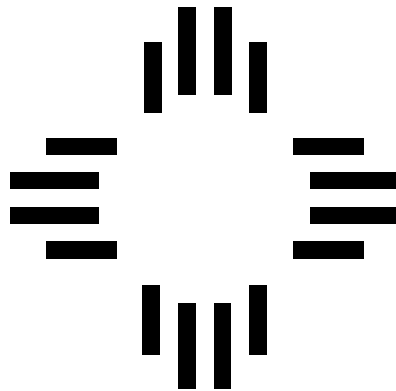


New Mexico Register

Volume XIII, Issue Number 2
January 31, 2002



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
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New Mexico Register

Volume XIII, Number 2

January 31, 2002

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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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The *New Mexico Register* is available free at
<http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

NOTICE OF PUBLIC HEARING

The Prevention and Intervention Division of the Children, Youth and Families Department will hold a formal public hearing on Tuesday, March 5, 2002, beginning at 9:00a.m., 1120 Paseo de Peralta, (PERA Building), Room 565 (5th Floor), Santa Fe, New Mexico 87502, to consider changes to 8.8.3 NMAC General Provisions Governing Criminal Records Checks and Employment History Verification. This Provision has general applicability to operators, staff and employees, and prospective operators, staff and employees of child-care facilities, including every facility or program having primary custody of children for twenty hours or more per week, juvenile detention, correction or treatment facilities, and direct providers of care for children in the following settings: Children's Behavioral Health Services and licensed and registered child care, including shelter care.

In addition, the Prevention and Intervention Division of the Children, Youth and Families Department will hold public forums to solicit public input on the proposed provisions as follows:

February 18, 2002 - 6:00 p.m.
Children, Youth & Families Department

Child Care Services Bureau

3401 Pan American Freeway, NE

Albuquerque, NM 87107

February 19, 2002 - 6:00 p.m.
Children, Youth & Families Department

Child Care Services Bureau

760 North Motel Blvd., Suite C

Las Cruces, NM 88005

The proposed provisions may be reviewed, or a copy obtained during the regular business hours of the Child Care Services Bureau, 1120 Paseo de Peralta, PERA Building, Room 111, Santa Fe, New Mexico 87504.

Interested persons may testify at the hearing or submit written comments at the above address no later than 5:00 p.m., March 5,

2002. Written comments will be given the same consideration as oral testimony given at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the Children, Youth and Families Department, Child Care Services Bureau toll free at 1-800-832-1321, or 827-7499. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF 20.3.5 NMAC - *Radiation Safety Requirements for Industrial Radiographic Operations*

The New Mexico Environmental Improvement Board will hold a public hearing on April 12, 2002, in conjunction with their regularly scheduled February meeting. The meeting will begin at 8:30 a.m. in the City/County Government Center, 9th floor Committee room, One Civic Plaza, Albuquerque, New Mexico. At this hearing, the Board will consider amendments to 20.3.5 NMAC - *Radiation Safety Requirements for Industrial Radiographic Operations*.

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

The purpose for revising Part 5 to the New Mexico Radiation Protection Regulations is that the Part requires revision to maintain compatibility with the U.S. Nuclear Regulatory Commission's (NRC) revisions to 10CFR§34 in recent years. The Radiation Control Bureau licenses industrial radiographic operations in accordance with New Mexico's agreement with the NRC to license and regulate radioactive materials. The radiography regulation is of statewide application.

The proposed revision 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 rule may be obtained by contacting Bill Floyd at (505) 476-3236 or by visiting the Department's

web site at www.nmenv.state.nm.us. Follow the links to the Radiation Control Bureau's page. Questions or comments about the Department's proposed amendments may be addressed to: Bill Floyd, Radiation Program Manager, Radiation Control Bureau, 1190 St. Francis Drive, P.O. Box 26110, Room S2100, Santa Fe, NM 87502-6110, telephone number (505) 476-3236.

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 Radiation Protection Regulation Section 74-3-5 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 recommended modifications to the proposed regulatory change; and

list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 p.m. on April 2, 2002 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, Administrator
NMED Boards and Commissions
1190 St. Francis Drive, Room N-2150
Santa Fe, New Mexico 87502

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 March 21, 2002. Mr. Hawley's telephone number is (505) 827-2844. He is Chief of the Program Support Bureau, New Mexico Environment Department, at 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.

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.

CW/sf

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF 20.3.16 NMAC – *Fees for Licensure of Radioactive Materials*

The New Mexico Environmental Improvement Board will hold a public hearing on April 12, 2002, in conjunction with their regularly scheduled February meeting. The meeting will begin at 9:30 a.m. in the City/County Government Center, 9th floor Committee room, One Civic Plaza, Albuquerque, New Mexico. At this hearing, the Board will consider amendments to 20.3.16 NMAC – *Fees for Licensure of Radioactive Materials*.

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

The purpose of the addition of Part 16 to the New Mexico Radiation Protection Regulations is to set annual fees for radioactive material licensees in New Mexico. Legislation passed at the 2000 legislative session granted the Department authority to assess annual fees from licensees and deposit such fees in a dedicated fund to support activities of the state radiation protection program. All fees are lower than those charged by the U.S. Nuclear Regulatory Commission and are comparable to those charged by states contiguous to New Mexico. The fees regulation is of statewide application.

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 rule may be obtained by contacting Bill Floyd at (505) 476-3236 or by visiting the Department's web site at www.nmenv.state.nm.us. Follow the links to the Radiation Control Bureau's page. Questions or comments about the Department's proposed amendments may be addressed to: Bill Floyd, Radiation Program Manager, Radiation Control Bureau, 1190 St. Francis Drive, P.O. Box 26110, Room S2100, Santa Fe, NM 87502-6110, telephone number (505) 476-3236.

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 Radiation Protection Regulation Section 74-3-5 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 recommended modifications to the proposed regulatory change; and
- list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 p.m. on April 2, 2002 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, Administrator
NMED Boards and Commissions
1190 St. Francis Drive, Room N-2150
Santa Fe, New Mexico 87502

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 March 21, 2002. Mr. Hawley's telephone number is (505) 827-2844. He is Chief of the Program Support Bureau, New Mexico Environment Department, at 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.

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.

CW/pc

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 Wednesday February 6, 2002, at State Land Office, Conference Room, 310 Old Santa Fe Trail, Santa Fe, New Mexico, at 9:00 a.m. The Board will consider rules covering: rules governing Meat Inspection and fees, 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
PUBLIC REGULATION
COMMISSION**

**NOTICE OF PROPOSED RULEMAKING
UTILITY CASE NO. 3567**

**BEFORE THE NEW MEXICO PUBLIC
REGULATION COMMISSION**

IN THE MATTER OF THE CUSTOMER PROTECTION RULE (17.11.16 NMAC) AND THE QUALITY OF SERVICE STANDARDS RULE (17.11.22 NMAC) ADOPTED IN UTILITY CASE NO. 3437.

Utility Case No. 3567

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") is commencing a rulemaking proceeding for the purpose of considering whether to amend the Customer Protection rule (17.11.16 NMAC) and the Quality of Service Standards rule (17.11.22 NMAC) for local telecommunications service in New Mexico that were adopted in NMPRC Utility Case No. 3437. Being fully informed of the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. Among other things, House Bill 400 (being 2000 N.M. Laws, Ch. 102; codified in pertinent part as NMSA 1978, Section 63-9A-8.2) required the Commission to adopt, by no later than January 1, 2000, a rule that would "establish consumer protection and quality of service standards" for local telecommunications services in New Mexico. House Bill 400, section 4(B)(1); Section 63-9A-8.2(B)(1). In accordance with this requirement of House Bill 400, the Commission issued a Notice of Proposed Rulemaking in Case No. 3437 that proposed the adoption of such a rule.

2. In its Final Order Adopting 17.11.16 NMAC, and 17.11.22 NMAC, entered on December 12, 2000, the Commission approved, respectively, a Customer Protection Rule and a Quality of Service Standards Rule.

3. By January 11, 2001, seven of the commentors in Case No. 3437 had filed motions for rehearing regarding one or both rules, and certain related motions. Also by that date, a Notice of Appeal was filed at the New Mexico Supreme Court in its Docket No. 26,756 by AT&T Wireless PCS, LLC, and Verizon Wireless LLC. The Attorney General of New Mexico filed a Notice of Cross-Appeal in that docket on February 21, 2001. After considering a Joint Motion to Hold Appeal

in Abeyance that was filed in Docket No. 26,756, the Court granted that Motion in its Order of April 30, 2001 (as amended on May 4, 2001). Pursuant to 17 NMAC 1.2.37.4.1, the Commission takes administrative notice of the record in Case No. 3437, and the record in Docket No. 26,756.

4. Collectively, the motions for rehearing in Case No. 3437 made numerous recommendations for the revision of both 17.11.16 and 17.11.22 NMAC. Those motions raised the fundamental issue of whether the Commission should consider revising one or both of these rules.

5. Although the appeals precluded the Commission from granting the relief requested by the motions for rehearing in Case No. 3437 (see, e.g., Kelly Inn No. 102, Inc. v. Kapnison, 113 N.M. 231, 824 P.2d 1033 (1992)), the Commission concluded that it was in the public interest to begin an inquiry into whether 17.11.16 and 17.11.22 NMAC should, consistent with the outcome of the pending appeals and Supreme Court requirements, ultimately be revised. The Commission recognized, and continues to recognize, that no such revisions may be made while the appeal is pending, or unless otherwise permitted by the Supreme Court. Nonetheless, we found that the public interest and administrative efficiency would best be served by beginning such an inquiry while the appeal is pending, and while the issues raised in Case No. 3437 and the record in that case were still fresh in everyone's mind.

6. For these reasons, the Commission began this Case No. 3567 by issuing a Notice of Inquiry on February 6, 2001. Among other things, that Notice invited written comments on whether either the Customer Protection rule, or the Quality of Service Standards rule, or both, should be revised. Commentors proposing changes to one or both rules were directed to state and discuss the particular reasons for the suggested changes, and to submit specific language for the effectuation of any proposed changes.

7. On March 8, 2001, timely Comments were filed by Qwest Corporation ("Qwest"), the New Mexico Wireless Group, the Competitive Carriers, the Attorney General of New Mexico, VALOR Telecommunications of New Mexico ("VALOR"), the New Mexico Exchange Carriers Group, Association of Communications Enterprises, and the Commission's Utility Division Staff ("Staff"). Timely Response Comments were filed on April 9, 2001, by VALOR, Qwest and Staff.

8. The Commission has considered all of the Comments and Response Comments that were filed in this case. In addition, we have considered a pertinent statutory change that has occurred since our Notice of Inquiry was issued.* Taking all these into account, the

Commission has drafted revised versions of both rules that incorporate the statutory change, certain of the changes proposed by the Commentors, and other changes that the Commission is proposing on its own initiative. All specific revisions for each rule are set out in redlined legislative format. The revised Customer Protection rule as proposed is appended hereto as Attachment A. The revised Quality of Service Standards rule as proposed is appended hereto as Attachment B.

9. The proposed revised rules would be adopted under the authority granted the Commission by the Public Regulation Commission Act, NMSA 1978, Sections 8-8-4 and 8-8-15, the New Mexico Telecommunications Act, NMSA 1978, Section 63-9A-8.2, and the Cellular Telephone Services Act, NMSA 1978, Section 63-9B-4.

10. The Commission will take written comments on the proposed revised rules from any person wishing to do so. Interested persons shall file their written comments no later than February 7, 2002. Any person wishing to respond to comments may do so by submitting written response comments no later than February 22, 2002. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. Copies of the proposed rules in electronic format may be obtained from the Commission's web site (www.nmprc.state.nm.us) to facilitate this requirement. Any proposed changes to Attachments A or B shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

11. Comments on the proposed revised Customer Protection Rule and/or the proposed revised Quality of Service Standards Rule shall be sent to, and additional copies of the proposed rules can be obtained from:

Maria Brito
ATTN: Proposed Rules in Case
No. 3567
New Mexico Public Regulation
Commission
224 East Palace Avenue
Santa Fe, NM 87501
Telephone: (505) 827-6940

Additional copies of the proposed rules may also be downloaded from the Commission's

web site under "NMPRC Proceedings." Copies of the original Customer Protection Quality of Service Standards rules approved in Case No. 3437 may also be obtained from the Commission's web site.

12. The Commission will review all timely submitted written comments and will hold a public hearing to take oral comment regarding the proposed rules. The public hearing will be held on Wednesday, February 20, 2002, at 10:00 a.m., in Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico. Additional public hearings may be scheduled. Further notice will be issued regarding the time and location of any additional hearings that may be scheduled.

13. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, since hearings are occasionally rescheduled.

14. Any person with a disability requiring special assistance in order to participate in a hearing should contact Maria Brito at (505) 827-6940 at least 48 hours prior to the commencement of the hearing.

15. Copies of this Notice shall be sent to all persons on the Telecommunications Service List, to all persons who filed motions for rehearing in Case No. 3437, and to any other person requesting service, and shall be published in three newspapers of general circulation in the state and in the *New Mexico Register*.

IT IS THEREFORE ORDERED:

A. The revised Customer Protection Rule, and the revised Quality of Service Standards Rule attached to this Notice as, respectively, Attachments A and B are proposed for adoption as permanent rules as provided by this Notice.

B. Interested persons shall file their written comments on the proposed rules as provided in this Notice.

C. A public hearing shall be held as provided in this Notice. Staff of the Utility Division shall mail a copy of this Notice to all persons on the telecommunications mailing list, to all persons who filed motions for rehearing in Case No. 3437, and to any other person requesting service. Staff shall cause this Notice to be published, without Attachments A and B, in three newspapers of general circulation and in the *New Mexico Register*, and shall provide the Notice by e-mail or by facsimile transmission to any persons who have so requested.

D. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 8th day of January, 2002.

