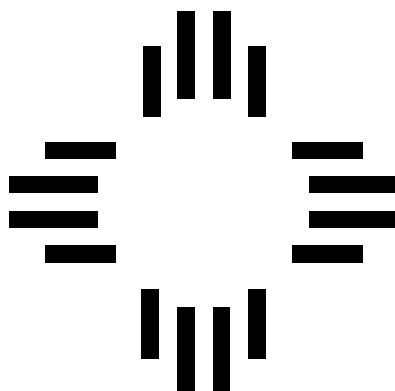


# **New Mexico Register**

**Volume XIII, Issue Number 6**  
**March 29, 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  
2002

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# New Mexico Register

Volume XIII, Number 6

March 29, 2002

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

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto:rules@rain.state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

The Protective Services Division (PSD) will hold a public hearing in Santa Fe on May 1, 2002 from 10:00 a.m. to 12:00 p.m. in the Public Employees Retirement Association (P.E.R.A.) Building, 1120 Paseo de Peralta, 2nd floor conference room, number 227, to take comments regarding the proposed Title IV-B Child and Family Services Plan Annual Report.

The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearings. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The annual report may be reviewed at any Protective Services Division county office. County office locations may be determined by calling 505-827-8400 for location information. The annual report may also be reviewed between 8:00 a.m.-5:00 p.m. (MST) at the PSD Directors office, Room 254, In the P.E.R.A. building in Santa Fe, NM. Copies of the annual report may be purchased (for the cost of copying) by contacting Linda McNall, Bureau Chief, CYFD-PSD, P.O. Drawer 5160, Santa Fe, NM 87502-5160, or by calling 505-827-3991. Copies can be requested through the use of the New Mexico relay system by calling 505-827-7586.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

The Protective Services Division (PSD) will hold a public hearing in Santa Fe on May 1, 2002 from 1:00 p.m. to 3:00 p.m. in the Public Employees Retirement Association (P.E.R.A.) Building, 1120 Paseo de Peralta, 2nd floor conference room, number 227, to take comments

regarding the proposed Title XX Annual Pre-expenditure Report for Social Services.

The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearings. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The annual report may be reviewed at any Protective Services Division county office. County office locations may be determined by calling 505-827-8400 for location information. The annual report may also be reviewed between 8:00 a.m.-5:00 p.m. (MST) at the PSD Directors office, Room 254, In the P.E.R.A. building in Santa Fe, NM. Copies of the annual report may be purchased (for the cost of copying) by contacting Linda McNall, Bureau Chief, CYFD-PSD, P.O. Drawer 5160, Santa Fe, NM 87502-5160, or by calling 505-827-3991. Copies can be requested through the use of the New Mexico relay system by calling 505-827-7586.

### NEW MEXICO STATE BOARD OF EDUCATION

#### NOTICE OF PROPOSED RULE- MAKING

The New Mexico State Board of Education ("Board") will convene on Wednesday, April 24, 2002. Committee meetings will be held on Wednesday, April 24 and Thursday, April 25, 2002. The regular meeting will convene on Friday, April 26, 2002, at 8:00 a.m. The meetings are scheduled to be held at the Alamogordo Public Schools Board Room, 1211 Hawaii Avenue, Alamogordo, New Mexico. Information regarding any change in the location of the meetings, the addition of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The New Mexico State Department of Public Education will recommend that the Board take action as follows:

RULE NUMBER	PROPOSED ACTION	(PROPOSED) RULE NAME
6.63.12 NMAC (Proposed)	Adopt new rule	School Business Licensure ▶
6.30.3 NMAC	Amend rule	Eligibility for the GED Tests and Diploma in New Mexico ✕
6.61.8 NMAC	Amend Rule	Licensure in Early Childhood Education, Birth – Grade 3 ●
6.61.2 NMAC	Amend rule	Licensure in Elementary Education, Grades K-8 ●
6.61.3 NMAC	Amend rule	Licensure in Middle Level Education, Grades 5-9 ●
6.61.4 NMAC	Amend rule	Licensure in Secondary Education, Grades 7-12 ●
6.61.6 NMAC	Amend rule	Licensure in Special Education, K-12 ●
6.61.5 NMAC	Amend rule	Licensure for Grades K Through 12 ●
6.60.3 NMAC	Amend rule	Alternative Licensure ●
6.60.4 NMAC	Amend rule	Requirements Governing Persons Completing Their Educational Programs at Institutions Outside New Mexico ●
6.60.5 NMAC	Amend rule	Competency Testing for Licensure ●
6.64.13 NMAC (Proposed)	Adopt new rule	Competencies for Entry-Level Performing and Visual Arts Teachers ●
6.64.14 NMAC (Proposed)	Adopt new rule	Competencies for Entry-Level Physical Education Teachers ●

- ▶ Finance, Transportation & Administration Committee  
 ✕ Vocational Rehabilitation, Career Education & Adult Services Committee  
 ● Quality Educators Committee

Copies of the proposed rules may be obtained from Linda Olivas, Professional Licensure Unit, at (505) 827-6581. A public hearing for the purpose of affording members of the public the opportunity to offer comments will be held at 11:00 AM on Wednesday, April 17, 2002, at the New Mexico State Library, Room 2022, 1209 Camino Carlos Rey, Santa Fe. Individuals may provide either written or verbal comments at that time.

Written comments may be submitted to James Ball, Director of Professional Licensure, State Department of Education, Santa Fe, New Mexico 87501-2786 ([jball@sde.state.nm.us](mailto:jball@sde.state.nm.us)) or telefaxed to (505) 827-4148. Written comments must be received no later than 5 p.m. on **April 17, 2002**. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the State Board of Education Office at (505) 827-6571 as soon as possible.

The Board attempts to follow the order and date of items as listed on the Agenda; however, the order and date of specific items are tentative and may vary from the printed Agenda.

Comments, questions, or requests for copies of the Agenda should be directed to Mary Jo Bradley, State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or (505) 827-6571.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NOTICE of PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF 20 NMAC 7.1 *Drinking Water*

The New Mexico Environmental Improvement Board will hold a public hearing on June 14, 2002, to consider a request to repeal 20 NMAC 7.1 *Drinking Water* and replace it with 20.7.10 NMAC *Drinking Water*. 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. The proponent of this regulatory change is the New Mexico Environment Department.

Revisions to the Drinking Water regulations are proposed for the primary purpose of retaining state primacy for the Drinking Water Program. To this end, the proposed regulations at 20.7.10 NMAC incorporate by reference, with small modifications and exceptions, all of the federal regulations found in 40 CFR Parts 141, the National Primary Drinking Water Regulations, and 40 CFR Part 143, the National Secondary Drinking Water Regulations, promulgated through June 2002. The incorporated federal regulations will replace a large portion of

the existing state regulations that, for the most part, are identical in form and substance to the federal regulations.

The proposed regulations 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 regulations may be obtained by contacting John Gillentine at (505) 476-3236, or by visiting the Department's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us) and following the links to the Drinking Water Bureau home page. Questions or comments about the Department's proposed regulations may be addressed to: L. William Bartels, Bureau Chief, Drinking Water Bureau, 525 Camino de Los Marquez, Suite 4, Santa Fe, NM 87501.

The hearing will be conducted according to 20.1.1 NMAC *Rulemaking Procedures – Environmental Improvement Board*; the Environmental Improvement Act, Section 74-1-9 NMSA 1978; and other applicable procedures. All interested persons will be given a reasonable opportunity during the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, and to introduce exhibits and examine witnesses.

Any person wishing to present technical testimony at the hearing must file a written notice with the Board that:

- identifies the person or persons for whom the witness (es) will testify;
- identifies each technical witness the person intends to present, states the qualifications of that witness and describes their educational and professional background;
- summarizes or attaches a copy of the direct testimony of each technical witness, and states the anticipated duration of testimony;
- includes the text of any recommended modifications to the proposed regulatory change; and
- lists, describes or attaches a copy of all exhibits anticipated to be offered by that person during their testimony.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Environmental Improvement Board no later than 5:00 p.m. on April 30, 2002, and should reference the name of the regulation and the date of the hearing. Submit notices of intent to: Administrative Secretary, NMED Boards and Commissions, 1190 St. Francis Drive, Room N-2150, Santa Fe, New Mexico

87502.

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

If you have a disability and require assistance or an auxiliary aid to participate in any aspect of this process, please contact Cliff Hawley, Bureau Chief of the NMED Program Support Bureau, at (505) 827-2844, on or before April 26, 2002. The Program Support Bureau is located at 1190 St. Francis Drive, Santa Fe, NM 87502. TDD users may access the Program Support Bureau phone number via the New Mexico Relay Network: in Albuquerque call (505) 275-7333; outside of Albuquerque call 1-800-659-1779.

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

## NEW MEXICO GAMING CONTROL BOARD

### NOTICE OF HEARING ON AMENDMENT TO RULE

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 9:00 a.m. on April 15, 2002 at the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110, to consider amendment for the following rule: **15.1.10 NMAC, *Conduct of Gaming Activity under the Gaming Control Act, Section 15.1.10.44 – Allocation of Gaming Machines.***

Copies of the proposed amendment are available on request to the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110, or by calling (505) 841-9733. The proposed rule is also available on our website at <http://www.nmgcb.org>. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110



If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Loretta Chavez, Gaming Control Board, at least one week prior to the hearing at (505) 841-9711.

## NEW MEXICO GAMING CONTROL BOARD

### NOTICE OF HEARING AND PROPOSED RULE

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 9:00 a.m. on April 18, 2002 at the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110, to consider proposed new rule: **15.1.25 NMAC, Manufacturer's License Waiver under the Gaming Control Act.**

Copies of the proposed rule are available on request to the New Mexico Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110, or by calling (505) 841-9733. The proposed rule is also available on our website at <http://www.nmgbc.org>. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 6400 Uptown Blvd., N.E., Suite 100-E, Albuquerque, New Mexico 87110.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Loretta Chavez, Gaming Control Board, at least one week

## NEW MEXICO COMMISSION ON HIGHER EDUCATION

### Public Notice for the New Mexico Register

The New Mexico Commission on Higher Education will meet in April 2002 as follows, to act on amendments and/or other changes to 5.100.2 NMAC, Private Post-Secondary Institutions Operating under the Post-Secondary Educational Institution Act, among other items: Committee meetings will be held on April

11, 2002 on the campus of Northern New Mexico Community College in El Rito, New Mexico, from 8:30am to about 5:00pm. The full Commission will meet on April 12, 2002 at Northern New Mexico Community College, 921 Paseo de Onate, in Espanola, New Mexico, from 8:00am to about 2:00pm.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the Food Stamp Program, NMW Cash Assistance Program and the Income Support Division General Provisions. The hearing will be held at 9:00 am on Monday April 29, 2002. The hearing will be conducted at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes to amend State regulations to implement the amendments to the New Mexico Works Act made by the 2002 Legislative session.

The amendment in the New Mexico Works Act provides for the State of New Mexico to opt out of the provision in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) that prohibits Food Stamp benefits and TANF funded cash assistance to individuals convicted of a drug-related felony. A provision of PRWORA allows a State to opt out of the statutory requirement if the State passes a law. The amendment in the New Mexico Works Act constitutes such a law.

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

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

Individuals who do not wish to attend the hearing may submit written or recorded

comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing. Please send comments to:

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

You may send comments electronically to: Sharon.Regensberg@state.nm.us

## NEW MEXICO LIVESTOCK BOARD

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

NOTICE IS HEREBY GIVEN that a rule making hearing and regular board meeting will be held on Thursday April 25, 2002, at El Meson Lodge, Hwy 84/64, Chama, New Mexico, at 9:00 a.m. The board will consider rules governing animal health, meat inspection and fees. They will also renumber and reformat 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 COMMISSION OF PUBLIC RECORDS

### NOTICE OF PUBLIC HEARING

Notice is hereby given that the New Mexico Commission of Public Records has scheduled **Public Hearings** on April 4, 2002 to hear public comments on proposed amendments to the following rules: **1.13.2 NMAC - Fees** and **1.14.2 - Microphotography Standards**. The hearing for 1.13.2 NMAC - Fees will begin at 10:00 A.M. The hearing for 1.14.2 -

Microphotography Standards will begin at 10:00 A.M. or when the 10:00 A.M. hearing is concluded, whichever is later. Both hearings will be held in the Commission Room of the New Mexico Library and Archives Facility, an accessible facility, located at 1209 Camino Carlos Rey in Santa Fe, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Kathy Mattison at 476-7902 by March 29, 2002. Proposed rules can be viewed at <http://www.nmcp.state.nm.us> and can also be provided in various accessible formats. For additional assistance please contact Kathy Mattison at 476-7902 or by e-mail at [kmattison@rain.state.nm.us](mailto:kmattison@rain.state.nm.us).

## NEW MEXICO PUBLIC REGULATION COMMISSION

### BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN )  
INQUIRY INTO RENEW- ) Utility  
ABLE ENERGY AS A ) Case No.  
SOURCE OF ELEC- ) 3619  
TRICITY, )  
UTILITY DIVISION )  
STAFF OF THE )  
PUBLIC REGULATION )  
COMMISSION, )  
Petitioner. )

### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") proposes to adopt a new Rule 572 to replace existing Rule 572 and a portion of Rule 591, and to encourage the development of renewable energy in New Mexico.

The proposed new Rule has two parts: In the first, public utilities are to provide to all customers an energy portfolio with a progressively greater percentage of service from renewable sources, on a least cost basis and preferably from generators in New Mexico. By September 1, 2003, the portfolio standard will be 2%. Then, the standard increases to 5% by September 1, 2005. Finally, the standard becomes 10% by September 1, 2007. A utility may satisfy some or all of these requirements through acquisition of certificates from any other New Mexico generator.

The second part of the proposed Rule specifies that every utility must provide electricity from renewable sources to any customer who requests it, and who is willing to purchase renewable energy, regardless of cost, based on availability. The price charged for these voluntary programs is to be established in renewable energy tariffs filed with and approved by the Commission.

The proposed rule would be adopted under the authority granted the Commission by the New Mexico Constitution, Article XI, Section 2, and by the Legislature pursuant to NMSA 1978 Sections 8-8-4; 8-8-15; 62-3-1; 62-3A-2; 62-3A-19; 62-3A-20; 62-6-4; and 62-6-19.

A copy of the proposed rule to be promulgated as NMPRC Rule 572 is attached hereto as "Exhibit A". The rule has been formatted for inclusion in the New Mexico Administrative Code pursuant to NMSA 1978 Section 14-4-3 and, if adopted as proposed, would be cited as 17 NMAC 10.572.

The proposed Rule specifies an effective date of June 14, 2002. Any person wishing to comment on the proposed NMPRC Rule 572, 17 NMAC 10.572 may do so by submitting written comments no later than April 15, 2002. Any person wishing to respond to comments may do so by submitting written response comments no later than April 30, 2002. Comments suggesting changes to the rule as proposed 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. The Commission requests that commentors provide a proposed version of the Form 11.2 referenced in Section 11.2 of the proposed Rule.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice and must be served on all persons in the Commission official service list for this case. Additional copies of the proposed Rule can be obtained from, and comments on the proposed Rule shall be sent to:

Maria Brito, Records Manager  
 NMPRC-Utility Division  
 Marian Hall  
 224 East Palace Avenue  
 Santa Fe, New Mexico 87501  
 Telephone: (505) 827-6940

Pursuant to NMSA 1978, Section 8-8-15(B), this notice, including Exhibit A, shall be mailed at least thirty days prior to the hearing date to all persons who have requested advance notice, and it must be published, without Exhibit A, in two newspapers of general circulation in the state and

in the New Mexico Register.

A public hearing will begin at 9:30 on May 8, 2002 at the offices of the Commission at Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico, to receive oral comment. The previous hearing scheduled for April 23, 2002 is hereby vacated and this Notice replaces the Notice issued by the Commission in this case on February 26, 2002.

Copies of any Final Order adopting the proposed Rule will be sent, along with copies of the particular rules adopted or amended, to all affected utilities, commentors in the case, and individuals requesting such copies.

**ISSUED under the Seal of the  
Commission at Santa Fe, New Mexico,  
this 12TH day of March, 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**

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

### **STATE OF NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION NOTICE OF PUBLIC HEARING**

Public Meetings to receive comments regarding the adoption of the 2002 New Mexico Electrical Code will be held as follows:



\* Santa Fe, New Mexico – May 1, 2002, 9:00 a.m. – 12:00 Noon  
At CID Conference Room 725 St. Michael's Drive

\* Albuquerque, New Mexico – May 1, 2002, 9:00 a.m. – 12:00 Noon At CID Conference Room, 2nd Floor, 1650 University Boulevard, N.E.

\* Las Cruces, New Mexico – May 1, 2002, 9:00 a.m. – 12:00 Noon At CID Conference Room, Loretto Town Center, 505 S. Main, Suite 150

\* Roswell, New Mexico – May 1, 2002, 9:00 a.m. – 12:00 Noon At National Guard Armory, Classrooms, No. 1 Earl Cummings Loop

You are invited to attend and express your opinion of the adoption of the above-referenced code. If you cannot attend the meeting, you may send your written comments to the Electrical Bureau, Construction Industries Division, 725 St. Michael's Drive, P. O. Box 25101, Santa Fe, New Mexico 87504. Telephone 505-827-7030; FAX 505-827-7045. All comments must be received no later than 5:00 p.m., May 1, 2002.

Copies of the 2002 New Mexico Electrical Code are available at the Construction Industries Division office at the above address.

If you require special accommodations, please notify the Division of such needs no later than April 19, 2002.

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

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## Adopted Rules and Regulations

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment of 16.2.1.7 of the NMAC.

**16.2.1.7 DEFINITIONS:** For the purpose of these Rules the following definitions apply in addition to those in the Act.

A. "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.

B. "Animal Acupuncture" is acupuncture performed on any animal other than man [~~—or extraterrestrial entity~~]. Animal acupuncture is prohibited except under the direct supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1. to 61-14-20.) and the rules of the New Mexico board of veterinary medicine. (16.25.9.15 NMAC)

C. "Applicant" is a person who has submitted to the Board an application for licensure as a Doctor of Oriental Medicine.

D. "Applicant for Temporary Licensure" is a person who has submitted to the Board an application for temporary licensure as a Doctor of Oriental Medicine.

