initial licensure, a licensee may apply for licensure in another discipline of engineering. The licensee shall demonstrate competence in that discipline and may be required to appear before the Board. Demonstration of competence

may be accomplished by presenting evidence as follows:

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

(2) Complete the application forms to indicate clearly the education, experience, and three (3) acceptable personal references which will substantiate proficiency in the discipline for which the licensee is applying. Experience and personal references must be stated.

(3) An applicant for licensure by endorsement may initially apply for the two disciplines.

**D. Structural Discipline –** Except for an applicant with a B.S. degree with a structural option and a minimum of four years of post-baccalaureate structural engineering experience, listing as a structural engineer may be obtained by having gained an acceptable engineering degree which included a minimum of 6 hours of structural design; having licensure as a professional engineer; and having four years of structural experience gained after licensure and acceptable to the Board.

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

(2) A Masters Degree in structures may be substituted for one year of the required experience.

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

[16.39.3.8 NMAC – Rp 16 NMAC 39.3.9, 1/01/2002]

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

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

**B.** A copy of the New Mexico Engineering and Surveying Practice Act and the Regulations and Rules of Procedure shall be sent to each applicant.

**C.** Applications for the Fundamentals of Engineering examination will be accepted from the following undergraduates: A person who has obtained at least a senior status in a board-approved four-year curriculum in engineering, or in a board-approved four-year curriculum in engineering technology that is accredited by the Technical Accreditation Commission of the Accreditation Board for Engineering and Technology. Applications may be submitted on the short form.

**D.** Applicants, with board-approved engineering degrees, wishing to take the Fundamentals of Engineering

examination shall submit their application on the long application form with an official college transcript mailed directly to the Board from the university.

**E.** Applicants for the Principles and Practices of Engineering examination with an ABET accredited engineering curriculum of four years or more or equivalent as determined by the Board shall have four years of post-baccalaureate experience acceptable to the PE Committee at the date of application and shall have passed the Fundamentals of Engineering Examination. Applicants with an ABET accredited engineering technology degree shall have six years of post-baccalaureate experience acceptable to the PE Committee at the date of application and shall have passed the Fundamentals of Engineering Examination.

**F.** Any application, to be complete, other than those referred to in 16.39.3.9.C above, must include acceptable replies from five references, pursuant to 61-23-14.1(3), official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other states.

**G.** No applicant will be eligible to take any examination whose application for eligibility has not been completed as set forth in 16.39.3.9.F for Professional Engineering Committee approval no less than eight (8) weeks prior to the next scheduled examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must be completed and examination fees paid no less than four (4) weeks prior to the next scheduled examination.

**H.** To update a PE application file in relation to experience, the applicant must complete the appropriate portions of the application form and provide references acceptable to the PE Committee to verify each additional experience record.

**I.** An applicant that has made three unsuccessful attempts at achieving a passing score on an examination, shall only be eligible to take the next scheduled examination after waiting a period of thirteen months. Thereafter, the applicant may take the examination no more than once each calendar year.

**J.** Applications for the FE/PE Examination which have been approved by the Board shall remain valid for three years from the date of approval.

**K.** An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the Committee's satisfaction, evidence that the applicants' qualifications are equal

to, or exceed those in New Mexico.

**L.** All applicants shall also show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of an engineer who will attest to the applicant's ability and knowledge as a competent engineer.

[16.39.3.9 NMAC – Rp 16 NMAC 39.3.9, 1/01/2002]

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

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

**B.** Any applicant that fails any written examination will be notified of the next three (3) dates of examination sessions. A written request to retake the examination and payment of the examination fee shall be received at least four (4) weeks prior to the date of the scheduled examination.

**C.** The type of examination will be disclosed to the examinee at a time to be set by the PE Committee. Type of examination will be one of the following:

(1) An "open book" examination shall be an examination during which the examinee may use board approved books, but shall exclude any book published as a compilation of examination items with their solutions that may have been presented in previous NCEES examinations.

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

(3) The examinations given by the PE Committee may be "open" or "closed book" or any combination thereof.

(4) Only battery operated calculators that print only to the integral display may be used for the solution of the examination problems. Calculators that can print to a disc, card, tape, removable electronic chip, or similar device shall not be used.

**D.** Examinees who wish to review their own examinations and the grading may do so, by appointment, at the Board's office in Santa Fe, but only in the presence of a member of the office staff. No notes may be taken during the examination of the materials and neither tests nor answer sheets shall be removed from the office.

**E.** If there is any question regarding the completed examination, the examinee shall put the matter in writing to

the Professional Engineering Committee; and it will be considered at the next Professional Engineering Committee meeting. The Professional Engineering Committee's answer to the examinee's question will be made in writing to the examinee.

[16.39.3.10 NMAC – Rp 16 NMAC 39.3.10, 1/01/2002]

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

**A.** Neither an individual nor any organization shall advertise or offer to practice engineering work in a discipline of engineering unless the individual or a member of the organization has been listed in the appropriate discipline by the Board and who is legally able to bind that organization by contract.

**B.** Neither individuals nor organizations shall circumvent these rules. Hiring persons qualified to do the work only after the work has been solicited or obtained shall be in violation of these rules and regulations. Licensees or organizations may advertise for work only in those disciplines of engineering in which they are listed to practice. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

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

**D.** The Board will consider the use of the terms, "Engineer", "engineering", or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of engineering. The Board will also consider the use of these terms or any modification or derivative of such terms in the articles of incorporation as published by the State Corporation Commission to constitute the offering of engineering services.

[16.39.3.11 NMAC – Rp 16 NMAC 39.3.11, 1/01/2002]

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

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

signatures as provided by law and Board's policy shall be acceptable.

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

**C.** The design of the seal/stamp shall consist of three concentric circles, the outermost circle being one and one-half inches in diameter, the middle circle being one inch in diameter, and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, LICENSED PROFESSIONAL ENGINEER" and the licensee's name. The inner ring shall contain the words "NEW MEXICO". The center circle shall contain the license number issued by the Board. Any border pattern used by the manufacturer is acceptable.

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

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

**F.** The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform an engineering survey. A licensed professional engineer may apply photogrammetric methods to derive topographic and other data and shall certify the work by affixing the licensee's seal.

[16.39.3.12 NMAC – Rp 16 NMAC 39.3.12, 1/01/2002]

#### **16.39.3.13 ENDORSEMENTS:**

**A.** For the purpose of New Mexico licensees by endorsement from other states, or possessions, the Professional Engineering Committee will only recognize

licensure granted by those authorities when the Professional Engineering Committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineering and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-14 and 61-23-14.1, NMSA 1978". Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state. Conditions for endorsement for licensure as a Professional Engineer shall be as follows:

(1) Graduation from an approved engineering curriculum, four years of experience satisfactory to the PE Committee, and passing of the 8-hour Fundamentals and 8-hour Professional examinations; (1979 law and 1987 law).

(2) Graduation from an ABET accredited engineering technology program or from an engineering or related science curriculum approved by the Committee, six years of experience satisfactory to the PE Committee, and passing of the 8-hour Fundamentals and 8-hour Professional examination; (1993 law).

(3) Licensure prior to July 1, 1993 by graduation from an engineering or related science curriculum other than the ones approved by the Committee, eight years of experience satisfactory to the PE Committee, and passing of the 8-hour Fundamentals and 8-hour Professional examination; (1979 law and 1987 law).

(4) Licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum, twenty years experience satisfactory to the PE Committee, and passing the 8-hour Professional examination; (1979 law and 1987 law).

(5) Licensure prior to July 1, 1940, by twelve years of experience satisfactory to the PE Committee (1934 law).

(6) Licensure prior to July 1, 1957, by graduation from an approved curriculum, and four years or more of experience satisfactory to the PE Committee; (1935 law).

(7) Licensure prior to July 1, 1957, by passing a written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved curriculum, and four years or more of experience satisfactory to the PE Committee; (1952 law).

(8) Licensure prior to July 1, 1967, by twenty-four years of experience satisfactory to the PE Committee, and by passing an oral examination; (1957 law).

(9) Licensure prior to July 1, 1967, by graduation from an approved cur-

riculum prior to July 1, 1957, and passing the 8-hour Professional examination; (1957 law).

(10) Licensure prior to July 1, 1979, by eight years of experience satisfactory to the PE Committee, and by having passed the 8-hour Fundamentals and 8-hour Professional examinations; (1969 law).

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

(12) For the purposes of endorsement, an approved engineering curriculum shall be an ABET accredited engineering curriculum of four years or more or equivalent as determined by the Board.  
[16.39.3.13 NMAC – Rp 16 NMAC 39.3.13, 1/01/2002]

#### **HISTORY OF 16.39.3 NMAC**

**PRE-NMAC HISTORY:** The material in Part is derived from that previously filed with the State Records Center & Archives under: PELS 67-1 New Mexico Engineering Practice Act, filed 6-22-67; PELS 79-1 New Mexico Engineering and Land Surveying Practice Act, filed 10-29-79; PELS 67-2 By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 6-22-67; PELS 68-1 By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 10-7-68; PELS 69-1 By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 7-3-69; PELS 71-1 Rules of Procedure Manual, filed 1-14-71; PELS 73-1 Rules of Procedure Manual, filed 1-4-73; PELS 75-1 Rules of Procedure Manual, filed 12-15-75; PELS 80-1 Regulations and Rules of Procedure, filed 1-28-80; PE/PS Rule No. 89-1 Regulations and Rules of Procedure, filed 8-15-89; Rule No. 200.1 Regulations and Rules of Procedure - Engineering Disciplines, filed 10-28-94; Rule No. 200.2 Regulations and Rules of Procedure - Application - Engineering Intern and Professional Engineer, filed 10-28-94; Rule No. 200.3 Regulations and Rules of Procedure - Examinations - Engineering Intern and Professional Engineer, filed 10-28-94; Rule No. 200.4 Regulations and Rules of Procedure - Practice of Engineering, filed 10-28-94; Rule No. 200.5 Regulations and Rules of Procedure - Seals of Registrant licensee, filed 10-28-94; Rule No. 200.6 Regulations and Rules of Procedure - Endorsements, filed 10-28-94.

**HISTORY REPEALED MATERIAL:** 16 NMAC 39.3, filed 03-31-1998, 16

NMAC 39.3.7, 16 NMAC 39.3.8.2, 16 NMAC 39.3.8.4, 16 NMAC 39.3.9.3, 16 NMAC 39.3.13.1 all filed 10-16-1998 all repealed (effective 01/01/2002). Replaced by 16.39.3 NMAC, filed 11-16-01 (effective 1/01/2002).

**POST-NMAC HISTORY:** 16 NMAC 39.3, filed 03-31-1998 (effective 04-15-1998); 16 NMAC 39.3.7, 16 NMAC 39.3.8.2, 16 NMAC 39.3.8.4, 16 NMAC 39.3.9.3, 16 NMAC 39.3.13.1, filed 10-16-1998 (effective 12-01-1998).

## **NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS**

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

**16.39.4.1 ISSUING AGENCY:** State Board of Licensure for Professional Engineers and Surveyors, 1010 Marquez Place, Santa Fe, NM 87505, Telephone No. (505) 827-7561  
[16.39.4.1 NMAC – Rp 16 NMAC 39. 4.1, 1/01/2002]

**16.39.4.2 SCOPE:** Provisions for Part 4 apply to any person licensed as a professional engineer.  
[16.39.4.2 NMAC – Rp 16 NMAC 39. 4.2, 1/01/2002]

**16.39.4.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-23-10 (B) prescribes that “The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors.” Section 61-23-10 (G) states “The board, in cooperation with the board of examiners for architects and the board of landscape architects shall create a joint standing committee to be known as the ‘joint practice committee’... (H) As used in the Engineering and Surveying Practice Act ‘incidental practice’ shall be defined by identical regulations of the board of licensure for professional engineers and survey-

ors and the board of examiners for architects.”  
[16.39.4.3 NMAC – Rp 16 NMAC 39. 4.2, 1/01/2002]

**16.39.4.4 DURATION:** Permanent  
[16.39.4.4 NMAC – Rp 16 NMAC 39.4.4, 1/01/2002]

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

**16.39.4.6 OBJECTIVE:** The objective of Part 4 of Chapter 39 is to define architectural work incidental to engineering and engineering work incidental to architecture as approved by the Joint Practice Committee and as an identical rule to 16. 30.1.7.12 NMAC (Board of Examiners for Architects).  
[16.39.4.6 NMAC – Rp 16 NMAC 39.4.6, 1/01/2002]

**16.39.4.7 DEFINITIONS [RESERVED]**  
[16.39.4.7 NMAC—RP. 16 NMAC 39.4.7, 1/01/2002]

**16.39.4.8 INCIDENTAL PRACTICE OF ARCHITECTURE AND ENGINEERING** - as defined in Section 61-23-22(A), NMSA 1978 means

**A.** Architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than four hundred thousand dollars (\$400,000) and having a total occupant load not greater than fifty (50);

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

**C.** All buildings and related structures within the regulatory provisions of the New Mexico Uniform Building Code (NMUBC) will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than four hundred thousand dollars (\$400,000) or having a total occupant load greater than fifty (50), with the exception of:

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

(2) multiple dwellings not more than 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;

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

(4) nonresidential buildings, as defined in the uniform building code, or additions having a total occupant load of ten (10) or less and not more than two (2) stories in height, which shall not include E-3 (Day Care), H (Hazardous), or I (Institutional) occupancies;

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

**D.** The owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project.

**E.** Occupant load shall be defined and determined by the method set forth in Table 33-A of the Uniform Building Code (UBC).

[16.39.4.8 NMAC – Rp 16 NMAC 39.4.8, 1/01/2002]

#### History of 16.39.4 NMAC

**PRE-NMAC HISTORY:** The material in this Part is derived from that previously filed with the State Records Center & Archives under: PE/PS Rule 92-1, Definitions, filed 1-30-92 and Rule No. 300.1 Regulations and Rules of Procedure - Incidental Practice of Architecture and Engineering, filed 10-28-94.

**HISTORY REPEALED MATERIAL:** 16 NMAC 39.4, filed 01-04-2000, repealed (effective 01-01-2002). Replaced by 16.39.4 NMAC, filed 11-16-2001(effective 01-01-2002).

**POST-NMAC HISTORY:** 16 NMAC 39.4, filed 03-31-98 (Effective 04-15-1998), 16 NMAC 39.4, filed 01-04-2000 (effective 02-15-2000).

## NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS

TITLE 16 OCCUPATIONAL &  
PROFESSIONAL LICENSING

### CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS

#### PART 5 SURVEYING — APPLICATIONS, EXAMINATIONS, PRACTICE OF SURVEYING, SEAL OF LICENSEE

**16.39.5.1 ISSUING AGENCY:** State Board of Licensure for Professional Engineers and Surveyors, 1010 Marquez Place, Santa Fe, NM 87505, Telephone No. (505) 827-7561

[16.39.5.1 NMAC – Rp 16 NMAC 39.5.1, 1/01/2002]

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

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

**16.39.5.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-23-10 (B) prescribes that “The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors.”

[16.39.5.3 NMAC – Rp 16 NMAC 39.5.3, 1/01/2002]

**16.39.5.4 DURATION:** Permanent

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

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

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

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

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

**16.39.5.7 DEFINITION [RESERVED]**

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

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

**A.** Board members may

not be used as references.