NEW MEXICO PUBLIC REGULATION COMMISSION

TONY SCHAEFER, CHAIRMAN

LYNDA M. LOVEJOY
VICE CHAIRWOMAN

HERB H. HUGHES, COMMISSIONER

RORY McMINN, COMMISSIONER

JEROME D. BLOCK, COMMISSIONER

*The legislature amended NMSA 1978, Section 63-9A-8.2 (see 2001 N.M. Laws, Ch. 52, Section 1) by adding the following Subsection D: Rules adopted pursuant to this section [including the Customer Protection and Quality of Service Standards Rules under consideration] shall not be applied to incumbent rural telecommunications carriers as that term is defined in Subsection I of Section 63-9H-3 NMSA 1978.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

**IN THE MATTER OF ADOPTING THE
ALTA SHORT FORM RESIDENTIAL
POLICY**

DOCKET NO. 02-010-IN

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

The purpose of this hearing is to obtain input on proposed amendments to 13.14.5 NMAC, Commitments and Binders; 13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies; and 13.14.18 NMAC, Forms.

I. SOLICITATION OF COMMENTS

The Superintendent of Insurance is issuing this Notice to provide an opportunity for public comment and to create a record for a decision on proposed amendments relating to the adoption of the ALTA Short Form Residential Loan Policy One-to-Four Family. The Superintendent requests written and oral comments from all interested persons and entities on the proposed amendments.

All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such informa-

tion is placed in the public file, and provided that the fact of the Superintendent's reliance on such information is noted in the Order the Superintendent ultimately issues.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on February 28, 2002, at 9:30 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before February 21, 2002. All relevant and timely comments, including data, views, or arguments will be considered by the Superintendent before final action is taken in this proceeding. An original and two copies of written comments must be filed prior to the hearing with the Chief Clerk, Public Regulation Commission, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also submit a diskette copy of written comments to the Chief Clerk or e-mail a copy of written comments to: elizabeth.bustos@state.nm.us. Comments will be available for public inspection during regular business hours in the office of the Chief Clerk, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that staff of the Superintendent of Insurance's Office shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*, both on or before January 31, 2002. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the Chief Clerk, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public

Regulation Commission to cover the cost of copying and postage; (2) call the Chief Clerk at 505-827-4526 with the docket number, rule name, and rule number (you will be billed \$5.00 to cover the cost of copying and postage); or e-mail Elizabeth Bustos at elizabeth.bustos@state.nm.us with the docket number, rule name, and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail at no charge). The proposed rule is also available for inspection and copying during regular business hours in the office of the Chief Clerk, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

III. ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for him or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are 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, may contact Ms. Ann Echols, on or before February 21, 2002, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

DONE, this 16th day of January, 2002.

NEW MEXICO PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION

ERIC P. SERNA, Superintendent of Insurance

NEW MEXICO WATER QUALITY CONTROL COMMISSION

AMENDED NOTICE OF PUBLIC MEETING AND PUBLIC HEARING TO CONSIDER PROPOSED AMEND- MENTS TO 20.6.2 NMAC – GROUND WATER DISCHARGE PERMIT PUB- LIC NOTICE REQUIREMENTS

The New Mexico Water Quality Commission will hold a public meeting beginning on March 12, 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 or during regular business hours in the office of the Commission Secretary, 1190 St. Francis Drive, Room N-2150, 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 March 1, 2002, 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 February 26, 2002, 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 February 12, 2002.

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

NEW MEXICO WATER QUALITY CONTROL COMMISSION

The New Mexico Water Quality Control Commission Notice of Public Meeting and Hearing to Consider Proposed Amendment to 20.6.4 NMAC – Standards for Interstate and Intrastate Surface Waters

The New Mexico Water Quality Control Commission will hold a public hearing on March 12, 2002, following the regularly scheduled meeting, which begins at 9:00 a.m., at the old Senate Chambers, Room

238, Bataan Memorial Building, Room 317, 407 Galisteo St., Santa Fe, New Mexico. The hearing will be held to consider proposed amendments to sections 20.6.4.10, 20.6.4.11, 20.6.4.12, 20.6.4.113, and 20.6.4.900 of the Commission's Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC (October 12, 2000). The proposed amendments will adopt human health and aquatic life criteria for Environmental Protection Agency (EPA) priority toxic pollutants. The Commission may make a decision on the proposed amendment at the conclusion of the hearing.

The proponent of the proposed amendment is the Surface Water Quality Bureau of the New Mexico Environment Department.

The proposed amendments may be reviewed during regular business hours at the office of the Commission, 1190 St. Francis Drive, Room N-2153, Santa Fe, New Mexico. For a copy of the proposed amendments or questions you may contact Steven Pierce of the Department's Surface Water Quality Bureau, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2800, <steve_pierce@nmenv.state.nm.us> or visit the New Mexico Environment Department's website at <http://www.nmenv.state.nm.us>.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 (1993), 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-2153, 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 a written notice with the Commission. 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 February 22, 2002, at 5:00 p.m. Written notices must be filed in the Commission's office and should reference 20.6.4 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 February 12, 2002, 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 February 12, 2002.

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.72.7 NMAC:

20.2.72.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions) as used in this Part:

A. "Accelerated review" means an optional process of permit application review that allows the Department to utilize a qualified outside firm to assist in review of a construction permit application.

B. "Affiliate," for the purposes of accelerated review, means a person that directly or indirectly, through one or more intermediaries, controls or is under common control with another person. Control includes the possession of the power to direct or cause the direction of management and policies of a person, whether directly or indirectly through the ownership, control or holding with the power to vote ten percent or more of the person's voting securities.

C. "Air pollution control equipment" means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

D. "Ambient air" means the outdoor atmosphere, but does not include the area entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries.

E. "Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur. This definition does not include coal preparation plants.

F. "Coal preparation plant" means any facility which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

G. "Commencement" means that an owner or operator has undertaken a continuous program of construction or modification.

H. "Conflict of interest," for the purposes of accelerated review, means any direct or indirect relationship between the qualified outside firm and the applicant or other interested person that would cause a reasonable person with

knowledge of the relevant facts to question the integrity or impartiality of the qualified outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or contractual relationship of less than one hundred dollars (\$100) in value for the twelve month period preceding Department receipt of the application. A conflict of interest includes but is not limited to the following examples:

(1) Gifts or gratuities of value have been exchanged between the qualified outside firm and the applicant.

(2) The qualified outside firm has provided goods or services to the applicant within one year prior to the start, or during the term, of the accelerated review process.

(3) An express or implied contractual relationship exists between the qualified outside firm and the applicant and the qualified outside firm has provided goods or services to the applicant through that relationship within five years prior to the start of the accelerated review process.

(4) There is a current financial relationship between the qualified outside firm and the applicant. Current financial relationships include, but are not limited to:

(a) The qualified outside firm owes anything of value to, or is owed anything of value by the applicant.

(b) The qualified outside firm has provided goods or services to the applicant and has issued a warranty or guarantee for the work that is still in effect during the time the contracted work for accelerated review is being performed.

(5) A director, officer, or employee of the qualified outside firm, who will perform services under a contract pursuant to this section (20.2.72.221 NMAC), has one or more personal, business, or financial interests or relationships with the applicant or any director, officer or employee of the applicant which would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a contract.

(6) A director, officer or employee of the qualified outside firm was a director, officer or employee of the applicant within one year prior to the start of the accelerated review process.

(7) Except where allowed by the Department, communication has been made between the qualified outside firm and the applicant regarding the substance of the application before a qualified outside firm has been selected to perform accelerated review of an application. Direct communication between the qualified outside firm and the applicant may take place once the

qualified outside firm has been selected by the Department.

(8) Any affiliate of the applicant has any of the above identified relationships with the qualified outside firm.

(9) Any affiliate of the qualified outside firm has any of the above identified relationships with the applicant.

(10) Any affiliate of the applicant has any of the above identified relationships with any affiliate of the qualified outside firm.

I. "Construction" means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources.

J. "Emergency" means unforeseen circumstances resulting in an imminent and substantial endangerment to health, safety, or welfare which requires immediate action.

K. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the US EPA, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

L. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

M. "Hazardous air pollutant" means an air contaminant which has been classified as a "hazardous air pollutant" by the administrator of the US EPA and is subject to a NESHAP.

N. "Interested person," as used in the definition of conflict of interest, means any person, other than the Department, that is reasonably expected to provide or has provided substantive comment or technical evidence on the permit application.

O. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment, or process to operate in an expected manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.

P. "Modification" means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential

emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

- (1) a change in ownership of the source;
- (2) routine maintenance, repair or replacement;
- (3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the Federal Act; or
- (4) unless previously limited by enforceable permit conditions:
 - (a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;
 - (b) an increase in the hours of operation; or
 - (c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

Q. "National Ambient Air Quality Standard" means, unless otherwise modified, the primary (health-related) and secondary (welfare-based) federal ambient air quality standards promulgated by the US EPA pursuant to Section 109 of the Federal Act.

R. "National Emission Standards for Hazardous Air Pollutants" or "NESHAP" mean the regulatory requirements, guidelines and emission limitations promulgated by the US EPA pursuant to Section 112 of the Federal Act.

S. "New Source Performance Standard" or "NSPS" means the regulatory requirements, guidelines and emission limitations promulgated by the US EPA pursuant to Section 111 of the Federal Act.

T. "Nonattainment area" means for any air contaminant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national or New Mexico ambient air quality standard for such contaminant. Such term includes any areas identified under Sub-paragraphs (A) through (C) of Section 107 (d)(1) of the Federal Act.

U. "Operator" means the person or persons responsible for the overall operation of a facility.

V. "Owner" means the person or persons who own a facility or part of a facility.

W. "Part" means an air

quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

X. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly, including for example but not limited to moveable sand and gravel processing operations and asphalt plants.

Y. "Potential emission rate" means the emission rate of a source at its maximum capacity ~~in the absence of air pollution control equipment which is not vital to production of the normal product of the source or to its normal operation. The determination of maximum capacity includes any federally enforceable physical or operational limitation on the capacity of the source.~~ to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal Act.

Z. "Qualified outside firm" means any person who has entered into a contract with the Department to provide assistance in the accelerated review of construction permit applications.

AA. "Regulated air contaminant" means, any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the Federal Act.

BB. "Shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

CC. "Standard Industrial Classification" or "SIC" means the code from the classification manual created by the Executive Office of the President-Office of Management and Budget, which categorizes industrial, manufacturing and commercial facilities, as listed in the Standard Industrial Code Manual published by the U.S. Government Printing Office, Washington D.C. 1972.

DD. "Startup" means the setting into operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing in of batch process units.

EE. "Stationary source" or "source" means any building, structure,

equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this Part at the discretion of the Secretary.

[11-30-95; 20.2.72.7 NMAC - Rn, 20 NMAC 2.72.107 2-2-01; A, 03-30-01; A, 02-18-02]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.77.2 NMAC and 20.2.77.9 NMAC

20.2.77.2 SCOPE: Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through ~~April 1, 2000~~ September 1, 2001.

[6-16-95, 11-19-97, 9-8-99; 20.2.77.2 NMAC - Rn 20 NMAC 2.77.101 & A, 6-23-00; A, 2-18-02]

20.2.77.9 ADOPTION OF 40 CFR PART 60: Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through ~~April 1, 2000~~ September 1, 2001 are hereby incorporated into this part [20.2.77 NMAC].

[6-16-95, 8-2-96, 11-19-97, 9-8-99; 20.2.77.9 NMAC - Rn 20 NMAC 2.77.107 & A, 6-23-00; A, 2-18-02]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.78.2 NMAC, 20.2.78.9 NMAC and 20.2.78.10 NMAC

20.2.78.2 SCOPE: All sources emitting hazardous air pollutants which are subject to the requirements of 40 CFR Part 61, as amended through ~~April 1, 2000~~ September 1, 2001.

[6-16-95, 11-19-97, 9-8-99; 20.2.78.2 NMAC - Rn 20 NMAC 2.78.101 & A, 6-23-00; A, 2-18-02]

20.2.78.9 ADOPTION OF 40 CFR ~~PART 60~~ PART 61: Except as otherwise provided, the national emission standards for hazardous air pollutants as promulgated by the United States environmental protection agency, 40 CFR Part 61, as amended in the Federal Register through ~~April 1, 2000~~ September 1, 2001 are hereby incorporated into this part [20.2.78

NMAC]. [6-16-95, 8-2-96, 11-19-97, 9-8-99; 20.2.78.9 NMAC - Rn 20 NMAC 2.78.107 & A, 6-23-00; A, 2-18-02]

20.2.78.10 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards:

A. amend 40 CFR Part 61, Section 61.02, Definitions, as follows: For the purposes of delegation of authority which the Administrator of the United States environmental protection agency may, in his discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary or his authorized representative.

B. exclude 40 CFR [Part 6] Part 61, Subparts B (National Emission Standards for Radon Emissions from Underground Uranium Mines), H (National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities), I (National Emission Standards for Radionuclide Emissions from Facilities Licensed by the NRC and Federal Facilities not covered by Subpart H), K (National Emission Standard for Radionuclide Emissions from Elemental Phosphorus Plants), Q (National Emission Standards for Radon Emissions from Department of Energy Facilities), R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks), T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings).

C. the federal emission standards incorporated by this regulation shall not be subject to NMSA 1978, Section 74-2-8 [Variances][6-16-95; 20.2.78.9 NMAC - Rn, 20 NMAC 2.78.108 6-23-00; A, 2/18/02]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.82.2 NMAC and 20.2.82.8 NMAC

20.2.82.2 SCOPE: All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through [April 1, 2000] September 1, 2001. [Rn, 20 NMAC 2.82.2, 8-14-98; A, 8-14-98, 9-8-99; 20.2.82.2 NMAC - Rn 20 NMAC 2.82.101 & A, 6-23-00; A, 2-18-02]

20.2.82.8 ADOPTION OF 40 CFR PART 63: Except as otherwise provided in section 20.2.82.10 NMAC (below), the national emission standards for haz-

ardous air pollutants for source categories as promulgated by the US EPA, 40 CFR Part 63, as amended in the Federal Register through [April 1, 2000] September 1, 2001 are hereby incorporated into this part [20.2.82 NMAC]. [Rn, 20 NMAC 2.82.7, 8-14-98; A, 8-14-98, 9-8-99; 20.2.82.8 NMAC - Rn 20 NMAC 2.82.106 & A, 6-23-00; A, 2-18-02]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.73 NMAC

20.2.73.7 DEFINITIONS: In addition to the terms defined in Part 2 [20.2.2 NMAC - Definitions], as used in this Part:

A. "Air pollution control equipment" means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state.

B. "Commencement" means that an owner or operator has undertaken a continuous program of construction or modification.

C. "Construction" means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources.

D. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

E. "Modification" means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

- (1) A change in ownership of the source;
- (2) Routine maintenance, repair or replacement;
- (3) Installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the federal Clean Air Act; or

(4) Unless previously limited by enforceable permit conditions;

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) An increase in the hours of operation; or

(c) Use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

F. "Non attainment Area" means, for any air pollutant, an area which has been designated as a nonattainment area under Section 107 of the Federal Act.