E. "Board" is the State of New Mexico Board of Acupuncture and Oriental Medicine.

F. "Clinical Skills Examination" is a Board approved, validated, objective practical examination that demonstrates the Applicants knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.

G. "Clinical Experience" is the practice of acupuncture and oriental medicine as defined in the Act, after graduation from an Educational Program in acupuncture and oriental medicine. A year of Clinical Experience shall consist of not less than five hundred (500) patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least twenty-five (25) different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.

H. "Department" is the State of New Mexico Regulation and Licensing Department.

I. "Doctor of Oriental Medicine" is a physician licensed to practice acupuncture and oriental medicine pursuant to the Act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

J. "Educational Program" is a Board approved complete formal program that has the goal of educating a person to be qualified for licensure as a Doctor of Oriental Medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the Act and 16.2.7 NMAC (Part 7 of the Rules).

K. "Expanded Prescriptive Authority" is authorized by Section 61-14A-3.G.(4) and (5), and 61-14A08.1 of the Act and is granted to a Doctor of Oriental Medicine who is certified by the Board after fulfilling the requirements, in addition to those necessary for licensure, defined in 16.2.2 NMAC (Part 2 of the Rules). Expanded Prescriptive Authority is in addition to the prescriptive authority granted all licensed Doctors of Oriental Medicine as defined in Section 61-14A-3.G.(2) of the Act. Expanded Prescriptive Authority may be abbreviated as Rx.

L. "Extended Prescriptive Authority" is authorized by Section 61-14A-3.H.(4) and (5), and 61-14A-8.1 of the Act and is granted to a Doctor of Oriental Medicine who is certified by the Board after fulfilling the requirements, in addition to those necessary for licensure, defined in 16.2.2 NMAC (Part 2 of the Rules). Extended Prescriptive Authority is in addition to the prescriptive authority granted all licensed Doctors of Oriental Medicine as defined in Section 61-14A-3.G.(2) of the Act. Extended Prescriptive Authority may be abbreviated as Ex.

M. "Extern" is a current Applicant undergoing supervised clinical training by an Externship Supervisor, and who has satisfied the application requirements for Extern certification and who has received an Extern certificate issued by the Board pursuant to 16.2.14 NMAC (Part 14 of the Rules).

N. "Externship" is the limited practice of oriental medicine in New Mexico by an Extern supervised by an Externship Supervisor pursuant to 16.2.14 NMAC (Part 14 of the Rules).

O. "Externship Supervisor" is a Doctor of Oriental Medicine who has at least five years Clinical Experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the Board's application require-

ments for an Externship Supervisor and has received an Externship Supervisor registration issued by the Board pursuant to 16.2.14 NMAC (Part 14 of the Rules).

P. "Good Cause" is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting Good Cause that would result in undue hardship. The person asserting Good Cause shall have the burden to demonstrate that Good Cause exists.

Q. "Licensee" is a Doctor of Oriental Medicine licensed pursuant to the Act.

R. "Licensing Candidate" is an Applicant whose initial application for licensure as a Doctor of Oriental Medicine has been approved by the Board.

S. "Office" is the physical facility used for the practice of acupuncture and oriental medicine.

T. "Rules" are the rules, promulgated pursuant to the Act, governing Doctors of Oriental Medicine, Applicants, Temporary Licensees, Applicants for Temporary Licensure, Externs, Educational Programs and applicants for approval of Educational Programs as set forth in 16.2 NMAC (Title 16 - Occupational and Professional Licensing, Chapter 2 - Acupuncture and Oriental Medicine).

U. "Supervised Clinical Observation" is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate Supervision.

V. "Supervised Clinical Practice" is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate Supervision.

W. "Supervision" is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC (Part 7 of the Rules). No more than four (4) students shall be under Supervision for Supervised Clinical Practice and no more than four (4) students shall be under Supervision for Supervised Clinical Observation by a qualified instructor at any time.

X. "Temporary Licensee" is a Doctor of Oriental Medicine who holds a temporary license pursuant to the Act, Section 61-14-12 and 16.2.5 NMAC (Part 5 of the Rules).

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### Notice of Repeal

8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification, is repealed effective 03/29/02 and repromulgated at 8.8.3 NMAC effective 03/29/02.

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### TITLE 8 SOCIAL SERVICES CHAPTER 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVI- SIONS PART 3 G O V E R N I N G CRIMINAL RECORDS CHECKS AND EMPLOYMENT HISTORY VERIFI- CATION

**8.8.3.1 ISSUING AGENCY:**  
Children, Youth and Families Department  
[8.8.3.1 NMAC - Rp 8.8.3.1 NMAC,  
03/29/02]

**8.8.3.2 SCOPE:** This rule 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 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.  
[8.8.3.2 NMAC - Rp 8.8.3.2 NMAC,  
03/29/02]

**8.8.3.3 S T A T U T O R Y  
AUTHORITY:** The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Section 28-2-1 to 28-2-6 NMSA and in the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to 32A-15-4 NMSA 1978 Amended.  
[8.8.3.3 NMAC - Rp 8.8.3.3 NMAC,  
03/29/02]

**8.8.3.4 D U R A T I O N :**  
Permanent  
[8.8.3.4 NMAC - Rp 8.8.3.4 NMAC,  
03/29/02]

**8.8.3.5 EFFECTIVE DATE:**

March 29, 2002.

[8.8.3.5 NMAC - Rp 8.8.3.5 NMAC,  
03/29/02]

### 8.8.3.6 OBJECTIVE:

A. The purpose of these regulations is to set out general provisions regarding criminal records checks and employment history verification required by the Prevention & Intervention Division of the Children, Youth and Families Department.

B. Criminal records checks are made to identify those adults who have relevant felony and/or misdemeanor convictions and/or arrests as defined in these regulations that operate as a disqualification to provide services to children.

[8.8.3.6 NMAC - Rp 8.8.3.6 NMAC,  
03/29/02]

### 8.8.3.7 DEFINITIONS:

A. ALFORD PLEA means a guilty plea entered by a defendant who simultaneously maintains his/her innocence and for purposes of these regulations is equivalent to a conviction.

B. ADMINISTRATIVE REVIEW means an informal process of reviewing a decision that may include an informal conference and/or hearing and/or a review of written records.

C. ADMINISTRATOR means the adult in charge of the day-to-day operation of a facility. The Administrator may be the licensee or an authorized representative of the licensee.

D. ADULT means a person who has a chronological age of 18 years or older, except for persons under Medicaid Certification as set forth in subsection I below.

E. APPEAL means a review of a determination made by the Children, Youth and Families Department, which may include an administrative review.

F. APPLICANT means any person who is the subject of a criminal records check under these rules and NMSA 1978, Section 32A-15-3 (1999).

G. ARREST means notice from a law enforcement agency about an alleged violation of law.

H. CARE RECIPIENT means any person under the care of a licensee.

I. CHILD means a person who has a chronological age of less than 18 years, and persons under applicable Medicaid Certification up to the age of 21 years.

J. CONDITIONAL EMPLOYMENT means a period of

employment which is contingent upon receipt of notice from the Children, Youth and Families Department that the direct provider of care's criminal records check indicates no relevant conviction and/or the period of employment allowed during which the direct provider of care is responsible for providing the disposition of an arrest record.

K. CRIMINAL HISTORY means information possessed by law enforcement agencies of an adult's arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

L. C R I M I N A L RECORDS CHECK means the process of submitting FBI approved fingerprint cards for the purpose of determining whether or not an applicant has State or Federal convictions on record and, when applicable, obtaining a criminal history. It may also refer to a request made by the Children, Youth and Families Department for a criminal history contained in local law enforcement records.

M. C R I M I N A L RECORDS CLEARANCE means a determination made by the Children, Youth and Families Department, based on the results of a criminal records check, that no relevant conviction exists to operate as a bar to employment.

N. DIRECT, PHYSICAL SUPERVISION means continuous visual contact or live video observation by a cleared direct provider of care of a non-cleared direct provider of care during periods when the non-cleared direct provider of care is in immediate physical proximity to care recipients. This requirement applies only to settings licensed by the Child Care Services Bureau or certified by the Children's Behavioral Health and Community Services Bureau.

O. DIRECT PROVIDER OF CARE means any adult who, as a result of employment, contractual service or volunteer service has direct care responsibilities or routine and unsupervised physical access to any care recipient in the settings to which these regulations apply.

P. DISPOSITION means the ruling, sentencing or other final settlement of a criminal matter.

Q. EMPLOYMENT HISTORY means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.

R. LICENSED means authorized to operate by the Children, Youth and Families department by issuance of an Operator's License or Certification Certificate.

S. LICENSEE means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC.

T. LICENSING AUTHORITY means the Children, Youth and Families Department.

U. NOLO CONTENDERE means a plea of no contest. For the purposes of these regulations, a nolo contendere is equivalent to a conviction.

V. PENDING CHARGES means charges that have been filed on which a court has not yet ruled.

W. RELATIVE CARE PROVIDER: A direct provider of care for children who are related to him/her within the third degree of consanguinity.

X. RELEVANT CONVICTION means a plea, judgment or verdict of guilty or a conviction following a plea of nolo contendere, conditional plea of guilty or nolo contendere, or an Alford Plea that is considered grounds for disqualification for employment under these regulations. Successful or pending completion of a deferred sentence under NMSA 1978, Section 31-20-9 (1977), or a conditional discharge under NMSA 1978, 31-20-13 (1994), or NMSA 1978, Section 30-31-28 (1972), or a comparable provision of another State's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the deferred sentence or conditional discharge is revoked or rescinded by the issuing court. Additionally, if a relevant conviction is overturned on appeal and does not result in conviction after retrial, and no further criminal proceedings are pending relating to that conviction, that conviction is not a relevant conviction under these regulations. The burden is on the Applicant to show after CRC denial that the Applicant has successfully completed a deferred sentence or conditional discharge, or that the relevant conviction has been overturned on appeal.

[8.8.3.7 NMAC – Rp 8.8.3.7 NMAC, 03/29/02]

#### 8.8.3.8 APPLICABILITY:

These regulations apply to all Licensees and direct providers of care in the following settings:

- A. Behavior Management Skills Development;
- B. Care Management Services;
- C. Group Home Services;

D. Home-Based Services;

E. Day Treatment Services;

F. Residential Treatment Services;

G. Treatment Foster Care Services Agency Staff;

H. Licensed Child Care Homes;

I. Licensed Child Care Centers;

J. Registered Child Care Homes;

K. Licensed Shelter Care;

L. Licensed Before and After School Care.

[8.8.3.8 NMAC – Rp 8.8.3.8 NMAC, 03/29/02]

#### 8.8.3.9 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except when otherwise required by applicable Certification Requirements for Children's Behavioral Health Services 7.20.11 NMAC:

- (1) Hospitals or Infirmaries;
- (2) Intermediate Care Facilities;
- (3) Children's Psychiatric Centers;
- (4) Home Health Agencies;
- (5) Diagnostic and Treatment Centers;
- (6) Unlicensed and/or unregistered Child Care Homes

B. These regulations do not apply to the following adults:

- (1) Treatment Foster Care Parents;
- (2) Relative Care Providers;
- (3) Non-Caregiver Adults Residing in Registered Child Care Homes;
- (4) Foster Grandparent volunteers;

(5) Screened and monitored volunteers of official programs, such as work/study students, providing the program is waived by the Licensing Authority from the criminal records check requirement;

(6) Volunteers working less than eight (8) hours per week, except in settings licensed or certified by the Children's Behavioral Health and Community Services Bureau, where more restrictive requirements apply in accordance with 7.20.11 NMAC or 7.20.12 NMAC.

[8.8.3.9 NMAC – Rp 8.8.3.9 NMAC, 03/29/02]

#### 8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification and/or renewal, and/or continuation of same.

B. The Licensee is

required to:

(1) Submit two FBI-approved fingerprint cards for all direct providers of care within five working days of commencement of service, whether employment, contractual, or volunteer. EXCEPTION: In the case of licensed child care homes, the Licensee must submit fingerprint cards, within five working days, for any adult who resides in the home or any persons residing in the home who reaches 18 years of age.

(2) Submit the FBI-approved fingerprint cards to CYFD along with the specified fee.

(3) Submit the name and any aliases of the direct care provider for a child abuse and neglect screen.

(4) Verify the employment history of any potential direct provider of care. The verification shall include contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service. The verification shall be documented and available for review by the Licensing Authority. EXCEPTION: Verification of employment history is not required for registered home providers, child care homes licensed for six (6) or fewer children, or relative care providers.

(5) In settings licensed by Children's Behavioral Health Services, provide for direct physical supervision of direct providers of care who have not received a criminal records clearance from the Children, Youth and Families Department. [8.8.3.10 NMAC – Rp 8.8.3.10 NMAC, 03/29/02]

#### 8.8.3.11 COMPLIANCE EXCEPTIONS:

A. If a direct provider of care is to be employed, contracted or volunteering in a setting licensed by Children's Behavior Health and Community Services Bureau, he/she is not required to undergo an additional criminal records check if he/she began employment, contractual services, or volunteer service with another Licensee within 180 days of departure from a prior Licensee. In all other settings, a direct provider of care is not required to undergo an additional criminal records check if he/she begins employment, contractual services, or volunteer service with another Licensee within one calendar year of departure from employment, contract, or volunteer service with a prior Licensee. The direct provider of care is responsible for providing proof of his/her prior criminal records check clearance. The direct provider of care must certify that he/she has not been arrested or convicted of any offense during the interim period.

B. If a direct provider of



care who has not resided in the United States for a minimum of five years is employed, contracted or volunteering in a setting licensed by Children's Behavior Health and Community Services Bureau, he/she must provide the equivalent of a criminal records clearance from any country in which he/she has resided within the past five years, for a period of longer than one year.

[8.8.3.11 NMAC – Rp 8.8.3.11 NMAC, 03/29/02]

#### **8.8.3.12 PROHIBITIONS:**

A. Any Licensee who violates these regulations is subject to revocation, suspension, sanctions, or denial of licensure, certification, or registration.

B. Licensure, certification, or registration is subject to receipt by the Licensing Authority of a criminal records clearance for the Licensee and/or the Licensee's Administrator.

C. Licensure, certification or registration may not be granted by the Licensing Authority if a criminal records check of the Licensee and/or the Licensee's Administrator reveals a relevant conviction.

D. Licensure, certification, or registration may not be granted by the Licensing Authority if a screen from the Protective Services Division or an employment history verification of the Licensee and/or the Licensee's Administrator reveals information which indicates abuse or neglect of children.

E. A Licensee may not retain employment, volunteer service or contract with any direct provider of care:

(1) For whom a criminal records check reveals a relevant conviction;

(2) For whom an employment history verification reveals evidence which indicates that a potential for the abuse or neglect of children exists.

(3) For whom a child abuse and neglect screen indicates a substantiated case of abuse or neglect of a child or adult.

F. A Licensee shall be in violation of these regulations if it retains a direct provider of care for more than fifteen working days following the mailing of a notice verifying relevant convictions by the Licensing Authority. The notice shall be mailed certified return receipt requested.

G. A Licensee shall be in violation of these regulations if it retains any direct provider of care beyond 180 days for whom a criminal records check clearance has not been received. At the discretion of the Children, Youth and Families Department, this time frame may be extended.

H. A Licensee shall be in violation of these regulations if it hires, con-

tracts with, uses in volunteer service, or retains any direct provider of care for whom an employment history verification, or other information received from any source including the direct provider of care, reveals information which indicates the abuse or neglect of children or adults, including a substantiated case of abuse or neglect of a child or adult that occurred after criminal records check clearance.

[8.8.3.12 NMAC – Rp 8.8.3.12 NMAC, 03/29/02]

#### **8.8.3.13 ARRESTS AND CONVICTIONS:**

A. For the purpose of these regulations, the following relevant convictions shall result in a denial of criminal records clearance.

(1) Convictions for child abuse, trafficking in controlled substances, and rape or criminal sexual penetration, automatically result in denial regardless of rehabilitation and regardless of whether the conviction is for a felony or a misdemeanor, pursuant to NMSA 1978, Section 28-2-4(A)(3) (1997). Therefore, any applicant who has such a conviction is denied criminal records clearance. This applies to any conviction at any time in either New Mexico or any other State, or in any court of competent jurisdiction in any other country.

(2) Convictions involving any crime against a child, including, but not limited to: criminal sexual contact of a minor; child pornography; false imprisonment; kidnapping; endangering a minor; or contributing to the delinquency of a minor, are considered child abuse for purposes of these regulations in accordance with NMSA 1978, Sections 28-2-4(A)(1) and 28-2-4(A)(3) (1997), and result in the denial of criminal records clearance regardless of rehabilitation and regardless of whether the conviction is for a felony or misdemeanor. This applies to any conviction at any time in either New Mexico or any other State, or in any court of competent jurisdiction in any other country.

(3) Convictions involving any felony offense, including, but not limited to felony convictions for: homicide, murder or manslaughter in any manner or degree; family or domestic abuse or violence; adult abuse; driving under the influence of intoxicating liquors; assault or battery; arson; drug possession; kidnapping; false imprisonment; criminal sexual contact; or any other felony offense, are directly related to an applicant's ability to provide a safe, responsible and morally positive setting for children, and result in the denial of criminal records clearance regardless of rehabilitation in accordance with NMSA 1978, Section 28-2-4(A)(1) (1997), subject to the

following subsections:

(a) If such felony conviction or convictions have occurred within the past three (3) years criminal records clearance is denied regardless of rehabilitation. This applies to any conviction at any time in either New Mexico or any other State, or in any court of competent jurisdiction in any other country.