**B.** A copy of the New Mexico Engineering and Surveying Practice Act and the Regulations and Rules of Procedure shall be sent to each applicant.

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

**D.** An applicant whose application for eligibility has not been completed as set forth in 16 NMAC 39.5.8.C eight (8) weeks prior to the examination will not be eligible to take any examination. Once eligibility has been approved, each applicant shall then submit a second application which identifies type and location of examination desired. This second application must be completed and examination fees paid no less than four (4) weeks prior to the next scheduled examination.

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

**F.** An applicant that has made three unsuccessful attempts at achieving a passing score on an examination, shall only be eligible to take the next scheduled examination after waiting a period of thirteen months. Thereafter, the applicant may take the examination no more than once each calendar year.

**G.** Applications for the PS Examination which have been approved by the Board shall remain valid for only one year.

**H.** An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the Committee's satisfaction, evidence that the applicants' qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico. All applicants shall show proficiency in the English language and shall have a minimum of four years experience working in the United States under the direction of a licensed Professional Surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.

[16.39.5.8 NMAC – Rp 16 NMAC 39.5.8, 1/01/2002]

**16.39.5.9 EXAMINATIONS—SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:**

**A.** Regularly scheduled written examinations shall be held biannually in the spring and autumn respectively.

Other examinations may be held at times and places as determined by the PS Committee.

**B.** An applicant that fails any written examination will be notified of the next three (3) dates of examination sessions. A written request to retake the examination and payment of the examination fee shall be received at least four (4) weeks prior to the date of the scheduled examination.

**C.** Examinees who wish to review their own examinations and the grading may do so, by appointment, at the Board's office in Santa Fe, but only in the presence of a member of the office staff. No notes may be taken during the review of the examination materials. Neither tests nor answer sheets shall be removed from the office.

**D.** If there is any question regarding an examination, the examinee shall put the question in writing and submit it to the Professional Surveying Committee. The question will be considered at the next Professional Surveying Committee meeting. The Committee's answer to the examinee's question shall be made in writing to the examinee.

[16.39.5.9 NMAC – Rp 16 NMAC 39.5.9, 1/01/2002]

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

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

**B.** Individuals and organizations shall not circumvent these rules. Hiring persons qualified to do the work only after the work has been solicited or obtained shall be in violation of these rules and regulations.

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

**D.** The Board will consider the use of the terms, "Surveyor", "surveying" or any modification or derivative of such terms, in the title of a firm or organization to constitute the offering of surveying services. The Board also considers the use of these terms or any modification or derivative of such terms solely in the articles of incorporation as published by the State Corporation Commission to constitute the offering of surveying services.

[16.39.5.10 NMAC – Rp 16 NMAC 39.5.10, 1/01/2002]

#### **16.39.5.11 SEAL OF**

#### **LICENSEE:**

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

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

**C.** The design of the seal/stamp shall consist of three concentric circles, the outermost one being one and one-half inches in diameter, the middle circle being one inch in diameter and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, LICENSED PROFESSIONAL SURVEYOR", and the licensee's name. The inner ring shall contain the words "NEW MEXICO". The center circle shall contain the license number issued by the Board. Any border pattern used by the manufacturer is acceptable.

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

[16.39.5.11 NMAC – Rp 16 NMAC 39.5.12, 1/01/2002]

#### **HISTORY OF 16.39.5 NMAC**

**PRE-NMAC HISTORY:** The material in this Part is derived from that previously filed with the State Records Center & Archives under: PELS 79-1, New Mexico Engineering Practice Act, filed 6-22-67; PELS 79-1 New Mexico Engineering and Land Surveying Practice Act, filed 10-29-79; PELS 67-2, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 06-22-67; PELS 68-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 10-07-68; PELS 69-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 07-03-69; PELS 71-1, Rules of Procedure Manual, filed 01-14-71; PELS 73-1, Rules of Procedure Manual, filed 01-04-73; PELS 75-1, Rules of Procedure Manual, filed 12-15-75; PELS 80-1, Regulations and Rules of Procedure, filed 01-28-80; PE/PS Rule No. 89-1, Regulations and Rules of Procedure, filed 08-15-89; Rule No. 400.1, Regulations and

Rules of Procedure - Application - Surveyor Intern and Professional Surveyor, filed 10-28-94; Rule No. 400.2, Regulations and Rules of Procedure - Examinations - Surveyor Intern and Professional Surveyor, filed 10-28-94; Rule No. 400.3, Regulations and Rules of Procedure - Practice of Surveying, filed 10-28-94; Rule No. 400.4, Regulations and Rules of Procedure - Seal of Registrant licensee, filed 10-28-94.

#### **HISTORY REPEALED MATERIAL:**

16 NMAC 39.5, filed 03-31-1998, repealed (effective 01-01-2002). Replaced by 16.39.5 NMAC, filed 11-16-2001 (effective 01-01-2002).

**POST-NMAC HISTORY:** 16 NMAC 39.5, filed 03-31-1998 (effective 04-15-1998).

## **NEW MEXICO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS**

### **TITLE 16 OCCUPATIONAL & PROFESSIONAL LICENSING CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS PART 7 MISC.—PROCEDURES FOR REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF CERTIFICATES & DISCIPLINARY ACTIONN**

**16.39.7.1 ISSUING AGENCY:** State Board of Licensure for Professional Engineers and Surveyors, 1010 Marquez Place, Santa Fe, NM 87505, Telephone No. (505) 827-7561

[16.39.7.1 NMAC – Rp 16 NMAC 39. 7.1, 1/01/2002]

**16.39.7.2 SCOPE:** Provisions for Part 7 apply to individuals certified as Engineer Interns, Surveyor Interns, or licensed as Professional Engineers or Professional Surveyors or anyone applying for licensure as a Professional Engineer or Surveyor.

[16.39.7.1 NMAC – Rp 16 NMAC 39.7.2, 1/01/2002]

**16.39.7.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-23-10 (B) prescribes that "The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the con-

duct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors.”

[16.39.7.3 NMAC – Rp 16 NMAC 39. 7.3, 1/01/2002]

**16.39.7.4 DURATION:** Permanent

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

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

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

**16.39.7.6 OBJECTIVE:** The objective of Part 7 is to define procedures for revocation, suspension, imposition of fines, reissuance of certificates and disciplinary action. It is also to define actions constituting violations of the Act. [16.39.7.6 NMAC – Rp 16 NMAC 39.7.6, 1/01/2002]

**16.39.7.7 DEFINITIONS [RESERVED]**

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

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

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

**B.** A lost, mutilated or destroyed certificate shall be replaced only upon the written request of the licensee and payment of the required fee. The reissued certificate shall show the original license number and original date, shall be signed by the current Chair and Secretary of the Board in office at that date, and shall carry the notation “Reissued (DATE).”

[16.39.7.8 NMAC – Rp 16 NMAC 39.7.8, 1/01/2002]

**16.39.7.9 VIOLATIONS:**

**A.** For organizations using the words “engineering” or “surveying” in their titles or offering engineering or surveying services, the Board’s Executive Director shall write the organization, enclosing an affidavit to be completed which identifies the member of the organization who is licensed to practice in the State of New Mexico and who is legally able to bind the organization by contract. If no response to this request is received within thirty (30) days, a second letter shall be sent by certified mail, return receipt requested. If the second letter does not result in a response, the matter may be turned over to the Attorney General’s office

for action.

**B.** It shall be considered “misconduct” under Sections 61-23-24 A(1) of the Act for any engineer or surveyor to practice or offer to practice outside their field(s) of demonstrated competence or in contravention of any of the provisions of these rules.

**C.** The practice or offer to practice engineering and/or surveying by a licensee of the Board in any state, territory and/or country where the licensee is in violation of that jurisdiction’s licensing requirement shall be considered to be professional misconduct which may be actionable by the Board.

**D.** Each applicant or licensee shall notify the Board, in writing, within ninety (90) days, of the imposition of any disciplinary action by any other applicable licensing board or any conviction of or entry of plea of nolo contendere to any crime under the laws of the United States, or any state, territory or county thereof, which is a felony, whether related to practice or not; any conviction of or entry of plea of nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is moral turpitude, or which is directly related to the practice of engineering or surveying.

**E.** The Board shall comply with the provisions of the Parental Responsibility Act as they relate to the denial, suspension or revocation of certificates of licensure for nonpayment of child support.

[16.39.7.9 NMAC – Rp 16 NMAC 39.7.9, 1/01/2002]

**HISTORY OF 16.39.7 NMAC**

**PRE-NMAC HISTORY:** The material in this Part is derived from that previously filed with the State Records Center & Archives under: PELS 67-2, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 6-22-67; PELS 68-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 10-7-68; PELS 69-1, Bylaws of State Board of Registration for Professional Engineers and Land Surveyors, filed 7-3-69; PELS 71-1, Rules of Procedure Manual, filed 1-14-71; PELS 73-1, Rules of Procedure Manual, filed 1-4-73; PELS 75-1, Rules of Procedure Manual, filed 12-15-75; PELS 80-1, Regulations and Rules of Procedure, filed 1-28-80; Rule PE/PS Rule No. 89-1, filed 8-15-89; Rule No. 600.1, Regulations and Rules of Procedure - Revocation, Suspension, Imposition of Fines, Reissuance of Certificates and Disciplinary Action, filed 10-28-94; Rule No. 600.2, Regulations and Rules of Procedure - Violations, filed 10-

28-94; Rule No. 600.2, Amendment 1, filed 10-18-95; and Rule No. 600.2, Amendment 2, filed 12-12-95.

**HISTORY REPEALED MATERIAL:** 16 NMAC 39.7, filed 03-31-1998, repealed (effective 01-01-2002). Replaced by 16.39.7 NMAC, filed 11-16-2001 (effective 01-01-2002).

**POST-NMAC HISTORY:** 16 NMAC 39.7, filed 03-31-1998 (effective 04-15-1998).

**NEW MEXICO BOARD OF  
LICENSURE FOR  
PROFESSIONAL  
ENGINEERS AND  
SURVEYORS**

**TITLE 16 OCCUPATIONAL &  
PROFESSIONAL LICENSING  
CHAPTER 39 ENGINEERING AND  
SURVEYING PRACTITIONERS  
PART 8 CODE OF PROFES-  
SIONAL CONDUCT—ENGINEERING  
AND SURVEYING**

**16.39.8.1 ISSUING AGENCY:** State Board of Licensure for Professional Engineers and Surveyors, 1010 Marquez Place, Santa Fe, NM 87505, Telephone No. (505) 827-7561

[16.39.8.1 NMAC – Rp 16 NMAC 39. 8.1, 1/01/2002]

**16.39.8.2 SCOPE:** Provisions for Part 8 apply to individuals certified as Engineer Interns or Surveyor Interns, licensed as Professional Engineers or Professional Surveyors or anyone applying for certification as an Engineer Intern or Surveyor Intern or licensed as a Professional Engineer or Professional Surveyor.

[16.39.8.2 NMAC – Rp 16 NMAC 39.8.2, 1/01/2002]

**16.39.8.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-23-10 (B) prescribes that “The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors.”

[16.39.8.3 NMAC – Rp 16 NMAC 39.8.3, 1/01/2002]

**16.39.8.4 DURATION:** Permanent



[16.39.8.4 NMAC – Rp 16 NMAC 39.8.4, 1/01/2002]

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

[16.39.8.5 NMAC – Rp 16 NMAC 39.9/5, 1/01/2002]

**16.39.8.6 OBJECTIVE:** The objective of Part 8 is to establish and maintain rules of professional conduct. [16.39.8.6 NMAC – Rp 16 NMAC 39.8.6, 1/01/2002]

**16.39.8.7 DEFINITIONS:** In these Rules of Professional Conduct, the word “licensee” shall mean any person holding a current license or certification issued by the Board. [16.39.8.7 NMAC – Rp 16 NMAC 39. 8.7, 1/01/2002]

**16.39.8.8 PREAMBLE:**

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

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

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

[16.39.8.8 NMAC – Rp 16 NMAC 39. 8.8, 1/01/2002]

**16.39.8.9 RULES OF PROFESSIONAL CONDUCT:**

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

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

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

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

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

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

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

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

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

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

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

**C.** The issuance of public statements.

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

(2) If a licensee issues statements on technical matters in his or her capacity as a professional engineer or professional surveyor on behalf of an interested party, the licensee must expressly preface his or her

remarks by identifying said interested party and by revealing the existence and nature of any interest the licensee may have in the matter.

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

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

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

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

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

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

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

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

(b) As authorized or required by law.

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

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

E. Solicitation of professional employment.

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

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

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

#### HISTORY OF 16.39.8 NMAC

**PRE-NMAC HISTORY:** The material in this Part is derived from that previously filed with the State Records Center & Archives under: PELS 89-2, Rules of Professional Conduct, filed 8-15-89; PE/PS Rule No. 89-2, Rules of Professional Conduct, filed 8-15-89; Rule No. 700.2, Code of Professional Conduct - Rules of Professional Conduct, filed 10-28-94; and Rule No. 700.1, Code of Professional Conduct -Preamble, filed 10-28-94.

#### HISTORY REPEALED MATERIAL:

16 NMAC 39.8, filed 3-31-1998, repealed (effective 01/01/2002). Replaced by 16.39.8 NMAC, filed 11-16-2001 (effective 01-01-2001).

**POST-NMAC HISTORY:** 16 NMAC 39.8, filed 03-31-1998 (effective 04-15-1998).

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.6 NMAC section 11.

#### 19.30.6.11 PROCEDURES FOR CONDUCTING PREVENTIVE COUGAR CONTROL IN BIGHORN

#### SHEEP RANGES.

A. The New Mexico Department of Game and Fish will conduct preventive cougar control within bighorn sheep ranges in the Manzano, Ladron, Peloncillo, ~~and~~ Hatchet, Animas, and Alamo Hueco Mountains for 5 years beginning October 1, 1999. Bighorn sheep ranges include Mesa Sarca and the entire Ladron Mountains to the south side of the Rio Salado in Game Management Unit 13 except that portion on the Sevilleta National Wildlife Refuge; ~~[the Little and Big Hatchet Mountains in Game Management Unit 26; that portion of the Peloncillo Mountains in Game Management Unit 27 from Skeleton Canyon north past Steins Mountain to the state line;]~~ that portion of the Manzano Mountains in Game Management Unit 14 from Commanche Canyon south to US Highway 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; and all of Units 26 and 27.

B. The maximum number of cougars removed per year (October 1-September 30) from bighorn ranges will ~~[be 7 from the Ladron Mountains, 7 from the Manzano Mountains, and 20 from the Peloncillo and Hatchet Mountains combined]~~ not be limited. Cougars taken from within the bighorn ranges by hunters during the sport harvest season will not be considered part of the ~~[allowable number for preventive control.]~~ quota.