G. "Operator" means the person or persons responsible for the overall operation of a facility.

H. "Owner" means the person or persons who own a facility or part of a facility.

I. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

J. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly, including for example but not limited to moveable sand and gravel processing operations and asphalt plants.

K. "Potential emission rate" means the emission rate of a source at its maximum capacity [in the absence of air pollution control equipment which is not vital to production of the normal product of the source or to its normal operation. The determination of maximum capacity includes any federally enforceable physical or operational limitation on the capacity of the source] to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal Act.

L. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally

enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

M. "Regulated air contaminant" means, any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the Federal Act.

N. "Shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

O. "Stationary source" or "source" means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this Part at the discretion of the Secretary of the Department.

[11/30/95, 10/01/97; 20.2.73.7 NMAC - Rn, 20 NMAC 2.73.I.107, Recompiled 11/27/01; A, 02/18/02]

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION**

LOCAL GOVERNMENT DIVISION

**TITLE 2 PUBLIC FINANCE
CHAPTER 40 EXPENDITURE OF
PUBLIC FUNDS
PART 3 CIVIL LEGAL SERVICES FUND**

2.40.3.1 ISSUING AGENCY: Department of Finance and Administration, Local Government Division
[2.40.3.1 NMAC - N, 1/31/2002]

2.40.3.2 SCOPE: All eligible nonprofit organizations within the State of New Mexico applying for Civil Legal Services Funds.
[2.40.3.2 NMAC - N, 1/31/2002]

2.40.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 34-14-1 (2001); NMSA 1978, Section 34-6-40; and NMSA 1978, Section 35-6-1.
[2.40.3.3 NMAC - N, 1/31/2002]

2.40.3.4 DURATION: Permanent
[2.40.3.4 NMAC - N, 1/31/2002]

2.40.3.5 EFFECTIVE DATE: January 31, 2002
[2.40.3.5 NMAC - N, 1/31/2002]

2.40.3.6 OBJECTIVE: The objective is to establish procedures for the

allocation and disbursement of revenue from the Civil Legal Services Fund.
[2.40.3.6 NMAC - N, 1/31/2002]

2.40.3.7 DEFINITIONS:

A. "Act" means NMSA 1978, Section 34-14-1 (2001), entitled Civil Legal Services Commission.

B. "Civil Legal Services" means a full range of free legal services provided by attorneys or attorney-supervised staff in noncriminal matters to low-income persons living in New Mexico. The full range of services is subject to interpretation by the Commission.

C. "Civil Legal Services Commission" means an appointed five-member commission, all members who must have experience with civil legal matters affecting low-income persons.

D. "Civil Legal Services Fund" or "Fund" means an account created within the State Treasury financed through designated court fees.

E. "Code" means the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199.

F. "Commission" means the Civil Legal Services Commission.

G. "Contract" means the signed legal agreement between Fund recipients and the Division outlining specific requirements for use of Fund monies.

H. "DFA" means the executive agency Department of Finance and Administration.

I. "Division" means Local Government Division within the Department of Finance and Administration.

J. "Impoverished New Mexicans" means low-income persons.

K. "Low Income Person(s)" means a person(s) living in New Mexico lacking the financial ability to secure needed civil legal services. The specific financial criteria to define low-income persons shall be based on Federal Poverty Guidelines and determined by the Commission at intervals not to exceed three years.

L. "New Mexicans living in poverty" means low-income persons.

M. "New Mexican" means a person living in New Mexico at the time that person needs civil legal services.

N. "Person(s) living in poverty" means a low-income person(s).

O. "Request for Proposal (RFP)" means a solicitation for a competitive proposal for services subject to the state Procurement Code.
[2.40.3.7 NMAC - N, 1/31/2002]

2.40.3.8 INTRODUCTION AND PURPOSE: The 2001 New Mexico Legislature enacted Laws of 2001, Chapter 277, now codified as the Act, creating the

Civil Legal Services Fund and the Civil Legal Services Commission. The Fund has been established in the State Treasury and is to be used to pay for civil legal services to low-income persons living in New Mexico. The Fund is appropriated to the Department of Finance and Administration Local Government Division and the Civil Legal Services Commission. Disbursements from the Fund shall be by warrant drawn by the Secretary of DFA. The Commission is required to establish and adopt rules and procedures for the Fund, solicit proposals for the provision of civil legal services, and enter into contracts with eligible providers. The Division, pursuant to the rules of the Commission, shall administer the contracts and programs of the Fund, and require an annual accounting from each recipient of disbursements from the Fund. All Commission rules, disbursements and expenditures involving the Fund must be within the purview of the state Code.
[2.40.3.8 NMAC - N, 1/31/2002]

2.40.3.9 ELIGIBLE SERVICE PROVIDERS: Service providers must be nonprofit organizations that meet one of the two following criteria:

A. Must have a mission to provide a range of free legal services to New Mexicans living in poverty and be able to demonstrate the capacity to cooperate with state and local bar associations, pro bono programs, private attorneys and other entities to increase the availability of free legal services to low-income New Mexicans, or

B. Must have a program(s) to increase and coordinate statewide access to civil legal services for low-income persons through the use of technology.
[2.40.3.9 NMAC - N, 1/31/2002]

2.40.3.10 ELIGIBLE SERVICES OR ACTIVITIES: All disbursements from the Fund are for the sole purpose of providing civil legal services to low-income persons, except for the annual administrative costs provided to DFA under statute. These services may be provided through the use of technology, as long as no more than fifty percent of any annual expenditures of the Fund are used for this purpose. Examples of eligible services include but are not limited to: outreach; community legal education; a legal "hot-line"; supportive services for pro se litigants; systems for alternative dispute resolution; utilization of the private bar; representation by staff attorney programs; providing for group representation and advocacy that is not inconsistent with the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 through 2-11-9; and system management/substantive support which enables an organization to provide legal services to the

poor.

[2.40.3.10 NMAC - N, 1/31/2002]

2.40.3.11 INELIGIBLE SERVICES OR ACTIVITIES: Money disbursed from the Fund cannot be used to:

A. Bring suit against the State of New Mexico;

B. Acquire land or buildings;

C. Accumulate or transfer cash;

D. Provide legal advice or representation on criminal matters; or

E. Support lobbying, as defined in the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 through 2-11-9.

[2.40.3.11 NMAC - N, 1/31/2002]

2.40.3.12 APPLICATION PROCEDURES:

Under direction from the Commission and pursuant to the state Procurement Code, the Division will issue Request for Proposals (RFPs) for the provision of civil legal services to low-income persons. The form and content of the RFP(s) will be determined by the Commission, with assistance from the Division. The evaluation criteria used by the Commission in determining RFP awards will be contained in the RFP. Civil legal service providers will be selected as Fund recipients by the Commission based on review and rating of submissions by the Division. Service providers will be required to formalize the award through a Contract with the Division, as required by state law.

[2.40.3.12 NMAC - N, 1/31/2002]

2.40.3.13 ADMINISTRATIVE PROCEDURES:

All funded service providers will be required to adhere to state procurement laws, regulations and other procedures established by the Division to ensure that all funds are expended in accordance with state law. The Division shall require an annual accounting from each organization receiving funds. Funds will be distributed to recipients as specified in the Contract. Fund disbursements must be included in the service provider's budget process and financial reports. Fund expenditure documentation must be provided to the Division as outlined in the Contract. The Commission may request additional oral or written reports from service providers as deemed necessary.

[2.40.3.13 NMAC - N, 1/31/2002]

2.40.3.14 LIMITATIONS OF FUND:

All disbursements from the Fund are contingent upon sufficient revenue credited to the Fund. Unexpended or unencumbered balances in the Fund at the end of a fiscal year remain in the Fund to carry out

provisions of the Act in the next fiscal year.

[2.40.3.14 NMAC - N, 1/31/2002]

2.40.3.15 SUPPLEMENTAL FUNDING: Should additional Fund monies become available, the Commission may call for and act on additional RFPs from eligible service providers.

[2.40.3.15 NMAC - N, 1/31/2002]

2.40.3.16 SANCTIONS :

Sanctions may include any administrative action, including Contract termination, authorized by the Commission against a Fund recipient for improper, inadequate performance or noncompliance with one or more condition(s) of the Contract. Examples of deficient performance by a service provider include but are not limited to: failure to correct monitoring or audit findings; failure to document and report to the Division all expenditures of Fund monies; failure to implement legal services in a timely manner; failure to execute activities in accordance with the Contract; and implementation of a program change without prior approval of the Commission.

[2.40.3.16 NMAC - N, 1/31/2002]

2.40.3.17 COMMISSION AUTHORITY:

The Commission may at any time waive or adjust any state imposed regulation relative to the Fund rules and administration as long as the waiver or adjustment does not penalize or favor any eligible service provider or violate any state law or other regulation.

[2.40.3.17 NMAC - N, 1/31/2002]

HISTORY OF 2.40.3 NMAC:
[RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an Amendment to 19.30.9 Section 8.

19.30.9.8 LICENSE VENDORS:

A. Assessment of Financial Liability:

(1) First Occurrence during a license year: A dollar value per missing license or stamp document shall be levied upon the license vendor. The dollar value shall be an amount equal to the average dollar value of that vendor's licenses sold the previous license year.

(2) Subsequent Occurrences during a license year: A dollar value equal to the maximum value of the missing document(s) may be levied upon any license vendor unable to account for any license documents issued.

(3) A license vendor must

appear before a Hearing Officer in order to have a hearing with respect to financial liability. A vendor may waive his right to a hearing and when he does so he agrees to pay to the Department the appropriate amount as specified in Paragraphs 1 and 2 of Subsection A of 19.30.9.8 NMAC within ten (10) working days.

(4) In the case of unusual mitigating or extraordinary circumstances, the State Game Commission may determine, and the Hearing Officer may recommend, financial liability in an amount other than the amounts described in Paragraphs 1 and 2 of Subsection A of 19.30.9.8 NMAC. The decision of the State Game Commission shall be final.

B. Vendor Procedures and Bonding Requirements:

(1) A list of vendor procedures, including bonding requirements shall be established and maintained by the Director of New Mexico Department of Game and Fish. A new license vendor must have a minimum of three (3) years as an established business in the same location prior to becoming a license vendor and must meet the minimum point criteria as set forth in the license vendor application. A reduction to the minimum years established as a business may be allowed if it is determined that the license vendor will be the sole vendor in the area and the license vendor provides a reasonable method to reduce any financial risk to the Agency as specified by vendor procedures. A bonding requirement [of \$6,000 or \$10,000 will] may be required of all approved vendors. [If a license vendor sells \$6,000 or less in license sales, the bond requirement is \$6,000; if over \$6,000 in license sales, the bond requirement is \$10,000.] The Director of the New Mexico Department of Game and Fish will determine the bond level based on the critical need for the vendorship and financial risk.

(2) [Any vendor who does not meet the established three (3) years may be required to secure a bond greater than \$10,000 but not more than \$30,000. The Director of the New Mexico Department of Game and Fish will determine the bond level based on the critical need for the vendorship and financial risk.] Each vendor shall follow the procedures set forth in the New Mexico Department of Game and Fish License Vendor Manual.

C. Vendor Fee:

(1) Standard fee: Each license vendor shall collect and retain \$1.00 per license, permit or stamp document sold or issued.

(2) Telephone sales fee: Each license vendor may collect the actual cost of shipping and handling not to exceed \$5.00 per license, permit or stamp document sold

or issued.
[12-20-94, 3-31-98; 19.30.9.8 NMAC - Rn, 19 NMAC 30.1.8 & A, 7-16-01; A, 1-31-02]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.34.6 NMAC, sections 7, 8 and 9.

19.34.6.7 DEFINITIONS:

A. "Public Land", as used herein, means those lands, which surface areas are under the management authority of the United States Forest Service or the United States Bureau of Land Management.

B. "Sikes Act", as used herein, means Public Law 93-452, which authorizes the issuance of public land management stamps, and regulates the use of funds collected there from.

C. "Public Land Management Stamp", herein shall be referred to as **"Habitat Stamp"**, and shall mean a stamp or validation that is affixed to or denoted on a valid hunting, trapping, or fishing license to demonstrate compliance with this regulation.

[19.34.6.7 NMAC - Rp, 19 NMAC 34.1.7, 12-28-01; A, 01-31-02]

19.34.6.8 PURCHASE AND POSSESSION:

A. Each person hunting on any public land that is under the management authority of the United States Forest Service or the United States Bureau of Land Management, except those lands under the management authority of the United States Bureau of Land Management that are contained with Game Management Unit 28, in the State of New Mexico, must purchase and possess a Public Land Management Stamp.

B. Each resident trapper twelve years of age and over, trapping for protected furbearers, and each non-resident trapper, trapping on any public land that is under the management authority of the United States Forest Service or the United States Bureau of Land Management, except those lands under the management authority of the United States Bureau of Land Management that are contained with Game Management Unit 28, in the State of New Mexico, must purchase and possess a Public Land Management Stamp.

C. Each angler twelve years of age and over, except those resident anglers 70 years of age and older, fishing on any public land that is under the management authority of the United States Forest Service or the United States Bureau of Land Management, except those lands under the management authority of the

United States Bureau of Land Management contained within Game Management Unit 28, in the State of New Mexico, must purchase and possess a Public Land Management Stamp.