(b) If such felony conviction or convictions were for non-violent offenses, for offenses not set forth in Subsections A(1) and A(2) above, and occurred more than three (3) years prior to the time of application for criminal records clearance, and if the applicant is not otherwise disqualified from criminal records clearance and no other conviction for any other misdemeanor or felony offense has occurred within the past three (3) years, the applicant shall be given the opportunity to petition in writing to the licensing authority prior to denial setting forth the applicant's claim that the applicant has been sufficiently rehabilitated to be able to provide a safe, responsible and morally positive setting for children. Such petition shall specifically state the actions that have been taken by the applicant since the conviction that show rehabilitation and, where applicable, shall include a letter of recommendation from the applicant's supervisor. Such petition shall be received by the division or bureau which issued the denial within fifteen (15) days of the mailing of a notice from the licensing authority to the applicant or provider that the conviction will result in denial of criminal records clearance. The burden of proof shall be on the applicant to show rehabilitation by clear and convincing evidence, and the decision of the licensing authority shall be considered final, subject to the applicant's rights to appeal under 8.8.3.14 and to the district court pursuant to state statute. This subsection does not apply to any conviction for family or domestic violence or abuse, or for any conviction specified in Subsections A(1) and A(2) above.

(4) Misdemeanor convictions involving moral turpitude, including prostitution or solicitation, and any other crimes of moral turpitude which a reasonable person would believe would effect a person's ability to provide a safe, responsible and morally positive setting for children, including, but not limited to: criminal sexual contact, indecent exposure; family or domestic violence or abuse; abuse, neglect or financial exploitation of an adult or elder person; theft; receiving or disposing of stolen property; auto theft or unlawful taking of a motor vehicle; larceny; burglary, auto burglary, aggravated burglary or breaking and entering; embezzlement; fraud; credit card fraud or improper use of a credit card;



shoplifting; writing bad checks; or arson are directly related to an applicant's ability to provide a safe, responsible and morally positive setting for children, and result in the denial of criminal records clearance regardless of rehabilitation in accordance with NMSA 1978, Section 28-2-4(A)(1) (1997), subject to the following subsections:

(a) If such conviction or convictions for misdemeanors of moral turpitude have occurred within the past three (3) years, or if any such conviction is for family or domestic violence or abuse, criminal records clearance is denied regardless of rehabilitation. This applies to any conviction at any time in either New Mexico or any other State, or in any court of competent jurisdiction in any other country.

(b) If such conviction or convictions for misdemeanors of moral turpitude have occurred later than seven (7) years prior to the time of application for criminal records clearance, and no arrest or conviction for any crime has occurred within the past seven (7) years, it is presumed that rehabilitation has occurred and criminal records clearance may be approved under this section, subject to approval under all other criminal record check requirements. Applicants who would have been presumed to be rehabilitated under this subsection but have an arrest without a conviction within the past seven (7) years are subject to subsection (c.) below. This subsection does not apply to any conviction for family or domestic violence or abuse, or to any felony conviction.

(c) If such conviction or convictions for misdemeanors of moral turpitude occurred more than three (3) years but less than seven (7) years prior to the time of application for criminal records clearance, and if the applicant is not otherwise disqualified from criminal records clearance and no other conviction for any other misdemeanor or felony offense has occurred within the past three (3) years, the applicant shall be given the opportunity to petition in writing to the licensing authority prior to denial setting forth the applicant's claim that the applicant has been sufficiently rehabilitated to be able to provide a safe, responsible and morally positive setting for children. Such petition shall be received by the division or bureau which issued the denial within fifteen (15) days of the mailing of a notice from the licensing authority to the applicant or provider that the conviction will result in denial of criminal records clearance. The burden of proof shall be on the applicant to show rehabilitation by clear and convincing evidence, and the decision of the licensing authority shall be considered final, subject to the applicant's rights to appeal under 8.8.3.14 and to the district

court pursuant to state statute. This subsection does not apply to any conviction for family or domestic violence or abuse, or to any felony conviction.

B. A disqualifying conviction may be proven by:

(1) A copy of the judgment of conviction from the Court.

(2) A copy of a plea agreement filed in Court in which a Defendant admits guilt.

(3) A copy of a report from the Federal Bureau of Investigation, Criminal Information Services Division, or the National Criminal Information Center, indicating a conviction.

(4) A copy of a report from the State of New Mexico, Department of Public Safety, or any other agency of any State or the Federal Government indicating a conviction.

(5) Any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed a deferred sentence or conditional discharge for the disqualifying conviction.

C. If a criminal records check shows pending charges for a felony offense, or for any misdemeanor offense involving domestic violence or child abuse, or an arrest but no disposition for any such crime, criminal records clearance shall be denied. If criminal records clearance has already been granted, an arrest for any felony offense or for any misdemeanor offense involving domestic violence or child abuse shall result in the immediate suspension of the applicant's criminal records clearance until such time as the charges are disposed of. It is the duty of the administrator of a facility or the licensee, upon learning of any such arrest, to notify the licensing authority immediately. A suspension of criminal records clearance shall have the same effect as a denial of criminal records check clearance until the charges are disposed of. If an arrest results in a conviction, the applicant shall be subject to all of the criminal records check provisions set forth in Subsections A, B, and C above and, if the conviction would result in a criminal records check denial, the applicant's criminal records clearance shall be revoked. If an arrest results in an acquittal, conditional discharge, or dismissal of the charges, or any other disposition that is not a criminal conviction, the applicant shall thereafter again be eligible for criminal records clearance. The applicant shall have the right to appeal a denial or revocation pursuant to Section 8.8.3.14 below.

D. If a criminal records check shows that an applicant is wanted for any offense by any law enforcement agency due to a warrant having been issued, or if the applicant is shown to have failed to appear for any pending criminal court proceeding, criminal records clearance shall be denied. If such information shall be reported to the licensing authority after criminal records clearance, the applicant's criminal records clearance shall be suspended until such time as the matter is disposed of. If the case results in a conviction, the applicant shall be subject to all of the criminal records check provisions set forth in Subsections A, B, and C above and, if the conviction would result in a criminal records check denial, criminal records clearance shall be denied or the applicant's criminal records clearance shall be revoked. If the charges are dismissed or otherwise result in a conviction for an offense that would not warrant a criminal records clearance denial, the applicant will thereafter be eligible for criminal records clearance. The applicant shall have the right to appeal a denial or revocation pursuant to Section 8.8.3.14 below.

[8.8.3.13 NMAC – Rp 8.8.3.13 NMAC, 03/29/02]

#### **8.8.3.14 APPEAL RIGHTS:**

A. Any Licensee who is denied licensure, certification, or registration or is sanctioned pursuant to these regulations may appeal that decision to the Children, Youth and Families Department.

B. Any direct provider of care who is disqualified from service due to a violation of 8.8.3.13 may request a hearing from the Children, Youth and Families Department. The request for hearing shall be made as soon as possible, but not more than fifteen days from notice.

[8.8.3.14 NMAC – Rp 8.8.3.14 NMAC, 03/29/02]

#### **HISTORY OF 8.8.3 NMAC:**

HED 85-6 (HSD), Regulations Governing Criminal Records Check And Employment History Of Licensees And Staff Of Child Care Facilities, 08/30/85.

#### **HISTORY OF REPEALED MATERIAL:**

HED 85-6 (HSD), Regulations Governing Criminal Records Check And Employment History Of Licensees And Staff Of Child Care Facilities - Repealed, 07/30/01.

8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification – Repealed, 03/29/02

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.1.7 NMAC:

### 16.5.1.7 DEFINITIONS:

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

C. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

D. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

E. "Jurisprudence Exam" means the examination given over the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the State of New Mexico.

F. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

G. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

H. "Supervising Dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous eleven months or will examine that patient within 30 days of giving authorization.

I. "WREB" means the Western Regional Examining Board, which acts as the representative agent for the Board and Committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

K. "CRDTS" means the Central Regional Dental Testing Service, which acts as a representative agent for the Board and Committee in providing written and clinical examinations to test the applicants competence to practice in New Mexico.

[J.] L. "Written Authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[K-M] PBIS is the

Professional Background information Services, which compiles background information regarding an applicant from multiple sources.

[16.5.1.7. NMAC - A, 3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 3-29-02]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.6.8 NMAC; 16.5.6.9 NMAC; 16.5.6.10 NMAC:

**16.5.6.8 PREREQUISITE REQUIREMENTS FOR GENERAL PRACTICE LICENSE:** Each applicant for a license to practice dentistry by examination must possess the following qualifications:

A. Graduated and received a diploma from an accredited dental school as defined in 61-5A-12,A:

B. Successfully completed the Dental National Board Examination as defined in 61-5A-12,A:

C. Passed a WREB or CRDTS clinical examination. The results of the WREB or CRDTS exam are valid in New Mexico for a period not to exceed five years;

(1) The applicant shall apply directly to WREB or CRDTS for examination; and

(2) WREB or CRDTS results must be sent directly to the Board office; and

D. Completed the Jurisprudence Exam with a score of at least 75 percent. The applicant shall schedule the exam through the Board office.

E. The Board requires a Level III background status report from PBIS for new graduates, and a Level II background status report from PBIS for an applicant who has been in practice with experience. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to PBIS to initiate this service. [3-14-73, 5-31-95, 9-30-96, 12-15-97; 16.5.6.8 NMAC - Rn & A, 16 NMAC 5.6.8, 06-14-01; A, 3-29-02]

**16.5.6.9 PREREQUISITE REQUIREMENTS FOR SPECIALTY LICENSE:** Each applicant for a license to practice a dental specialty by examination must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.

A. Graduated and received

a diploma from an accredited dental school as defined in 61-5A-12,A; and

B. A postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12,D in one of the following specialty areas:

- (1) Dental Public Health,
- (2) Endodontics,
- (3) Oral and Maxillofacial Surgery,
- (4) Orthodontics and Dento-facial

- Orthopedics,
- (5) Oral Pathology,
- (6) Pediatric Dentistry,
- (7) Periodontology, or
- (8) Prosthodontics.

C. Successfully completed the Dental National Board Examination as defined in Section 61-5A-12,A;

D. Passed a WREB or CRDTS specialty examination. The results of the WREB or CRDTS exam are valid in New Mexico for a period not to exceed five years;

(1) The applicant shall apply directly to WREB or CRDTS for examination; and

(2) WREB results must be sent directly to the Board office;

E. An applicant in any specialty defined above for which there is no WREB or CRDTS specialty examination may substitute diplomate status for the examination; and

F. Completed the Jurisprudence Exam with a score of at least 75 percent. The applicant shall schedule the exam through the Board office.

G. The Board requires a Level II background status report from PBIS. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to PBIS to initiate this service. [3-16-94, 5-31-95, 12-15-97, 02-14-00; 16.5.6.9 NMAC - Rn & A, 16 NMAC 5.6.9, 06-14-01; A, 3-29-02]

**16.5.6.10 DOCUMENTATION REQUIREMENTS:** Each applicant for a license by examination must submit the required fees and following documentation:

A. Completed application signed and notarized with a passport quality photo taken within 6 months. Applications are valid for 1 year from the date of receipt;

B. Official transcripts from the dental school or college, to be sent directly to the Board office from the accredited program;

C. Copy of WREB or CRDTS score card or certificate from the appropriate Specialty Board;

D. Copy of National Board

Examination certificate or score card;

E. Proof of having taken a course in infection control technique or graduation from dental school within the past twelve months;

F. Proof of current CPR certification;

G. Repealed

H. The Board will obtain verification of applicant status from the National Practitioners Data Bank and the American Association of Dental Examiners Clearinghouse; and

I. The appropriate status report from PBIS must be received by the Board office directly from PBIS. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the Board.

J. The Board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the Act, the Uniform Licensing Act, the Impaired Dentists and hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public.

K. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the Office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

L. In addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program and/or postgraduate training program to be sent directly to the Board office from the accredited program.

[3-16-94, 5-31-95, 9-30-96, 12-15-97, 8-16-99; 16.5.6.10 NMAC - Rn & A, 16 NMAC 5.6.10, 06-14-01; A, 3-29-02]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.7.8 NMAC; 16.5.7.10 NMAC; 16.5.7.15 NMAC:

16.5.7.8 CATEGORIES OF TEMPORARY LICENSES: Applications for a temporary New Mexico dental license may be issued in the following categories for specific purposes if education and experience requirements are met:

A. Clinical Educator. Dentists, not currently licensed in New

Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for forty-eight hours (two days). If the course lasts longer than two days, additional forty-eight hour licenses may be requested upon payment of the applicable fees. A temporary license may not be issued for less than forty-eight hours.

B. ~~[A resident or student in an accredited dental specialty program, who holds a valid license in another jurisdiction, may be granted a temporary 48-hour license for the purpose of observing and/or assisting a licensed NM Practitioner in cases for educational purposes.]~~ A student who is enrolled in an ADA accredited dental specialty program or an ADA accredited general practice dental residency program, or an advanced education in general dentistry program, who holds a current, valid license in another US jurisdiction, may be granted a temporary 48-hour license for the purpose of observing and/or assisting a licensed New Mexico practitioner in cases for educational purposes. If the resident or student is enrolled in an accredited program in the state of New Mexico and holds a current, valid license in another US jurisdiction, they may be granted a temporary license for up to 12 months. This temporary license may be renewed annually only for purposes of completing the educational program.

C. ~~[Clinical Public Health Dentistry.]~~ Clinical Practice in Underserved Area or State Institutions. A dentist may be granted temporary licensure to practice in a state institution, ~~or~~ a program approved or maintained by the New Mexico Department of Health (NMDOH), or a program or clinic designated by the New Mexico Department of Health (NMDOH), as Dental Care Underserved Area (DCUA). The New Mexico Department of Health (NMDOH) may recommend to the New Mexico Board of Dental Health Care, counties, communities, county census divisions, or in the case of urban areas, neighborhoods, zip codes, and census tracts to be considered as Dental Care Underserved Areas (DCUA's). Areas recommended as DCUA's may reflect those areas designated by the Federal Government as Dental Health Professional Shortage Areas (DHPSA). The New Mexico Board of Dental Health Care will request annually from NMDOH a written report of which areas are recommended as DCUA's and will update the listing throughout the year as appropriate. The New Mexico Board of Dental Health Care may designate DCUA's based upon these recommendations.

(1) The temporary license holder is restricted to work exclusively in the insti-

tution or program named on the application or the temporary license certificate.

(2) ~~[A temporary license to practice public health dentistry is valid for twelve months and may be re-issued for additional twelve-month period.]~~ A temporary license for Clinical Practice in an Underserved Area or State Institution is valid for twelve months and shall expire at the end of that period. The Board may re-issue the temporary license for three additional twelve-month periods. Each license reissue must be approved by the Board.

(3) ~~[If it can be demonstrated by the Department of Health that a dentist working with a temporary public health license fills a need that cannot be met by another licensed dentist, the public health license may be re-issued for additional twelve-month periods as long as the documented need exists. Each re-issuance must be approved by the Board.]~~ The New Mexico Board of Dental Health Care shall rely upon the listing of recommended practices in Underserved Areas or State Institutions, and the listing of recommended DCUA's provided by NMDOH in its review of applications for Clinical Practice in Underserved Areas. Temporary licenses will be reissued only for sites and DCUA's that remain on the recommended listings by the New Mexico Department of Health.

(4) A temporary license to practice in an Underserved Area may be converted to a license by credentials provided the applicant:

(a) Meets all requisite requirements listed in 16.5.8 and provides all documentation as required in 16.5.8.10 of these rules, with exception of the requirement to have a license in good standing for 5 years.

(b) Practices for at least 1000 hours per year under a temporary license in an underserved area for three consecutive years. One year of credit will be granted for:

(i) An ADA accredited residency or ADA recognized specialty program.

(ii) Private practice of 1000 or more hours per year.

(c) Has no complaints under Board investigation, actions pending or actions taken against the applicant's Temporary License.

(d) Has renewed the temporary license yearly, and has paid the required license fees.

(e) Has maintained the same continuing education requirements of regularly licensed dentists as set forth in 16.5.10 of these rules. The annual continuing education requirements are to be based upon 1/3 prorata share of those required of a licensee applying for license renewal on a triennial



basis.

(f) Applies for conversion of a temporary license to a license by credentials pursuant to 16.5.7.15 of these rules.

D. **E m e r g e n c y** Practitioner. Out of state specialists needed for emergency care in a hospital may be granted a temporary license.

(1) The information normally given in official documentation may be given in written or verbal form because of the emergency nature of the license.

(2) This category will be given a forty-eight hour temporary license but it may be extended in forty-eight hour increments until the dentist can leave the patient to the care of others.

(3) The New Mexico licensed dentist acting as the sponsor for the temporary licensee must be responsible for the validity of the following credentials:

(a) The license number in the state in which the applicant resides and practices, and the current status of the license;

(b) Proof of liability insurance; and

(c) Verification of status of hospital credentials in state of residence and/or practice.

E. **R e p l a c e m e n t** Practitioner. A dentist may be granted temporary licensure for six or twelve months to work exclusively with patients in the practice of a New Mexico licensed dentist who is unable to practice dentistry because of physical or mental illness, injury, pregnancy, impairment, physical absence, or other condition approved by the Board.

(1) The temporary license holder is restricted to work exclusively in the practice named on the application.

(2) A temporary license as a replacement practitioner is valid for no longer than twelve months, and may not be re-issued.

[3-17-73, 3-16-94, 4-15-94, 5-31-95, 9-30-96; 16.5.7.8 NMAC-Rn & A, 16 NMAC 5.7.8, 12-14-00; A, 3-29-02]

16.5.7.10 **DOCUMENTATION REQUIREMENTS:** Each applicant for a temporary license must submit the required fees and following documentation:

A. Completed application signed and notarized with a passport quality photo taken within 6 months. Applications are valid for 1 year from the date of receipt;

B. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date,

license number, and other information contained on the form;

C. Proof of current CPR certification; and

D. An affidavit from the New Mexico licensed dentist [~~or dental hygienist~~] who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform. Applicants for temporary licensure in underserved areas and state institutions must:

(1) Provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both or:

(2) Provide an affidavit from the New Mexico Department of Health specifying supervision will be by a licensed New Mexico dentist and bearing the signature of both, and

(3) Report any changes in supervision or oversight of the temporary licensee to the Board within (30) thirty days of the change.

(4) Provide proof of acceptable liability insurance coverage.