C. The Department will obtain the services of houndsmen or trappers either from the Department's depredation list or through private contract to take up to the allowable number of cougars within the bighorn ranges that are not taken by hunters during the sport harvest season

D. A decision to hunt with hounds or to use snares will be made by Department personnel.

E. All cougars taken for preventive control will be reported to the Department.

F. At the conclusion of the 5 year period, an evaluation of the effectiveness of preventive control of cougars in improving the condition of the bighorn sheep populations will be made. [5-14-99, 9-15-99; 19.30.6.11 NMAC – Rn, 19 NMAC 30.6.11, 2-14-01; A, 11-30-01]

### NEW MEXICO COMMISSION ON HIGHER EDUCATION

This is Amendment to 5.3.12 NMAC, Sections 1, 6, 7, 8, 9. The rule was re-numbered to comply with the NMAC requirements.

**5.3.12.1 ISSUING AGENCY:** State of New Mexico Commission on Higher Education 1068 Cerrillos Road, Santa Fe, New Mexico [87501, (505) 827-7383] 87505.

[3/16/51, 7/1/94; 5.3.12.1 NMAC - Rn & A, 5 NMAC 3.12.1, 11/30/01]

#### 5.3.12.6 OBJECTIVE AND PURPOSE:

A. The objective of 5.3.12 NMAC is to identify and define on- and off-campus instruction that is eligible to receive funding through New Mexico's higher education funding formulae.

B. The purpose of 5.3.12 NMAC is to provide public higher education institutions with adequate and equitable funding in support of on-campus instruction as well as with the resources to enhance educational opportunities for the many New Mexico citizens who can not readily attend on-campus courses or programs. It is also anticipated that this funding will better enable post-secondary educational institutions to quickly respond to changing community and workforce educational needs. The New Mexico Commission on Higher Education believes that the delivery of instructional programming to students via alternative delivery modes will not only provide them improved educational opportunities, but will also provide the state a cost-effective alternative to the development of additional new campuses and facilities.

C. Commission policy encourages the evolution of existing campuses and the development of new models of delivery that take advantage of the opportunities offered by technology. Use of the Internet to deliver instruction has revealed that students participating in web-based courses may be located on-campus or off-campus. In order to recognize and support the increased use of technology, the Commission has adopted a policy that regards web-based courses as on-campus instruction for reporting purposes. [9/30/96, 5.3.12.6 NMAC - Rn & A, 5 NMAC 3.12.6; 11/30/01]

#### 5.3.12.7 DEFINITIONS:

A. "Academic credit" means student credit hours for courses ~~[which] that~~ through institutional policy and academic convention are determined to have the academic resources and support to meet traditional expectations for certificate and degree credit in academic and vocational programs.

B. "Commission" means the New Mexico Commission on Higher Education.

C. "Course File" is the Commission's data file containing one

record for each course-section at a given public post-secondary educational institution per academic term.

D. **“Developmental credit”** means student credit hours for courses which provide preparatory work (basic skills) that is prerequisite to the level of work expected for college.

E. **“Extended learning”** means the full range of available and developing modes for bringing instruction to learners, including live instructor delivery, instructional television, computer conferencing, video conferencing, audio conferencing, etc.

F. **“Extension, Correspondence, or Self-Study Credits”** are student credit hours for courses ~~which~~ that are limited in academic content, academic resources and/or setting (such as formal and regular student-instructor contact), or are so specialized that they do not meet traditional standards of applicability to degree program requirements. These courses are marked by the label, “extension,” “correspondence,” “self-study,” or “home study” so that their special nature is considered in evaluation for degree credit.

G. **“Off-campus credits”** are student credit hours earned from courses offered that do not meet the definition[s] of on-campus credits but are offered for regular academic credit and are applicable to an approved degree or certification program, taught by regular faculty or equivalent and delivered via extended learning instruction. Off-campus credits are reported in separate extended services data files to generate funding and include additional data fields to indicate the delivery location(s) of the instruction.

H. **“On-campus credits”** are student credit hours earned from courses that are offered within the geographical boundaries of the campus or via institutional web-based delivery systems for academic credit and for which regular main campus tuition is charged.

I. **“Registrar File”** is the Commission’s data file containing summary data of enrollments and residency of students at a given public post-secondary educational institution for Fall term only.

J. **“Restricted Credits”** are student credit hours earned in a course offered for academic credit for which the expenses of delivery are covered by funds from restricted sources (i.e., grants or contracts), by direct third-party payment (e.g., ROTC), or by the pooling of tuition and fees (i.e., self support).

K. **“Right of First Refusal”** means that an institution assigned a service area must first decline to provide requested educational services before

another New Mexico public post-secondary institution may offer those services in that service area.

L. **“Service area”** is an assigned geographic region where the local two-year higher education institution has the exclusive right to meet the lower division post-secondary educational needs of the area, subject only to limitations imposed by its enabling legislation, and consistent with the provisions of this policy. An institution may utilize its right of first refusal to allow other public higher education institutions to deliver offerings within its designated service area.

M. **“Student File”** is the Commission’s data file containing one record for each student taking courses at a given public post-secondary educational institution per academic term.

N. **“Student-Course File”** is the Commission’s data file containing one record for each course that each student at a given public post-secondary educational institution is enrolled in each academic term.

O. **“Student Credit Hours”** are instructional time units derived from the structure of academic degrees and programs. Generally, one student credit hour is considered to require no less than fifteen contact hours between the student and instructor and thirty hours of independent effort by the student in course preparations per academic term.

P. **“Tuition credit base”** means the base revenue anticipated to be available from tuition sources to assist in funding the cost of instruction at New Mexico’s public post-secondary educational institutions.

Q. **“Unrestricted Credits”** are student credit hours earned in a course offered for academic credit for which the faculty salary is paid by funds from the regular instruction and general sources and for which the student cost is the regular, on-campus tuition.

R. **“Web-based Courses”** are courses offered for academic credit and delivered synchronously or asynchronously over the Internet to students located at sites other than the classroom, including sites that may be off-campus. A web-based course may include the requirement that a student meet in a physical setting for lecture, laboratory, examination or other purposes as long as the required student presence in the physical setting does not exceed 25% of the total course time.

[2/27/85, 1/10/91, 9/30/96, 5.3.12.7 NMAC - Rn & A, 5 NMAC 3.12.7; 11/30/01]

### 5.3.12.8 GENERAL PRINCIPLES GUIDING INSTRUCTIONAL FUND-

### ING:

#### A. **Funding Priorities:**

The Commission is committed to ensuring equitable access to quality educational services to give all citizens the opportunity to fulfill their potential, regardless of their place of residence. Therefore, a major objective of the Commission’s annual funding recommendations will be to encourage the most effective and efficient means of delivering higher education services to citizens throughout New Mexico.

#### B. **Academic Quality:**

Quality is an essential component of the Commission’s agenda for higher education in New Mexico.

(1) By reporting student credit hours earned for state support, an institution concurs and agrees that all credits are derived from courses and programs that meet generally accepted principles of quality as used by the appropriate regional accrediting association, including, but not limited to:

(a) Each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded.

(b) Degree or certificate programs are coherent and complete.

(c) The program provides for appropriate interaction between faculty and students and among students.

(d) Qualified faculty provide appropriate oversight of each course and program.

(e) The program is consistent with the institution’s role and mission.

(f) Institutional review and approval processes ensure that each course and program is appropriate for the learning delivery system being used.

(g) The institution provides appropriate training and support services for faculty.

(h) The program ensures that appropriate learning resources are available to students.

(i) The program provides students with clear, complete and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment required, availability of support services and financial aid resources, and cost and payment policies.

(j) Students accepted for the course or program have the background, knowledge and technical skills needed to undertake the program.

(k) Students enrolled in the course or program have reasonable and adequate access to the range of student services appropriate to support their learning.

(l) The institution evaluates the program's educational effectiveness, including assessment of student learning outcomes, student retention, and student and faculty satisfaction. Students have access to such program evaluation data.

(m) Policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to various learning delivery systems.

(n) The institution demonstrates a commitment to ongoing support, both financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree/certificate.

(2) In implementing regular enrollment audit and program review processes, the Commission has both a right and a responsibility to test credits to ensure these standards are met.

#### C. Funding Mechanisms:

The Commission affirms its expectation that educational services provided to students be of the highest quality regardless of where or when instruction is offered. Therefore, in order to provide an adequate and equitable distribution of state funds to public higher education institutions in support of both on- and off-campus instruction, all eligible student credit hours will be used in the calculation of the recommended Instructional and General appropriation.

D. **Tuition Credit:** While the governing boards of New Mexico's public higher education institutions are assigned the responsibility for setting tuition and fee charges at their respective institutions, as part of its statutory responsibility the Commission is concerned with the adequate financing of these institutions and with the equitable distribution of funds among them. Because it is the policy of the Commission that every New Mexico citizen who desires public post-secondary education should have access to these educational opportunities, tuition credit for off-campus instruction shall be established for the sponsoring institutions at the same level as that set for resident and nonresident students on-campus.

#### E. Funding Eligibility:

To meet its responsibility to ensure access to high quality education for New Mexico's residents in a manner that promotes the effective and efficient use of available public tax dollars, the Commission recognizes that it is necessary to define types of instruction eligible for state funding. Therefore, the Commission asserts as a matter of public policy, that courses and programs provided by public institutions of higher education in New Mexico that are received within the geographic boundaries of the state are eligible for state funding if

they meet the following criteria:

(1) Courses and programs must demonstrate academic quality, consistent with the expectations stated in Subsection B of 5.3.12.8 NMAC.

(2) Courses must be offered for academic credit, or for developmental credit at non-doctoral institutions.

(3) Courses typically must be accessible to members of the general public who meet admissions standards and prerequisites. However, this paragraph is not intended to preclude state funding for course sections offered to specialized audiences or at locations inaccessible to the general public (e.g., secure areas on military reservations).

(4) In order to promote the responsible use of public resources and build upon existing institutional strengths, courses available off-campus must be related to educational programs offered by the institution to students on-campus. Likewise, programs available off-campus must fall within program areas offered on-campus and degrees available off-campus may not be at a level higher than offered on-campus.

F. **Geographic Service Areas:** The Commission acknowledges that rapidly evolving information technologies can deliver instructional services to many individuals without regard to their geographic location. However, the Commission also acknowledges that public two-year post-secondary institutions are provided supplemental funding through local tax levies, and are thus expected to meet the local taxpayers' educational needs. ~~[Therefore, the Commission will provide for a five year transition period to the free-market provision of instruction. In the interim,]~~ The Commission is committed to responding to the changing needs of the state and will examine alternative means of ensuring access and local accountability. At this time the Commission maintains that each two-year higher education institution's local taxing district shall constitute its geographic service area for the direct provision of lower division instruction, subject only to limitations imposed by its enabling legislation, and consistent with the provisions of Subsection C of 5.3.12.9 NMAC until June 30, 2004.

~~[(4) The Commission hereby gives notice that it does not intend to assign instructional delivery locations to any public post secondary institution in New Mexico after the end of a five year transition period. Subsection F of 5.3.12.8 NMAC shall expire on June 30, 2002].~~

[1/10/91, 9/30/96, 5.3.12.8 NMAC - Rn & A, 5 NMAC 3.12.8; 11/30/01]

**5.3.12.9 IMPLEMENTATION:** In order to ensure uniformity and equity in the implementation of this policy, it is necessary to clarify and make formal certain concepts described in Section 8 that determine differences in the fundability of certain types of credits.

#### A. Types of Credit:

Generally courses offered for academic credit are also eligible to count toward certificate and degree requirements; however, in some cases the special nature of the courses and their purpose make them inappropriate for degree credit, and thus ineligible for certain types of state funding.

(1) Academic Credit: Credits for these courses are eligible for reporting to generate regular funding, as long as they meet all eligibility criteria contained in this policy.

(2) Developmental Credit: Developmental course credits are not eligible for funding credit at the doctoral institutions, nor for degree or certificate credit at any institution.

(3) Extension, Correspondence, Self-Study Credit: Credits for courses that do not award credit applicable to a certificate or degree, or courses that do not include formal and regular contact between a student and instructor but are delivered through self-study, are not eligible for reporting to generate regular funding and must be supported by restricted or self-support funding.

#### B. Sources of Revenue:

The sources of revenue used to generate current instructional credits affect the State's interest in funding future activities based upon this record of past credits. In particular, the State may choose not to generate new funding levels from past activity that was compensated by a non-state source, thus avoiding double support for the same activity. For this reason, concepts of unrestricted and restricted credits are delineated within this policy. See also 5.3.12.7 NMAC for definitions.

(1) Unrestricted Credit: Unrestricted credits are counted by the Commission as credits in the regular state funding process. Tuition for unrestricted credits is estimated as a revenue credit in developing the Instruction and General funding recommendations.

(2) Restricted Credit: Restricted credits do not count as credits in the regular state funding process and are not considered by the Commission when determining Instruction and General funding recommendations.

#### C. Boundaries of a

**Campus:** In order to differentiate between on-campus and off-campus instruction, it is necessary to define the limits of a campus.

This policy provides such definitions, noting the differences between two-year and four-year boundaries relating to the unique circumstances of local supplementary funds for two-year institutions.

(1) On-Campus Credits: These are earned from courses that are offered within the defined boundaries of the campus for academic or developmental credit, including credits generated from institutional web-based delivery systems, and for which regular main campus tuition is charged.

(a) For Four-Year Institutions: The geographic boundaries of the campus are the limits of the municipality or metropolitan statistical area where the university is located.

(b) Special And Arranged On-Campus Credits: Because of the special nature of some courses, there are circumstances which of necessity require that they be taught, either in whole or in part, beyond the geographical boundaries of the campus and yet be classified as on-campus credit. These courses include those listed below or those arranged through timely, written agreement with the Commission and the Chief Academic Officer of the institution. The approved special on-campus programs include:

- (i) student teaching,
- (ii) internships,
- (iii) cooperatives,
- (iv) practica,
- (v) field instruction,
- (vi) physical education and recreation activity courses,
- (vii) study abroad, and
- (viii) thesis and dissertation courses.

(c) For Two-Year Institutions: The geographic boundaries of the campus are the geographic boundaries of their taxing district or approved service area.

(d) Service Areas - Enabled: The Commission hereby assigns service areas [~~for a five year period~~] to the public two-year higher education institutions consistent with the geographic boundaries of their taxing districts and subject only to limitations imposed by their enabling legislation. One institution will not deliver courses in another institution's service area without contacting that institution in a timely manner and obtaining concurrence in writing from that institution's chief academic officer, copy to the Commission. Subparagraph (d), Paragraph 1, Subsection C of 5.3.12.9 NMAC shall expire on ~~June 30, 2002~~ June 30, 2004.

(e) For areas of the state without local taxing districts, both four-year and two-year post-secondary institutions may offer educational services on a free-market

basis.

(f) Right of First Refusal - General Provision: Two-year post-secondary institutions assigned a service area shall have a right of first refusal to meet lower division instructional needs within their service area and have an obligation to assist that area's citizens in obtaining appropriate institutional services where financially, programmatically, and otherwise feasible. See also 5.3.12.7 NMAC for definitions.

(g) Right of First Refusal - Overlapping Campus Boundaries: No lower division offerings of any main campus of a four-year post-secondary institution that is located within a two-year higher education institution's local taxing district shall be subject to the provisions of Subparagraphs (d) or (f), Paragraph 1, Subsection C of 5.3.12.9 NMAC of this policy with regard to that two-year institution.