D. Provided, however, that only one Public Land Management Stamp is required for any one individual to hunt, trap, and/or fish on public land within the State of New Mexico during any license year.

E. Purchase price for each Public Land Management Stamp shall be five (\$5.00) dollars.
[19.34.6.8 NMAC - Rp, 19 NMAC 34.1.8, 12-28-01; A, 01-31-02]

19.34.6.9 VALIDATION [AND EXHIBIT]:

~~A. [The purchaser of each]~~
A Public Land Management Stamp must be purchased when buying a license and the vendor must check the appropriate box; or if purchased separately, affix the stamp to a valid license and sign his or her name in ink across the face of the stamp (**exception: no more than one stamp must be purchased per license year**). Stamps not so validated shall not be valid for hunting, fishing, or trapping on public land within the State of New Mexico.

B. Public Land Management Stamps are not transferable.

C. No one may use a Public Land Management Stamp validated by another person.

~~D. [Any individual hunting, fishing, or trapping on any public land that is under the management authority of the United States Forest Service or the United States Bureau of Land Management within the State of New Mexico, who is required by this regulation to purchase and possess a Public Land Management Stamp, shall produce said stamp for the inspection upon demand of any law enforcement officer, any employee of the United States Department of Agriculture, any employee of the United States Department of Interior or to any other person who is authorized to enforce Section 240(a) of the Sikes Act.]~~
No hunting, fishing or trapping license used on Forest Service and/or Bureau of Land Management lands shall be valid unless a Public Land Management Stamp is purchased, possessed or affixed as prescribed by 19.34.6.8 and 19.34.6.9 NMAC.

[19.34.6.9 NMAC - Rp, 19 NMAC 34.1.9, 12-28-01; A, 01-31-02]

**NEW MEXICO GAMING
CONTROL BOARD**

This is an amendment to 15.1.7.5 NMAC, 15.1.7.6 NMAC, 15.1.7.7 NMAC, 15.1.7.11 NMAC, 15.1.7.15, NMAC,

15.1.7.26 NMAC, 15.1.7.27 NMAC, 15.1.7.32 NMAC, 15.1.7.35 NMAC, and 15.1.7.37 NMAC.

15.1.7.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].

15.1.7.6 OBJECTIVE: This rule [~~is intended to~~] establishes standards for the evaluation, testing, approval, modification, maintenance, and disposition of gaming machines, games and associated equipment.

15.1.7.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. "Act" means the Gaming Control Act.

B. "central monitoring system" means the hardware and software at the board's central site used to control, monitor, and retrieve information from, all licensed gaming machines.

C. "component" means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, [~~and~~]meter and any other parts the Board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

D. "conversion" means a change from one pre-approved configuration to another pre-approved configuration.

E. "event" means an occurrence of elements or particular combinations of elements that are available on the particular gaming device.

F. "game outcome" means the final result of the wager.

G. "modification" means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs; "modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game; replacement of one component with another pre-approved component, or the rebuilding of a previously

approved gaming machine with pre-approved components.

H. "multigame" means a gaming device that offers a menu of more than one game to the player.

I. "site controller" means the central hardware and software that monitors and controls one or more gaming machines on the licensed premises.

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

15.1.7.11 ACCOUNTING METER SPECIFICATIONS:

A. A gaming device must be equipped with both electronic and electromechanical meters.

B. A gaming device's electromechanical meters must have no less than six digits.

C. A gaming device's electronic meters must tally totals to eight digits and be capable of rolling over when the maximum value is reached.

D. A gaming device's control program must provide the means for on-demand display of the electronic meters utilizing a key switch on the exterior of the machine.

E. The required electromechanical meters must comply with the following and must count and report data on a basis consistent with the meters described [§]Subsection H of 15.1.7.11 [§] below:

(1) the coin-in meter must cumulatively count the number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

(2) the coin-out meter or amount won meter must cumulatively count the number of coins, credits, or tokens won as a result of game play including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

(3) the hand-pay jackpot meter must identify the number of coins, credits, or tokens won as a result of game play resulting in a hand-pay jackpot; and

(4) the coins-dropped meter must maintain a cumulative count of the number of coins or tokens diverted into a drop bucket plus the value of the bills inserted that have been inserted into the bill acceptor.

F. Electromechanical meters must meet a reasonable level of accuracy, given the available technology, as approved by the board.

G. Electronic meters must have an accuracy rate of 99.99% or better.

H. The required electronic meters must comply with the following and must count and report data on a basis con-

sistent with the meters described in [§]Subsection E of 15.1.7.11 [§] NMAC above:

(1) the coin-in meter must cumulatively count the value or number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

(2) the coins-out meter or amount won meter must cumulatively count the value or number of coins, credits, or tokens won as a result of game play, including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

(3) the coins-dropped meter must maintain a cumulative count of the value or number of coins or tokens diverted into a drop bucket plus the value of the bills that have been inserted into the bill acceptor;

(4) the games played meter must display the cumulative number of games played;

(5) a cabinet door meter must display the number of times the front cabinet door was opened; and

(6) the drop door meter must display the number of times the drop door or the bill acceptor door was opened.

I. If a gaming device is equipped with a bill acceptor, then the device must be equipped with a bill acceptor meter that records the following:

(1) the total number of bills that were accepted;

(2) an accounting of the number of each denomination of bill accepted; and

(3) the total dollar amount of bills accepted.

J. A gaming device must be designed so that the replacement parts or modules required for normal maintenance do not require replacement of the electromechanical meters.

K. A gaming device must have meters that continuously display all of the following information relating to current play or monetary transaction:

(1) the number of coins, tokens, or credits wagered in the current game;

(2) the number of coins, tokens, or credits won in the current game, if applicable;

(3) the number of coins or tokens paid by the hopper for a credit cashout or a direct pay from a winning outcome; and

(4) the number of credits available for wagering, if applicable.

L. Electronically stored meter information required by this rule must be preserved after a power loss to the gaming device and must be maintained for a

period of not less than 180 days.

M. A gaming device may not have a mechanism that causes the required electronic accounting meters to clear automatically when an error occurs.

N. The required electronic accounting meters may be cleared only if approved by the board.

O. Required meter readings, when possible, must be recorded before and after the electronic accounting meter is cleared.

15.1.7.15 BILL ACCEPTOR SPECIFICATIONS:

A. A gaming device may have a bill acceptor installed into which a patron may insert currency in exchange for an equal value of gaming device credits. The patron must be able to obtain an equal number of tokens or credits for the amount of currency that was inserted into the bill acceptor.

B. ~~[A bill acceptor may accept one dollar (\$1.00), five dollar (\$5.00), ten dollar (\$10.00), or twenty dollar (\$20.00) bills.] A bill acceptor may be for any single denomination or a combination of denominations.~~

~~[C.]~~ A bill acceptor must have software programs that enable the acceptor to differentiate between genuine and counterfeit bills to a high degree of accuracy. Bill acceptors may utilize flash technology upon approval of the board after evaluation by an independent testing laboratory.

[D]C. A bill acceptor must be equipped with a bill acceptor drop box to collect the currency inserted into the bill acceptor. The bill acceptor must:

(1) be housed within the gaming device or, if mounted on the outside of the gaming device, be contained in a locked compartment. The key to such compartment must be different from any other key on the gaming device; and

(2) be equipped with a bill acceptor drop box that includes a stacker. The drop box must be identifiable to the gaming device from which it was removed and have a separate lock to access the contents of the bill acceptor drop box. The key to the lock must not access any other area of the gaming device.

15.1.7.26 THEORETICAL PERCENTAGE PAYOUT REQUIREMENTS:

A. During the expected lifetime of the gaming [device] machine, the gaming machine must not pay out less than 80% nor more than 96% of the amount wagered.

B. The theoretical payout percentage must be determined using stan-

standard methods of the probability theory. The percentage must be calculated using the highest level of skill where player skill impacts the payback percentage.

C. A gaming ~~[device]~~ machine must have a probability of obtaining the single highest posted maximum payout of more than 1 in 50,000,000.

15.1.7.27 REVOCATION OF LICENSE OR APPROVAL:

A. The board may revoke the license or approval of a gaming machine or gaming device if the board determines, in its discretion, that the gaming machine or gaming device:

(1) ~~[the gaming machine or gaming device]~~ does not perform in the manner described in the application;

(2) ~~[the gaming machine or gaming device]~~ is defective or malfunctions frequently;

(3) ~~[the gaming equipment]~~ has a detrimental impact on the conduct of the gaming operation; or

(4) ~~[the gaming machine or gaming device]~~ adversely affects the computation of taxes due, but not limited to, inaccurate computation, defects, or malfunctions.

B. The board will ~~[immediately]~~ notify, in writing, the manufacturer or distributor of the gaming machine or gaming device of the revocation of the license or approval. The board will advise the manufacturer or distributor of the date on which use of the gaming machine or gaming device must cease.

C. The board will ~~[immediately]~~ notify, in writing, the gaming operator licensees that use the gaming machine or gaming device of the revocation of the license or approval. The board will advise the licensees of the date on which use of the gaming machine or gaming device must cease.

D. A gaming operator licensee or applicant must cease using, on the date established by the board, the gaming machine or gaming device for which the license or approval has been revoked. The licensee must notify the board, in writing, if the licensee believes it cannot cease use of the gaming machine or device by the established date and must request an extension of time. The board will advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.

15.1.7.32 REVOCATION OF APPROVAL OF ASSOCIATED EQUIPMENT OR MODIFICATION:

A. The board may revoke approval of associated equipment or any modification thereto, if the board finds that

the associated equipment:

(1) does not perform in the manner described in the application;

(2) is defective or malfunctions frequently;

(3) has a detrimental impact on the conduct of a gaming operation; or

(4) adversely affects the computation of taxes for reasons including, but not limited to, inaccurate computation, defects, or malfunctions.

B. The board will ~~[immediately]~~ notify, in writing, the manufacturer or distributor of the associated equipment of the revocation of approval. The board will advise the manufacturer or distributor of the date on which use of the associated equipment must cease.

C. The board will ~~[immediately]~~ notify, in writing, the gaming operator licensees that use, or applicants that propose to use, the associated equipment of revocation of approval. The board will advise the gaming operator licensee or applicant of the date on which the use of the associated equipment must cease.

D. A gaming operator licensee or applicant must cease using the associated equipment for which approval has been revoked by the date established by the board. The licensee must notify the board, in writing, if the licensee believes it cannot cease use of the associated equipment by the established date and must request an extension of time. The board will advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.

15.1.7.35 MARKING OF GAMING MACHINES:

A. A manufacturer or distributor may not distribute a gaming machine in New Mexico unless the ~~[device]~~ machine has:

(1) a unique, permanent serial number, which must be clearly visible and permanently stamped or engraved on the metal frame or other permanent component of the gaming machine or on a metal plate attached to the metal frame or other permanent component of the gaming machine;

(2) a metal plate that provides the manufacturer's name, model, date of manufacture, and permanent serial number of the machine; the metal plate must be attached to the cabinet of the gaming machine, and

(3) the board-issued license number and any modification approval number affixed to all program storage media placed in the machine.

B. Each manufacturer or distributor must keep a written list of the date of each distribution, the serial numbers of the gaming machines, and the names,

addresses, and telephone numbers of the persons to whom the machines have been distributed and must provide the list to the board immediately upon request.

C. In addition to the requirements in ~~[§]~~Subsection A of 15.1.7.35~~[(A)]~~ NMAC above, no gaming operator may place a gaming machine in a licensed premises for play unless the gaming machine bears the board-issued license number affixed to the machine. No person other than the board or its authorized employee or other agent may affix or remove the license number.

15.1.7.37 MAINTENANCE, REPAIR AND SERVICING OF GAMING DEVICES:

A. A licensee may not alter the operation of approved gaming machines or associated equipment and must ensure that the gaming machines and associated equipment are maintained in proper condition.

B. Only the following persons may service or repair a gaming device or associated equipment:

(1) a licensed manufacturer;

(2) an employee of a licensed manufacturer; or

(3) technician certified by a manufacturer and employed by a licensed distributor or gaming operator licensee.

C. A licensed manufacturer must maintain a certification program for the purpose of training and certifying technicians to service and repair gaming devices manufactured by the licensed manufacturer. Upon request, the licensed manufacturer must provide evidence of such program to the board, including a full description of the program, models of gaming devices for which training is provided, criteria for certification, information concerning instructor qualifications, and copies of training materials and tests. Any program deemed insufficient by the board must be modified at the board's request.

D. The licensed manufacturer must ensure that its technician employees have received sufficient and appropriate training in the service and repair of each of its approved gaming device models before the gaming device may be placed in operation in New Mexico.

E. A licensed manufacturer that certifies other persons as technicians must ensure that the technicians have received sufficient and appropriate training in the service and repair of the approved gaming device to be operated by the gaming operator licensee, or distributed by the licensed distributor, employing the technician.

F. Upon request by the board, the certified technician, or the

licensed manufacturer, distributor, or gaming operator employing the technician, must provide proof satisfactory to the board proof of the technician's certification.

G. The gaming operator licensee is responsible for ensuring that all service and repairs on its gaming devices, including the installation or repairs of component parts such as bill acceptors, monitoring systems, or other parts that would significantly alter the current or subsequent operation of a gaming machine, are made correctly and in compliance with board requirements.

H. Except for certified technicians, no employee of the gaming operator licensee may perform service or repairs on the licensee's gaming machines other than incidental repairs. Incidental repairs are repairs that do not affect any of the machine's major systems or require that the person making the repair access any internal space of the gaming machine.

I. The board may allow, at the board's discretion, on-site training by a certified technician as long as the technician has received the manufacturer's equivalent of certification as set forth in Subsection 15.1.7.37(E) above. Technicians in training must work under the direct supervision of a certified technician and must have obtained certification by satisfactorily completing all required training within 30 days of employment.