E. In addition, applicants requesting temporary licensure in Public Health Dentistry or as a Replacement Practitioner must submit the following:

(1) Official transcripts from the dental school or college, to be sent directly to the Board office from the accredited program;

(2) Copy of National Board Examination certificate or score card;

(3) Proof of having taken a course in infection control technique within the past twelve months;

(4) Applicant shall authorize the Drug Enforcement Administration (DEA) and American Association of Dental Examiners Clearinghouse to send verification of status directly to the Board office;

(5) The Board will obtain verification of applicant status from the National Practitioners Data Bank; and

(6) A Level III status report from PBIS must be received directly from PBIS. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the Board. The Board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the Act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public.

(7) In addition to the documenta-

tion required above, an applicant for temporary licensure in a specialty area must request official transcripts from the residency program and/or postgraduate training program to be sent directly to the Board office from the accredited program.

[3-14-73, 5-31-95, 9-30-96; 16.5.7.10 NMAC-Rn, 16 NMAC 5.7.10, 12-14-00; A, 06-14-01; A, 3-29-02]

#### 16.5.7.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS:

A. Following the completion of the requirements listed in Subsection C of 16.5.7.8 NMAC of these rules, the Temporary licensee may complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for licensure by credentials.

D. Upon receipt of a complete application the Board shall issue a New Mexico license by Credentials unless there is any action pending against the temporary license. Then at the discretion of the Board or it's agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials will be halted and the temporary license will no longer be renewed.

[16.5.7.15 NMAC - N, 3-29-02]

### **NEW MEXICO BOARD OF DENTAL HEALTH CARE**

This is an amendment to 16.5.33.7 NMAC; 16.5.33.8 NMAC; 16.5.33.10 NMAC; 16.5.33.11 NMAC; 16.5.33.13 NMAC 16.5.33.14 NMAC:

#### **16.5.33.7 DEFINITIONS**

A. "Approved Training Program" means a course of study approved by the Board resulting in the attendee being eligible for certification to perform an expanded function.

B. "DANB" means the Dental Assisting National Board.

C. "Personal Supervision" means the licensee is personally providing patient care and authorizes the assistant to concurrently perform a supportive procedure.

D. "Indirect Supervision" means a Licensee is present in the treatment facility while authorized treatments are

being performed by a dental assistant.

E. "General Supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan and in facilities as designated by rule of the board.

F. "Direct Supervision" means a dentist is present in the facility and personally overseeing and directing the procedure.

[D] G. "Rubber Cup Coronal Polishing" means the use of a rubber cup or a bristle brush to remove soft debris and stain from above the gingival margin. [10-21-70...5-31-95, 9-30-96, 2-14-00; 16.5.33.7 NMAC - Rn, 16 NMAC 5.33.7, 12-14-00; A, 3-29-02]

16.5.33.8 REQUIREMENTS FOR CERTIFICATION: A Licensee of the Board shall not allow dental assistants to perform oral radiography[; under any level of supervision that are not certified by the Board of Dental Health Care. A Licensee may not allow dental assistants to perform coronal polishing, pit and fissure sealant(s), and/or topical fluoride application[are required to be certified] under general supervision without certification by the Board of Dental Health Care. Expanded function certification offered by the New Mexico Board of Dental Health Care should not be confused with Certification as a Dental Assistant by DANB. DANB certification gives the individual the right to use the initials C.D.A. after their name, but does not qualify the individual to perform expanded functions unless they are also certified by the New Mexico Board. [9-7-84...9-30-96; 16.5.33.8 NMAC - Rn, 16 NMAC 5.33.8, 12-14-00; A, 3-29-02]

16.5.33.10 EDUCATION, EXPERIENCE, AND EXAMINATION REQUIREMENTS FOR RUBBER CUP CORONAL POLISHING;

A. Successfully completed a self-study or training course on rubber cup coronal polishing, and have assisted with and/or observed five (5) cases of rubber cup coronal polishing in children and adults.

B. Pass a Board approved written examination on rubber cup coronal polishing; and

C. Following successful completion of the exam, perform rubber cup coronal polishing under the personal supervision of a licensed dentist or dental hygienist on 4 adults and 4 children;

D. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental

hygiene who has passed a curriculum for rubber cup coronal polishing may be granted a certificate without meeting the other requirements of this section.

(2) A dental assistant who is certified to perform coronal polishing in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

(3) A dental assistant who holds a current CDA certification issued by DANB may be issued a certificate for rubber cup coronal polishing without meeting the other requirements of this section.

[8-11-89...9-30-96, 1-1-98, 2-14-00; 16.5.33.10 NMAC - Rn, 16 NMAC 5.33.10, 12-14-00; A, 3-29-02]

16.5.33.11 EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS FOR APPLICATION OF TOPICAL FLUORIDE

A. Successfully complete a self-study or training course on the use of topical fluoride, and assisted an/or observed five (5) cases of topical fluoride application;

B. Pass a Board approved written examination on topical fluoride application; and

C. Following successful completion of the exam, apply topical fluoride under the personal supervision of a licensed dentist or dental hygienist on 6 children.

D. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who has passed a curriculum for application of topical fluoride may be granted a certificate without meeting the other requirements of this section.

(2) A dental assistant who is certified to perform topical fluoride in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

(3) A dental assistant who holds a current CDA certification issued by DANB may be issued a certificate for application of topical fluoride without meeting the other requirements of this section.

[5-31-95, 9-30-95, 2-14-00; 16.5.33.11 NMAC - Rn, 16 NMAC 5.33.11, 12-14-00; A, 3-29-02]

16.5.33.13 REQUIRED DOCUMENTATION: Each applicant for an expanded function dental assistant certificate must submit the required fees and following documentation. The application fee must only be submitted with the initial request for certification. Additional expanded functions require only the documentation.

A. Completed signed

application with a passport quality photo taken within 6 months affixed to the application. Applications are valid for 1 year from the date of receipt;

B. Dental Radiography:

(1) A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed five (5) cases of full mouth radiography.

(2) Proof of completion of a training course in radiation health and safety or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self-study training course on radiation health and safety.

C. Rubber cup coronal polishing:

(1) A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed five (5) cases of rubber cup coronal polishing.

(2) Proof of completion of a training course in rubber cup coronal polishing or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self-study training course on rubber cup coronal polishing;

(3) A form, provided by the Board, signed by the dentist or dental hygienist who provided personal supervision and instruction of the required experience specified in Subsection C of 16.5.33.10 NMAC.

D. Topical Fluoride:

(1) A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed five (5) cases of topical fluoride application.

(2) Proof of completion of a training course on topical fluoride application or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self-study training course on topical fluoride application;

(3) A form, provided by the Board, signed by the dentist or dental hygienist who provided personal supervision and instruction on appropriate application techniques.

[D] E. Pit and Fissure Sealants:

(1) A letter from a supervising dentist or hygienist that the applicant has assisted with and/or observed placement of twelve (12) pit and fissure sealants.

(2) Proof of completion of a training course on pit and fissure sealants or a letter of certification cosigned by the applicant and a dentist or hygienist, that they have completed a self-study training course on pit and fissure sealants;

(3) A form, provided by the Board, signed by the dentist or dental hygienist who provided personal supervision and instruction on appropriate applica-

tion techniques, and

(4) Proof of 4,000 hours of chair side dental assisting experience in the five years immediately prior to application.

[8-11-89... 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.13 NMAC - Rn & A, 16 NMAC 5.33.13, 12-14-00; A, 3-29-02]

16.5.33.14 **CERTIFICATION BY CREDENTIALS:** Applicants for certification by credentials shall provide: ~~[a copy of a current valid certificate from another state or a letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function. Verification of the certification and the requirements for certification must be received by the Board office directly from the state. A letter attesting to enrollment in a dental hygiene program must be received directly from the institution.]~~

A. Verification of a current valid certificate from another state, or

B. An official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function, or

C. Proof of current, valid, certification as a CDA issued by DANB.

D. All certifications, letters and validations must be received directly by the Board office from the state, institution, or DANB.

[1-1-98, A, 8-16-99; 16.5.33.14 NMAC - Rn, 16 NMAC 5.33.14, 12-14-00; A, 3-29-02]

## NEW MEXICO BOARD OF EDUCATION

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY PART 1 PUBLIC SCHOOL ACCOUNTABILITY: GENERAL PROVISIONS

**6.19.1.1 ISSUING AGENCY:** State Board of Education  
[6.19.1.1 NMAC - N, 03-29-02]

**6.19.1.2 SCOPE:** All public schools, including charter schools.  
[6.19.1.2 NMAC - N, 03-29-02]

**6.19.1.3 STATUTORY AUTHORITY:** Subsections A and B of Section 22-2-1 NMSA 1978, Subsections A and I of Section 22-1-6 NMSA 1978, Subsection W of Section 22-2-2 NMSA 1978, and Section 22-2-14 NMSA 1978.

[6.19.1.3 NMAC - N, 03-29-02]

**6.19.1.4 DURATION:** Permanent  
[6.19.1.4 NMAC - N, 03-29-02]

**6.19.1.5 EFFECTIVE DATE:** March 29, 2002, unless a later date is cited at the end of a section.  
[6.19.1.5 NMAC - N, 03-29-02]

**6.19.1.6 OBJECTIVE:** The rule establishes the definitions, school ratings, indicators, and measurements applicable to public school accountability.  
[6.19.1.6 NMAC - N, 03-29-02]

**6.19.1.7 DEFINITIONS:**  
A. "Accountability Rating System" means the categories of performance ratings and the methodology for determining these categories established by the State Board of Education ["State Board"]:

(1) "Exemplary" means a district/school rating on the five statewide indicators demonstrating that the district/school has at least 50% of its data points in exemplary and 0% of its data points in probationary;

(2) "Exceeds Standards" means a district/school rating on the five statewide indicators demonstrating that the school/district has at least 50% of its data points in Exceeds Standards or higher, allowing the greater of up to 5% or one (1) probationary data point;

(3) "Meets Standards" means a district/school rating on the five statewide indicators demonstrating that the district/school has more than 50% of all data points in Meets Standards or higher;

(4) "Probationary" means a district/school rating on the five statewide indicators demonstrating that the district/school has 50% or more of all data points in probationary.

B. "Attendance" means students who are in class or in a school-approved activity. If a student is in attendance up to one half the total instructional time during a school day, the student will be counted as having attended one-half of a school day. If the student attends school for more than one-half of the total instructional time, the student will be counted as having attended for the full day.

C. "Cohort group" means a group of students in one grade in one school who participated in statewide testing one year and the same exact group that participated in statewide testing in the following year(s).

D. "Corrective action" means action taken by or at the direction of the State Board intended to improve a cor-

rective action school's rating.

E. "Corrective action school" means a school improvement school that has failed to attain a performance rating of Meets Standards or higher for two consecutive years or fails to meet the criteria the State Board has for an additional year of school improvement.

F. "District" means a public school district or a charter school district.

G. "Dropout" means an individual who:

(1) was enrolled in school at some time during the previous school year;

(2) was not enrolled at the beginning of the current year;

(3) has not graduated from high school or completed a state- or district-approved educational program; and

(4) does not meet any of the following two exclusionary conditions:

(a) transfers to another public school district, private school, or state- or district-approved education program, or

(b) is temporarily absent due to suspension or illness, or death.

H. "Educational Standards Commission" ("Commission") means that commission created by the State Board in 6.2.2 NMAC whose purpose shall be to advise the State Board on issues relating to educational standards and accountability for New Mexico public schools.

I. "Intervention" means the process established by the State Board of Education to assist a public school that is rated Probationary.

J. "New School" means a school not established for a sufficient time to have gathered two years of results on the five statewide indicators.

K. "Rating cycle" means the annual rating that triggers performance warned action and culminates in corrective action or removes a school from intervention at any point in time.

L. "Rolling Averages" means that all statewide test scores for the most current three consecutive school years in a subject area in a small school regardless of what grades they represent will be used to attain the median percentile rank for the NRT or the median scale score for the New Mexico High School Competency Examination. The median derived from this calculation will be used to determine the rating of each data point.

M. "School" means a public school, including a charter school.

N. "Standard Deviation" means a quantitative measure that indicates how far away numbers on a list are from their average.

O. "Statewide Indicators"



are those indicators established in Subsection A of Section 22-1-6 NMSA 1978: student achievement, attendance, dropout rate, parent and community involvement, and school safety.

P. "Typical Growth" means the typical increase in scale score points from one year to the next as established by the test publisher.

[6.19.1.7 NMAC – N, 03-29-02]

#### 6.19.1.8 INDICATORS AND MEASUREMENTS:

The State Department of Public Education ["Department"] shall annually measure public schools on the five statewide indicators. All scores, rates, and other measures used in the Accountability Rating System shall be verified by the Department. Groups of students are denoted by grade levels and subpopulations of grade levels. Assessment data shall be considered for accountability ratings only when a group represents 10 or more students. Each school generates data points which have been identified as either exemplary, exceeds standards, meets standards, or probationary.

A. The student achievement indicator will utilize results from the state-mandated norm referenced achievement test(s) ("NRT") in Spanish or English. Students will be tested using the NRT in Spanish or English or other assessments, when appropriate, as defined by federal guidelines. Likewise, all exemptions to statewide testing requirements and all accommodations provided in statewide testing must be in compliance with federal guidelines.

(1) The NRT will be represented at a rate proportionate to the number of students taking each of the subtests in English or Spanish. Each subtest – reading, language arts, mathematics, science, and social studies – will provide one data point per grade at the school for a total of five data points per grade. These data points shall be referred to as "status data points".

(a) The test results of the students who have been in attendance on or prior to the 40-day attendance count shall be used to determine the rating of each status data point.

(b) A status data point is rated exemplary if the median percentile rank is above the 70th percentile, exceeds standards if the percentile rank is above the 60th percentile to the 70th percentile, meets standards if it is at the 40th through the 60th percentile, and probationary if it is below the 40th percentile.

(2) The results of the NRT shall also be utilized to determine the growth in student performance.

(a) Growth is determined by the

number of scale score points a cohort group within the same school achieves from one year to the next.

(b) Growth shall be measured for one, two and three years when available in a school.

(c) "Typical growth" shall be utilized to determine if a cohort group has achieved the growth expectations set by the Board. Each grade and each subject has varying scale score points to achieve in order to meet "typical growth."

(d) When all of the growth data are configured, the number of data points for growth shall be weighted to equal the status data points. The number of students contributing to the growth data shall contribute proportionately to the growth data.

(e) Students who take the tests with accommodations shall be considered as a proportion of the total number of students in cohort groups.

(f) Each growth data point shall be determined to be either high, middle, or low range, prior to measuring the growth, by the median percentile. If the median percentile is below the 40th percentile, the data point is considered low range. If it is at the 40th percentile through the 60th percentile, the data point is considered middle range. If the data point is above the 60th percentile, the data point is considered high range.

(g) Utilizing the standard determined by the test publisher to represent "typical growth" scales, a low range data point must increase:

(i) by 1.75 or higher times typical growth to achieve exemplary;

(ii) by 1.5 to 1.74 times typical growth to achieve exceeds standards;

(iii) by 1.25 to 1.4 times typical growth to achieve meets standards; and,

(iv) below 1.25 times typical growth to achieve probationary.

(h) Utilizing the same standard determined by the test publisher to represent "typical growth" scales, a middle range data point must achieve:

(i) 1.5 or higher times typical growth to achieve exemplary;

(ii) 1.25 to 1.4 times typical growth to achieve exceeds standards;

(iii) 1.0 to 1.24 times typical growth to achieve meets standards; and,

(iv) less than typical growth to achieve probationary.

(i) Utilizing the same standard determined by the test publisher to represent "typical growth" scales, a high range data point must achieve:

(i) 1.25 or higher times

typical growth to achieve exemplary;

(ii) 1.0 to 1.24 times typical growth to achieve exceeds standards;

(iii) less than typical growth to achieve meets standards;

(iv) and show a decline for probationary.

(3) Achievement results for small schools shall be rated by utilizing the concept of "rolling averages." For purposes of rating schools, a school is considered to be a small school if it has any one grade level with fewer than a total of 10 students enrolled. Once identified as a small school, a school will continue to be rated as a small school for three years before considering whether to rate it as a larger school. These data are configured by using all the students in attendance at the school that have statewide test results. All the scores for all the students for the past three years are considered as if they represented one class. The median percentile is then determined and a status data point assigned based on this median. There are no growth data points for small schools.

(4) In addition to the results from the required testing described in Subsection A of 6.19.1.8 NMAC, the New Mexico High School Competency Examination shall be used to provide achievement data points for schools that have 10th grade in attendance. There are five subtests that shall be used – reading, language arts, mathematics, science, and social studies. Each subtest shall generate a data point by using results of tenth grade first time test-takers as follows:

(a) A data point shall be exemplary if it has an average scale score value of 205 or higher;

(b) A data point shall be exceeds standards if the average scale score is 180 to 204.9;

(c) A data point shall be meets standards if the average scale score is 175 to 179.9

(d) A data point shall be probationary if the average scale score is below 175.

B. The attendance indicator utilizes the definition of a full day of attendance as established in the Accountability Data System (ADS) and data will be collected through the ADS mechanism to establish an attendance rate for each public school.

(1) Attendance is assigned one data point per school.

(2) The State Board defines:

(a) exemplary attendance as 94% or higher;

(b) exceeds standards attendance as 93% to 93.9%;

(c) meets standards attendance as 92% to 92.9%; and,

(d) probationary attendance as below 92%.

(3) A school that receives an overall rating of probationary and also has a probationary attendance data point may appeal the attendance data point to the Commission if a higher attendance data point would prevent a probationary rating of the school and the probationary attendance data point can be explained due to weather conditions, extreme illness, transportation problems, or other such matters. The appeal must be made to the State Superintendent of Public Instruction ("State Superintendent") in writing within twenty days of the school's receipt of official notice of the school rating. The State Superintendent will designate staff to coordinate and process the appeal. If the Commission determines that the attendance data point should be rated Meets Standards, the school's rating will be amended as appropriate. The Educational Standards Commission has the final approval of the appeal of this data point.

C. The dropout indicator utilizes the National Center for Education Statistics ("NCES") definition and includes grades 7 through 12.

(1) Dropout rate is assigned one data point per school.

(2) The State Board delineates dropout data for grade levels 9 – 12 as:

(a) exemplary when it is 1.0% or less;

(b) exceeds standards when it is 1.1 % to 4.0%;

(c) meets standards when it is 4.1% to 7.0%; and,

(d) probationary when it is higher than 7.0%.