(h) Right of First Refusal - Branch Campuses and Educational Centers: While branch campuses and educational centers have the right of first refusal with regard to the offerings of other post-secondary institutions within their service area, the right of first refusal does not extend to the offerings of their own main campuses. Such offerings are subject only to internal institutional decision making.

(2) Off-Campus Credits: These are earned from courses offered that do not meet the above definitions of on-campus credits but are offered for academic or developmental credit and are part of an approved degree or certification program, taught by regular faculty or equivalent and/or delivered via extended learning. Tuition for off-campus credits reported for formula funding is estimated as a revenue credit in the calculation of the Instruction and General funding recommendations.

(a) Types of Off-Campus Instruction Credit: Public post-secondary educational institutions should use any appropriate form of instruction and/or delivery mode to meet the needs of students and programs, consistent with the provisions of Subsection B of 5.3.12.8 NMAC of this policy.

(b) Two-year institutions may offer course work for off-campus credits at sites remote from their defined service area that are not in another designated service area, or where the two-year institution has obtained concurrence from another two-year institution to provide the course within the latter's service area. Such course work will be at the lower division level, subject only to limitations imposed by their enabling legislation, provided that main campus academic expectations for staff and support are met.

(c) Four-year institutions may

offer course work for off-campus credits at sites remote from the main campus provided that they meet main campus academic expectations for staff and support. Generally, such course work will be at the upper division or graduate levels, except where there is no designated two-year institutional service area or where the four-year institution has obtained concurrence from the two-year institution to provide the course within the latter's service area.

(d) Any public post-secondary institution offering off-campus instruction in the vicinity of another public post-secondary institution will notify and seek the cooperation of that institution.

(e) The Commission has the authority to resolve disputes between or among higher education institutions regarding the delivery of instruction both within or outside of designated service areas.

**D. Collaborative Efforts, Consortia, and Extended Learning Instruction:** The Commission supports efforts to promote the sharing of resources by existing public post-secondary educational institutions to provide quality educational services. Where appropriate, the development of collaborative approaches to deliver courses and programs to students is encouraged. In order to ensure the efficient and effective provision of such services, public post-secondary institutions engaging in such joint ventures must have written agreements clarifying the various responsibilities and benefits of the collaborating parties. These agreements must address, but need not be limited to, the following points:

- (1) Cost and revenue sharing arrangements,
- (2) Student credit hour reporting arrangements,
- (3) Accommodations for alternative delivery methods at the receiving site,
- (4) Arrangements and responsibilities for evaluating the effectiveness of the joint venture,
- (5) Provision of student support services, and
- (6) Provision of academic support services.

[9/21/84, 1/10/91, 9/30/96, 5.3.12.9 NMAC - Rn & A, 5 NMAC 3.12.9; 11/30/01]

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## NEW MEXICO LIVESTOCK BOARD

21 NMAC 35.5, Cattle Rest Stations, filed 1-28-99 repealed effective 11-30-2001.

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## NEW MEXICO LIVESTOCK BOARD

### TITLE 21 AGRICULTURE AND RANCHING CHAPTER 35 LIVESTOCK MARKETING PART 5 CATTLE AND SHEEP REST STATIONS

**21.35.5.1 ISSUING AGENCY:** New Mexico Livestock Board, 300 San Mateo, NE, Suite 1000, Albuquerque, New Mexico 87108. Telephone: (505) 841-6161  
[21.35.5.1 NMAC – Rp, 21, NMAC 35.5.1, 11-30-2001]

**21.35.5.2 SCOPE:** All owners and operators of livestock rest stations and facilities used as rest stations and all owners, transporters, or handlers of livestock in the State of New Mexico and those that bring livestock into the state for any reason and utilize the services provided by rest stations. Additional requirements for livestock owners governing livestock business activities can be found in Title 21, Chapters 30, 32, 33, & 34 of the NMAC.  
[21.35.5.2 NMAC – Rp, 21 NMAC 35.5.2, 11-30-2001]

**21.35.5.3 STATUTORY AUTHORITY:** Section 77-2-7, and Article 3 of Chapter 77 and 77-9A-1 through 77-9A-5 NMSA 1978.  
[21.35.5.3 NMAC – Rp, 21 NMAC 35.5.3, 11-30-2001]

**21.35.5.4 DURATION:** Permanent.  
[21.35.5.4 NMAC – Rp, 21 NMAC 35.5.4, 11-30-2001]

**21.35.5.5 EFFECTIVE DATE:** November 30, 2001, unless a later date is cited at the end of a section.  
[21.35.5.5 NMAC – Rp, 21 NMAC 35.5.5, 11-30-2001]

**21.35.5.6 OBJECTIVE:** To establish rules governing the operation, inspection services, and licensing of cattle and sheep rest stations in New Mexico.  
[21.35.5.6 NMAC – Rp 21 NMAC 35.5.6, 11-30-2001]

#### 21.35.5.7 DEFINITIONS:

**A.** “Board” means the New Mexico Livestock Board.

**B.** “Director” means the executive director of the New Mexico Livestock Board.

**C.** “Inspector” means any duly authorized or commissioned officer of the Livestock Board.

**D.** “Livestock” means cat-

tle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

**E.** “Cattle or Sheep Rest Station Owner” means any person, persons, corporation, or organization operating a cattle rest station.

**F.** “Cattle Rest Station” means any facility in the state of New Mexico, which is used for the purpose of receiving and holding for rest, feeding, watering cattle, which are in transit within or through New Mexico.

**G.** “Sheep Rest Station” means any facility in the state of New Mexico, which is used for the purpose of receiving and holding for rest, feeding, or watering sheep or goats, which are in transit within or through New Mexico.

**H.** “New Mexico Livestock” means any livestock raised or pastured or fed within the State of New Mexico.

**I.** “Person” means an individual, partnership, association, or operation.

**J.** “Bond” means cash or an insurance agreement from a New Mexico Licensed surety or insurance corporation pledging surety for financial loss caused to another, including certificate of deposit, irrevocable letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board.  
[21.35.5.7 NMAC – Rp 21 NMAC 35.5.7, 11-30-2001]

#### 21.35.5.8 LICENSING OF REST STATIONS:

**A.** Cattle and sheep rest stations shall be licensed and bonded in accordance with Section 77-9A-2, NMSA 1978. The license shall be renewed annually. The bond shall be in an amount of \$10,000.00.

**B.** The NM Livestock Board or its inspector shall be notified upon arrival of all shipments entering a cattle or sheep rest station. An inspection of the cattle, sheep or goats may be conducted by a livestock inspector, or his authorized agent.

**C.** All cattle, sheep or goats entering a cattle or sheep rest station on direct shipment from outside the continental United States, must be accompanied by an official form issued by a federal official of the U.S.D.A. showing the current health status of the shipment, indicating the type of inspection and treatment administered prior to entry, and indicating the destination of the shipment. If the cattle, sheep or goats crossed at Santa Teresa or Columbus, they must also be accompanied

by the New Mexico Livestock Board Inspection Certificate issued at the port of entry.

**D.** All cattle, sheep or goats entering a cattle or sheep rest station from a state within the continental United States shall be accompanied by an official certificate issued by an accredited veterinarian, state, or federal official of the that state of origin, which certificate shall indicate the current health status, the place of origin, and the destination of the shipment.

**E.** The owner or operator of the cattle or sheep rest station shall provide a book to be used expressly by him or his agent for the purpose of recording the following information for each consignment of cattle or sheep entering the rest station:

- (1) Date and time of arrival;
- (2) Origin of the shipment;
- (3) Name and address of the importer, consignor, or shipper;
- (4) Name of the carrier upon arrival and departure;
- (5) Number and class of livestock;
- (6) Livestock identification (brands, ear tags, etc);
- (7) Name and address of consignee;
- (8) Place of destination (city and state); and date and time of departure from the cattle or sheep rest station.

**F.** The record book shall be available at any time, day or night, to a representative of the New Mexico Livestock Board.

**G.** Cattle, sheep or goat shipments entering a New Mexico cattle or sheep rest station, with a predetermined destination within, or out of the state of New Mexico, may depart without inspection, provided the shipment is not altered, sorted, reconfigured, or diverted from the destination indicated on the accompanying certificate.

**H.** Cattle, sheep or goat shipments entering without a predetermined destination, or shipments diverted from the predetermined destination, shall be subject to inspection at the prescribed fee, by a representative of the New Mexico Livestock Board.

**I.** Cattle, sheep or goats remaining in a cattle or sheep rest station for a period of more than twelve hours, are subject to inspection at the prescribed fee, at the discretion of the New Mexico Livestock Board.

**J.** No cattle, sheep or goats may be allowed to enter a cattle or sheep rest station without the required official certificate prescribed in 8.3 or 8.4 above until prior permission is obtained

from the livestock inspector, or other official of the New Mexico Livestock Board.

**K.** The penalty for violating any of the regulations of this section shall be as provided by Section 77-9A-4, NMSA 1978, and, at the discretion of the appointed board, may result in revocation of the rest station license and forfeiture of the bond.

[21.35.5.8 NMAC – Rp, 21 NMAC 35.5.8, 11-30-2001]

### History of 21.35.5 NMAC

#### PRE-NMAC HISTORY:

The material filed in this Part was derived from that previously filed with the State Records Center and Archives under: NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 05-03-67;

NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 03-11-70;

NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 05-06-76;

NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12-10-69;

NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 01-31-72;

NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 01-31-72;

NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 01-31-72;

NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10-17-79;

NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11-04-81;

NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 01-30-85.

#### History repealed material:

21 NMAC 35.5, Cattle Rest Stations, filed 1-28-99 repealed effective 11-30-2001.

## NEW MEXICO BOARD OF NURSING

This is an amendment to Sections 16.12.2.7, 16.12.2.10, 16.12.2.11, 16.12.2.13, 16.12.2.14 and 16.12.2.15 NMAC. This action amends these Sections by removing unnecessary language and adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

### 16.12.2.7 DEFINITIONS:

#### A. Definitions beginning with the letter A;

(1) **“actually engaged in nursing”**: employed, engaged, or holding a position which requires licensure or in which

the maintenance of licensure as a nurse is expected.

(2) **“administration of medications”**: a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed to administer medications. The administration of medications is a procedure which requires a knowledge of anatomy, physiology, pathophysiology and pharmacology. When administering a medication, the licensed person is required to assess the patient/client’s health status and disease process before and after the administration of the medication and to evaluate the patient/client’s response to the drug or biological agent. ~~[The definition for administration of medications by licensed persons as defined above should not be confused with assisting an individual to take a medication. Assisting an individual to take a medication implies that the individual is responsible for his own care or a parent/legal guardian/surrogate is responsible for the care of the individual, and that the individual or parent/legal guardian/surrogate can determine if the individual is receiving the expected response from the medication.]~~

(3) **“affidavit”**: a sworn written statement made to affirm a statement of fact.

(4) **“approval”**: the review and acceptance of a specific activity.

(5) **“approval agency”**: agency, institution or organization with the authorization to award CE credit.

(6) **“approved equivalent”**: a program reviewed and accepted by the board of nursing as meeting necessary regulatory/statutory requirements.

(7) **“assessment”**: the review and interpretation by a licensed individual of specific data necessary to determine the patient/client’s care and treatment needs. (Also see Data collection)

(8) **“assignment of nursing activity”**: assignment involves making a lateral shift of nursing care responsibilities by one licensed nurse to another licensed nurse who has the same level of responsibility and accountability, and similar knowledge and skills.

(9) **“assisting an individual to take a medication”**: implies that the individual is responsible for his own care or parent/legal guardian/surrogate can determine if the individual is receiving the expected response from the medication. The definition for administration of medications by licensed persons as defined above should not be confused with assisting an individual to take a medication.

~~¶~~ (10) **“audit”**: an examination and verification of CE and practice docu-

ments.

#### B. Definitions beginning with the letter B;

(1) **“basic nursing education”**: the scholastic route to initial licensure.

(2) **“board”**: the New Mexico board of nursing.

#### C. Definitions beginning with the letter C;

(1) **“certificate”**: a legal document granting permission to an unlicensed person to perform specific functions generally considered the practice of nursing under the direction of a licensed nurse.

(2) **“collaboration”**: practice in conjunction with another health professional.

(3) **“competency”**: competency in nursing is the ability to perform skillfully and proficiently the role of the licensee. The role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity. Competency is a dynamic concept and is based on educational training, preparation, and expertise.

(4) **“consultation”**: to communicate regularly to set goals and objectives and to review and document outcomes.

(5) **“contact hours”**: a unit of measurement to describe an approved, organized learning experience.

(6) **“continuing education”**: planned learning experiences beyond a basic nursing education program. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of nursing practice, thus improving health care to the public.

(7) **“continuing education unit (CEU)”**: ten contact hours of participation in an organized CE experience under responsible sponsorship, capable direction, and qualified instruction.

#### D. Definitions beginning with the letter D;

(1) **“data collection”**: the process of obtaining uninterrupted information, material, fact and/or clinical observations which will be used in the assessment process. Data collection is not limited to licensed individuals.

(2) **“delegation of nursing activity”**: delegation involves authorizing and supervising licensed and unlicensed persons in the performance of specific tasks that are within the scope of nursing practice.

(3) **“department of public safety”**: the New Mexico department of public safety or other state’s department of public safety.

~~¶~~ (4) **“direct supervision for graduate permit holders”**: at a minimum, the person responsible for the direct super-

vision must be in the facility or on the unit with the graduate permit holder observing, directing and evaluating the performance of the permit holder. The supervisor must not be engaged in other activities that would prevent them from providing direct supervision.

**E. Definitions beginning with the letter E;**

(1) **“educational institution”**: refers to an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution).

(2) **“eligible for graduation”**: individual who has met all the requirements of an educational program.

**F. “final transcript”**: an official record of course work and grades, issued by a school, which indicates date of program completion and certificate or degree awarded.

**G. “generally recognized organization”**: an association of nurses with common goals and concerns expressed through structured by laws. Rules and regulations, and whose recognition derives from both the profession and the public.

**H. Definitions H - Reserved**

**I. Definitions beginning with the letter I;**

(1) **“initial license”**: the process of achieving the legal privilege to practice within a professional category upon the completion of all educational requirements and the successful writing of the national licensing examination.

(2) **“institution of higher education”**: college or university

**J. “jurisdiction”**: the licensure or regulatory authoritative body for nursing within a specific geographic area for which there is endorsement in NM.

**K. Definitions K - Reserved**

**L. Definitions beginning with the letter L;**

(1) **“lapsed status”**: a license which was not renewed by the expiration date on the license.

(2) **“legal guardian”**: a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person who is considered incapable of administering his own affairs.

(3) **“letter of authorization”**: a document issued by the board which authorizes an individual to practice nursing in NM under the auspices of an approved preceptorship for an advanced nursing expanded scope of practice or prescriptive authority.

(4) **“license”**: a legal document

granting an individual the privilege and authority to engage in the practice of an occupation/profession.

(5) **“licensure by endorsement”**: the process of achieving the legal privilege to practice within a professional category, in NM, by individuals licensed in other jurisdictions, upon fulfilling all requirements set by this state.

(6) **“limited license”**: a document issued by the board which authorizes an individual to practice nursing in NM under the auspices of an approved refresher course.