J. ~~[The interior of each licensed gaming machine must be secured by a dual key system. The manufacturer or distributor must provide to the board sets of both keys needed to access the locked compartments of all licensed gaming machines sold or distributed by the manufacturer or distributor in the State. A gaming operator licensee may keep on the licensed premises only one of the keys necessary to access the locked compartments of each of its licensed gaming machines. The manufacturer or distributor must retain the second key necessary for access.]~~

K.]The gaming operator licensee must keep a written maintenance log inside the main cabinet access area of each gaming machine. Every person who gains entry into any internal space of a gaming machine must sign the maintenance log, indicate the date and time of entry, indicate the mechanical meter readings, and list all areas inspected, repaired or serviced. The gaming operator licensee must retain the maintenance log for a period of five years and must make the maintenance log available to the board or its authorized agents upon request.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.13.5 NMAC, 15.1.13.8 NMAC, 15.1.13.10 NMAC, 15.1.13.11 NMAC, 15.1.13.12 NMAC, 15.1.13.13 NMAC, 15.1.13.14 NMAC

15.1.13.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section ~~[or paragraph]~~.

15.1.13.8 ANNUAL RENEWAL OF LICENSE OR WORK PERMIT:

A. Licenses issued under the Act, other than work permits and certifications of findings of suitability, expire on December 31 each year and are subject to annual renewal in accordance with the Act and this rule.

B. A complete renewal application and payment of all applicable fees for renewal of a license must be filed with the board on or before the date specified in the renewal application. The renewal application must be submitted on forms provided by the board. ~~[The renewal form will include a report detailing the Licensee's compulsive gambling prevention activities for the previous licensing period.]~~

C. In addition to any other information required, the renewal application for a nonprofit organization gaming operator license must include a copy of its amended charter, articles of incorporation, bylaws, or rules that establish regular or auxiliary membership requirements. The board may deny a license renewal application if it determines that any such amendment has opened, or may open, gaming activity to persons beyond those authorized under the Act.

D. In addition to any other information required, the renewal application for a racetrack gaming operator license must include proof that the racetrack holds an active license to conduct pari-mutuel wagering. The application also must include a copy of the racetrack's schedule of live races on each race day during its licensed race meet for the renewal year. If the schedule of live races has not been approved by the date the renewal application is filed with the board, the racetrack gaming operator licensee may submit a proposed schedule with the renewal application but must submit a final schedule within 15 days of approval by the Racing Commission. The board will not issue a renewed license before the final, approved schedule of live races has been submitted as required by this subsection unless the applicant applies for, and the board grants, a variance from this requirement for good cause shown.

E. The board may deny a license renewal application if the applicant is delinquent in the payment of any installment of the gaming tax or the payment of any other fees, fines, costs, or penalties imposed by the State, the liability for which arises out of any previous or current application to conduct, or out of the conduct of, gaming activity in the State.

F. A work permit expires one year from the date of issuance. A complete renewal application and payment of all applicable fees for renewal of the work permit must be filed with the board on or before the date specified in the renewal application. The renewal application must be submitted on forms provided by the board.

15.1.13.10 ~~[RENEWAL OF WORK PERMIT UPON CHANGE IN PLACE OF EMPLOYMENT:~~

~~In addition to filing an annual renewal as required by this rule, a gaming employee who is issued a work permit must contact the board to obtain a renewed permit after any change in the employee's place of employment, if the employee's new employer is a licensed gaming operator, manufacturer, or distributor. The gaming employee must contact the board and file a renewal application with the board within 10 days after the employee changes his or her place of employment.~~

15.1.13.11] LATE RENEWAL OF LICENSE:

A. The board may, in its discretion, accept and process a renewal application filed after the deadline established in section 15.1.13.8 above. Any such application, however, will be subject to a late renewal fee of \$250 plus \$10 per day for each additional day the renewal application is late.

B. To allow sufficient processing time by the board, no renewal application will be accepted by the board within 15 days of the expiration date of the license, regardless of whether the licensee pays late fees. Any licensee who fails to submit a complete renewal application 15 days before the expiration date of his or her license will be required to file a full application for licensure and pay all applicable fees and investigation costs if that person desires to engage in the conduct of gaming activities.

15.1.13.11 [42] MANDATORY CESSATION OF GAMING ACTIVITY: No licensee may engage in any gaming activity unless the licensee has received a renewed license from the board. Any licensee that fails to renew its license as required by the Act and this rule must cease, on December

31, the gaming activity authorized by the license. Engaging in any gaming activity without a renewed license will subject the licensee to fines and penalties as determined by the board.

15.1.12.12 [43] ORIGINAL LICENSE PERIOD: To provide for a calendar-year renewal of all licenses issued under the Act, other than work permits and certifications, each original license issued by the board will be valid for the period beginning on the date of issuance and ending on December 31 of that year. Thereafter, all renewed licenses will expire on December 31 annually and will be subject to renewal on a calendar-year basis. The board will prorate the license fee in cases it deems appropriate according to the calendar quarter in which the application was received.

15.1.13.13 [44] RECERTIFICATION OF FINDING OF SUITABILITY:

A. The board may require any person previously certified as suitable by the board to apply for recertification of the finding of suitability if the board believes that circumstances warrant such application or if three or more years has elapsed since the date the board issued the previous certification of finding of suitability.

B. Any person required by the board to apply for recertification must apply within 30 days after the date of the board's request and provide such information as the board may direct. The board may find any person failing to apply for recertification as required in this rule unsuitable on that basis.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.16.5 NMAC, 15.1.16.9 NMAC, and 15.1.16.14 NMAC.

15.1.16.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section [or paragraph].

15.1.16.9 TRANSPORTATION OF GAMING DEVICES INTO THE STATE:

A. A gaming device is shipped or transported into the State when the starting point for shipping or transporting begins outside the State and terminates in the State.

B. A licensed manufacturer [or distributor] shipping or transporting a gaming device into the State must provide the following information to the board, prior to shipment, on forms provided or approved by the board:

(1) the full name, address, and license number of the person making the shipment;

(2) the method of shipment and the name of the carrier, if any;

(3) the full name, address, and license number of the person to whom the devices are being sent and the destination of the shipment, if different from the address;

(4) the number of gaming devices in the shipment;

(5) the serial number of each gaming device;

(6) the model number and description of each gaming device;

(7) the expected arrival date of the gaming devices at their destination within the State; and

(8) such other information as required by the board.

C. Each EPROM transported into the State must be delivered to the board by the manufacturer [or distributor] licensee for inspection and testing prior to delivery to the gaming operator licensee. Upon satisfactory completion of inspection and testing, the board will notify the distributor or gaming operator licensee designated to receive the EPROM. No EPROM may be delivered to a distributor or gaming operator licensee without prior inspection and approval in writing by the board. Any distributor or gaming operator licensee receiving any EPROM directly from the manufacturer must notify the board immediately.

15.1.16.14 DISPOSAL OF GAMING MACHINES:

A. A gaming machine may be disposed of only with the board's approval and only if the manner of disposition makes the machine incapable of use or operation. Any person seeking to dispose of [an unusable or damaged] a gaming machine must notify the board in writing prior to disposal and provide the following information:

(1) the full name, address, and license number of the person seeking to dispose of the gaming machine;

(2) the serial number of the gaming machine;

(3) the model number and description of the gaming machine;

(4) the manufacturer of the gaming machine;

(5) the gaming machine license number;

(6) the gaming machine's hard meter readings;

(7) the location of the gaming machine;

(8) the proposed manner, time, and place of disposal; and

(9) any other information required by the board.

B. Unless the board notifies the [gaming operator licensee] person seeking to dispose of the gaming machine within 30 days of receipt of the notice required by this section, the method of disposal will be deemed approved.

C. The person seeking to dispose of a gaming machine must submit to the board, within 10 days of disposal, a sworn affidavit verifying the date, time, place, and manner of disposal and the names of all persons witnessing the disposal.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.17.5 NMAC, and 15.1.17.9 NMAC.

15.1.17.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section [or paragraph].

15.1.17.9 SCHEDULE OF FINES AND PENALTIES:

A. Penalties to be imposed for violations of the Act or this title will be determined by the board depending upon the facts and circumstances of each case. The penalty for a first violation will include the imposition of administrative fines within the ranges shown below, unless circumstances warrant enhancement of the fine. The maximum fine for each subsequent violation is \$50,000. The penalty for any violation may also include suspension or revocation of the license or denial of license renewal.

B. Licensing violations include:

(1) Engaging in gaming activity without valid license—\$10,000 to \$25,000 fine (Code 201).

(2) Possession of illegal gaming device—\$500 to \$1,000 fine (Code 202).

(3) Failure to apply for certification of finding of suitability—\$500 to \$1,000 fine (Code 203).

(4) Employing persons without work permits or key person certifications—\$500 to \$1,000 fine (Code 204).

(5) Expired work permit—\$250 to \$500 fine (Code 205).

(6) Unlicensed gaming machine—\$1,000 to \$5,000 fine (Code 206).

(7) Selling, offering to sell, or distributing a gaming device to other than a gaming operator licensee—\$10,000 to \$25,000 fine (Code 207).

(8) Purchasing, leasing, or otherwise receiving a gaming machine from other than an authorized licensee—\$5,000 to \$10,000 fine (Code 208).

(9) Association with distributor or

manufacturer with revoked license—\$1,000 to \$5,000 fine (Code 209).

(10) Unauthorized transfer of license—\$5,000 to \$10,000 (Code 210).

C. Operating violations include:

(1) Permitting play on an unauthorized gaming machine—\$5,000 to \$10,000 fine (Code 301).

(2) Permitting play of an unauthorized game—\$1,000 to \$5,000 fine (Code 302).

(3) Possessing or installing a gaming machine at other than an authorized location—\$2,500 to \$10,000 fine (Code 303).

(4) Engaging in dishonest or deceptive practices involving gaming activity—\$5,000 to \$10,000 fine (Code 304).

(5) Public nuisance—\$5,000 to \$10,000 fine (Code 305).

(6) Minor playing a gaming machine—\$5,000 to \$10,000 fine (Code 306).

(7) Unauthorized person on licensed premises—\$2,500 to \$7,500 fine (Code 307).

(8) Unauthorized person playing a gaming machine—\$5,000 to \$10,000 fine (Code 308).

(9) Sale, service, delivery or consumption of alcoholic beverage on licensed premises—\$5,000 to \$10,000 fine (Code 309).

(10) Operating or permitting the playing of gaming machine on unauthorized days or times—\$2,500 to \$5,000 fine (Code 310).

(11) Operating or permitting the operation of more than maximum number of gaming machines allowed—\$5,000 to \$10,000 fine (Code 311).

(12) Failure to pay winnings or award prizes—\$1,000 to \$5,000 fine (Code 312).

(13) Failure to maintain adequate security—\$1,000 to \$5,000 fine (Code 313).

(14) Unauthorized or improper use of tokens—\$500 to \$1,000 fine (Code 314).

(15) Unauthorized or improper disposition of tokens—\$500 to \$1,000 fine (Code 315).

(16) Unauthorized or improper disposal of gaming device—\$500 to \$1,000 fine (Code 316).

(17) Unauthorized modification of gaming device where the modification changes the manner of operation from that approved by the board or from that represented to patrons—\$1,000 to \$5,000 fine (Code 317).

(18) Knowingly associating with, employing, or assisting, directly or indirectly, persons or businesses of disreputable

character—\$5,000 to \$10,000 fine (Code 318).

(19) Employing ~~[as a key executive]~~ a person who has been denied, or failed or refused to apply for, a gaming license, work permit or finding of suitability in any jurisdiction—\$5,000 to \$10,000 fine (Code 319).

(20) Failing to comply with all federal, state and local laws and rules governing gaming activity, including payment of fees and taxes due—\$5,000 to \$10,000 fine (Code 320).

(21) Conducting, operating, or dealing with any cheating game or device—\$5,000 to \$10,000 fine (Code 321).

(22) Unauthorized modification of licensed premises—\$1,000 to \$5,000 fine (Code 322).

(23) Facilitating, participating in, or allowing the issuance of any loans or extending credit to a gaming patron for gaming purposes—\$1,000 to \$5,000 fine (Code 323).

(24) Misleading or deceptive payoff schedule—\$500 to \$1,000 fine (Code 324).

(25) Failure to make payments in accordance with payoff schedule—\$1,000 to \$5,000 fine (Code 325).

(26) Failure to install or maintain adequate surveillance system—\$1,000 to \$5,000 fine (Code 326).

(27) Insufficient funds in gaming tax transfer account—\$5,000 to \$10,000 fine (Code 327).

(28) Failure to comply with minimum accounting standards—\$1,000 to \$5,000 fine (Code 328).

(29) Commingling of gaming receipts with other monies of nonprofit organization gaming operator licensee—\$500 to \$7,500 fine (Code 329).

(30) Failure to maintain minimum bankroll required or to notify board of deficiencies—\$1,000 to \$10,000 fine (Code 330).

(31) Failure to request excluded person to leave or to prohibit entry on licensed premises or to properly notify board of excluded person on licensed premises—\$5,000 to \$10,000 fine (Code 331).

(32) Failure to implement or maintain adequate internal controls for gaming operations—\$1,000 to \$10,000 fine (Code 332).

(33) Unlawful or unauthorized operation of progressive system—\$5,000 to \$10,000 fine (Code 333).

(34) Unlawful or unauthorized promotion or additional payout—\$250 - \$5,000 fine (Code 334).

(35) Shipment of unapproved gaming device—\$1,000 - \$5,000 fine (Code 335).

(36) Unauthorized change in min-

imum internal controls—\$250 - \$2,500 fine (Code 336).

(37) Engaging in other unsuitable method of operation—\$1,000 to \$10,000 fine (Code 337).

D. Miscellaneous violations include:

(1) Interference with investigation, including denying the board or its agent or other authorized person access to, or inspection of, a gaming establishment—\$10,000 to \$25,000 fine (Code 401).

(2) Providing false or misleading information to the board or the board's agent—\$1,000 to \$10,000 fine (Code 402).

(3) Failure to file required report or disclose information—\$500 to \$10,000 fine (Code 403).