(3) For grades seven and eight, the dropout data is:

(a) exemplary when it is less than 0.1%;

(b) exceeds standards when it is 0.1% to 1.0%;

(c) meets standards when it is 1.1% to 2.5%; and,

(d) probationary when it is higher than 2.5%.

(4) When a school has a rate for 7th and/or 8th grade, and also has a rate for grade 9 or higher, the data point rating will be determined by an average of the two rates.

D. The Parent and Community Involvement indicator will utilize the school's Department-approved Parent and Community Involvement Plan and the six national standards for parent-community involvement.

E. The Safe School indicator will utilize the school's Department-

approved Safe School Plan.

[6.19.1.8 NMAC – N, 03-29-02]

#### **6.19.1.9 SCHOOL RATINGS:**

A. A school's rating will determine when intervention is appropriate.

B. A school's rating is determined by the percentage of data points that are rated as exemplary, exceeds standards, meets standards, and probationary.

C. The ratings shall be publicized each year and provided by the Department to districts and to schools.

D. New schools are not rated.

[6.19.1.9 NMAC – N, 03-29-02]

**6.19.1.10 SEVERABILITY:** If any part or application of this rule is held invalid, the remainder or its application to other situations shall not be affected.

[6.19.1.10 NMAC – N, 03-29-02]

**HISTORY OF 6.19.1 NMAC:** [Reserved]

## **NEW MEXICO BOARD OF EDUCATION**

### **TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY PART 2 PUBLIC SCHOOL ACCOUNTABILITY SYSTEM FOR SCHOOLS RATED PROBATIONARY**

#### **6.19.2.1 ISSUING AGENCY:**

State Board of Education

[6.19.2.1 NMAC – N, 03-29-02]

**6.19.2.2 SCOPE:** All public schools, including charter schools.

[6.19.2.2 NMAC – N, 03-29-02]

#### **6.19.2.3 STATUTORY**

**AUTHORITY:** Subsections A and B of Section 22-2-1 NMSA 1978, Subsections A and I of Section 22-1-6 NMSA 1978, Subsection W of Section 22-2-2 NMSA 1978, and Section 22-2-14 NMSA 1978.

[6.19.2.3 NMAC – N, 03-29-02]

#### **6.19.2.4 DURATION:**

Permanent

[6.19.2.4 NMAC – N, 03-29-02]

#### **6.19.2.5 EFFECTIVE DATE:**

March 29, 2002, unless a later date is cited at the end of a section.

[6.19.2.5 NMAC – N, 03-29-02]

**6.19.2.6 OBJECTIVE:** This rule establishes the process for intervening when schools fail to meet the expectations

established in the Accountability Rating System.

[6.19.2.6 NMAC – N, 03-29-02]

#### **6.19.2.7 DEFINITIONS:** [Reserved]

#### **6.19.2.8 PERFORMANCE WARNED AND SCHOOL IMPROVEMENT SCHOOLS:**

A. A school will be designated as "performance warned" the first time it is rated probationary. A school that is performance warned is required to conduct an analysis of its systems and design a plan to address the needs of the students and the school.

B. The second time a school is rated probationary within a three year period, it becomes a school improvement school. A school that is in school improvement shall analyze its systems, refine its plan and the planning processes, address the academic needs of students, provide for necessary professional development, and accept technical assistance from the State Department of Public Education ("Department").

C. A school that continues to rate probationary and remains in school improvement for two school years without improving its rating to "meets standards" or higher is subject to corrective action; provided, however, that upon meeting one of the following requirements, a school will continue in school improvement for an additional year:

(1) when growth data are available and the school demonstrates an increase in assessment results. This is determined by achieving an average of 1.25 times typical growth per year (or better). This must occur in a minimum of three out of five subject areas. There must not be any growth below typical growth in year 2 or 3 in any of the three subject areas; or

(2) when no growth data are available and when the school demonstrates an increase in assessment results. This is determined by scoring two standard deviations or more above the score obtained the first time it is rated probationary in any three (3) out of five (5) subject areas.

[6.19.2.8 NMAC – N, 03-29-02]

#### **6.19.2.9 CORRECTIVE ACTION SCHOOLS:**

A. A school that rates probationary, as described in 6.19.1 NMAC, for two out of three consecutive years and fails to meet the criteria for the extension of school improvement, shall be subject to corrective action.

B. Corrective action is implemented by the Department at the

direction of the State Board.

C. Corrective action involves suspension of the authority and responsibility of the local school board and subsequent State Board approved action, including: management by Department, contracted management (e.g., by another school district, individual, group, private company, university) or other action as deemed appropriate by the State Board upon recommendation by the Department. Any contractual arrangement for the operation of a corrective action school must require that the school show gains at least equal to those required in Paragraphs (1) and (2) of Subsection C of 6.19.2.8 NMAC.

D. A school that is in corrective action must follow the direction of the State Superintendent or his/her designee.

E. Corrective action for charter schools will account for the length of the charter, data from the five (5) indicators as well as information about their charter, and progress over the last four years when considering options.

[6.19.2.9 NMAC – N, 03-29-02]

#### **6.19.2.10 SUSPENSION OF A LOCAL SCHOOL BOARD FOR PURPOSES OF CORRECTIVE ACTION:**

The State Board, through the State Superintendent, may, for purposes of corrective action, suspend the authority and responsibility of a local school board or a charter school's governing body. Where the school subject to corrective action is a charter school, the State Board, through the State Superintendent, shall have final authority over decisions of the school's governing body. As used below, "local school board" includes the governing body of a charter school.

A. The suspension may be accomplished by either partially or totally suspending the local school board's authority and responsibility.

B. A total suspension permits the suspension of all the local school board's authority and responsibility.

C. A partial suspension permits the suspension:

(1) of all the local school board's authority and responsibility as it pertains to fewer than all schools within that board's district; or

(2) of some of the local school board's authority and responsibility as it pertains to any or all schools within that board's district.

D. Whether total or partial, suspension of a local school board suspends the power, duties, authority, and responsibilities of the local school board as specified in the suspension order.

E. No suspension shall be used to bring about a consolidation or reorganization of a school district without the approval of the local board of that district.

[6.19.2.10 NMAC – N, 03-29-02]

**6.19.2.11 DURATION OF SUSPENSION:** Unless otherwise provided in this rule, suspension of a local school board shall continue until requirements of law, standards or rules have been met, compliance is assured, and the State Board removes the suspension. Despite suspension of their powers, duties, authority and responsibility, nothing in this rule shall in any way limit the term of office, membership, election, re-election or recall of a local school board.

[6.19.2.11 NMAC – N, 03-29-02]

**6.19.2.12 VOLUNTARY SUSPENSION:** The authority and responsibility of a local school board may be suspended voluntarily. Such a voluntary suspension may be either total or partial. A voluntary suspension shall be accomplished by an agreement signed as between the State Superintendent and the local board, and approved by the State Board at its next available meeting.

[6.19.2.12 NMAC – N, 03-29-02]

**6.19.2.13 INVOLUNTARY SUSPENSION:** The State Superintendent may commence involuntary suspension of a local school board if a school within its district has rated probationary for two out of three consecutive years, and has failed to meet the criteria for the extension of school improvement after rating probationary for two out of three consecutive years. The State Board may direct the State Superintendent to determine if total or partial suspension of a local school board would be in the best interests of school children in a school district subject to corrective action. The State Superintendent can but need not pursue voluntary suspension procedures as a pre-condition to involuntary suspension. Except for a total suspension in which case the suspension procedures set forth at Section 22-2-14 NMSA 1978 shall apply, the following procedures shall be used to accomplish a partial suspension:

A. Issuance of a notice of proposed suspension. To commence an involuntary suspension, the State Superintendent shall issue a notice of proposed suspension that:

(1) is delivered to the local school board that is the subject of the proposed suspension;

(2) identifies the public school or public schools under the authority and responsibility of a local school board that is

the object of the proposed suspension;

(3) indicates the expected duration of the proposed suspension and that states it will not exceed the given duration unless extended by the State Board;

(4) identifies a date, place and time where the local school board may appear and show cause either orally, in writing, or both, why an order of suspension should not be issued;

(5) limits the amount of time that anyone including the local school board and their representative(s) and any witnesses may have, to address the State Superintendent at the show cause hearing;

(6) notifies the local district that a written recommendation to suspend or not to suspend shall be made within 10 days of the show cause hearing.

B. Issuance of a written recommendation. Within 10 days of the show cause hearing, the State Superintendent shall issue a written recommendation to suspend or not to suspend. Unless the State Superintendent has recommended non-suspension, he shall issue and deliver a copy of the proposed suspension order to the local school board together with a copy of the recommendation to suspend.

C. Contents of the proposed suspension order. The proposed suspension order shall:

(1) identify the group, individual(s) or combination thereof who will manage and operate the school(s) subject to corrective action;

(2) identify the public school or public schools that is the object of the proposed suspension;

(3) indicate the duration of the proposed suspension and state that it will not exceed the given duration unless extended by the State Board;

(4) give a detailed reason why suspension is being ordered;

(5) set forth the specific power, duties, authority, and responsibilities of the local school board that will be affected by the proposed suspension order;

(6) be accompanied by the outline of an action plan the State Superintendent intends to follow in providing management or necessary personnel to operate the deficient public school or schools;

(7) contain a statement that the proposed suspension order shall become a final suspension order unless the local school board appeals the State Superintendent's recommendation and proposed suspension order to the State Board within 10 days of receipt of the proposed order;

(8) contain a provision that the State Superintendent or his designee shall have the authority to direct the district busi-



ness office to execute an appropriate procurement document and enter into a lawful contract and/or a joint powers agreement with both the SDE and a qualified provider for management consultant services, goods, services and salaries. Also, the proposed suspension order shall contain the substance of the following provisions, where applicable. The management consultant shall have control over the fiscal resources of the individual school. In making purchases, management consultants shall purchase all required district goods and services in accordance with the provisions of the New Mexico Procurement Code. The funding available to management consultants for a charter school shall be governed by the 1999 Charter Schools Act [Sections 22-8B-1 to 22-8B-15 NMSA 1978]. For all other public schools, the following fiscal resources shall be available at a minimum:

(a) a program cost amount determined by the membership of the school subject to corrective action, using the same methodology used to calculate program cost for a school district. For the purpose of calculating the school subject to corrective action's program cost, the district's training and experience index and the district's at-risk index shall be used;

(b) that portion of money from state, federal or local programs generated by students enrolled in the school subject to corrective action eligible for that aid; and

(c) any capital outlay funding designated for the school subject to corrective action;

(9) contain a provision that directs the district business office to include in that district's annual audit any public school funds used or expended by any person or entity listed at Subsection A of 6.19.2.14 NMAC who is carrying out a corrective action.

**D. Appeal of Proposed Suspension Order.** Only a local school board may appeal a proposed suspension order to the State Board. A final suspension order shall not for any reason be subject to appeal to, or review or reconsideration by, the State Superintendent or State Board. To appeal a proposed suspension order, the following procedures must be followed:

(1) A written notice of appeal shall be filed with the State Board within 10 days of receipt of the State Superintendent's recommendation and proposed suspension order.

(2) The State Superintendent shall schedule the matter to be heard by the State Board, after giving the local school board at least 30 days within which to submit its written reasons and documents to support its position that a suspension should not be ordered at all or in the manner proposed.

(3) The State Superintendent shall have 10 days from the receipt of the local school board's written reasons and supporting documents to submit any rebuttal reasons or documentation in support of the proposed suspension order. With the exception of provisions of law or rules, no other documents by either side shall be permitted to be submitted to or considered by the State Board.

(4) The State Board shall allow either side, including any witnesses, a total of 30 minutes to present their position.

(5) At any time prior to the end of its meeting, the State Board shall issue a decision and order which shall either:

(a) deny the State Superintendent's proposed suspension order, or

(b) allow the State Superintendent's proposed suspension order and impose any conditions on the suspension that do not violate state laws or existing State Board rules.

(6) Any decision and order of the State Board that suspends a local school board shall order the suspension to become effective on the first day of the month following the meeting of the State Board that allowed the suspension.

(7) The decision and order of the State Board is final and shall not be subject to further appeal to, or review or reconsideration by, the State Board.

(8) Notwithstanding its decision and order, the State Board shall have continuing authority to order a modification or early termination of a suspension order, provided it justifies its action at a State Board meeting and gives both sides the opportunity to be heard.

**E. Termination of Suspension.** A suspension of a local school board under this rule shall terminate only upon approval by the State Board at its next available meeting convened as near as practicable to the month set for termination in the suspension order. Provided, however, that:

(1) Either the State Superintendent or a local school board may seek an earlier termination by submitting a detailed written request to the State Board.

(2) Upon termination of suspension where the local school board is for whatever reason no longer lawfully constituted, the State Superintendent shall assist in a transition capacity only, until a new school board has been duly elected and sworn.

(3) Any power, duties, authority, and responsibilities held by the State Superintendent during the suspension shall be deemed immediately transferred

to the local school board upon the termination of the suspension by the State Board.

(4) The State Board may at any time on its own terminate a suspension, provided that it does so at a public meeting where it gives its reasons for the decision.

**F. Enforcement of Suspension.** The State Superintendent or State Board may enforce this rule by applying to the district court for an injunction, writ of mandamus or other appropriate relief.

[6.19.2.13 NMAC – N, 03-29-02]

#### **6.19.2.14 IMPLEMENTATION OF CORRECTIVE ACTION:**

**A. The State Superintendent** shall prescribe a written action plan on how the corrective action school(s) will be managed and operated during the life of the suspension. The action plan need not be finalized at the time the suspension becomes effective and once completed may be modified at any time as circumstances change. The action plan shall be maintained by the state superintendent or his designee. The action plan may encompass the use of any or all of the following groups or individuals in managing or operating the corrective action school(s):

(1) the Department;

(2) contracted consultants;

(3) contracted management (e.g., another school district, individual, group, private company, university);

(4) contracted for individuals from other school districts, educational cooperatives, educational organizations, or the state's colleges and universities;

(5) any combination of the foregoing.

**B. Effect of Suspension on District Employees.** While it shall not be the express purpose of a suspension under this rule to terminate, discharge, or replace licensed or unlicensed district or charter school employees, the State Superintendent shall possess and execute all the legal authority and responsibility of the suspended local school board subject to the following restrictions.

(1) The object of the State Superintendent's authority and responsibility shall be limited to the school or schools identified in the suspension order.

(2) The scope of the State Superintendent's authority and responsibility shall be limited to the school or schools identified in the suspension order.

(3) The retention of existing district administrators and employees shall be considered.

(4) Any termination or discharge of district employees must be conducted in

accordance with the applicable sections of the School Personnel Act [Section 22-10-1 et seq. NMSA 1978].

(5) Any adverse personnel action of any licensed or unlicensed district employee shall be limited to the authority set forth in the suspended district's policies.

(6) The State Superintendent shall not be obligated to honor any district employment plans or letters of intent issued pursuant to Section 22-10-13 NMSA 1978 that involve the hiring of an individual holding or seeking a substandard license.

C. In the event any group or individual(s) identified in the corrective action plan fails, refuses or otherwise ceases to perform in accordance with the State Superintendent action plan or pursuant to a contract entered into with a corrective action school, the authority and responsibility to manage the corrective action school under the corrective action plan shall immediately revert to the State Superintendent. [6.19.2.14 NMAC – N, 03-29-02]

#### 6.19.2.15 ANNUAL STATUS REPORT:

The State Superintendent shall report on the progress of any local school board suspension periodically to the State Board. At a minimum, the State Superintendent shall report to the State Board on the 12th-month anniversary of the suspension of a local school board. Additionally, he shall report to the State Board upon the termination of suspension of a local school board. Modification of any action plans need not be reported unless they involve substantial changes.

[6.19.2.15 NMAC – N, 03-29-02]

**6.19.2.16 SEVERABILITY:** If any part or application of this rule is held invalid, the remainder or its application to other situations shall not be affected.

[6.19.2.16 NMAC – N, 03-29-02]

#### HISTORY OF 6.19.2 NMAC: [Reserved]

### NEW MEXICO HUMAN SERVICES DEPARTMENT

#### MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 11 and 20, which will be effective on April 1, 2002. The Medical Assistance Division amended subsections in section 11 by changing the poverty income guidelines dollar amounts and updating the year in Section 20.

#### 8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. **100% Of Federal Poverty:** 100% of Federal Poverty Income

#### Guidelines

##### Size of Assistance Unit

##### Poverty Income Guidelines

1	[ <del>\$716</del> ] \$739 per month*
2	[ <del>\$968</del> ] \$995 per month*
3	[ <del>\$1,220</del> ] \$1,252 per month
4	[ <del>\$1,471</del> ] \$1,509 per month
5	[ <del>\$1,723</del> ] \$1,765 per month
6	[ <del>\$1,975</del> ] \$2,022 per month
7	[ <del>\$2,226</del> ] \$2,279 per month
8	[ <del>\$2,478</del> ] \$2,535 per month

Add [~~\$252~~] \$256 for each additional person in the assistance unit.

\* Use only these two standards for the QMB program.

B. **120% Of Federal Poverty:** This Income Level is used only in the determination of the maximum income limit for Specified Low Income Medicare Beneficiaries (SLIMB) applicants/recipients. [~~Effective April 1, 1998, the following income levels apply:~~]

##### Applicant/Recipient

##### Amount

1. Individual	At least [ <del>\$716</del> ] \$739 per month but no more than [ <del>\$859</del> ] \$886 per month.
2. Couple	At least [ <del>\$968</del> ] \$995 per month but no more than [ <del>\$1,161</del> ] \$1,194 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. **133% Of Federal Poverty:** 133% of Federal Poverty Income Guidelines

##### Size of Assistance Unit

##### Poverty Income Guidelines

1	[ <del>\$953</del> ] \$982 per month
2	[ <del>\$1,287</del> ] \$1,324 per month
3	[ <del>\$1,622</del> ] \$1,665 per month
4	[ <del>\$1,957</del> ] \$2,007 per month
5	[ <del>\$2,291</del> ] \$2,348 per month
6	[ <del>\$2,626</del> ] \$2,689 per month
7	[ <del>\$2,961</del> ] \$3,031 per month
8	[ <del>\$3,296</del> ] \$3,372 per month

Add [~~\$334~~] \$342 for each additional person in the assistance unit.