**M. Definitions beginning with the letter M;**

(1) **“medical emergency”**: a situation resulting from a disaster in which the number of persons requiring nursing care exceeds the availability of NM registered nurses and/or licensed practical nurses.

(2) **“monitoring system”**: a mechanism whereby programs may be approved for CE hours within a geographic area.

(3) **“must”**: a requirement.

**N. Definitions beginning with the letter N;**

(1) **“national licensing examination”**: examination for licensure as provided by the national council of state boards of nursing, inc.

(2) **“nationwide criminal history record”**: information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information of other states.

(3) **“nationwide criminal history screening”**: a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

**O. Definitions O - Reserved**

**P. Definitions beginning with the letter P;**

(1) **“passport photograph”**: recent commercial photograph, approximately 2x2 inches only.

(2) **“permit-to-practice for GCNSs”**: a document conferring the privilege to practice as a graduate clinical nurse specialist, at a specific place of employment, under the direct supervision of a

licensed CNS, CNP or physician. Such permits will carry set expiration dates, are not renewable and are not transferable.

(3) **“permit-to-practice for GNs and GPNs”**: a document conferring the privilege to practice nursing at a specific place of employment, under direct supervision of a RN only. Such permits will carry set expiration dates, are not renewable or transferable.

(4) **“permit-to-practice for GNPs”**: a document conferring the privilege to practice as a graduate nurse practitioner, at a specific place of employment, under the direct supervision of a physician or a certified nurse practitioner. Direct supervision of a physician, licensed CNP or CNS is required for prescription writing. Such permit will carry set expiration dates, are not renewable and are not transferable.

(5) **“permit-to-practice for GRNAs”**: a document conferring the privilege to administer anesthesia to any person, as a GRNA, at a specific place of employment, functioning in an interdependent role under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist licensed in NM. Such permits will carry set expiration dates, and are not renewable or transferable.

(6) **“post-graduate program”**: any specialized knowledge and/or skills sought after completion of a basic nursing educational program which does not necessarily lead to an advanced degree.

(7) **“private practice”**: employment status of an individual nurse who is self-employed.

**Q. Definitions Q - Reserved**

**R. Definitions beginning with the letter R;**

(1) **“reactivation”**: the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements. This process does not involve board action at any juncture.

(2) **“recognized national or state institutions/organizations”**: institutions and organizations recognized as providers of CE for nurses.

(3) **“refresher course”**: an organized and board-approved program of CE providing review and updating of nursing theory and practice.

(4) **“reinstatement”**: the process whereby a license which has been subject to revocation or suspension, is returned to its former status by individual board action. This process always involves board action, and requires filing of a form and payment of the reinstatement fee.

(5) **“relicensure”**: the process of renewal, reactivation or reinstatement of a



NM nursing license.

**S. Definitions beginning with the letter S;**

(1) **“state approved program”:** a basic nursing education program approved or accredited by a state board of nursing and/or a nationally recognized nursing education accreditation body.

(2) **“shall”:** mandatory; a requirement.

(3) **“should”:** a suggestion or recommendation; not a requirement.

(4) **“sponsor/provider”:** any person, organization, agency, or institution which organizes, develops, implements, and evaluates a CE activity.

(5) **“supervision/direction”:** initial verification of a person’s knowledge and skills in the performance of a specific function and/or activity followed by periodic observation, direction and evaluation of that person’s knowledge and skills as related to the specific functions and/or activity.

(6) **“surrogate”:** an individual, other than a patient’s agent or guardian, authorized under the uniform health-care decisions act to make a health-care decision for the patient.

**T. “temporary license”:** a nonrenewable, nontransferable document indicating a legal privilege to practice as a RN, LPN, CNP,CNS or CRNA, on a conditional basis for a specific period of time.

**U. “uniform licensing act”:** NM statute which provides procedures to be utilized in disciplinary proceedings.

[1-1-98; 16.12.2.7 NMAC – Rn & A, 16 NMAC 12.2.7, 7-30-01; A, 12-31-01]

**16.12.2.10 LICENSURE REQUIREMENTS FOR REGISTERED AND PRACTICAL NURSES:** Licensure with the NM board of nursing is mandatory and is the responsibility of the individual nurse, pursuant to the nursing practice act.

**A.** Prerequisites for licensure of RNs and LPNs by examination in NM.

(1) Completion of and eligible for graduation from a board approved course of study for the preparation of registered nurses or practical nurses, or graduation from a program which is equivalent to an approved program of nursing in the United States.

(a) RN and PN graduates from non-U.S. nursing programs must have an evaluation of their nursing education credentials sent to the NM board of nursing directly from a board-recognized educational credentialing agency.

(b) RN applicants educated in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission of graduates of foreign nursing

school’s (CGFNS) examination certificate in lieu of an evaluation of their educational credentials.

(2) Completion of the required board of nursing application for licensure by examination according to instructions and including the required fee and passport photograph.

(3) Completion of NCLEX application for the testing service according to instructions.

**B. Nationwide criminal background check. Applicants for initial licensure in New Mexico are subject to a state and national criminal background check at their cost.**

(1) Furnish directly to the board, two full sets of fingerprints on fingerprint cards issued by the board.

(2) Complete and sign a release of information on the authorization for criminal background check application.

(3) Submit the required fee.

(4) Submit two (2) full sets of fingerprints, signed authorization for criminal background check and fee.

(5) The board must receive results of the criminal background check prior to issuance of the license.

(6) If the criminal background check reveals a felony or violation of the Nursing Practice Act, the applicant will be notified to submit copies of legal documents and other related information to the board who will make the determination if the applicant is eligible for licensure.

~~B~~ **C.** Complete application for licensure by examination, certification of eligibility for graduation or official transcript and fee must be received by the board office prior to being granted permission to take the national licensing examination (NCLEX). Certification of eligibility for graduation or official transcript, indicating date requirements for graduation from the nursing program were met and certificate or degree awarded or to be awarded, must be received in the board office directly from the registrar’s office.

~~C~~ **D.** Results of the examination shall be reported, by mail, to the individual applicant within four (4) weeks following the applicant’s examination date. Examination results shall be released to the applicant’s nursing program, and boards of nursing unless otherwise instructed, in writing, by applicant.

~~D~~ **E.** An initial license shall be valid for two (2) years.

~~E~~ **F.** Applications containing fraudulent or misrepresented information could be the basis for denial or revocation of licensure.

~~F~~ **G.** If the licensure process is not completed, the application becomes

null and void one (1) year after date of last noted activity.

~~G~~ **H.** Permits-to-practice may be issued for employment at a specific institution(s) in NM. Permits are mailed directly to the NM employing institution(s).

(1) To be eligible for a permit-to-practice, the applicant must:

(a) Complete the application process to take the NCLEX within twelve (12) weeks of graduation.

(b) RN and PN graduates from non-U.S. nursing programs may be issued a permit to practice in New Mexico for a period not to exceed twenty-four (24) weeks from the date of application.

(c) Assure that prospective NM employer(s) submit a letter of intent to employ to the board office, on agency letterhead, indicating the name of a specific NM employer and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse.

(2) Permits-to-practice cannot be transferred or renewed.

(3) Written notification from employer must be made to the board office in case of lost or stolen permit-to-practice.

(4) Permits-to-practice shall be valid until the examination results are disseminated but shall not exceed the expiration date on the permit.

(5) Applicants who hold a graduate permit and do not become licensed prior to expiration date of the permit, may not continue to practice as a graduate nurse or graduate practical nurse.

~~H~~ **I.** Applicants who fail the examination may apply to retake the examination a maximum of four (4) times per year, but must wait ninety-one (91) days to retest.

(1) A fee will be charged by the board for all reexaminations.

(2) Applicants for reexamination must meet all NCLEX requirements for retaking the examination.

~~I~~ **J.** National council licensing examination

(1) Applicants for licensure as RNs shall be required to pass the NCLEX for RNs.

(2) Applicants for licensure as PNs shall be required to pass the NCLEX for PNs.

(3) Applicants observed giving and/or receiving unauthorized assistance during the taking of the national licensing examination shall be referred to the board by a sworn complaint.

~~J~~ **K.** Prerequisites for licensure of registered nurses and licensed practical nurses by endorsement.

(1) Verification DIRECTLY from

the licensing authority which shall include:

(a) Graduation from an approved nursing program or a nursing program which is equivalent to an approved program of nursing in the United States, and

(b) Initial licensure by passing a national licensure examination in English or a state constructed licensure examination prior to October 1986.

(2) Applicants from licensing authorities which do not verify graduation from a nursing education program, must assure that a final transcript is sent to the board of nursing DIRECTLY from the educational institution or custodian of records verifying graduation from an approved nursing program or equivalent, or

(3) RN and PN graduates from non-U.S. nursing programs must request an evaluation of their nursing education credentials be sent to the NM board of nursing DIRECTLY from a board-recognized educational credentialing agency. RN and PN graduates in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission on graduates of foreign nursing schools' (CGFNS) examination certificate in lieu of an evaluation of the educational credentials.

(4) Complete and submit the required application for licensure by endorsement in accordance with all instructions, ~~and~~ including the required fee and passport photograph.

(5) Complete and submit two full sets of fingerprints, the authorization for criminal background check, and the fee in accordance with all instructions found in subsection B, 16.12.1.10 NMAC.

~~(K) L.~~ Qualifications for licensure as a RN or PN are pursuant to the nursing practice act.

(1) LPN applicants initially licensed after July 1, 1969 must meet the educational requirements.

(2) Military personnel, licensed as LPNs by successful writing of the national licensing examination prior to July 1, 1977, may be licensed in NM by endorsement providing their DD-214 shows the related civilian occupation to be "LPN."

(3) Applicants for endorsement into NM, must meet one of the following requirements: (a) have received initial licensure by successfully writing the national licensing examination within the immediate past ~~five (5)~~ two (2) years, or (b) have been engaged in nursing within a minimum of ~~1,000~~ 400 hours within the immediate past ~~five (5)~~ two (2) years.

Applicants who have not met the work requirements MUST complete a board-approved refresher course or its equivalent as determined by the board. (Refer to subsection F of 16.12.2.11 NMAC)

(4) Continuing education is not required for initial licensure by endorsement. CE requirements must be met at the time of the first renewal.

(5) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

~~(H) M.~~ A permit-to-practice may be issued, by mail only to a New Mexico employer(s), for an endorsee awaiting results of the national licensing examination or the English equivalent from another country.

(1) Written verification must be received DIRECTLY from the licensing authority: (a) that the applicant applied for the licensing examination within twelve (12) weeks of graduation and is eligible for licensure, or (b) that the first licensing examination after completion of nursing education has been applied for or taken.

(2) Assure prospective NM employer(s) submits a letter of intent to employ, on agency letterhead, indicating the name of the specific NM employing institution and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse.

(3) Meeting all other endorsement requirements.

(4) A permit-to-practice shall be valid from date of issuance until the applicant's examination results and licensure status have been verified by the other state or country, but shall not exceed twenty-four (24) weeks from the date of graduation.

~~(M) N.~~ A temporary license may be issued to an endorsee upon submission of a notary-certified copy of a current, valid nursing license, or an affidavit of current licensure, which meets the following criteria. (a) verification of current licensure with an expiration date of not less than thirty-one (31) days and no stipulations or restrictions, (b) name of issuing jurisdiction, and (c) category of licensure and license number.

~~(N) O.~~ A letter, on agency letterhead verifying intent to employ, must be received from each NM employer verifying intent to employ.

(1) Verbal verification of intent to employ, must be followed by a written verification.

(2) The name of employing institution shall be indicated on the temporary verification.

(3) The board will mail the temporary license to the employing agency.

(4) A temporary license is valid for a period not to exceed six (6) months from the date of application.

(5) A temporary license is not renewable and becomes null and void upon

issuance of a current license, expiration, or withdrawal by board action.

(6) Applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license.

(7) The discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

~~(O) P.~~ An initial license shall be valid for two (2) years.

~~(P) Q.~~ If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

~~(Q) R.~~ In case of a medical emergency (as defined in these rules), nurses currently licensed to practice as a RN or LPN in a jurisdiction of the United States may practice in NM without making application for a NM license for a period not to exceed thirty (30) days.

~~(R) S.~~ Requirements for relicensure. Applicants for relicensure must meet CE and work requirements as stated in these rules, pursuant to the nursing practice act [Section 61-3-24 NMSA 1978].

(1) Licensed nurses shall be required to complete the renewal process by the end of their renewal month every two (2) years. Nurses whose renewal month is their birth month shall continue to renew during their birth month unless the renewal process is completed after the last day of their birth month.

(2) A renewal application ~~and CE verification~~ form shall be mailed to the licensee at least six (6) weeks prior to the end of the renewal month.

(a) The renewal application ~~and CE verification~~ form may be accepted no more than sixty (60) days prior to the expiration date of the license.

(b) Failure to receive the application for renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

(c) If the license is not renewed by the end of the renewal month, licensee does not hold a valid license and shall not practice nursing in NM until the lapsed licensed has been reactivated.

(3) Thirty (30) hours of approved CE must be accrued within the 24 months immediately preceding expiration of license.

(a) Certified nurse practitioners must complete a total of 50 hours of approved CE each renewal.

(b) Certified RN anesthetists must submit a copy of the recertification card issued by AANA council on recertification

cation for renewal of the CRNA license.

(c) Clinical nurse specialist must complete a total of 50 hours of approved continuing education each renewal.

(d) Exception: if renewing, nurses mobilized for military action are not required to meet the CE requirements while on active duty, in a combat zone, during a military action. A copy of the mobilization order must be submitted along with the renewal application.

(4) In order to meet the work requirements for relicensure of a RN or LPN license, the applicant must:

(a) have been engaged in nursing a minimum of ~~1,000~~ 400 hours during the immediate past ~~five (5)~~ two (2) years preceding relicensure, or

(b) have received initial licensure by successfully taking the national licensing examination within the immediate past ~~five (5)~~ two (2) years, or

(c) have completed a board-approved refresher course or equivalent, which will meet: (1) the continuing education requirements for the renewal period in which it was completed, and (2) the work requirement for up to ~~five (5)~~ two (2) years from the date of completion.

(5) Individuals who reside out-of-state, but wish to maintain a current, valid NM license, must meet the same requirements for licensure as licensees residing within the state.

(6) Penalty: Failure of licensee to meet the CE or work requirements for licensure shall result in the license not being renewed, reinstated, or reactivated. When the CE and work or refresher course requirements have been met, an application for licensure may be submitted for consideration.

(7) Licenses are issued by mail only.

~~F~~ T. Requirements for reporting lost-stolen licenses/name-address change, and requesting duplicate license.

(1) Lost/stolen license: Licensee is required to give immediate, notification to the board office of lost or stolen license.

(2) Address change: Immediate notification of address change must be made, to the board office.

(3) Name change: Nurse must use name as it appears on current license.

(a) Duplicate may be requested upon change of name, or

(b) Name may be changed when license is renewed.

(4) Procedure for obtaining a duplicate license.

(a) Submit a written request for a duplicate license including the following information: Licensee's name, date of birth, nursing license number, social security

number, address, and mother's maiden name.

(b) Submit a copy of the legal document required for name change (ONLY recorded marriage certificate, divorce decree or court order accepted).

(c) Remit the required fee.