(4) Failure to renew license while continuing to conduct licensed activity—\$500 to \$1,000 fine (Code 404).

(5) Unlawful gaming operations contract—\$1,000 to \$5,000 fine (Code 405).

(6) ATM on licensed premises—\$500 to \$1,000 fine (Code 406).

(7) Failure to implement or maintain compulsive gambling assistance plan—\$1,000 to \$5,000 fine (Code 407).

(8) Failure to disclose gaming contracts—\$1,000 to \$5,000 fine (Code 408).

(9) Failure to retain required records—\$500 to \$2,500 fine (Code 409).

(10) Felony conviction of licensee, employee or other agent of licensee—\$5,000 to \$25,000 fine (Code 410).

(11) Failure to be in possession of work permit—\$250 to \$500 fine (Code 411).

(12) Failure to post gaming license—\$250 to \$500 fine (Code 412).

(13) Failure to post required signs—\$250 to \$500 fine (Code 413).

(14) Failure to provide required notice—\$250 to \$1,000 fine (Code 414).

~~(14)~~(15) Other violation—\$250 to \$10,000 fine (Code 999).

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.18.5 NMAC and 15.1.18.11 NMAC.

15.1.18.5 EFFECTIVE DATE: April 15, 1999, unless a later date is cited at the end of a section ~~[or paragraph]~~.

15.1.18.11 ANNUAL REPORT OF ACTIVITIES: Each gaming operator licensee must submit to the board, no later than March 31 annually, a report detailing the licensee's compulsive gambling activities for the previous 12-month period end-

ing December 31. The report must be in form and content prescribed or approved by the board.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.19.5 NMAC, 15.1.19.7 NMAC, 15.1.19.9 NMAC, and 15.1.19.10 NMAC.

15.1.19.5 EFFECTIVE DATE: April 30, 1999, unless a later date is cited at the end of a section [~~or paragraph~~].

5.1.19.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. "Act" means the New Mexico Gaming Control Act.

B. "Department" means the New Mexico Human Services Department.

C. "person" means an individual.

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

E. "this title" means Title 15, Chapter 1 of the New Mexico Administrative Code.

F. "wager" means a sum of money or thing of value risked on an uncertain occurrence.

G. "winning patron" means a person entitled to winnings.

H. "winnings" means the gaming machine amount due a winning patron [~~and awarded in any form, including money, tokens, credit to a player's account, and personal property~~] as a result of a legitimate wager; "winnings" are based on a single winning transaction on a gaming machine or other single transaction that entitles the winning patron to money, a prize, or other award.

15.1.19.9 VERIFICATION OF WINNINGS; REPORTING PROCEDURES:

A. When any winning patron [~~presents to the gaming operator licensee~~] seeks payment of winnings in excess of \$600.00, the gaming operator licensee must verify the winnings in accordance with approved minimum internal control standards.

B. Upon verification of the validity of the winnings, and before payment of the winnings, the gaming operator licensee must ensure that the winning patron completes a form provided or approved by the board to report the winnings.

C. The form must include

the following information and must be completed in full:

(1) the name, address, telephone number, and social security number of the winning patron;

(2) the exact amount of the winnings;

(3) the date the winnings were won; and

(4) the name, address, telephone number, and gaming operator license number of the gaming operator.

D. In addition to providing the information required in [s]Subsection C of 15.1.19.9(~~C~~) NMAC above, the winning patron must sign and date the following statements, under penalty of perjury:

(1) a statement declaring, to the best of the winning patron's knowledge and belief, that the winning patron does not owe and is not delinquent in child support payments in any state; and

(2) a statement attesting to the accuracy of the information provided.

E. After the winning patron completes the form, the gaming operator licensee must verify the identity of the winning patron and the information provided by checking the form against at least two forms of identification. Any of the following may be used for verification purposes, provided one of the forms contains a photograph:

(1) valid driver's license issued by any state;

(2) military identification card;

(3) current passport;

(4) social security card;

(5) identification card issued by the United States government; and

(6) major credit card.

F. Upon verification of the information provided by the winning patron; the gaming operator licensee may pay the winnings.

G. If a winning patron refuses to provide any of the information required by this rule, or fails or refuses to complete the reporting form, the gaming operator licensee must withhold the winnings until such time as the information is provided.

15.1.19.10 DISTRIBUTION OF REPORTING FORM:

A. The gaming operator licensee must provide a copy of the reporting form to the winning patron and retain a copy for the gaming operator's records.

B. The gaming operator licensee must provide, on a weekly basis, copies of all such reporting forms to the [~~Department at the following address:~~] Director of Child Support Enforcement or his designee.

[New Mexico Human

Services Department Child Support Enforcement Division

Attn: Tom Spahr, General Counsel

P.O. Box 25109

Santa Fe, New Mexico

87504

C. Reports of winnings may not be made to the Department by telephone.

D. The gaming operator licensee is not required to report to the Department in any week in which the gaming operator licensee makes no payments of winnings in excess of \$600.00.

E. The board will provide to the Department, on a monthly basis, a record of all winnings in excess of \$600.00 resulting from single wagers at each licensed gaming establishment for the prior month.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.22.5 NMAC and 15.1.22.8 NMAC.

15.1.22.5 EFFECTIVE DATE: March 15, 1999, unless a later date is cited at the end of a section [~~or paragraph~~].

15.1.22.8 AMUSEMENT DEVICES; IDENTIFYING FEATURES:

A. Features used to identify an amusement device include, but are not limited to, the following:

(1) average player—an ordinary person can, with reasonable application to the problem, learn to score and win games consistently;

(2) control by player—the device gives the player the opportunity to exert continuous, effective control the entire duration of the game;

(3) time of play—the game is not operated on a timed cycle, and the player can, depending on skill level, affect the time of play of the game;

(4) single coin feature—the denomination of coins used to activate the machine cannot be varied by the owner;

(5) conversion of machine—the device cannot be easily converted into an actual payout machine; [~~and~~]

(6) no accumulation of credits—the device has no credit meter or other means to accumulate credits; and

(7) no knock-off switch or other means to remove credits earned.

B. Any device incorporating the features described in [s]Subsection A of 15.1.22.8(~~A~~) NMAC will be presumed to be an amusement device and will not be subject to seizure and forfeiture as an illegal gaming machine.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.23.5 NMAC, and 15.1.23.9 NMAC.

15.1.23.5 EFFECTIVE DATE: October 15, 2000, unless a later date is cited at the end of a section ~~[or paragraph]~~.

15.1.23.9 GROUNDS FOR REVOCATION OF A WORK PERMIT:

A. The board may initiate action to revoke a work permit for any cause deemed reasonable by the board, including but not limited to the following:

(1) the making of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the board or made in connection with any investigation, including a background investigation, regardless of when discovered by the board;

(2) conviction of any crime in any jurisdiction;

(3) conviction of any gambling offense in any jurisdiction;

(4) entry of a civil judgment against the licensee that is based, in whole or in part, on conduct that allegedly constituted a crime;

(5) direct or indirect association with persons or businesses of known criminal background or persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the conduct of gaming activity;

(6) any aspect of the licensee's past conduct, character, or behavior that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the conduct of gaming activity or licensee's involvement in gaming activity;

(7) failure to timely respond to any request by, or order of, the board or its agent;

(8) revocation or suspension of a work permit or other gaming license or certification in any jurisdiction;

(9) violation of any provision of the Act or this title;

(10) failure to notify the board in writing of any criminal conviction or criminal charge pending against the licensee within 10 days of any arrest, summons, or conviction as required in 15.1.10.30 NMAC;

(11) theft ~~or attempted theft~~;

(12) falsification of, failure to make a required entry in, or destruction of records required to be maintained;

(13) failure to notify the board

of any matter requiring notice under the Act or rules or failure to obtain approval of the board as required under the Act or rules;

(14) termination of employment;

(15) refusal to submit to a background investigation;

(16) failure to appear and testify at the designated time and place, unless excused by the board;

(17) refusal or failure to renew a work permit;

(18) refusal or failure to notify the board of any change in employment or address;

(19) refusal or failure to possess the licensee's work permit while engaged in the conduct of gaming activities; ~~and~~

(20) failure to follow minimum internal controls; and

~~[(20)](21)~~ any other cause deemed appropriate by the board.

B. Any person whose work permit has been revoked by the board may not reapply for a work permit or other gaming license in New Mexico.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.2.2 NMAC, 15.1.2.5 NMAC, 15.1.2.6 NMAC, 15.1.2.7 NMAC, 15.1.2.8 NMAC, and 15.1.2.10 NMAC. This rule was renumbered to comply with current NMAC requirements.

15.1.2.2 SCOPE: This rule applies to information provided to the Gaming Control Board under the New Mexico Gaming Control Act and to the State Gaming ~~[R]~~ Representative pursuant to an approved Indian Gaming Compact with the State of New Mexico.

15.1.2.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section ~~[or paragraph]~~.

15.1.2.6 OBJECTIVE: This rule ~~[is intended to]~~ establishes criteria for determining the confidentiality of information and data received by the Gaming Control Board and circumstances under which the Gaming Control Board may disclose confidential information in its possession.

15.1.2.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. "compact" means an approved gaming compact and revenue sharing agreement between a Tribe and the State.

B. "gaming enterprise"

means the tribal entity created and designated by the Tribe as having authority to conduct Class III gaming pursuant to a valid gaming compact with the State of New Mexico.

C. "proprietary information" means written processes, data, or other internal records or materials developed by and available exclusively to the owner, the disclosure of which would seriously impair the owner's operations or its ability to operate or compete against similar operations.

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

E. "State Gaming Representative" means the person designated by the Gaming Control Board pursuant to the Gaming Control Act who is responsible for actions of the State set out in the compact.

~~F. ["Tribal Gaming Agency" means the tribal governmental agency that has been identified to the State Gaming Representative as the agency for actions of the Tribe set out in the compact.~~

G. "Tribe" means any Indian tribe or pueblo located within the State that has entered into an approved gaming compact and revenue sharing agreement with the State.

15.1.2.8 CONFIDENTIAL INFORMATION:

A. Confidential information includes any information, document, or communication that is:

(1) required by law or rules promulgated by the board to be furnished in connection with an application or preliminary application submitted to the board or ~~[which] that~~ may otherwise be obtained by the board in connection with the application;

(2) provided to the members, agents, or employees of the board by a licensee when such information is required to be submitted or disclosed under the law or rules promulgated by the board;

(3) provided to the members, agents, or employees of the board by a governmental agency or an informer; ~~[or]~~

(4) compiled by the members, agents, or employees of the board from other confidential information, including lists of persons who have been approved for, or denied, work permits by the board; ~~or~~

(5) obtained or compiled by the board or its agents in the course of an investigation of an applicant or licensee; the information, document or communication remains confidential unless and until disclosure is permitted under the Act.

B. Confidential information does not include:

(1) names and business addresses of applicants or the fact that an applicant has filed an application with the board;

(2) names and business addresses of any and all of an applicant's parent companies, affiliates, subsidiaries, partners, limited partners, major shareholders owning more than five percent (5%) of an applicant's stock, trustees, successor trustees, trust beneficiaries, or of any person that controls or is in a position to control or exercise other significant involvement in the operations of the applicant or licensee;

(3) names and business addresses of all officers and key employees of the applicant;

(4) names and business addresses of parties with whom the applicant or licensee contracts or expects to contract to support the operation of gaming establishments, including the names and addresses of landlords owning the premises where gaming will occur;

(5) names and business addresses of manufacturers and distributors with whom the applicant or licensee contracts or expects to contract for the sale, lease, or use of gaming devices;

(6) written order of final board approval or denial of an application and/or any other final action of the board taken on any other matter involving an applicant or licensee, including but not limited to, enforcement actions, investigations, rulings on motions and requests for legal determinations;

(7) legal documents submitted by applicants or licensees, including but not limited to, motions, requests for legal determinations, comments, briefs, notices of appeal, etc.; provided, however, that information contained or attached to such documents that otherwise meets the confidentiality requirements of this section will be treated accordingly pursuant to [s] Subsection A of 15.1.2.8(A) NMAC and all its subparts above;

(8) documents or information that is available from another state agency, federal agency, or other public source; or

(9) any other information ruled by the board, in its discretion, not to be confidential.

C. The board members, agents, and employees will receive, process, store and maintain all confidential information in a manner and location sufficient to ensure that the confidential information is secure and that access is strictly limited to authorized persons. Only members of the board, its employees, and agents, including persons designated by the board or authorized by law to conduct investigations of applicants and licensees, may have access to the confidential information.

D. Confidential informa-

tion will be disclosed upon issuance of a lawful order by a court of competent jurisdiction ordering the board to release such information. Absent such an order, confidential information will be disclosed only with the prior written consent of the subject applicant or licensee.

15.1.2.10 INFORMATION PROVIDED UNDER GAMING COMPACTS:

[~~A. Except as otherwise provided in this section, information provided by a Tribe to the State Gaming Representative under a valid gaming compact with the State is not considered confidential when the information relates to gaming operations and the gaming enterprise.~~

~~B. Trade secrets, information relating to security and surveillance systems, cash handling and accounting procedures, building layout, gaming machine payouts, investigations into alleged violations of laws or regulations, personnel records, and proprietary information regarding the gaming enterprise of the tribe, Class III gaming conducted by the Tribe, or the operation of Class III gaming, are considered confidential information. Such information may not be released without prior written approval of a duly authorized representative of the Tribe. [The foregoing restrictions do not prohibit:~~

~~(1) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;~~

~~(2) the State from disclosing the names of persons, firms, or corporations conducting Class III gaming pursuant to the terms of the valid compact, locations at which such activities are conducted, or the dates on which the activities are conducted;~~

~~(3) publishing the terms of a gaming compact with the State;~~

~~(4) disclosing information necessary to audit, investigate, prosecute or arbitrate violations of any compact or other applicable laws or to defend suits against the State, or information relating to dispute resolution, including documents relating to arbitration and communications between parties to an arbitration or between the parties and the arbitrators;~~

~~(5) complying with subpoenas or court orders issued by courts of competent jurisdiction; or~~

~~(6) disclosing any financial statement or audit furnished to the State Gaming Representative or the state treasurer by the Tribal Gaming Agency pursuant to a compact.]~~

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.9.5 NMAC, 15.1.9.6 NMAC, and 15.1.9.8 NMAC. This rule was also renumbered to comply with NMAC requirements.