D. **135% Of Federal Poverty:** This income level is used only in the determination of the maximum income limit for Qualified Individuals 1 (QI-1) applicants/recipients. The following income levels apply:

##### Applicant/Recipient

##### Amount

1. Individual	At least [ <del>\$859</del> ] \$886 per month but no more than [ <del>\$967</del> ] \$997 per month.
2. Couple	At least [ <del>\$1,161</del> ] \$1,194 per month but no more than [ <del>\$1,307</del> ] \$1,344 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

E. **185% Of FEDERAL POVERTY:**

##### Size of Assistance Unit

##### Poverty Income Guidelines

1	[ <del>\$1,325</del> ] \$1,366 per month
2	[ <del>\$1,790</del> ] \$1,841 per month
3	[ <del>\$2,256</del> ] \$2,316 per month
4	[ <del>\$2,722</del> ] \$2,791 per month
5	[ <del>\$3,187</del> ] \$3,266 per month
6	[ <del>\$3,653</del> ] \$3,741 per month
7	[ <del>\$4,118</del> ] \$4,215 per month
8	[ <del>\$4,584</del> ] \$4,690 per month

Add [~~\$466~~] \$475 for each additional person in the assistance unit.

F. **200% Of Federal Poverty:** 200% of Federal Poverty Income Guidelines

##### Size of Assistance Unit

##### Poverty Income Guidelines

1	[ <del>\$1,432</del> ] \$1,477 per month
2	[ <del>\$1,935</del> ] \$1,990 per month

G. **235% Of Federal Poverty:** 235% of Federal Poverty Income

## Guidelines

<u>Size of Assistance Unit</u>	<u>Poverty Income Guidelines</u>
1	<del>[\$1,683]</del> <u>\$1,736 per month</u>
2	<del>[\$2,274]</del> <u>\$2,339 per month</u>
3	<del>[\$2,866]</del> <u>\$2,942 per month</u>
4	<del>[\$3,457]</del> <u>\$3,545 per month</u>
5	<del>[\$4,048]</del> <u>\$4,148 per month</u>
6	<del>[\$4,640]</del> <u>\$4,751 per month</u>
7	<del>[\$5,231]</del> <u>\$5,355 per month</u>
8	<del>[\$5,823]</del> <u>\$5,958 per month</u>

Add ~~[\$592]~~ \$603 for each additional person in the assistance unit.

H. **250% Of Federal Poverty:** 250% of Federal Poverty Income

## Guidelines

<u>Size of Assistance Unit</u>	<u>Poverty Income Guidelines</u>
1	<del>[\$1,790]</del> <u>\$1,846 per month</u>
2	<del>[\$2,419]</del> <u>\$2,488 per month</u>
3	<del>[\$3,048]</del> <u>\$3,130 per month</u>
4	<del>[\$3,678]</del> <u>\$3,771 per month</u>
5	<del>[\$4,307]</del> <u>\$4,413 per month</u>
6	<del>[\$4,936]</del> <u>\$5,055 per month</u>
7	<del>[\$5,565]</del> <u>\$5,696 per month</u>
8	<del>[\$6,194]</del> <u>\$6,338 per month</u>

Add ~~[\$630]~~ \$642 for each additional person in the assistance unit.

[1-1-95, 4-1-95, 4-15-96, 4-1-97, 3-31-98, 3-1-99, 4-1-99, 4-1-00; 8.200.520.11 NMAC – Rn, 8 NMAC 4.MAD.520.1-5, & 14, & A, 1-1-01; A, 4-1-01; A, 4-1-02]

**8.200.520.20 COVERED QUARTER INCOME STANDARD:**

<u>DATE</u>	<u>CALENDAR QUARTER AMOUNT</u>
Jan. <del>[2001]</del> <u>2002</u> – Dec. <del>[2001]</del> <u>2002</u>	\$870 per calendar quarter
[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02]	

**NEW MEXICO BOARD OF MEDICAL EXAMINERS**

The is a notice to repeal and replace the following rules effective April 18, 2002: 16 NMAC 10.2 Licensure as a Medical Practitioner will be replaced with 16.10.2 NMAC Physicians: Licensure Requirements; 16 NMAC 10.3 Interim and Temporary Licenses will be replaced with 16.10.3 NMAC Examinations; 16 NMAC 10.4 Continuing Medical Education will be replaced with 16.10.4 NMAC Continuing Medical Education; 16 NMAC 10.5 Disciplinary Power of the Board will be replaced with 16.10.5 NMAC Disciplinary Power of the Board, 16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action will be replaced with 16.10.6 NMAC Complaint Procedure and Disciplinary Action; and 16 NMAC 10.13 Devices and Procedures: Use by Medical and Non-Medical Personnel will be replaced by 16.10.13 NMAC Use of Devices and Procedures by Unlicensed Personnel. 16.10.2.9 NMAC, Medical License will be effective May 1, 2002.

**NEW MEXICO BOARD OF MEDICAL EXAMINERS**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS**  
**PART 2 PHYSICIANS:**  
**LICENSURE REQUIREMENT**

**16.10.2.1 ISSUING AGENCY.** New Mexico Board of Medical Examiners, hereafter called the board.

[16.10.2.1 NMAC – Rp 16 NMAC 10.2.1, 4/18/02]

**16.10.2.2 SCOPE.** This part applies to all allopathic physicians applying for licensure in New Mexico.  
 [16.10.2.2 NMAC – Rp 16 NMAC 10.2.2, 4/18/02]

**16.10.2.3 STATUTORY AUTHORITY.** This Part governs the licensing of medical doctors in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-11, 61-6-11.1, 61-6-12, 61-6-13, 61-6-14, 61-6-15, 61-6-18, 61-6-18.1, and 61-6-19 NMSA 1978.  
 [16.10.2.3 NMAC – Rp 16 NMAC 10.2.3, 4/18/02]

**16.10.2.4 DURATION.**

## Permanent

[16.10.2.4 NMAC – Rp 16 NMAC 10.2.4, 4/18/02]

**16.10.2.5 EFFECTIVE DATE.** April 18, 2002, unless a later date is cited at the end of a section.

[16.10.2.5 NMAC – Rp 16 NMAC 10.2.5, 4/18/02]

**16.10.2.6 OBJECTIVE.** This part establishes requirements and procedures for licensure as a physician in New Mexico.

[16.10.2.6 NMAC – Rp 16 NMAC 10.2.6, 4/18/02]

**16.10.2.7 DEFINITIONS.**

**A. “Board approved school”** means a medical college or school that has been approved by the Liaison Committee on Medical Education, composed of the American Medical Association and the Association of American Medical Colleges, or is on the approved list of the California State Medical board, or has been approved by the Board.

**B. “Board approved training program”** means a program approved by the Accrediting Council on Graduate Medical Education of the American Medical Association.

**C. “FCVS”** means the Federation of State Medical Boards Credential Verification Service.

**D. “Telemedicine”** means the practice of medicine across state lines as defined in the Medical Practice Act, Section 61-6-6, K NMSA 1978.

[16.10.2.7 NMAC – Rp 16 NMAC 10.2.7, 4/18/02]

**16.10.2.8 CATEGORIES OF ACTIVE LICENSES.** Individuals holding one of the following categories of medical license are eligible to practice medicine and surgery in New Mexico.

**A. Medical.** An unrestricted license to practice medicine and surgery.

**B. Interim License.** An unrestricted license that enables the physician to practice between the date of issuance and the issuance of a permanent medical license after completion of the mandatory Orientation meeting.

**C. Telemedicine.** A limited medical license that allows a physician located outside New Mexico to practice medicine on patients located in New Mexico.

**D. Post-Graduate.** A limited training license issued by the board to physicians who are enrolled in a board approved training program.



**E. Public Service.** A limited license issued by the board to physicians in training who have successfully completed one year of post-graduate training.

**F. Temporary.** A limited license that allows a physician to practice medicine for a limited time after meeting certain specific conditions.

[16.10.2.8 NMAC – N, 4/18/02]

## 16.10.2.9 MEDICAL LICENSE.

**A. Prerequisites for Licensure.** Each applicant for a license to practice as a medical doctor in New Mexico must possess the following qualifications:

(1) Graduated and received a diploma from a Board approved school;

(2) Successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) Completed two years of post-graduate training or been approved by the Board in accordance with the provisions of Section 61-6-11, C NMSA 1978;

(4) When the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) A qualified applicant who has not been actively and continuously in practice for more than 2 years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (Special Purpose Examination), the PLAS (Post-Licensure Assessment System of the Federation of State Medical Boards), or specialty re-certification.

**B. Required Documentation for all applicants.** Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) A completed application signed and notarized with a passport-quality photo taken within the previous 6 months. Applications are valid for 1 year from the date of receipt by the Board;

(2) Verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be sent directly to the board office from the other state board(s), must include a raised seal, and must attest to the status, issue date, license number, and other information requested and contained on the form;

(3) Two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the

applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine. The recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance. Forms must be sent directly to the board from the recommending physician;

(4) Verification of all hospital affiliations in the last five years, if applicable, not to include postgraduate training; and

(5) A copy of all ABMS specialty board certifications, if applicable.

(6) The board may request that applicants be investigated by the biographical section of the American Medical Association, the Drug Enforcement Administration, the Federation of State Medical Boards, the National Practitioner Data Bank, and other sources as may be deemed appropriate by the board. The board may also request information from other medical licensing boards and hospitals where the applicant has practiced; and

(7) Applicants who have graduated from a medical school not located in the United States must provide proof that they are in compliance with the immigration laws of the United States.

**C. Additional Documentation for applicants using the FCVS.** All applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the Board. Only the documents required in 16.10.2.9.B are required in addition to the FCVS report.

**D. Additional Documentation for applicants applying directly to New Mexico and not using FCVS.**

(1) Verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) Transcripts sent directly to the board from the medical school;

(3) Notarized copy of diploma;

(4) Status report of ECFMG certification sent directly to the Board from ECFMG, if applicable.

(5) Copy of ECFMG interim letter documenting additional postgraduate training for International Medical Graduates applying through the Fifth Pathway process, if applicable;

(6) Postgraduate training form sent to the Board directly from the training program;

(7) Certified transcripts of exam

scores as required in 16.10.3 NMAC sent directly to the Board from the testing agency; and

(8) Proof of identity must be presented at the personal interview. Acceptable documents include birth certificate, passport, naturalization documents, and visas.

(9) Certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

**E. Licensure Process.** Upon receipt of a completed application, including all required documentation and fees, the applicant will be scheduled for a personal interview before the board or a board member designated by the board and must present original documents as requested by the board.

(1) Applicants whose applications are complete and who successfully complete the interview may be issued an Interim license valid for a period of up to twelve months.

(2) In addition to the required personal interview, each applicant approved for licensure must personally attend the board Orientation meeting within twelve months of the date of the interview prior to the issuance of a permanent license.

(3) Following attendance at the Orientation meeting, the applicant will receive a permanent license to practice medicine.

**F. Initial License Expiration.** Medical licenses expire on July 1 of every third year. Initial licenses are valid for a period of not more than thirty-seven months or less than thirty months. [16.10.2.9 NMAC – N, 5/1/02]

## 16.10.2.10 TELEMEDICINE LICENSE.

**A. Prerequisites for Licensure.** Each applicant for a Telemedicine license must be of good moral character and hold a full and unrestricted license to practice medicine in another state or territory of the United States.

**B. Required Documentation.** Each applicant for a telemedicine license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) Completed application, signed and notarized with a passport quality photo taken within 6 months. Applications are valid for 1 year from the date of receipt;

(2) Verification of licensure in all states where the applicant holds or has held a license to practice medicine, or other

health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information requested and contained on the form.

(3) Applicants who have had previous disciplinary or other action against them are required to meet with the entire board. The board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.

#### C. Licensure Process.

Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA Physician Profile and Federation of State Medical Boards Board Action Databank Search. When the application is complete the Secretary-Treasurer or board designee will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved. Attendance at the board orientation meeting is not required.

**D. Initial License Expiration.** Telemedicine licenses expire on July 1 of every third year. Initial licenses are valid for a period of not more than three years or less than two years.

**E. Exemption from Licensure Requirements** are defined in Section 61-6-17 of the Medical Practice Act and include a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico licensed physician on an irregular or infrequent basis not to exceed ten patients per year.

[16.10.2.10 NMAC – N, 4/18/02]

**16.10.2.11 POSTGRADUATE TRAINING LICENSE.** A Postgraduate Training license is required for all interns, residents, and fellows enrolled in board approved training programs within the State. Individuals enrolled in board approved training programs outside of New Mexico may apply for a Postgraduate Training license as a pre-requisite to obtaining a New Mexico Public Service license.

**A. Required Documentation.** Each applicant shall submit the required fee as specified in 16.10.9.8 NMAC and complete the Board-approved application.

(1) Applicants enrolled at the University of New Mexico Health Science Center must submit an application through the Office of Graduate Medical Education for review before it is forwarded to the Board for review and approval.

(2) Applicants enrolled at a board approved training program outside New Mexico must submit the postgraduate training license application directly to the Board.

#### B. Licensure Process.

Upon receipt of a completed application and fee, the Secretary-Treasurer or board designee will review the application and may approve the license.

#### C. License Expiration:

Postgraduate Training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate Training licenses may be renewed prior to expiration..

[16.10.2.11 NMAC – Rp 16 NMAC 10.2.13, 4/18/02]

#### 16.10.2.12 PUBLIC SERVICE

**LICENSE.** A resident physician may apply for a public service license, which enables him to practice medicine outside the training program. The resident physician must be continuing in the board approved training program.

#### A. Prerequisites for

**Licensure.** Each applicant for a Public Service license shall have graduated from an approved medical school, passed all required examinations as defined in 16.10.3 NMAC, and completed one year of postgraduate training. In addition, the applicant shall have completed an application for licensure including all required documentation and FCVS, or the documentation required in 16.10.2.9, B if applicable. Other requirements include:

(1) Written approval from his training program director.

(2) A Postgraduate Training license issued by the New Mexico Board of Medical Examiners.

(3) A resident physician with one-year postdoctoral training may only apply for a public service license when he is under the direct supervision of a New Mexico physician or when employed in a medically underserved area.

(4) If a physician is not being supervised directly, there must be procedures in place for a licensed New Mexico physician to review, on at least a quarterly basis, prescriptions written and dispensed for controlled substances and operative procedures performed.

**B. Required Documentation.** Each applicant for a Public Service license shall submit the required fee as specified in 16.10.9.8 NMAC and the following documentation:

(1) Completed application, signed

and notarized with a passport quality photo taken within the previous 6 months. Applications are valid for 1 year from the date of receipt;

(2) Letter of approval from the Training Program Director.

#### C. Licensure Process.

Upon receipt of a completed application, including all required documentation and fees, the applicant will be scheduled for a personal interview before the board or a board member designated by the board and must present original documents as requested by the board.

(1) Applicants whose applications are complete and who successfully complete the interview may be issued an Interim license valid for a period of up to twelve months.

(2) In addition to the required personal interview, each applicant approved for licensure must personally attend the board Orientation meeting within twelve months of the date of the interview prior to the issuance of a public service license.

(3) Following attendance at the Orientation meeting, the applicant will receive a public service license to practice medicine.

#### D. License Expiration.

Public Service licenses expire on July 1. Initial licenses are valid for a period of not more than 13 months or less than 8 months, or until completion of the training program. Public Service licenses may be renewed annually as long as the applicant remains eligible.

[16.10.2.12 NMAC – Rp 16 NMAC 10.2.14, 4/18/02]

#### 16.10.2.13 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES.

The Secretary-Treasurer may issue temporary licenses to physicians licensed in other states or jurisdictions who wish to teach, conduct research, or perform specialized diagnostic and treatment procedures in New Mexico on a temporary basis. The following provisions apply:

#### A. Prerequisites for

**Licensure.** The applicant must:

(1) Be otherwise qualified to practice medicine in New Mexico;

(2) Hold an unrestricted license in another state or country;

(3) Submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico;

**B. Required Documentation:**

(1) Specific program or protocol of work planned;

(2) Address of sponsoring institu-

tion or organization where the work will be performed;

(3) An affidavit from the sponsoring physician attesting to the qualifications of the applicant and the purpose of the functions or medical procedures the applicant will perform;

(4) Verification of licensure in state or jurisdiction where physician is practicing; and

(5) A license fee as set forth in 16.10.9 NMAC.

#### C. Licensure Process.

Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA Physician Profile and Federation of State Medical Boards Board Action Databank Search. When the application is complete the Secretary-Treasurer or board designee will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

D. The applicant may perform only those functions listed in the application.

E. The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. If the plan changes, an updated plan must be submitted by the sponsoring physician to the Board for review and approval.

[16.10.2.13 NMAC – Rp 16 NMAC 10.3.9, 4/18/02]

**16.10.2.14 YOUTH CAMP OR SCHOOL LICENSES.** The Secretary-Treasurer may issue temporary licenses to physicians to provide temporary medical services to organized youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Applicants must be qualified for licensure in New Mexico and shall submit the following documentation:

A. Completed application with a passport-quality photograph, taken within the previous 6 months, attached;

B. Verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

C. Verification of D.E.A. permit; and,

D. A temporary license fee as set forth in 16.10.9.8 NMAC.

E. Licensure Process. Upon receipt of a completed application,

including all required documentation and fees, board staff will request and review an AMA Physician Profile and Federation of State Medical Boards Board Action Databank Search. When the application is complete the Secretary-Treasurer or board designee will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction. [16.10.2.14 NMAC – Rp 16 NMAC 10.3.8, 4/18/02]

#### HISTORY OF 16.10.2 NMAC

**Pre-NMAC History** The material in this Part was derived from that previously filed with State Records Center & Archives under:

Rule 3, Licensure as a Medical Practitioner, filed 10-26-94

Rule 3, Licensure as a Medical Practitioner, filed 06-21-93

Rule 4, Temporary Licenses, filed 12-19-89  
NMBME Rule 88-1, Temporary Licenses, filed 05-31-88

History or Repealed Material:

16 NMAC 10.2, Licensure as a Medical Practitioner – Repealed 4/18/02

16 NMAC 10.3, Interim and Temporary Licenses – Repealed 4/18/02

## NEW MEXICO BOARD OF MEDICAL EXAMINERS

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 3 EXAMINATIONS

**16.10.3.1 ISSUING AGENCY:** New Mexico Board of Medical Examiners, hereafter called the board.

[16.10.3.1 NMAC – N, 4/18/02]

**16.10.3.2 SCOPE:** This part applies to all allopathic physicians applying for licensure in New Mexico.

[16.10.3.2 NMAC – N 4/18/02]

**16.10.3.3 STATUTORY AUTHORITY:** This Part governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 and 61-6-13 NMSA 1978.