(d) Duplicate license may be reissued, within a given renewal period, ONLY upon return of the previously issued duplicate.

(e) Duplicate licenses are issued by mail only.

~~F~~ U. Reactivation/reinstatement

(1) Applicant for reactivation or reinstatement of a lapsed license must meet the requirements for relicensure pursuant to the nursing practice act and these rules. A reactivated or reinstated license shall be valid for two (2) years.

(2) Licensees who have not actually been engaged in nursing a minimum of ~~1,000~~ 400 hours in the immediate past ~~five (5)~~ two (2) years, must successfully complete a board-approved refresher course or its equivalent as determined by the NM board to reactivate the nursing license. (Refer to subsection F of 16.12.2.11 NMAC)

[1-1-98; 16.12.2.10 NMAC – Rn & A, 16 NMAC 12.2.10, 7-30-01; A, 12-31-01]

#### 16.12.2.11 CONTINUING EDUCATION

##### A. Introduction

(1) Pursuant to the provision of the nursing practice act, the board of nursing prescribes the following regulations establishing requirements for CE to be met by the licensee to protect the health and well being of the citizens of NM and to promote current nursing knowledge and practice.

(2) Philosophy of CE: The members of the NM board believe that CE is one of the most important responsibilities of the nurse and is a lifelong process. The primary responsibility for CE rests with the individual nurse. A diversity of nursing-related learning activities is recommended to enhance the scope of professional development.

##### B. Requirements and rules.

###### (1) Records

(a) All licensees must indicate compliance with the CE required by these rules on the renewal application. All information must be completed as requested.

(b) Licensees are responsible for maintaining their own CE records and for keeping the certificates of verification of attendance of CE activities for at least one (1) year after the license is renewed. Photocopies of certificates must be submit-

ted to the board office only if audited and/or requested.

###### (2) CE Audit

(a) Continuing education records are subject to audit by the board.

(b) Licensee may be subject to disciplinary action by the board if noncompliant within sixty (60) days of the first notification of audit.

C. Approved continuing education. To be acceptable in NM, the CE activity must have been approved by a recognized approval body and must enhance the licensee's scope of professional development as related to his/her activities in nursing. The participant must receive a certificate of attendance which validates the number of approved CE hours awarded, name of the participant, sponsoring agency, approval body and date attended. Correspondence courses and home-study programs are acceptable, if approved.

(1) Recognized approval bodies for CE for nurses.

(a) National or state recognized nursing organizations.

(b) Other state boards of nursing.

(c) NM board-approved local monitoring systems.

(2) Other CE which may be accepted as approved CE for nurses:

(a) Academic credit.

Computation: one (1) academic credit equals 15 contact hours.

(b) CE units (CEUs) or contact hours awarded by CE divisions within educational institutions of higher learning.

(c) Educational offerings approved through other generally recognized health care or professional organizations as related to licensee's nursing practice.

D. Monitoring system. CE hours accrued through educational offerings approved by a local monitoring system shall be accepted as meeting the CE requirements for licensure in NM but may not be accepted by other state boards of nursing as approved CE.

(1) Local monitoring systems must be approved initially and annually by the board of nursing. A guideline for the establishment and operation of a local monitoring system is available in the Board office.

(2) The approval of educational offerings shall be determined on the approval criteria developed by the board.

E. Certification and/or recertification in the nursing specialty. Certification and/or recertification granted by a national professional organization which uses criteria designed to recognize competence in a specialized area of nursing practice may be used as approved CE.

Verification of certification and/or recertification within the current renewal period is accepted in lieu of the thirty (30) hours of CE required for licensure.

**F. Refresher course.**  
Pursuant to the provisions of the nursing practice act, applicants for licensure who have not been actually engaged in nursing a minimum of ~~one thousand (1,000)~~ four hundred (400) hours within the ~~five (5)~~ two (2) year period immediately preceding relicensure, shall furnish the board such evidence of having successfully completed such refresher courses of CE as required by regulations adopted by the board.

(1) A refresher course may be institution-sponsored, or a reentry program.

(a) Refresher courses must be approved, initially and annually, by the board.

(b) Refresher courses must contain both a theoretical and a clinical component. Guidelines for the development of an institution-sponsored refresher course, and the reentry program are available in the board office.

(c) The refresher course must be completed within six (6) months and a limited license will be issued for the duration of the course.

(2) The successful completion of the refresher course shall meet the work requirement for up to ~~five (5)~~ two (2) years from the date of completion.

(3) Examination in lieu of a refresher course. In the event that a refresher course is not available, the applicant may take the national licensing examination in lieu of a refresher course as permitted by contract with the National Council of State Boards of Nursing, Inc. Applicants for licensure/relicensure as a RN or PN must pass the national licensing examination for RNs or PNs.

(4) Enrollment as a full-time nursing student: The board of nursing may accept evidence that an individual is enrolled full time in a program of nursing education to meet the requirements for a refresher course when individual has not actively practiced nursing within the ~~five (5)~~ two (2) years immediately preceding relicensure.

(a) Board of nursing staff is delegated the responsibility of review and approval of course material.

(b) Nursing courses, equivalent to a refresher course, must be completed during the two (2) year period immediately preceding relicensure.

[1-1-98; 16.12.2.11 NMAC – Rn & A, 16 NMAC 12.2.11, 7-30-01; A, 12-31-01]

### 16.12.2.13 CERTIFIED NURSE PRACTITIONER (CNP)

**A. Requirements for licensure of nurse practitioners.**

(1) Hold a current, valid NM RN license.

(2) Successfully complete a formal program designed for the education and preparation of nurse practitioners as providers of primary, and/or acute, and/or chronic, and/or long-term, and/or end of life health care.

(a) The program must be offered through an accredited institution of higher education or through the armed services.

(b) The program must be one full academic year of full-time study with approximately 1/3 of the program devoted to didactic and 2/3 to a preceptorship with a physician and/or certified (licensed) nurse practitioner. Didactic hours must include twenty-four (24) contact hours of pharmacology. NOTE: One academic hour equals fifteen (15) contact hours.

(c) If the applicant is initially licensed by any board of nursing including the NM board of nursing after January 1, 2001 the program must be at the master's level or higher. Applicants who do not hold a master's level or higher degree from a nurse practitioner program and were initially licensed by any board before January 1, 2001, must provide verification of NP licensure.

(3) Provide evidence of successful accomplishment of national certification as a nurse practitioner.

(4) It is the responsibility of the applicant to provide documented evidence of his/her qualifications for licensure.

(5) Applicants who meet the minimum didactic and pharmacology requirements, but lack the required preceptorship, may be considered for licensure in NM if the applicant provides satisfactory evidence of two (2) years nurse practitioner experience in another jurisdiction.

(6) Nurse practitioners who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

**B. Procedure for licensure as a graduate nurse practitioner.** The ~~RN~~ applicant seeking licensure as a nurse practitioner shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the NM nurse practitioner licensure application and submit it along with all required documents.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet

the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Nurse practitioners are not eligible to practice in NM as a certified nurse practitioner until so licensed in accordance with the licensure procedures.

(5) The board may appoint nurse practitioners to the advanced practice committee. These nurse practitioners will provide advice regarding licensure and practice of nurse practitioners.

**C. Graduate nurse practitioners permit-to-practice may be issued, upon written request, provided all requirements have been met except national nursing certification.**

(1) GNPs must practice under the direct supervision of a physician or NM CNP or CNS in the specialty.

(2) GNPs may prescribe medications only under the direct supervision of a licensed CNP, CNS or a physician, in compliance with these rules. GNPs must fulfill the requirements in this section to prescribe controlled substances.

(3) GNP permits will be issued by mail only to the employer.

(4) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor, is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be mailed directly to the new employing agency.

(5) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GNP permit.

(6) GNP permits cannot be transferred, renewed or a duplicate issued.

(7) GNP permits expire on the date specified on the permit.

(a) Permits shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice as a GNP. It is the responsibility of the GNP to request that the national certifying organization notify the board of the results of the examination.

(b) The permits for new graduates may be valid for a period not to exceed two (2) years.

**D. A license to practice as a CNP shall be issued only after receipt by the board of proof of national certification. Such proof must be submitted to the board prior to the expiration of the permit.**

**E. Exclusion: Nurse practitioners with lapsed national certification are not eligible for a permit to practice.**

**F.** Prerequisites for licensure of CNP by endorsement.

(1) Verification DIRECTLY from the licensing authority, which shall include graduation from a nurse practitioner program.

(2) In lieu of verification of advanced practice licensure for the licensing authority the board will accept:

(a) Documentation directly from that licensing authority that the state does not issued advanced practice licensure or

(b) Verification of nurse practitioner education form directly from the nurse practitioner program.

(3) Verification from applicant of national certification as a nurse practitioner.

(4) Nurse practitioners who are requesting prescriptive authority must comply with the requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application from licensure by endorsement in accordance with all instructions including the required fee.

**G.** Qualifications for licensure as CNP are pursuant to the nursing practice act.

(1) Refer to subsection A, 16.12.2.13 NMAC for licensure requirements.

(2) Applicants for endorsement into NM, must meet one of the following requirements:

(a) Have received initial licensure as a nurse practitioner within the immediate past two (2) years or

(b) Have been engaged in nursing as a nurse practitioner a minimum of 400 hours within the immediate past two years. Applicants who have not met the work requirements MUST complete a board-approved refresher course or its equivalent as determined by the board. Refer to subsection N, 16.12.2.13 NMAC.

(3) Continuing education is not required for initial CNP licensure by endorsement. CE requirements must be met at the time of the first renewal.

(4) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

**H.** A CNP permit-to-practice may be issued, by mail only, to a New Mexico employer(s) for an endorsee awaiting results on successful completion of national certification. Refer to subsection B and C of 16.12.2.13 NMAC for procedure and requirements.

**I.** A temporary nurse practitioner license may be issued to an endorsee who:

(1) Submit a notary-certified copy of a current, valid nurse practitioner license,

or an affidavit of current nurse practitioner licensure, which meets the following criteria:

(a) Verification of current licensure with an expiration date of not less than thirty-one (31) days and no stipulations or restrictions.

(b) Name of issuing jurisdiction, and

(c) Category of licensure and license number.

(2) Submits a copy of current national certification as a nurse practitioner. The following exceptions can be made:

(a) Nurse practitioners who were licensed by any jurisdiction before December 2, 1985 are not required to hold national certification, or

(b) When the state of former advanced practice licensure does not require national certification. Proof of national certification as a nurse practitioner must be submitted to the board before a license will be issued.

**J.** A letter of intent to employ on official letterhead must be received from each NM employer.

(1) The board will mail the temporary license to the employing agency.

(2) The name of the agency will be included on the TL.

(3) A temporary license is valid for a period not to exceed six (6) months from the date of application.

(4) A temporary license is not renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action.

(5) Applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license.

(6) The discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

**K.** An initial nurse practitioner license shall be valid for two (2) years.

**L.** If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

~~F~~ **M.** Authorization to expand scope of practice

(1) A letter of authorization will be issued for the CNPs who through additional formal education have expanded their practice into another area of NP practice provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official

letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the board of nursing.

(3) Practice must be under the direct supervision of a physician or licensed NM CNP or CNS in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued by mail only to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will expire on the date specified.

(a) A letter of authorization shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNP to request that the national certifying organization notify the board of the results of the examination. A letter of authorization may be valid for a period not to exceed two (2) years.

(b) A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship expansion of scope of practice.

~~G~~ **N.** Maintaining licensure as a nurse practitioner.

(1) National certification: NPs must maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal. Nurse practitioners licensed by the NM board, after December 2, 1985 are required to be nationally certified.

(2) Continuing education

(a) The CNP shall accrue a total of fifty (50) contact hours of approved CE each renewal period. National certification or recertification as a NP may not be used to fulfill any portion of the CE requirement.

(i) Thirty (30) contact hours shall meet the requirements for licensure as a RN, and

(ii) an additional twenty (20) contact hours, 15 of which must be pharmacology, shall meet the requirements for licensure as a nurse practitioner.

(b) The CE shall be in accordance with the requirements as set forth in these rules.

(3) Work requirement. The CNP must practice a minimum of four-hundred (400) hours in his/her area of specialty each renewal period and indicate such at the time of license renewal.

~~¶~~ **O.** Reactivation. To reactivate or reinstate licensure as a nurse practitioner, the nurse must provide evidence of meeting the CE requirements and completing 400 hours of practice under direct supervision in the appropriate specialty area. The supervised practice must be completed within six (6) months and a limited license will be issued for the duration of the supervised practice. NPs licensed by the board after December 2, 1985 must also provide evidences of current national certification.

~~¶~~ **P.** Nurse practitioner practice

(1) The CNP makes independent decisions regarding the health care needs of the client and also makes independent decisions in carrying out health care regimens.

(2) The CNP provides primary and/or acute, and/or chronic, and/or long-term, and/or end of life health care to meet the health care needs of individuals, families and communities in any health care setting. ~~[The focus of primary care is on health promotion, health maintenance, prevention of illness, and comprehensive management of acute or chronic health problems.]~~

(3) The CNP may assume specific functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CNP provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CNP's advanced educational preparation and certification, the CNP is responsible for obtaining the appropriate knowledge, skills and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) The CNP collaborates as necessary with other healthcare providers. Collaboration includes discussion of diagnosis and cooperation in managing and delivering healthcare.

(5) CNPs who have fulfilled requirements for prescriptive authority may prescribe and distribute dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act within their clinical specialty and practice setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNP who fulfills the following requirements may prescribe and distribute dangerous drugs including

controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two (2) years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a licensed CNP, CNS or physician. The preceptorship must be completed within six (6) months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CNP must provide the board of nursing with verification of current state controlled substances registration and current DEA number. CNPs may not possess, prescribe or distribute controlled substances until they have both a current state controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary. It is the CNP's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed. The only drugs to be included in the formulary are those relevant to the CNP's specialty and practice setting.

(i) All CNPs must maintain a current formulary with the board of nursing.

(ii) The board of nursing reserves the right to audit the formulary of the CNP. Licensees may be subject to disciplinary action by the board of nursing if non compliant with the audit.

(c) Prescription pads. The CNP's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CNP is using a prescription pad printed with the names of more than one CNP, the name of the CNP for the individual prescription shall be indicated.

(d) Distributing: CNPs, who have fulfilled requirements for prescriptive authority as stated in these rules, may distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNPs may label

only those drugs which the CNP prescribes and distributes to patients under the CNP's care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, number dispensed and name, address and telephone number of the CNP. Labeling may be handwritten or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNPs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate nurse practitioner (GNP) practice

(a) GNPs may not distribute medications.

(b) GNPs may practice and/or prescribe medications only under the direct supervision of a licensed CNP, CNS or physician in the specialty.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM:

(a) A list of current CNPs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy.

(b) Violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy.

(c) The board of nursing shall annually appoint qualified CNPs in each specialty to serve on the board of pharmacy disciplinary panel.

[1-1-98; 16.12.2.13 NMAC – Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01]

#### **16.12.2.14 CERTIFIED REGISTERED NURSE ANESTHETIST (CRNA)**

**A. [Qualifications]**  
Requirements for licensure as a CRNA

(1) ~~[Current licensure as a RN in NM.]~~ Hold a current, valid or NM RN license.