15.1.9.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section [or paragraph].

15.1.9.6 OBJECTIVE: This rule [is intended to] establishes requirements for the establishment of internal controls by gaming operator licensees.

15.1.9.8 GENERAL REQUIREMENTS:

A. The gaming operator licensee or applicant must develop, implement and maintain appropriate written internal procedures and controls for the operation of gaming machines on the licensed premises. The procedures and controls must be sufficient, as determined by the board, to ensure the accuracy, reliability, and security of the function performed, process used, and information produced. The gaming operator licensee's internal controls must provide at least the level of control described in this rule.

B. Whether or not specified in a particular section or paragraph, the gaming operator licensee's internal controls must identify the employees authorized to perform each function and must ensure an appropriate level of security for each function.

C. Computer applications that provide controls equivalent in accuracy, reliability, and security to the standards set forth in this rule or otherwise adopted by the board will be acceptable to the board.

D. Any amendment to a licensee's internal controls must be approved in writing by the board before implementation by the licensee.

~~D]E.~~ Failure to develop and implement the necessary internal controls, implementation of substandard internal controls, or failure to obtain board approval before amending internal controls, constitutes an unsuitable method of operation.

~~E]E.~~ The board, in its discretion, may waive specific standards contained in this rule upon submission by the licensee of alternative procedures that ensure a comparable level of security.

**NEW MEXICO
HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.510 NMAC, Section 8, 9 and 10.

8.139.510.8 RESOURCE ELIGIBILITY STANDARDS

A. The maximum allowable resources, including both liquid and non-liquid assets, of all members of a household cannot exceed:

- (1) \$2,000; or
- (2) \$3,000 for households consisting of or including a member age 60 or older.

B. The value of a nonexempt resource ~~[except for licensed vehicles]~~ is its equity value. Equity value is the fair market value less encumbrances. The value of stocks and bonds, such as U.S. savings bonds, is their cash value, not their face value.

C. It is a household's responsibility to report all resources held at the time of application and any anticipated to be received, or that are later received during the certification period, that might place the household's resources above the maximum allowed.

D. Categorically Eligible Households: Households in which all members receive Title IV-A, GA, or SSI benefits are categorically eligible and do not need to meet the resource limits or provisions of this section.

E. Sponsored Aliens: For households containing sponsored aliens, ~~[the full]~~ a prorated amount of the countable resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) are deemed to be those of the sponsored alien, in accordance with sponsored alien provisions in 8.139.420.9 NMAC.

F. Non-household Members: The resources of non-household members, defined in 8.139.400.10 NMAC ~~[will]~~ shall not be considered available to the household.

G. Resources of Ineligible or Disqualified Household Members: The resources of ineligible or disqualified household members ~~[will]~~ shall be counted as available to the household in their entirety. If a resource exclusion applies to a household member, the exclusion ~~[will]~~ shall also apply to the resources of an ineligible or disqualified person whose resources are counted as available to the household.

[02/01/95, 07/01/97, 07/01/98, 06/01/99; 8.139.510.8 NMAC - Rn, 8 NMAC 3.FSP510, 05/15/2001; A, 02/01/2002]

8.139.510.9 STANDARDS

A. Liquid Resources:

Liquid resources are readily negotiable resources such as, but not limited to:

- (1) Cash on hand;
- (2) Money in checking and saving accounts;
- (3) Savings certificates, stocks and bonds (even if they are producing income consistent with their fair market value), credit union shares, promissory notes, U.S. savings bonds (after they become accessible six months from the date of purchase);
- (4) Loans, including loans from private individuals as well as from commercial institutions, are considered in the month received.

B. Lump - Sum Payments: Money received in the form of a nonrecurring lump sum payment is counted as a resource in the month received, unless specifically excluded by other federal laws.

(1) Lump sum payments include, but are not limited to:

- (a) Income tax refunds, rebates, or credits, including Earned Income Tax Credit payments after 2 months;
- (b) Retroactive lump sum social security, SSI, ~~[financial]~~ Cash Assistance, railroad retirement benefits or similar payments;
- (c) Lump sum insurance settlements;
- (d) Refunds of security deposits on rental property or utilities.

(2) Lump sum payments are delayed payments owed to a household for past periods.

C. Other Liquid Resources: Liquid resources also include:

- (1) Funds held in individual retirement accounts (IRAs), and
- (2) Funds held in Keogh plans that do not involve a household member in a contractual relationship with individuals who are not household members. In determining the availability of IRAs or Keogh plans, the ~~[Income Support Specialist (ISS) will]~~ caseworker shall count the total cash value minus the amount of the penalty (if any) for early withdrawal of the entire amount.

D. Non-liquid Resources: Non-liquid resources include personal property, ~~[licensed and unlicensed vehicles,]~~ boats, buildings, land, recreational property, and any other property, provided that the resource is not specifically excluded. Non-liquid resources ~~[must]~~ shall be documented in sufficient detail to permit verification if the resource becomes questionable.

E. Vehicles: The entire value of any licensed or unlicensed vehicle shall be excluded in determining eligibility

and benefit amount in the Food Stamp program.

~~[(1) Excluded Vehicles: The entire value of any licensed vehicle will be excluded if the vehicle is:~~

~~(a) Used primarily (over fifty percent (50%) of vehicle use time) for income-producing purposes such as, but not limited to, taxi, moving van, or fishing boat. Excluded vehicles used by a household member engaged in farming retain the exclusion for one year from the date the household member ceases self-employment from farming;~~

~~(b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;~~

~~(c) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available);~~

~~(d) Used as the household's home;~~

~~(e) Used to carry fuel for heating or water for home use, when such fuel or water is the primary source of fuel or water for a household. A household may receive the exclusion without having to meet any additional tests concerning the nature, capability, or other uses of the vehicle. If the basis for the exclusion is questionable, further documentation may be needed.~~

~~(f) Exclusions (a) through (d) continue to apply when the vehicle is not in use because of temporary unemployment, illness, inclement weather, equipment failures and the like.~~

~~(g) Used for the transportation of a physically disabled household member, physically disabled ineligible alien or disqualified individual in the household whose resources are considered available to the household. A vehicle is considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled individual or if the vehicle is a special type of vehicle that makes it possible to transport the disabled individual. However, the vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member in order to be exempt under this provision. This exclusion is limited to one vehicle per physically disabled individual in the household. If the vehicle is excluded during a period of temporary disability, the exclusion ends when the individual recovers.~~

~~(h) An unlicensed vehicle on an Indian reservation that does not require vehicles driven by tribal members to be licensed.~~

F. \$4,650 Exclusion: All

licensed vehicles whose entire value is not excluded (above) as a resource will be individually evaluated to determine the fair market value.

(1) The portion of the value of each vehicle that exceeds \$4,650 is counted in full toward the household's resource level, regardless of any encumbrances on the vehicle.

(2) Any value in excess of \$4,650 is counted in determining a household's resource amount regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment.

(3) Each vehicle is appraised individually. The fair market values of two or more vehicles is not added together to reach a total fair market value in excess of \$4,650.

G. Equity Value: When all vehicles have been evaluated for fair market value exceeding \$4,650, the vehicles will have their equity value determined, except for:

(1) Vehicles excluded in Paragraph 1 of Subsection E of 8.139.510.9 NMAC above;

(2) One licensed vehicle per household, regardless of the use of the vehicle; and

(3) Any other vehicle used to transport household members, or an ineligible alien or disqualified household member whose resources are being considered available to the household, to and from employment; or

(4) Any other vehicle used to transport household members, or an ineligible alien or disqualified household member whose resources are being considered available to the household, to and from training or education preparatory to employment, or to seek employment in compliance with the employment and training work requirements.

(5) A vehicle customarily used to commute to and from work is covered by this provision during temporary periods of unemployment.

(6) If a student has been assured of a job by an employer upon completion of training or education, is attending a vocational school, or is taking a specifically vocational curriculum, the vehicle is covered by this provision.

H. Assigning Value: Each vehicle must be evaluated separately. If a licensed vehicle is assigned both a fair market value in excess of \$4,650 and an equity value, only the greater of the two amounts is counted as a resource.

I. Vehicle Fair Market Value:

(1) The fair market value of licensed automobiles, trucks, and vans will

be determined by the value of those vehicles as listed in "blue book" publications written for the purpose of providing guidance to automobile dealers and loan companies. Publications listing the value of vehicles are also referred to as NADA books.

(2) The wholesale value will be used to determine the fair market value of a vehicle. The value of the vehicle will not be increased by adding the value of low mileage or other factors such as optional equipment.

(3) Any household claiming that the blue book value does not apply to its vehicle's value is given an opportunity to get verification of the true value from a reliable source. An estimate by a dealer of the amount that would be offered on trade-in or the amount that would be paid to purchase such a vehicle for resale, is acceptable. [02/01/95, 10/01/95, 10/01/96; 8.139.510.9 NMAC - Rn, 8 NMAC 3.FSP511, 05/15/2001; A, 02/01/2002]

8.139.510.10 EXCLUSIONS

A. In determining the resources of a household, the following ~~will~~ shall be excluded:

(1) Home and surrounding property (Subsection C of 8.139.510.10 NMAC);

(2) Household and personal goods (Subsection D of 8.139.510.10 NMAC);

(3) Life insurance, deferred compensation and joint pension funds (Subsection D of 8.139.510.10 NMAC);

(4) Income-producing property (Subsection E of 8.139.510.10 NMAC);

(5) Work-related equipment (Subsection F of 8.139.510.10 NMAC);

(6) Inaccessible resources (Subsection G of 8.139.510.10 NMAC);

(7) Resources excluded by federal law (8.139.527 NMAC);

(8) Resources of non-household members (Subsection F of 8.139.510.8 NMAC);

(9) Other exempt resources, such as those of an SSI or Title IV-A recipient;

~~-(10) Certain vehicles used to produce income, or necessary to transport a physically disabled person (Subsection E of 8.139.510.9 NMAC);~~

~~(11) \$4650 of the fair market value of one vehicle per household, regardless of use, and of vehicles necessary for employment;~~

~~(12)~~ (10) Excluded monies kept in a separate account and not commingled with non-excluded funds. When commingled, the excluded monies retain their exclusion for a period of six months from the date they are commingled.

(11) **Vehicles:** The entire value of a vehicle owned by a household member

shall be excluded as a countable resource as set forth at Subsection E of 8.139.510.9 NMAC.

B. Exceptions:

(1) Educational loans and grants of students, commingled with non-excluded funds, retain the exemption for the period over which they are intended to be used.

(2) Operating funds of a self-employment enterprise commingled with non-excluded funds retain the exemption for the period over which they have been prorated as income.

C. Home and Surrounding Property:

A household's home, and surrounding property which is not separated from the home by intervening property owned by others, ~~will~~ shall be excluded. Public rights of way, such as roads that run through the surrounding property and separate it from the home, do not affect the exemption of the property. The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. No specific time limit is imposed in determining that the absence is temporary. A household that currently does not own a home, but owns or is purchasing a lot on which it intends to build, or is building a permanent home, receives an exclusion for the value of the lot, and, if partially completed, for the home. If part of the land surrounding a home is rented, the land retains this exclusion and the income-producing test in Subsection E of 8.139.510.10 NMAC does not apply. Any income received from renting part of the surrounding property ~~must~~ shall be counted in determining income eligibility and food stamp benefit amount.

D. Personal Effects:

(1) Households goods, livestock, and personal effects, including one burial plot per household member, and the cash value of life insurance policies ~~will~~ shall be excluded. Any amount that can be withdrawn from a prepaid burial plan ~~will~~ shall be counted as a resource and cannot be excluded under this provision.

(2) The cash value of pension plans or pension funds ~~will~~ shall be excluded.

(3) IRAs and Keogh plans involving no contractual relationship with individuals who are not household members are not excluded.

E. Income-Producing Property:

(1) **Exclusions:** The following income-producing property ~~will~~ shall be excluded:

(a) Property which annually produces income consistent with its fair market

value, even if used on a seasonal basis. Such property includes rental and vacation homes. If the property cannot produce income consistent with its fair market value because of circumstances beyond the household's control, the exclusion remains in effect.

(b) Property, such as farm land, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming continues to be excluded for one year from the date that the household member ends self-employment farming.

(c) An installment contract for the sale of land or a building that is producing income consistent with its fair market value. The value of the property sold under an installment contract or held as security in exchange for the purchase price consistent with the fair market value of that property is also excluded. The value of personal property sold on installment contracts such as boats, automobiles, etc. is also treated in this manner as long as the property sold on contract is not part of a self-employment enterprise.

(2) Determining Fair Market Value: The following guidelines [will] shall be used to determine fair market value:

(a) If it is questionable that property is producing income consistent with its fair market value, the [ISS must] caseworker shall contact local realtors, tax assessors, the Small Business Administration, Farmer's Home Administration or other similar sources to determine the prevailing rate of return. If it is determined that property is not producing income consistent with its fair market value, such property is counted as a resource. If property is leased for a return that is comparable to that on other property in the area leased for similar purposes, it is considered income producing consistent with its fair market value and is not counted as a resource.

(b) Property exempt as essential to employment need not be producing income consistent with its fair market value. For example, the land of a farmer is essential to the farmer's employment; therefore, a good or bad crop year does not affect the exemption of such property as a resource.

F. Work-Related Equipment Exclusion: Work-related equipment, such as the tools of a trades-person or the machinery of a farmer, which are essential to the employment or self-employment of a household member are excluded. The tools of a trades-person are excluded, and remain exempt, if the trades-person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

G. Inaccessible

Resources: Resources [will] shall be excluded if their cash value is not accessible to the household, such as, but not limited to:

(1) Security deposits on rental property or utilities;

(2) **Property in Probate:** When a decision is rendered by the court explaining how the property is to be divided, the property is no longer in probate, whether or not the household signs papers;

(3) Real property that the household is making a good faith effort to sell at a reasonable price and which has not been sold; and

(4) **Irrevocable Trust Funds:** Any funds in a trust, or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, is considered inaccessible to the household if:

(a) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(b) The trustee administering the funds is:

- (i) A court;
- (ii) an institution, corporation, or organization not under the direction or ownership of any household member;

(iii) an individual appointed by the court with court-imposed limitations placed on the use of the funds.