[16.10.3.3 NMAC – N, 4/18/02]

**16.10.3.4 DURATION:** Permanent

[16.10.3.4 NMAC – N, 4/18/02]

**16.10.3.5 EFFECTIVE DATE:** April 18, 2002, unless a later date is cited at the end of a section.

[16.10.3.5 NMAC – N, 4/18/02]

**16.10.3.6 OBJECTIVE:** This Part establishes examination requirements for physicians seeking licensure as an allopathic physician in New Mexico.

[16.10.3.6 NMAC – N, 4/18/02]

**16.10.3.7 DEFINITIONS:** “USMLE” means the United States Medical Licensing Examination, an examination of three separate “steps.”

[16.10.3.7 NMAC – N, 4/18/02]

### 16.10.3.8 BOARD-APPROVED EXAMINATIONS FOR APPLICANTS WHO EXAMINED PRIOR TO JANUARY 1, 2000.

A. Graduates of U. S. and Canadian medical schools must have passed the FLEX (Components 1 & 2), the NBME (Parts I, II, & III), the USMLE (Steps 1, 2, & 3), the Canadian Medical Licensing Examination (LMCC Parts 1 & 2), or one of the combination examinations listed in Paragraph C.

B. International Medical Graduates must have passed the ECFMG examination plus either the Federation Licensing Examination (FLEX), the NBME, the LMCC, the USMLE, or one of the combination examinations listed in Paragraph C.

C. Eligible combination exams include the following, as long as the entire combination is successfully completed prior to January 1, 2000;

(1) USMLE, Step 1; NBME, Parts II and III.

(2) USMLE, Steps 1 and 2; NBME, Part III.

(3) USMLE, Steps 1 and 3; NBME, Part II.

(4) NBME, Part I; USMLE, Steps 2 and 3.

(5) NBME, Parts 1 and 2; USMLE, Step 3.

(6) NBME, Parts 1 and 3; USMLE, Step 2.

(7) ECFMG; FLEX, Component 1; USMLE, Step 3.

(8) NBME, Part 1; USMLE, Step 2; ECFMG; FLEX; Component 2; FLEX.

(9) NBME, Parts 1 and 2; ECFMG; FLEX, Component 2.

(10) USMLE, Step 1; NBME, Part 2; ECFMG; FLEX, Component 2.

(11) USMLE, Steps 1 and 2; ECFMG; FLEX Component 2; or,

(12) A New Mexico state board



examination or a state board examination given in another state if that examination were equivalent to the last New Mexico state board examination. That state examination would be considered equivalent if it were to have contained both basic science and clinical components and had been taken and passed prior to the end of 1973 with a score of 75 or higher.

[16.10.3.8 NMAC – Rp 16 NMAC 10.2.9, 4/18/02]

#### **16.10.3.9 BOARD-APPROVED EXAMINATIONS FOR APPLICANTS COMPLETING EXAMINATIONS AFTER JANUARY 1, 2000:**

**A.** Graduates of U.S. medical schools are required to pass the United States Medical Licensing Examination (USMLE, Steps 1, 2, & 3).

**B.** International Medical Graduates are required to pass the Educational Commission for Foreign Medical Graduates (ECFMG) examination for English proficiency and the USMLE, Steps 1, 2 & 3 or LMCC.

**C.** Graduates of Canadian medical schools may pass the Canadian Medical Licensing Examination (LMCC), Parts 1 & 2 or the USMLE Steps 1, 2 & 3. [16.10.3.9 NMAC – Rp 16 NMAC 10.2.9, 4/18/02]

#### **16.10.3.10 SUCCESSFUL COMPLETION OF EXAMINATIONS**

**A.** An applicant must score a minimum of 75 on each component part of a board-approved examination. The minimum score of 75 may not be achieved for any component part of an examination by averaging that component's scores with scores of other component part(s).

**B.** A FLEX weighted average score of 75 or higher will be considered passing if obtained by testing prior to June 1984.

**C.** Except as set forth in below, an applicant may attempt six times to successfully complete any part of a board-approved examination, as long as the entire examination is successfully completed within seven years from the date the first step of the examination is passed.

**D.** An applicant taking a combination examination set forth above in 16.10.3.8 must successfully complete the combination examination by January 1 of the year 2000. If not, the applicant must successfully complete the USMLE (Steps 1, 2, and 3). Either the combination examination or the USMLE must be successfully completed in a total of six attempts maximum for each Part. The applicant must successfully complete a combination examination or the USMLE within seven years from

the date any Part of the combination examination was first passed.

**E.** Applicants who are MD/PhD candidates must successfully complete the entire examination within ten years from the date the first step of the examination is passed.

**F.** Candidates may repeat a previously passed Step if they need to retake the exam in order to bring an entire sequence within the mandated time frame. [16.10.3.10 NMAC – Rp 16 NMAC 10.9.2, 4/18/02]

**16.10.3.11 SPECIAL EXAMINATIONS.** The board may require a qualified applicant who has not been actively and continuously in practice for more than 2 years prior to applying for licensure, license renewal, or re-instatement, and who has previously passed a board-approved examination, also to successfully complete a special examination, such as the SPEX (Special Purpose Examination), the PLAS (Post-Licensure Assessment System) of the Federation of State Medical Boards (FSMB), or specialty re-certification examination (American Board of Medical Specialties) as a requirement for such licensure. To successfully complete the SPEX, the applicant must obtain a minimum score of 75.

[16.10.3.11 NMAC – Rp 16 NMAC 10.2.9.3, 4/18/02]

#### **HISTORY OF 16.10.3 NMAC:**

**Pre-NMAC History** The material in this Part was derived from that previously filed with State Records Center & Archives under:

Rule 3, Licensure as a Medical Practitioner, filed 10-26-94

Rule 3, Licensure as a Medical Practitioner, filed 06-21-93

#### **History of Repealed Material:**

16 NMAC 10.2, Licensure as a Medical Practitioner – Repealed 4/18/02

### **NEW MEXICO BOARD OF MEDICAL EXAMINERS**

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 4 CONTINUING MEDICAL EDUCATION**

**16.10.4.1 ISSUING AGENCY:** New Mexico Board of Medical Examiners, hereafter called the board.

[16.10.4.1 NMAC – Rp 16 NMAC 10.4.1, 4/18/02]

**16.10.4.2 SCOPE:** This part applies to physicians licensed by the board. [16.10.4.2 NMAC – Rp 16 NMAC 10.4.2, 4/18/02]

**16.10.4.3 STATUTORY AUTHORITY:** This Part governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Section 61-6-21 NMSA 1978 [16.10.4.3 NMAC – Rp 16 NMAC 10.4.3, 4/18/02]

**16.10.4.4 DURATION:** Permanent [16.10.4.4 NMAC – Rp 16 NMAC 10.4.4, 4/18/02]

**16.10.4.5 EFFECTIVE DATE:** April 18, 2002, unless a later date is cited at the end of a section. [16.10.4.5 NMAC – Rp 16 NMAC 10.4.5, 4/18/02]

**16.10.4.6 OBJECTIVE:** This Part establishes continuing education requirements for license renewal. [16.10.4.6 NMAC – Rp 16 NMAC 10.4.6, 4/18/02]

**16.10.4.7 DEFINITIONS:**  
**A.** “AMA” means the American Medical Association.  
**B.** “CME” means continuing medical education. [16.10.4.7 NMAC – N, 4/18/02]

**16.10.4.8 HOURS REQUIRED:** Seventy-five hours of continuing medical education are required during each triennial renewal cycle. CME may be earned at any time during the licensing period, July 1 through June 30 immediately preceding the triennial renewal date.

**A.** Physicians renewing their license in 2002 may use CME hours obtained between January 1, 1999 and June 30, 2002.

**B.** Physicians renewing their license in 2003 may use CME hours obtained between January 1, 2000 and June 30, 2003.

**C.** Physicians renewing their license in 2004 may use CME hours obtained between January 1, 2001 and June 30, 2004.

**D.** After July 1, 2004, all CME must be obtained within the three-year renewal cycle or a deferral must be granted as defined in section 14 of this Part. [16.10.4.8 NMAC – Rp 16 NMAC 10.4.8, 4/18/02]

**16.10.4.9 CREDIT HOURS:** The Board

accepts one credit hour for every clock hour of participation in a CME activity.  
[16.10.4.9 NMAC – N, 4/18/02]

**16.10.4.10 ACCEPTABLE AS CME:** The Board will accept any of the following as fulfillment of CME requirements:

- A. The Physician's Recognition Award of the AMA,
  - B. The American Academy of Family Physicians (AAFP) Certificate of Continuing Education, or
  - C. Certification or re-certification by an ABMS approved specialty board during the renewal period.
- [16.10.4.10 NMAC – N, 4/18/02]

**16.10.4.11 ALLOWED COURSES AND PROVIDERS:** The following courses and activities are acceptable for CME credit:

**A. AMA CATEGORY 1.** Clinical courses certified by an accredited sponsor of the AMA Physician's Recognition Award, Category 1, are acceptable for credit.

**B. NM CATEGORY 1.** Clinical courses certified by the New Mexico Medical Society Continuing Medical Education Committee as meeting the criteria for AMA category 1, but certified as New Mexico category 1 specific, are acceptable for credit.

**C. POST GRADUATE EDUCATION.** Forty (40) credit hours per year are allowed for participation in a postgraduate education program, which has been approved by the Board or by the AMA Liaison Committee on Graduate Medical Education. This category includes internships, residencies and fellowships.

**D. ADVANCED DEGREES.** Forty (40) credit hours are allowed for each full academic year of study toward an advanced degree in a medical field or a medically related field as approved by the Board.

**E. SELF ASSESSMENT TESTS.** Self-assessment examinations certified for AMA Category 1 by an accredited sponsor of continuing medical education are acceptable if the examination is scored by an educational entity approved by the Board.

**F. TEACHING.** One credit hour is allowed for each hour of teaching medical students or physicians in a United States medical school, an approved internship or residency or for teaching in other programs approved by the Board for a maximum of forty (40) credit hours in any three-year reporting period.

**G. PHYSICIAN PRECEPTORS.** A maximum of thirty (30)

hours of credit during a three year reporting period is acceptable for licensed physicians who are acting as preceptors for students enrolled in an accredited medical school.

**H. PAPERS AND PUBLICATIONS.** Ten (10) hours of credit are allowed for each original scientific medical paper or publication written by a licensee. For acceptance, papers must have been presented to a recognized national, international, regional or state society, or organization whose membership is primarily physicians; or must have been published in a recognized medical or medically related scientific journal. Material used in a paper or publication may be given credit one time. A maximum of thirty (30) hours credit may be claimed during each three-year reporting period.

**I. CARDIO-PULMONARY RESUSCITATION.** Credit may be claimed during each three-year reporting period for successful completion of ACLS (advanced cardiac life support), PALS (pediatric advanced life support), ATLS (advanced trauma life support) and NALS (neonatal advanced life support) courses.

[16.10.4.11 NMAC – Rp 16 NMAC 10.4.8, 4/18/02]

**16.10.4.12 LIMITATIONS:** During each renewal cycle credit will be given for a maximum of twenty-five credit hours for CME that has been obtained using the Internet. Hours obtained online must be approved by the AMA or state equivalent.

[16.10.4.12 NMAC – N, 4/18/02]

**16.10.4.13 VERIFICATION OF CME:** Each physician renewing a license shall attest that they have obtained the required hours of CME. The Board will select renewal applications for audit to verify completion of acceptable CME. The Board may audit CME records at any time. CME records must be maintained for one year following the renewal cycle in which they are earned.

[16.10.4.13 NMAC – N, 4/18/02]

**16.10.4.14 ACCEPTABLE DOCUMENTATION OF CME INCLUDES:**

**A.** Photocopies of original certificates or official letters from course sponsors or online providers.

**B.** Postgraduate CME hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**C.** Advanced degree studies must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**D.** Teaching hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**E.** Preceptor hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**F.** Papers or publications must be documented with a copy.  
[16.10.4.14 NMAC – N, 4/18/02]

**16.10.4.15 EMERGENCY DEFERRAL:** A physician unable to fulfill the CME requirements prior to the date of license expiration may apply to the Board for an emergency deferral of the requirements. A designee of the Board may grant deferrals of up to 90 days.

**A.** In case of illness or other documented circumstances, the Board may grant an additional extension of time in which the necessary credits may be earned. The request must be made in writing at the time of renewal and approved by the Board.

**B.** A licensee practicing or residing outside the United States shall not be required to fulfill the CME requirements for the period of the absence. The Board must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence. Upon return to the US, the licensee shall complete the CME required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.  
[16.10.4.15 NMAC – N, 4/18/02]

#### **HISTORY OF 16.10.4 NMAC:**

**Pre-NMAC History:** The material in this Part was derived from that previously filed with State Records and Archives under:

NMBME Rule 79-13, Continuing Medical Education, filed 9-19-79

NMBME Rule 79-13, Continuing Medical Education, filed 10-4-79

BME Rule 5, Continuing Medical Education, filed 12-19-89

Rule 5, Continuing Medical Education, filed 5-5-92

Rule 5, Continuing Medical Education, filed 6-1-95

History of Repealed Material:

16 NMAC 10.4 Continuing Medical Education – Repealed 4/18/02

## NEW MEXICO BOARD OF MEDICAL EXAMINERS

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 5 DISCIPLINARY POWER OF THE BOARD

**16.10.5.1 ISSUING AGENCY:** New Mexico Board of Medical Examiners, hereafter called the board.

[16.10.5.1 NMAC – Rp 16 NMAC 10.5.1, 4/18/02]

**16.10.5.2 SCOPE:** This part applies to licensees and applicants for licensure.

[16.10.5.2 NMAC – Rp 16 NMAC 10.5.2, 4/18/02]

**16.10.5.3 STATUTORY AUTHORITY:** This Part governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, section 61-1-1 through 61-1-33 NMSA 1978, and the Impaired Health Care Provider Act, section 61-7-1 through 61-7-12 NMSA 1978.

[16.10.5.3 NMAC – Rp 16 NMAC 10.5.3, 4/18/02]

**16.10.5.4 DURATION:** Permanent

[16.10.5.4 NMAC – Rp 16 NMAC 10.5.4, 4/18/02]

**16.10.5.5 EFFECTIVE DATE:** April 18, 2002, unless a later date at the end of a section.

[16.10.5.5 NMAC – Rp 16 NMAC 10.5.5, 4/18/02]

**16.10.5.6 OBJECTIVE:** This Part establishes procedures for license denial, revocation of license, suspension of license, probation, censure and reprimand, fines, costs and stipulations.

[16.10.5.6 NMAC – Rp 16 NMAC 10.5.6, 4/18/02]

**16.10.5.7 DEFINITIONS:**

**A. "License"** means a document granting legal permission to a physician, a physician assistant, or an anesthesiologist assistant to practice medicine in the State of New Mexico.

**B. "Licensee"** means a physician, physician assistant, or anesthesiologist assistant who has been granted permission to practice medicine in the State of New Mexico.

[16.10.5.7 NMAC – Rp 16 NMAC 10.5.7, 4/18/02]

**16.10.5.8 DISCIPLINARY POWER OF THE BOARD.** Pursuant to 61-6-5, 61-6-8, 61-6-15 and 61-7-8 NMSA, 1978, the board has the power to suspend or revoke a license, place a licensee on probation under such terms and conditions as the board deems necessary after a hearing or pursuant to a stipulation with a licensee. Further, under the Medical Practice Act the board has the power to deny a license application, to deny a license renewal, to censure, to reprimand or to fine a licensee.

[16.10.5.8 NMAC – Rp 16 NMAC 10.5.8, 4/18/02]

**16.10.5.9 REVOCATION OF LICENSE.**

**A. Action Prior to Revocation.** Prior to revoking any license for any violation of the Medical Practice Act, or the Impaired Health Care Provider Act, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

**B. Terms of Revocation.** A licensee whose license is revoked may not practice in any manner under the license.

**C. Relicensing after Revocation under the Medical Practice Act** All revocations pursuant to the Medical Practice Act are permanent and no such license revoked shall be reinstated. Persons seeking licensure after revocation under the Medical Practice Act shall file a new application for licensure with the board, under the rules for new applicants, only if permitted in the revocation order.

**D. Relicensing after Revocation under the Impaired Health Care Provider Act.** A physician or physician assistant whose license has been revoked pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to section 61-7-9 NMSA 1978.

[16.10.5.9 NMAC – Rp 16 NMAC 10.5.10, 4/18/02]

**16.10.5.10 SUSPENSION OF LICENSE.**

**A. Action Prior to Suspension.** Except as provided in the Impaired Health Care Provider Act, or in a disciplinary order entered after a hearing, or pursuant to Sub Section C of 16.10.5.15 NMAC below, prior to suspending any license, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

**B. Terms of Suspension:**

The board may suspend a license for either a specified period of time or indefinitely. A licensee whose license is suspended may not practice in any manner under the license during the period of suspension.

**C. Reinstatement.**

Unless otherwise established by the board:

(1) If the board has suspended a license indefinitely, the licensee must petition the board for reinstatement. If reinstatement is initially denied, the licensee may petition for reinstatement on a yearly basis thereafter;

(2) If the board sets a date after which a license may be reinstated, the board will consider a petition for reinstatement only after that date. The licensee may petition for reinstatement on a yearly basis thereafter;

(3) A physician whose license has been suspended pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to 61-7-9 NMSA, 1978, if the physician can meet the statutory requirements. The licensee may petition for reinstatement on a yearly basis thereafter.