(2) ~~[Graduate from a program accredited by the AANA Council on Accreditation of Nurse Anesthetist Educational Program/Schools.]~~ Successfully complete a formal program designed for the education and preparation of certified registered nurse anesthetist. The AANA Council on Accreditation of Nurse Anesthetist Educational Programs/Schools must accredit the program.

(3) ~~[Successful completion of a national qualifying examination as described by the AANA Council on Certification of Nurse Anesthetists.]~~ If the

applicant is initially licensed by any board of nursing including the NM board of nursing after January 1, 2001, the program must be at the master's level or higher. Applicants who do not hold a master's or higher degree from a nurse anesthetist program and were initially licensed by any board before January 2, 2001, must provide verification of CRNA licensure.

~~(4) If initially licensed by any board of nursing including the NM board of nursing after January 1, 2001, the program must be at the master's level or higher. Applicants who do not hold a master's level or higher degree from a nurse anesthetist program and were initially licensed by any board before January 1, 2001, must provide verification of CRNA licensure.] Provide evidence of successful completion of a national qualifying examination as described by the AANA Council on Certification of Nurse Anesthetists.~~

(5) It is the responsibility of the applicant to provide documented evidence of his/her qualification for licensure.

(6) Applicants who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

**B.** ~~[Recertification by AANA Council on Recertification of Nurse Anesthetists is accepted by the NM board of nursing for meeting mandatory CE and practice requirements for CRNA licensure renewal.] Procedure for licensure as a graduate. The applicant seeking licensure as a certified registered nurse anesthetist shall be responsible for providing proof of meeting the requirements for licensure.~~

(1) The applicant shall complete the NM certified registered nurse anesthetist licensure application and submit it along with all required documents.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Certified registered nurse anesthetists are not eligible to practice in NM as certified registered nurse anesthetist until so licensed in accordance with the licensure procedures.

(5) The board may appoint certified registered nurse anesthetists to the advanced practice committee. These nurse anesthetists will provide advice regarding licensure and practice of certified registered nurse anesthetists.

**C.** ~~[Temporary permit to practice as a GRNA] Graduate registered~~

nurse anesthetist permit-to-practice may be issued, upon written request, provided all requirements have been met except national AANA certification.

(1) A permit may be issued following graduation from an approved school of nurse anesthesia to afford the applicant the opportunity for employment pending dissemination of the national qualifying examination results by the AANA Council on Certification of Nurse Anesthetists.

(2) GRNAs must function in an interdependent role as a member of a health care team and practice at the direction of and in collaboration with a physician, osteopathic physician, dentist or podiatrist.

~~{2} (3) [To be eligible for a permit, applicant must:] GRNAs may prescribe and administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist in compliance with these rules.~~

~~{(a) Hold a current, valid or temporary NM RN license;}~~

~~{(b) provide proof of application to write the national qualifying exam within 12 weeks of graduation from the nurse anesthesia program;}~~

~~{(c) provide a letter of intent to employ on official letterhead verifying practice under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist license in NM; and}~~

~~{(d) remit appropriate application and fee.}~~

~~{3} (4) [If there is a change in employment, the procedure must be repeated and a new permit issued.] GRNAs permits will be issued by mail only to the employer(s).~~

~~{4} (5) [Verification that applicant wrote the national qualifying examination, must be received in the board of nursing office within 3 weeks subsequent to the date of the examination.] A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor(s) and name of prescription supervisor(s), is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice for the new place of employment. The permit will be mailed directly to the new employing agency.~~

~~{5} (6) [Failure of applicant to write the scheduled qualifying examination will render the applicant ineligible to practice anesthesia in NM and the employer must immediately return the permit to practice to the board of nursing office.] The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GRNA permit.~~

~~{6} (7) [All permits expire on the date specified on the permit, approximately twenty four (24) weeks subsequent to the date of graduation from the nurse anesthesia program, and cannot be renewed or a duplicate issued.] GRNA permits cannot be transferred, renewed or a duplicate be issued.~~

~~{7} (8) [Upon completion of the national qualifying examination:] GRNA permits expire on the date specified on the permit.~~

(a) ~~{Successful candidates will be issued a current, valid license to practice as a CRNA in NM.] Permits shall be valid for approximately 12 months subsequent to the date of graduation from the nurse anesthesia program.~~

(b) ~~{Unsuccessful candidates shall not practice anesthesia in NM until such time as the national qualifying examination is successfully completed, and employer must immediately return the permit to practice to the board of nursing.] Written proof of application to write the national qualifying exam must be received in the board office within 12 weeks of graduation from the nurse anesthesia program.~~

(c) Verification that applicant wrote the national qualifying examination, must be received in the board office within 3 weeks subsequent to the date of the examination.

(d) Failure of applicant to write the scheduled qualifying examination or if the exam is failed, will render the applicant ineligible to practice anesthesia in NM and the employer must immediately return the permit-to-permit to the board office. It is the responsibility of the GRNA to request that the national certifying organization notify the board of the results of the examination.

**D.** ~~[CRNA practice is in accordance with the standards and guidelines as established by the AANA Council on Nursing Anesthesia Practice.] A license to practice as a CRNA shall be issued only after receipt by the board of proof of AANA certification. Such proof must be submitted to the board prior to the expiration of the permit.~~

**E.** Exclusion: Certified registered nurse anesthetists with lapsed AANA certification are not eligible for a permit-to-practice.

**F.** Prerequisites for licensure of CRNA by endorsement.

(1) Verification DIRECTLY from the licensing authority, which shall include graduation from an AANA Council on Accreditation of Nurse Anesthetist Educational Program/School.

(2) In lieu of verification of advanced practice licensure from the licensing authority, the board will accept docu-

mentation directly from that licensing authority that the state does not issue advanced practice licensure.

(3) Verification by applicant of AANA certification/recertification.

(4) Certified registered nurse anesthetists must comply with the requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application for licensure by endorsement in accordance with all instructions including the required fee.

**G.** Qualifications for licensure as CRNA are pursuant to the nursing practice act.

(1) Refer to subsection A, 16.12.2.14 NMAC for licensure requirements.

(2) Recertification by AANA Council on Recertification of Nurse Anesthetists is accepted for endorsement into NM for meeting mandatory practice requirements. Applicants who have not met the practice requirements MUST complete a board-approved refresher course or its equivalent as determined by the board. Refer to subsection M, 16.12.2.14 NMAC.

(3) Continuing education is not required for initial CRNA licensure by endorsement. CE requirements must be met at the time of first renewal. Recertification by AANA Council on Recertification of Nurse Anesthetists will meet the mandatory CE requirements for CRNA licensure.

(4) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

**H.** A GRNA permit-to-practice may be issued, by mail only, to a New Mexico employer(s) for an endorsee awaiting results on successful completion of AANA national certification. Refer to subsection B and C, 16.12.2.14 NMAC for procedure and requirements.

**I.** A temporary certified registered nurse anesthetist license may be issued to an endorsee who:

(1) Submits a notary-certified copy of a current, valid certified registered nurse anesthetist license, or an affidavit of current nurse practitioner licensure, which meets the following criteria:

(a) Verification of current licensure with an expiration date of not less than thirty-one (31) days and no stipulations or restrictions.

(b) Name of issuing jurisdiction, and

(c) Category of licensure and license number.

**J.** A letter of intent to employ on official letterhead must be received from each NM employer.

(1) The name of the employing institution shall be indicated on the temporary license.

(2) The board will mail the temporary license to the employing agency.

(3) A temporary license is valid for a period not to exceed six (6) months from the date of application.

(4) A temporary license is not renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action.

(5) Applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license.

(6) The discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

**K.** An initial certified registered nurse anesthetist license shall be valid for two (2) years.

**L.** If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

**M.** Maintaining licensure as a certified registered nurse anesthetist

(1) National Certification: CRNAs must maintain AANA Council on Recertification of Nurse Anesthetist. A copy of the recertification card must be presented at the time of each subsequent renewal.

(2) Continuing Education/Work Requirement: Recertification by AANA Council on Recertification of Nurse Anesthetist is accepted for meeting mandatory CE and practice requirements.

**N.** Reactivation: To reactivate or reinstate licensure as a certified registered nurse anesthetist, the nurse must provide evidence of current recertification by the AANA Council on Recertification of Nurse Anesthetists.

**O.** Certified registered nurse anesthetist practice.

(1) The CRNA provides pre-operative, intra-operative and post-operative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current American Association of Nurse Anesthetists' guidelines for nurse anesthesia practice.

(2) The CRNA functions in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in NM.

(3) The CRNA may assume specific functions and/or perform specific procedures which are beyond the advanced

educational preparation and certification for the CRNA provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CRNA's advanced educational preparation and certification, the CRNA is responsible for obtaining the appropriate knowledge, skills and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) The CRNA collaborates as necessary with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient. Collaboration means the process in which each health care provider contributes his/her respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

(5) CRNAs who have fulfilled requirements for prescriptive authority may prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act within the specialty of anesthesia and practice setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CRNA who fulfills the following requirements may prescribe and administer dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing and administering dangerous drugs has occurred within the two (2) years immediately preceding the date of the application.

(ii) In order to prescribe controlled substances, the CRNA must provide the board of nursing with verification of current state controlled substances registration and current DEA number. CRNAs may not possess or prescribe controlled substances until they have both a current state controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary: The formulary will include agents related to the adminis-



tration of anesthesia and ACLS protocol agents.

(i) All CRNAs must maintain a current formulary with the board of nursing.

(ii) The initial formulary or a formulary with changes will be submitted to the board of medical examiners for a review.

(c) Prescription pads: The CRNA's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CRNA is using a prescription pad printed with the names of more than one CRNA, the name of the CRNA for the individual prescription shall be indicated.

(d) Prescribing and administering: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may prescribe and administer to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged or fabricated by a registered pharmacist or doses or drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the New Mexico Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Distributing: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may NOT distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act.

(f) CRNAs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate registered nurse anesthetist practice

(a) GRNAs may NOT distribute medications.

(b) GRNAs may practice and/or prescribe/administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM.

(a) A list of current CRNAs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy.

(b) Violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy.

(c) The board of nursing shall

annually appoint qualified CRNAs to serve on the board of pharmacy disciplinary panel.

[1-1-98; 16.12.2.14 NMAC – Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01]

#### **16.12.2.15 CLINICAL NURSE SPECIALIST (CNS)**

**A.** Requirements for licensure as a CNS:

(1) Hold a current, valid NM RN license,

(2) Successfully complete a clinical nurse specialist program at the master's or doctoral level in a defined clinical nursing specialty through an accredited institution of higher education, and

(3) Provide evidence of successful accomplishment of certification by a national nursing organization, consistent with the defined clinical nursing specialty, which meets criteria as listed below:

(a) Successfully complete a national certifying examination in the applicant's area of specialty.

(b) Is certified by a national nursing organization.

(4) It is the responsibility of the applicant to provide documented evidence of his/her qualifications for licensure.

(5) Any CNS requesting prescriptive authority must also comply with the regulations for prescriptive authority as outlined in these rules.

~~(6) Beginning in 2001 any CNS applying for initial licensure in New Mexico must comply with the requirements for prescriptive authority as outlined in these rules.~~

**B.** Procedure for licensure as a graduate CNS: ~~[RN]~~ Applicant seeking licensure as a CNS shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the NM CNS application and submit it along with all requested documents.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or their designee.

(4) CNSs are not eligible to practice in NM as an CNS until so licensed by the NM board in accordance with licensure procedures.

(5) The board may appoint CNSs to the advanced practice committee. These CNSs will provide advice regarding the licensure and practice of the CNS.

**C.** Graduate clinical nurse

specialist (GCNS) permit to practice

(1) GCNS permits may be issued upon written request, provided all requirements have been met except certification by a national nursing organization.

(a) GCNSs practice under the direct supervision of another CNS, CNP or physician in the specialty.

(b) GCNSs may prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in compliance with these rules.

(c) GCNS permits will be issued by mail only to the employer.

(d) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be mailed directly to the new employing agency.

(e) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GCNS permit.

(f) GCNS permits cannot be transferred, renewed or a duplicate issued.

(g) GCNS permits expire on the date specified on the permit.

(i) Permits shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice as a GCNS. It is the responsibility of the GCNS to request that the national certifying organization notify the board of the results of the examination.

(ii) The permit for new graduates may be valid for a period not to exceed two 2 years.

(2) Exclusion: CNS with lapsed national certification are not eligible for a permit to practice.

(3) A license to practice as a CNS shall be issued only after receipt by the board of proof of certification by a national nursing organization. Such proof must be submitted to the board prior to the expiration of the permit.

**D. Prerequisites for licensure of CNS by endorsement.**

(1) Verification DIRECTLY from the licensing authority which shall include graduation from a clinical nurse specialist program in a defined clinical nursing specialty.

(2) In lieu of verification of advanced practice licensure from the licensing authority, the board will accept:

(a) Documentation directly from

the licensing authority that the state does not issue advanced practice licensure or

(b) Verification of clinical nurse specialist education form directly from the program.

(3) Verification by applicant of national certification in a clinical specialty area.

(4) Clinical nurse specialist must comply with requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application for licensure by endorsement in accordance with all instructions including the required fee.

**E.** Qualifications for licensure as a CNS are pursuant to the nursing practice act.

(1) Refer to subsection A, 16.12.15 NMAC for licensure requirements.

(2) Applicants for endorsement into NM must meet one of the following requirements:

(a) Have received initial licensure as a clinical nurse specialist within the immediate past two (2) years or

(b) Have been engaged in nursing as a clinical nurse specialist a minimum of 400 hours within the immediate past two (2) years. Applicants who have not met the work requirements MUST complete a board-approved refresher course or its equivalent as determined by the board. Refer to subsection L, 16.12.2.15 NMAC.

(c) Continuing education is not required for initial CNS licensure by endorsement. CE requirements must be met at the time of the first renewal.

(d) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

**F.** A GCNS permit-to-practice may be issued, by mail only, to a New Mexico employer(s) for an endorsee awaiting results on successful completion of national certification. Refer to subsection B and C, 16.12.2.15 NMAC for procedure and requirements.

**G.** A temporary clinical nurse specialist license may be issued to an endorsee who:

(1) Submits a notary-certified copy of a current, valid clinical nurse specialist license, or an affidavit of current clinical nurse specialist licensure, which means the following criteria:

(a) Verification of current licensure with an expiration date of not less than thirty-one (31) days and no stipulations or restrictions.

(b) Name of issuing jurisdiction, and

(c) Category of licensure and

license number.

(2) Submits a copy of current national certification in a nursing specialty. When the state of former advanced practice licensure does not require national certification a TL can be issued. Proof of national certification in a nursing specialty must be submitted to the board before a license will be issued.

(3) Has not completed, within five years immediately prior to the date of application to the board, a three credit hour pharmacology course at the advanced level or forty-five (45) contact hours advanced level pharmacology continuing education course. Completion of the course is required for licensure.

**H.** A letter of intent to employ on official letterhead must be received from each NM employer.

(1) The name of the employing institution shall be indicted on the temporary license.

(2) The board will mail the temporary license to the employing agency.

(3) A temporary license is valid for a period not to exceed six (6) months from the date of application.