(c) The trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(d) The funds held in an irrevocable trust are either:

(i) established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust, or to pay the educational or medical expenses of any person named by the household creating the trust; or

(ii) established from non-household funds by a non-household-member.

(5) **Insignificant Return:** Any resource, that as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great.

(a) A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household.

(b) This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments, nor to vehicles.

(c) The [ISS] caseworker may require verification of the value of a resource to be considered inaccessible if the information provided by the household is questionable.

(d) The following definitions [will] shall be used in determining whether a resource may be excluded under this provision:

(i) "significant return" is any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that is estimated to be one half or more of the applicable resource limit for the household;

(ii) "any significant amount of funds" are funds amounting to one-half or more of the applicable resource limit for the household.

H. Joint Property:

(1) **Joint Resources:** Resources owned jointly by separate households [will] shall be considered available in their entirety to each household, unless it can be demonstrated by an applicant household that such resources are inaccessible to it. The household must verify that:

(a) It does not have the use of the resource;

(b) It did not make the purchase or down payment;

(c) It does not make the continuing loan payments, and

(d) The title is transferred to or retained by the other household.

(e) If a household can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the household's resource level. A resource [will] shall be considered totally inaccessible, if it cannot be practically subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For purposes of this provision, ineligible aliens or disqualified individuals residing with a household are considered household members.

(2) **Joint Bank Accounts:** If signatories to a joint bank account are separate households, the funds in the account are considered available to each household to the extent that it has contributed to the account. If the participating household has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other household intends that the participating household actually own the funds.

I. Residents of Shelters for Battered Women and Children: Resources [will] shall be considered inaccessible to individuals residing in shelters for battered women and children if:

(1) Resources are jointly owned by shelter residents and members of their

former household, and

(2) Shelter resident's access to the value of the resource(s) is dependent on the agreement of a joint owner residing in the former household.

J. Other Exempt Resources:

(1) **Earmarked Resources:** Government payments designated for the restoration of a home damaged in a disaster [will] shall be excluded, if the household is subject to a legal sanction if the funds are not used as intended. However government payments designed to bring homes "up to code" are not exempt and are counted as a resource.

(2) **Prorated Income:** Resources, such as those of students or self-employed individuals which have been prorated as income, [will] shall be excluded.

(3) **Indian Lands:** Indian land held jointly by a participating household and the tribe, or land that can be sold only with the approval of the Department of Interior's Bureau of Indian Affairs, [will] shall be excluded.

(4) **Business Loan Collateral:** Non liquid assets against which a lien has been placed as a result of taking out a business loan, when the household is prohibited by the security or loan agreement with the lien holder (creditor) from selling the assets, [will] shall be excluded.

(5) **Property for Vehicle Maintenance and Use:** Property, real or personal, is excluded to the extent that it is directly related to the maintenance or use of a vehicle excluded under Paragraph 1 of Subsection E of 8.139.510.9 NMAC. Only that part of real property determined necessary for actual maintenance or use is excludable under this provision.

(6) **Title IV-A/SSI Recipients:** The resource of any household member who receives:

(a) Supplemental security income (SSI) benefits under Title XVI of the Social Security Act; or

(b) Aid to the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security Act; or

(c) Benefits under part A of Title IV of the Social Security Act [will] shall be considered exempt for food stamp purposes provided resources are also considered exempt under the applicable titles or parts of the Social Security Act.

[02/01/95, 10/01/95, 02/01/96, 10/01/96, 07/01/97, 06/01/99; 8.139.510.10 NMAC - Rn, 8 NMAC 3.FSP513, 05/15/2001; A, 02/01/2002]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.85.100 NMAC, Sections 2 and 8

2.85.100.2 SCOPE: This rule affects participants and the deferred compensation third party administrator under the Deferred Compensation Act. [10-15-97; 2.85.100.2 NMAC - Rn, 2 NMAC 85-100.2, 12-28-00; A, 1-31-02]

2.85.100.8 GENERAL PROVISIONS

A. **Unforeseeable Emergency Withdrawal Applications.** The deferred compensation third party administrator shall handle the processing of unforeseeable emergency withdrawal applications including, but not limited to:

- (1) Sending out withdrawal applications;
- (2) Answering questions on the process and rules;
- (3) Reviewing applications for completeness and compliance;
- (4) Making decisions concerning whether or not withdrawal applications are approved;
- (5) Sending appropriate notices to participants (approved or denied);
- (6) Sending detailed denial letters explaining specific reason(s) why application was denied and instructions for reapplication/appeal.

B. **Appeals.** Appeals of denials of applications for unforeseeable emergency withdrawals shall be handled by the deferred compensation third party administrator. The deferred compensation third party administrator shall also maintain files on approvals/denials and provide regular reports to the Board on unforeseeable emergency activity.

C. **Unforeseeable Emergency.** In the event of an unforeseeable emergency, a participant may request that benefits be paid to him or her immediately, provided, however, that payment of any such benefits after the elected or mandatory commencement date shall be subject to any limitations specified by an investment carrier. Such request shall be filed with the third party administrator. If the third party administrator determines that the application for unforeseeable emergency meets the standards of the Internal Revenue Service guidelines and the plan document, payment will be made within twenty-four (24) hours of such approval. Benefits to be paid shall be limited strictly to the amount necessary to meet the unfore-

seeable emergency constituting financial hardship to the extent such unforeseeable emergency is not relieved:

- (1) through reimbursement or compensation by insurance or otherwise;
- (2) by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause financial hardship; or
- (3) by cessation of deferrals under the Plan.

D. **Matters Not Constituting Unforeseeable Emergencies.** Divorce or foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, etc., will not constitute an unforeseeable emergency.

[10-15-97; 2.85.100.8 NMAC - Rn, 2 NMAC 85.100.8, 12-28-00; A, 8-15-01; A, 1-31-02]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.85.200 NMAC, Section 2

2.85.200.2 SCOPE: This rule affects participants, ex-spouses of participants, former participants, ex-spouses of former participants, and the deferred compensation third party administrator under the Deferred Compensation Act.

[10-15-97; 2.85.200.8 NMAC - Rn & A, 2 NMAC 85.200.8, 8-15-01; A, 1-31-02]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

This is an amendment to 12.11.2.8 NMAC. 12.11.2 NMAC has been renumbered and reformatted to conform to the current NMAC requirements from 12 NMAC 11.2.1 through 12 NMAC 11.2.5; 12 NMAC 11.2.7 through 12 NMAC 11.2.9; and 12 NMAC 11.2.12.

12.11.2.8 APPLICATIONS FOR LICENSES

A. **Applications for licenses by broker-dealers and sales representatives who are members of the National Association of Securities Dealers (NASD) shall be filed with the Central Registration Depository (CRD) of the NASD as developed under contract with the North American Securities Administrators Association (NASAA), on forms established for the CRD and, in addition thereto,**

the broker-dealer shall file with the Director ~~[completed Form U-2, Licensing Resolution, Broker Dealer Affidavit and Affidavit of No Sales]~~ a financial statement that is current within 90 days of the date the application is received by the Division, and a completed Affidavit of No Sales or an explanation why such Affidavit cannot be completed.

B. Applications for licenses and annual reports of broker-dealers and sales representatives not members of the NASD shall be filed with the Director on Forms BD, ~~[U-2,]~~U-4, ~~[Licensing Resolution, Broker Dealer Affidavit]~~ and Affidavit of No Sales, as designated in ~~[12.11.15 NMAC]~~ 12.11.16 NMAC. If the applicant cannot complete the Affidavit of No Sales, then the applicant shall file an explanation why such Affidavit cannot be completed.

C. An "application" for purposes of Section 58-13B-8 shall include any information required by the Director pursuant to Section 58-13B-8B.

D. Annual reports required by the New Mexico Securities Act or rules promulgated thereunder shall be filed with the Director on or before December 31 of each year.

[12 NMAC 11.2.1, 12-30-95; 12 NMAC 11.2.2.1, 5-1-99; 12.11.2.8 NMAC - Rn, 12 NMAC 11.2.2.1, 01-31-02; A, 01-31-02]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

This is an amendment to 12.11.5.8 NMAC. 12.11.5 NMAC has been renumbered and reformatted to conform to the current NMAC requirements from 12 NMAC 11.3.1 through 12 NMAC 11.3.5; 12 NMAC 11.3.7 through 12 NMAC 11.3.8; 12 NMAC 11.3.9.5; and 12 NMAC 11.3.11 through 12 NMAC 11.3.12.

12.11.5.8 APPLICATIONS FOR LICENSES

A. Applications for licenses and annual reports of investment advisers ~~[and investment adviser representatives]~~ shall be filed with the ~~Director on Forms ADV, U-2, Licensing Resolution]~~ and Investment Adviser ~~[Affidavit, as designated in 12.11.15 NMAC]~~ Registration Depository (IARD) on forms established by the IARD and a financial statement that is current within 90 days of the date the application is received by the Division.

B. An "application for licensing" for purposes of Section 58-13B-8 means all information required by the form prescribed in Subsection 58-13B-8A

and any additional information required by the Director.

C. Annual reports and fees required of investment advisers and investment adviser representatives pursuant to Section 58-13B-12 shall be filed with the Director on or before December 31 of each year.

D. Applications for licenses by investment adviser representatives shall be filed with the Director on Form U-4.

[12 NMAC 11.3.1, 12-30-95; 12 NMAC 11.3.2.1, 12 NMAC 11.3.2.2, 5-1-99; 12.11.5.8 NMAC - Rn, 12 NMAC 11.3.2.1, 12 NMAC 11.3.2.2, 01-31-02; A, 01-31-02]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

This is an amendment to 12.11.12 NMAC. It has (sic) been amended by adding a new section 24. 12.11.12 NMAC has been renumbered and reformatted to conform to the current NMAC requirements from 12 NMAC 11.4.7.2.1 through 12 NMAC 11.4.7.2.10; and 12 NMAC 11.4.7.2.12 through 12 NMAC 11.4.7.2.16.

12.11.12.24 OFFERS AND SALES OF SECURITIES BY EXEMPT CANADIAN BROKER-DEALERS AND AGENTS: Any offer or sale of a security effected by a Canadian broker-dealer or agent of such broker-dealer exempted from licensure pursuant to NMAC 12.11.2.17 is exempted from the securities registration requirements of Section 58-13B-20 and the filing requirements of Section 58-13B-29 provided that such offer or sale meets the requirements paragraph D of NMAC 12.11.2.17.

[12.11.12.24 NMAC - N, 01/31/02]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

This is an amendment to 12.11.16.10 NMAC. 12.11.16 NMAC has been renumbered and reformatted to conform to the current NMAC requirements from 12 NMAC 11.6.1 through 12 NMAC 11.6.4.

12.11.16.10 FORMS RELATING TO LICENSURE, REPORTING AND RENEWALS OF BROKER-DEALERS, SALES REPRESENTATIVES, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

A. FORM BD, UNIFORM APPLICATION FOR BROKER-

DEALER REGISTRATION, shall be used for initial licensure and periodic reporting by broker-dealers.

B. FORM BDW, UNIFORM REQUEST FOR BROKER-DEALER WITHDRAWAL, shall be used for withdrawal from licensure by broker-dealers.

C. FORM U-2, UNIFORM CONSENT TO SERVICE OF PROCESS, shall be used for initial licensure by broker-dealers and investment advisers.

~~[D. LICENSING RESOLUTION,~~ shall be used for initial licensure by all corporate broker-dealers and investment advisers.]

[E] D. FORM U-4, UNIFORM APPLICATION FOR SECURITIES INDUSTRY REGISTRATION OR TRANSFER, shall be used for initial licensure and periodic reporting by broker-dealer sales representatives, investment adviser representatives and issuer sales representatives.

[F] E. FORM U-5, UNIFORM TERMINATION NOTICE FOR SECURITIES INDUSTRY REGISTRATION, shall be used to report termination of employment of broker-dealer sales representatives and investment adviser representatives.

[G] F. FORM ADV, UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION, shall be used for initial licensure and periodic reporting of investment advisers required to be licensed under the New Mexico Securities Act and for notice filings of federal covered advisers.

[H] G. FORM ADV-W, NOTICE OF WITHDRAWAL FROM REGISTRATION AS INVESTMENT ADVISOR, shall be used for withdrawal from licensure by investment advisers.

[I] H. FORM ADV-E, CERTIFICATE OF ACCOUNTING OF CLIENT SECURITIES AND FUNDS IN THE POSSESSION OR CUSTODY OF AN INVESTMENT ADVISER, shall be used annually for filing with the renewal report by investment advisers who retain custody of client funds or securities.

[J] I. BF-2, SECURITIES LICENSEE'S BLANKET BOND, shall be used for initial licensure of investment advisers, that are not federal covered advisers, that have custody of clients funds or securities, for initial licensure of issuer sales representatives, and for initial licensure of broker-dealers that are not licensed under the Securities Exchange Act of 1934.

[K] J. AFFIDAVIT OF NO SALES, shall be used for initial licensure by broker-dealers.

~~[L. BROKER-DEALER~~

~~AFFIDAVIT, shall be used for initial licensure by broker-dealers.]~~

~~[**M. INVESTMENT ADVISER AFFIDAVIT**, shall be used for initial licensure of investment advisers required to be licensed under the New Mexico Securities Act.]~~

~~[12 NMAC 11.6.1, 12-30-95; 12 NMAC 11.6.4, 5-1-99; 12.11.16.10 NMAC - Rn, 12 NMAC 11.6.4, 01-31-02; A, 01/31/02]~~

End of Adopted Rules and Regulations Section

2002
SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
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
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