(4) A temporary license is not renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action.

(5) Applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license.

(6) The discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

**I.** An initial clinical nurse specialist license shall be valid for two (2) years.

**J.** If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

~~(D)~~ **K.** Authorization to expand scope of practice

(1) A letter of authorization will be issued for the CNSs who through additional formal education have expanded their practice into another area of CNS practice provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the board of nursing.

(3) Practice must be under the direct supervision of a physician or NM

CNP or CNS in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued by mail only to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will expire on the date specified.

(a) A letter of authorization shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNS to request that the national certifying organization notify the board of the results of the examination. A letter of authorization may be valid for a period not to exceed two (2) years.

(b) A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship for expansion of scope of practice.

~~(F)~~ **L.** Maintaining licensure as a clinical nurse specialist

(1) The CNS shall be nationally certified in the specialty by a nursing organization and maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal.

(2) Continuing education

(a) The CNS shall accrue a total of fifty (50) contact hours of approved CE each renewal period. National certification or recertification as a CNS may not be used to fulfill any portion of the CE requirement.

(b) Thirty (30) contact hours, shall meet the requirements for licensure as an RN and

(c) An additional twenty (20) contact hours, 15 of which must be pharmacology, shall meet the requirements for licensure as a CNS.

(d) The CE shall be in accordance with the requirements as set forth in these rules.

(3) Work requirement: The CNS must practice a minimum of 400 hours in the specialty each renewal period and indicate such at the time of their license renewal.

(4) Reactivation. To reactivate or reinstate licensure as a CNS, the nurse must provide evidence of meeting the CE requirements and completing 400 hours of practice under the direct supervision in the appropriate specialty area. The supervised practice must be completed within six months and a limited license will be issued

for the duration of the supervised practice. Evidence of current national certification must also be provided.

~~¶¶~~ **M.** Clinical nurse specialist practice

(1) The CNS is a nurse who through graduate level preparation has become an expert in a defined area of knowledge and practice in a selected clinical area of nursing. (Taken from the ANA Social Policy Statement)

(2) The CNS practices in accordance with the standards as established by the ANA.

(3) The CNS makes independent decisions in a specialized area of nursing practice, using knowledge about the health care needs of the individual, family and community. The CNS collaborates as necessary with other members of the health care team, when the needs are beyond the scope of practice of the CNS.

(4) The CNS may assume specific functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CNS provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CNS's advanced educational preparation and certification, the CNS is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(5) Carries out therapeutic regimens in the area of the specialty.

(6) The CNS who has fulfilled the requirements for prescriptive authority in the specialty area may prescribe and distribute therapeutic measures including dangerous drugs and controlled substances contained in Schedules II through V of the Controlled Substance Act within the scope of the specialty practice and setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNS who fulfills the following requirements may prescribe and distribute dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two (2) years immediately preceding the date of application and provide a copy of a tran-

script documenting successful completion of the a three credit hour pharmacology course, a three credit hour assessment course and a three credit hour pathophysiology course included as part of a graduate level advanced practice nursing education program. Forty-five (45) contact hours of advanced level pharmacology continuing education course may be substituted for the academic pharmacology. A certificate of completion must be provided that verifies continuing education or

(ii) If 400 hours of work experience in which prescribing dangerous drugs cannot be verified, provide a copy of a transcript documenting successful completion of a three credit hour pharmacology course that is included as part of a graduate level advanced practice nursing education program within five years immediately prior to the date of application to the board. Forty-five (45) contact hours of advanced level pharmacology continuing education course may be substituted for the academic pharmacology. A certificate of completion must be provided that verifies continuing education. The course must be related to the specialty and contain content in pharmacokinetics, pharmacodynamics, pharmacology of current/commonly used medications and application of drug therapy to the treatment of disease and/or the promotion of health and

(iii) Provide a copy of a transcript documenting successful completion of a three credit hour assessment course that is included as part of a graduate level advanced practice nursing education program. The course must be related to the specialty and include content supported by related clinical experience such that students gain knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans and

(iv) Provide a copy of a transcript documenting successful completion of a three credit hour pathophysiology course that is included as part of a graduate level advanced practice nursing education program. The course must be related to the specialty and include content in physiology and pathophysiology.

~~(v) After fulfilling ii, iii and iv above, provide documentation from a qualified preceptor(s) (CNS, CNP or physician) on official letterhead of a minimum of 400 clock hours preceptorial experience in the prescription of dangerous drugs within the two years immediately prior to the date of application to the board or upon application a letter of authorization for a prescriptive authority preceptorship will be issued to complete a preceptorship, which must be~~

~~completed within six (6) months.] Provide a copy of a transcript documenting successful completion of a 400 hour university/college associated preceptor experience in the prescription of dangerous drugs within the two years immediately prior to the date of application to the board or.~~

~~(vi) After fulfilling ii, iii, and iv above, upon application to the board, a letter of authorization for a prescriptive authority preceptorship will be issued to complete a preceptorship, which must be completed within six (6) months.~~

~~¶¶~~ (vii) In order to prescribe controlled substances, the CNS must provide the board of nursing with verification of current state controlled substances registration and current DEA number. CNSs may not possess, prescribe or distribute controlled substances until they have both a current state controlled substances registration and a current DEA registration.

~~¶¶~~ (viii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary. It is the CNS's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed. The only drugs to be included in the formulary are those relevant to the CNS's area of specialty practice, scope of practice and clinical setting.

(i) All CNSs must maintain a current formulary with the board of nursing.

(ii) The board of nursing reserves the right to audit the formulary. Licensees may be subject to disciplinary action by the board of nursing if noncompliant with the audit.

(c) Prescription pads. The CNS's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CNS is using a prescription pad printed with the names of more than one CNS, the name of the CNS for the individual prescription shall be indicated.

(d) Distributing: CNSs who have fulfilled requirements for prescriptive authority as stated in these rules, may distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substance Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNSs may label only those drugs which the CNS prescribes and distributes to patients under the CNS's

care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, telephone number of the CNS. Labeling may be handwritten or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNSs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(7) Graduate clinical nurse specialist (GCNS) practice

(a) GCNSs may not distribute medications.

(b) GCNSs may practice and/or prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in the specialty.

(8) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM:

(a) A list of current CNSs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy.

(b) Violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy.

(c) The board of nursing shall annually appoint qualified CNSs in each specialty to serve on the board of pharmacy disciplinary panel.

~~(G) N.~~ Advanced practice committee

(1) The board may appoint a minimum of a 6-member advisory committee to assist the board in regulating the advanced practice of nursing.

(2) The committee shall assist and advise the board in the review of issues related to the advanced practice of nursing.

(3) The committee shall be composed of a least two representatives from each advanced practice area regulated by the board.

[1-1-98; 16.12.2.15 NMAC – Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01]

## NEW MEXICO BOARD OF NURSING

This is an amendment to Section 16.12.3.12 NMAC. This action amends this Section by removing unnecessary language and adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

**16.12.3.12 MINIMUM STAN-**

### DARDS FOR NURSNG PROGAMS

A. Administration and organization

(1) The nursing education program shall be an integral part of a regionally accredited institution authorized by this state to confer credentials in nursing.

(2) The nursing programs shall have status comparable with other academic units. There shall be an organizational chart which identifies the relationships, within and between the program and other administrative areas of the parent institution.

(3) The administration of the parent institution shall provide adequate financial support for the nursing program.

(4) The parent institution shall designate a qualified, nursing director who is licensed to practice as a registered nurse in New Mexico. The nursing program director shall have responsibility and authority comparable with the administrative position including but not limited to development, implementation, evaluation, administration and organization of the nursing program.

(5) Faculty, administration and students shall have the opportunity to participate in the governance of the nursing program and the parent institution.

B. Curriculum

(1) The mission of the nursing unit shall be consistent with that of the parent institution.

(2) The curriculum shall be developed, implemented, controlled and evaluated by the faculty within the framework of the mission, goals and outcomes of the nursing program.

(3) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop nursing competence and shall evidence an organized pattern of instruction consistent with principles of learning and educational practice.

(4) Clinical experience shall provide opportunities for application of theory and for achievement of the stated objectives in a client care setting, and shall include clinical learning experience to develop nursing skills required for safe practice. Student/faculty ratio in the clinical setting shall be based upon the level of students, the acuity level of the clients, the characteristics of the practice setting and shall not exceed 8:1. Clinical evaluation tools for evaluation of students progress, performance and learning experiences shall be stated in measurable terms directly related to course objectives.

(5) The curriculum shall provide instruction in the discipline of nursing, appropriate to the RN or PN level, across

the lifespan and include content relevant to national and local health care needs. Support courses shall be an integral part of the nursing curriculum.

(6) A plan for curriculum and program evaluation shall be in place.

C. Students: There shall be written policy statements consistent with those of the parent institutions which shall be made available to the student. Students shall be provided with opportunities to participate in the development and revisions of policies and procedures related to students including but not limited to philosophy, objectives, clinical sites, learning experiences, and evaluation of the program.

D. Faculty qualifications and requirements

(1) The director of the nursing program and all nursing program faculty shall hold current licenses to practice as registered nurses in New Mexico.

(2) Faculty shall meet the educational requirements of the parent institution and those requirements shall be at least comparable to other faculty members of like status.

~~[(a) The director shall hold a graduate degree in nursing.]~~

~~[(b) Nursing faculty shall hold a graduate degree in nursing. Faculty without a graduate degree may be employed for one year and then are required to complete a graduate degree within the next five years.]~~

~~[(c) Nursing faculty who teach clinical only shall hold a minimum of a bachelors degree in nursing.]~~

(3) Beginning on January 1, 2002, all new nursing program directors and nursing faculty must meet the following requirements:

(a) The director shall hold a graduate degree in nursing.

(b) Nursing faculty shall hold a graduate degree in nursing. Faculty without a graduate degree may be employed for one year and then are required to complete a graduate degree within the next five years.

(c) Nursing faculty who teach part time shall hold a minimum of a bachelors degree in nursing.

(4) Faculty shall be qualified and adequate in number to meet the needs of the nursing program.

(5) Personnel policies for nursing faculty shall be the same as those in effect for other faculty with the exception of :

(a) At least 80% of the director's assignment should be administrative. Additional administrative time should be given when preparing for accreditation, curriculum revision and other such activities.

(b) Nursing faculty workload shall be calculated by teaching clock/contact hour.

E. Resources: The parent institution shall provide sufficient resources, services and facilities to operate the nursing program.  
[1-1-98; 16.12.3.12 NMAC – Rn & A, 16 NMAC 12.3.12, 7-30-01; A, 12-31-01]

**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY  
TRAINING AND RECRUITING  
DIVISION  
LAW ENFORCEMENT ACADEMY**

On September 20, 2001 the New Mexico Law Enforcement Academy Board amended Subsection L of 10.29.9.14 NMAC concerning the night fire course requirements. All certified officers are to qualify annually with their firearms on a day course of fire and on a night course of fire. The amendment adjusts the night course of fire to more closely resemble the actual field conditions. This amendment will become effective on January 1, 2002. If more information is required, please contact Director Darrel Hart, New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico 87507, (505) 827-9255.

**10.29.9.14 ENTRY LEVEL AND REQUALIFICATION FIREARMS TRAINING**

**L. QUALIFICATION COURSE: NIGHT (50 Round Course) -** Range is “hot”. Shooter will not be told when to reload, except when firing the reloading drill portion of the course. No “alibis” will be given for shooter errors. Low light conditions would include parking lights from vehicles, naturally existing light, or other light that is just enough to identify a threat.

YARD LINE	DESCRIPTION	ROUNDS	TIME
5 (low light)	{Shooter draws to a standing position and fires three rounds (repeat)} <b>Shooter draws from the holster and fires a three round failure drill. (repeat)</b>	6	3 sec
5 (low light)	Shooter draws to a low ready position and fires two rounds (repeat twice)	6	2 sec
7 (flashlight or low light)	{Shooter draws to a standing position and fires six rounds, reloads and fires six more rounds} <b>Shooter draws from the holster and fires two rounds. (repeat twice)</b>	{12} <b>6</b>	{25 sec} <b>4 sec</b>
7 (flashlight or low light)	{From a flashlight low ready, on command the shooter fires three rounds (repeat)} <b>Shooter draws to a low ready position and fires two rounds. (repeat twice)</b>	6	{5 sec} <b>3 sec</b>
<b>7 (flashlight or low light)</b>	<b>Shooter draws to a low ready position and fires a three round failure drill. (repeat)</b>	<b>6</b>	<b>5 sec</b>
10 (Headlights & Overheads)	{Shooter draws to a standing position and fires six rounds, reloads and fires four more rounds} <b>Shooter draws from the holster and fires two rounds, reloads and fires two more rounds. (repeat)</b>	{10} <b>8</b>	{20 sec} <b>10 sec</b>
10 (Headlights & Overheads)	{Shooter makes ready with four rounds. Draw to the low ready, on command shooter will fire four rounds, reload and fire six more rounds.} <b>Shooter draws to the low ready position and fires two rounds, reloads and fires two more rounds. (repeat)</b>	{10} <b>8</b>	{20 sec} <b>8</b>
<b>10 (Headlights &amp; Overheads)</b>	<b>Shooter draws to a low ready position and fires two rounds. Flashlight optional.</b>	<b>2</b>	<b>3 sec</b>
<b>10 (Headlights &amp; Overheads)</b>	<b>Shooter draws from the holster and fires two rounds. Flashlight optional.</b>	<b>2</b>	<b>4 sec</b>

[1-1-95, 5-31-97; 10.29.9.14 NMAC – Rn, 10 NMAC 29.9.14, 4/30/01; A, 1/1/02]

## NEW MEXICO WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.4.101 NMAC.

**20.6.4.101 RIO GRANDE BASIN - The main stem of the Rio Grande from the international boundary and water commission sampling station above American dam upstream to one mile below Percha dam.** (Sustained flow in the Rio Grande below Caballo reservoir is dependent on release from Caballo reservoir during the irrigation season; at other times of the year, there may be little or no flow.)

**A. Designated Uses:** irrigation, limited warmwater fishery, livestock watering, wildlife habitat, and secondary contact.

**B. Standards:**

(1) In any single sample: pH shall be within the range of 6.6 to 9.0, and temperature shall not exceed 34°C (93.2°F). The use-specific numeric standards set forth in 20.6.4.900 NMAC are applicable to the designated uses listed above in Subsection A of this section.

(2) The monthly geometric mean of fecal coliform bacteria shall not exceed [~~1,000/100 mL~~] 200/100 mL; no single sample shall exceed [~~2,000/100 mL~~] 400/100 mL (see Subsection B of 20.6.4.13 NMAC).

(3) At mean monthly flows above 350 cfs, the monthly average concentration for: TDS shall not exceed 2,000 mg/L, sulfate shall not exceed 500 mg/L, and chlorides shall not exceed 400 mg/L.  
[20.6.4.101 NMAC – Rp 20 NMAC 6.1.2101, 10-12-00; A, 12-16-01]

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**End of Adopted Rules  
and Regulations Section**

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**2001**  
**SUBMITTAL DEADLINES AND PUBLICATION DATES**

<b>Volume XII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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Issue Number 2	January 16	January 31
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Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
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