[16.10.5.10 NMAC – Rp 16 NMAC 10.5.11, 4/18/02]

**16.10.5.11 PROBATION.**

**A. General.** The board may stay any disciplinary action taken and place a license on probation with a requirement that the licensee comply with terms of probation. The board may also place a licensee on probation without taking other disciplinary action.

**B. Terms of Probation.** The terms of the probation shall be set forth in writing. The licensee on probation may continue to practice under the license so long as the licensee complies with all terms of probation.

**C. Violation of Probation.** If probation is granted and the terms of the probation are then violated, the board shall give the applicant written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act prior to taking further disciplinary action, unless the order of probation contains a provision for the summary suspension of the license.

[16.10.5.11 NMAC – Rp 16 NMAC 10.5.13, 4/18/02]

**16.10.5.12 CENSURE AND REPRIMAND.** The board may issue a letter of censure or reprimand to a licensee for any minor violation of the Medical Practice Act. If the board intends to issue a letter of censure or reprimand, the licensee shall be notified in writing pursuant to the Uniform Licensing Act.

[16.10.5.12 NMAC – Rp 16 NMAC



10.5.14, 4/18/02]

**16.10.5.13 FINES.** The board may impose a fine on a licensee for each violation of the Medical Practice Act after giving the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act. If the physician's action constitutes more than one violation of the Medical Practice Act, the board may impose a fine for each violation.  
[16.10.5.13 NMAC – Rp 16 NMAC 10.5.15, 4/18/02]

**16.10.5.14 PAYMENT OF COSTS.** All licensees against whom the board imposes disciplinary action under the Medical Practice Act shall pay costs associated with the disciplinary action including, but not limited to, stenographers' costs, per diem and mileage cost of the board members, staff, or hearing officer who attend the hearing(s), and expert witness fees, but shall not include attorney's fees for the board's attorney.  
[16.10.5.14 NMAC – Rp 16 NMAC 10.5.16, 4/18/02]

#### **16.10.5.15 STIPULATION.**

**A. Power to Enter into Stipulations.** The board may come to an agreement and enter into a stipulation with a licensee at any time. In a stipulation, the parties may agree to any disciplinary or other action that the board is authorized to take by law.

**B. Contents.** The stipulation shall be in writing, shall contain the agreed upon restrictions on the licensee and shall be signed by the board and the licensee. The stipulation shall contain statements that the licensee:

(1) knows and understands the applicable statutory and regulatory provisions setting forth the authority and power of the board; and,

(2) understands that entering into a stipulation regarding the case results in a waiver of the licensee's rights under the Uniform Licensing Act, the Medical Practice Act, and/or the Impaired Health Care Provider Act, as applicable, including the right to appeal;

**C. Violation of a Stipulation.** The licensee and the board may agree that the board may take immediate action to suspend a license, as set forth in the stipulation, if the board has reasonable cause to believe that the stipulation has been violated, without the licensee being given an opportunity to request a hearing. In this case, the stipulation shall provide that the board shall give notice of the disciplinary action to the licensee at the last known address of the licensee pursuant to

the provisions of the Uniform Licensing Act.

**D. Costs.** In all appropriate cases, the payment of costs of preparing the case, including reasonable prosecuting attorney's fees, may be negotiated as part of the stipulation.

[16.10.5.15 NMAC – Rp 16 NMAC 10.5.17, 4/18/02]

#### **History of 16.10.5 NMAC**

**Pre-NMAC History:** The material in this Part was derived from that previously filed with State Records Center & Archives under:

Rule 7, Disciplinary Power of Board Over Physician Assistants, filed 06-21-93

BME Rule 7, Disciplinary Power of Board Over Physician Assistants filed 12-19-89

BME MD01-MD031, Board of Medical Examiners Model Disciplinary Order, filed 1-22-85

BME MDG1-MDG20, Manual of Disciplinary Guideline and Model Disciplinary Orders, filed 01-22-85.

#### **History of Repealed Material:**

16 NMAC 10.5, Disciplinary Power of the Board – Repealed 4/18/02

## **NEW MEXICO BOARD OF MEDICAL EXAMINERS**

### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS**

#### **PART 6 COMPLAINT PROCEDURE AND INSTITUTION OF DISCIPLINARY ACTION**

**16.10.6.1 ISSUING AGENCY:** New Mexico Board of Medical Examiners, hereafter called the board.

[16.10.6.1 NMAC – Rp 16 NMAC 10.6.1, 4/18/02]

**16.10.6.2 SCOPE:** This Part applies to applicants, licensees and members of the board.

[16.10.6.2 NMAC – Rp 16 NMAC 10.6.2, 4/18/02]

**16.10.6.3 STATUTORY AUTHORITY:** This rule governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, section 61-1-1 through 61-1-33 NMSA 1978, Impaired Physician Act, section 61-7-1 through 61-7-12 NMSA 1978 and the Parental Responsibility Act section 40-5A-1 through 13 NMSA 1978.

[16.10.6.3 NMAC – Rp 16 NMAC 10.6.3,

4/18/02]

**16.10.6.4 DURATION:** Permanent  
[16.10.6.4 NMAC – Rp 16 NMAC 10.6.4, 4/18/02]

**16.10.6.5 EFFECTIVE DATE:** April 18, 2002, unless a later date at the end of a section  
[16.10.6.5 NMAC – Rp 16 NMAC 10.6.5, 4/18/02]

**16.10.6.6 OBJECTIVE:** This Part establishes a procedure for investigating complaints, issuing Notices of Contemplated Action, holding hearings and making decisions in disciplinary proceedings.  
[16.10.6.6 NMAC – Rp 16 NMAC 10.6.6, 4/18/02]

**16.10.6.7 DEFINITIONS:** "Licensee" as used in this Part means a physician, a physician assistant, or anesthesiologist assistant who holds a current license to practice in New Mexico or who is applying for licensure, license renewal or license reinstatement.  
[16.10.6.7 NMAC – N, 4/18/02]

**16.10.6.8 COMPLAINTS.** A complaint may be filed against a physician, physician assistant or anesthesiologist assistant. All complaints must be in writing and must be verified under oath or given in sworn testimony to the board or a member of the board's staff. The date of receipt of sworn or notarized complaint shall begin the running of the statute of limitation.  
[16.10.6.8 NMAC – Rp 16 NMAC 10.6.8, 4/18/02]

**16.10.6.9 COMPLAINT RECORD.** The board shall maintain a record of all complaints filed. The complaint record is confidential.  
[16.10.6.9 NMAC – Rp 16 NMAC 10.6.9, 4/18/02]

**16.10.6.10 COMPLAINT COMMITTEE.** The President of the board shall appoint at least one member of the board to serve on each complaint committee. At least one complaint committee shall review each complaint charging a physician, physician assistant or anesthesiologist assistant with unprofessional conduct or other violations under the Medical Practice Act. The following procedures may apply:

**A.** Upon receipt of the complaint and prior to the review by a complaint committee, assigned board personnel shall notify the complainant that the board has received the complaint.

**B.** Upon receipt of the

complaint, the assigned board staff shall furnish copies to the appropriate complaint committee. Staff will supplement the material when additional information is obtained.

**C.** The complaint committee shall review the complaint to determine if the board has jurisdiction over the matter, and if the complaint may have merit.

**D.** The complaint committee shall conduct a preliminary investigation to determine if the allegations in the complaint are supported by the facts.

**E.** The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

**F.** Upon completion of an investigation, the complaint committee shall submit its recommendations to the board. After submitting their recommendations to the board, the members of the complaint committee shall recuse themselves from all further proceedings in that case.

**G.** The complaint committee shall report to the board the status of complaints during board meetings, upon request by the board.

**H.** The complaint committee, on behalf of the Board, may issue investigative subpoenas. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in ?61-1-10 NMSA 1978 or in the Service of a Notice of Contemplated Action pursuant to ?Section 61-6-15 (D) 23, NMSA 1978.

[16.10.6.10 NMAC – Rp 16 NMAC 10.6.10, 4/18/02]

**16.10.6.11 NOTICE TO PHYSICIAN(S), PHYSICIAN ASSISTANT(S) OR ANESTHESIOLOGIST ASSISTANT(S).** If the complaint committee determines that it will not impede an investigation and will not interfere with the procurement of testimony or development of the case, the complaint committee may inform the physician(s) or physician assistant(s) about whom the complaint is made, of the nature of the complaint and may request a response to the allegations.

[16.10.6.11 NMAC – Rp 16 NMAC 10.6.11, 4/18/02]

**16.10.6.12 INVESTIGATIVE SUBPOENA.** Pursuant to Sections 61-6-23 and 61-1-9 NMSA (1978) the board may issue investigative subpoenas. Investigative subpoenas may be signed by the Executive Director of the Board at the request of the President or complaint committee. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in Section 61-1-10, NMSA (1978) of the service of a Notice of Contemplated

Action pursuant to Section 61-6-15(D)(23), NMSA 1978.

[16.10.6.12 NMAC – Rp 16 NMAC 10.6.12, 4/18/02]

**16.10.6.13 NOTICE OF CONTEMPLATED ACTION.** Pursuant to a complaint or on its own motion, the board may serve upon an applicant or licensee a Notice of Contemplated Action for any alleged violation of the Medical Practice Act and/or the Impaired Health Care Provider Act. All Notices of Contemplated Action shall comply with the Uniform Licensing Act, Section 61-1-4 NMSA 1978, and shall be served on the applicant or licensee personally or by certified mail, return receipt requested, at the applicant's or licensee's last known address as shown in the board's records. The Executive Director may sign a Notice of Contemplated Action that is the result of a formal board action.

[16.10.6.13 NMAC – Rp 16 NMAC 10.6.13, 4/18/02]

**16.10.6.14 PROCEDURE.** If an applicant or licensee requests a hearing after receiving a Notice of Contemplated Action, all proceedings, including the hearing before the Board, shall be governed by the Uniform Licensing Act.

[16.10.6.14 NMAC – Rp 16 NMAC 10.6.14, 4/18/02]

**16.10.6.15 CASE MANAGEMENT.** Once the board serves a Notice of Contemplated Action, an administrative prosecutor shall prepare the case for prosecution before the board. The board as a whole shall not participate in the development of the case after it serves a Notice of Contemplated Action.

[16.10.6.15 NMAC – Rp 16 NMAC 10.6.15, 4/18/02]

**16.10.6.16 DISQUALIFICATION OF BOARD MEMBERS.**

**A. Excusal of a Board Member or Hearing Officer Initiated by a Party.** Excusal of a board member or hearing officer shall be in accordance with Section 61-1-7 NMSA 1978. Untimely excusals or request for excusals will not be allowed.

**B. Disqualification of a Board Member.** A board member may disqualify him or herself from hearing and rendering a decision in the case if the board member believes it is in the best interest of the board or the parties to do so. Any member of the board who is unable to make an unbiased decision in a hearing because of pre-hearing review of documents or interview of witnesses must disqualify him or herself from participation in formal disciplinary action.

[16.10.6.16 NMAC – Rp 16 NMAC 10.6.16, 4/18/02]

**16.10.6.17 PRE-HEARING CONFERENCE.** Pursuant to Section 61-1-9 NMSA 1978, or upon the motion of a party, the board or hearing officer may conduct a pre-hearing conference. At the conference the parties shall determine the feasibility of settlement, formulate or simplify the issues in the proceeding, consider the necessity or desirability of amending the pleadings, obtain admissions and stipulations of fact, place limitations upon or determine the number of witnesses, distribute written testimony and exhibits, and dispose of such other matters as may aid in the disposition of the case. The board shall give all parties at least ten (10) days notice of the pre-hearing conference, provided however that parties may waive the ten (10) day notice requirement. Any settlement or simplification of issues resulting from the pre-hearing conference must be consented to by the licensee or applicant.

[16.10.6.17 NMAC – Rp 16 NMAC 10.6.17, 4/18/02]

**16.10.6.18 MOTIONS MADE PRIOR TO THE HEARING.** Motions may be made prior to or during a hearing. Motions made during the hearing are governed by Subsection B of 16.10.6.21 NMAC. Pre-hearing motions may be accompanied by a memorandum of law in support of the motion and must be in writing. The moving party shall serve one copy of the motion on all other parties, including the prosecutor. Unless otherwise agreed upon by the parties, parties opposing the motion must respond within ten (10) days of service of the motion. If the motion is served within ten (10) days of the hearing, a response may be given at the hearing, either orally or in writing. The board may consider motions made without response as unopposed motions.

[16.10.6.18 NMAC – Rp 16 NMAC 10.6.18, 4/18/02]

**16.10.6.19 EX PARTE COMMUNICATION.** No party in a contested case shall communicate with any member of the board assigned to render a decision or otherwise regarding the pending case unless all parties involved in the proceedings and their attorneys are invited to participate.

[16.10.6.19 NMAC – Rp 16 NMAC 10.6.19, 4/18/02]

**16.10.6.20 ENTRY OF APPEARANCE.** All attorneys representing physicians or physician assistants in matters before the board shall file an entry of appearance.

[16.10.6.20 NMAC – Rp 16 NMAC

10.6.20, 4/18/02]

**16.10.6.21 HEARING PROCEDURE.**

**A.** The board President, or his designated representative, on behalf of the board, shall decide whether the hearing shall be before the board or a hearing officer. If the President of the board, or his designated representative, decides that the matter shall be heard before the board or a hearing officer and the board disagrees with that decision, the board may reverse the decision and designate whether the hearing shall be before it or a hearing officer.

**B.** If the board or the President of the board, or his designated representative, decides that the matter shall be before a hearing officer, the board, the President of the board, or his designated representative shall appoint a person to act as the hearing officer.

**C.** Motions may be submitted in writing or made orally during the hearings. The board may request parties to submit a memorandum of law following the hearing in support of a motion made orally. The board may defer judgment on a motion made during the hearing until it has had an opportunity to hear the presentation of evidence. All motions not specifically acted upon during the hearing shall be acted upon in the board's final decision.

[16.10.6.21 NMAC – Rp 16 NMAC 10.6.21, 4/18/02]

**16.10.6.22 TRANSCRIPTS**

**A. Record of hearing.** The board or hearing officer shall cause a record to be made of all formal hearings. The record shall be as recorded by a court reporter appointed by the board or taped at the discretion of the board in the manner authorized by the Rules of Civil Procedure for the District Court. The record shall contain all physical evidence presented during the hearing.

**B. Correction.** Parties wishing to correct the transcript or record may request correction within ten (10) calendar days after the transcript is filed in the proceeding. All suggested corrections shall be in writing and shall be served upon each party or his attorney, the official reporter and the board or hearing officer. If no objection is made to the proposed corrections, the board or hearing officer, may direct that the corrections be made.

**C. Objections to Record.** Objections shall be made in writing within ten calendar (10) days from the filing of the suggested correction. The board or hearing officer shall, with or without hearing, determine what changes, if any, shall be made in the record.

**D. Copies of transcripts and tapes.** Any party may request copies of transcripts and tapes of formal proceedings. Any party who requests and receives transcripts and tapes shall pay the specified costs to the reporter.

[16.10.6.22 NMAC – Rp 16 NMAC 10.6.22, 4/18/02]

**16.10.6.23 RULES OF EVIDENCE**

**A. General.** The board shall follow the rules of evidence set forth in Section 61-1-11 NMSA 1978 in proceedings held under the Uniform Licensing Act. Rules regarding evidence, not otherwise addressed by these rules or the Uniform Licensing Act, shall be governed by the Rules of Evidence for the District Courts.

**B. Testimony Under Oath.** Witnesses testifying by deposition or before the board in formal hearings shall be placed under oath.

**C. Stipulation as to Facts.** The parties to any investigation or proceeding before the board may stipulate to any facts in a document filed with the board or entered orally in the record. The stipulation shall be binding upon the parties and may be regarded and used by either party as evidence at the hearing.

[16.10.6.23 NMAC – Rp 16 NMAC 10.6.23, 4/18/02]

**16.10.6.24 PROPOSED FINDING OF FACT, CONCLUSION OF LAW, BRIEFS AND ORAL ARGUMENTS**

**A. Proposed finding of fact and conclusion of law.** The board or hearing officer may require all parties to submit proposed findings of fact and conclusions of law. The board or hearing officer shall determine the time for submission of the proposed findings and conclusions. Each proposed finding and conclusion shall be clearly stated.

**B. Briefs.** The board or the hearing officer may require all parties to submit briefs.

(1) Unless otherwise ordered by the board or hearing officer, the prosecution shall file its brief-in-chief within fifteen (15) days after receipt of the transcript. The respondent shall file its answer brief within (15) days thereafter. Reply briefs must be filed within seven (7) days after filing of the answer brief.

(2) Each party must serve one copy of its brief on all other parties.

(3) Briefs shall be concise and shall include transcript citations for each statement of fact. Briefs shall contain a table of contents with page references.

**C. ORAL ARGUMENT.**

The board or the hearing officer may require all parties to present oral arguments after parties have filed briefs. Even though a hearing officer conducts the hearing the board may require oral arguments to be presented to it. Any party may request oral arguments before the hearing officer or the board. The hearing officer or the board will determine whether oral argument is necessary.

[16.10.6.24 NMAC – Rp 16 NMAC 10.6.24, 4/18/02]

**16.10.6.25 WRITTEN DECISION.** Within sixty (60) days after the preparation of the record or submission of the hearing officer's report, whichever is later, but in any event not later than ninety (90) days, the board shall issue written findings of fact, conclusions of law, and the order of the board based on the findings of fact and conclusions of law. The board shall also issue a statement informing the applicant or licensee of his right to judicial review and the time within which review must be sought. The board may issue an oral decision prior to issuance of a written order. The board shall serve the written findings, conclusions, order and statements concerning judicial review upon the licensee personally or by certified mail, return receipt requested within fifteen (15) days after the decision is rendered and signed.

[16.10.6.25 NMAC – Rp 16 NMAC 10.6.25, 4/18/02]

**16.10.6.26 HEARING OFFICER REPORT AND RECOMMENDATION.**

If a hearing officer conducts the hearing, the hearing officer shall prepare a report of findings of fact. All board members participating in the decision making process, but not present at the hearing, shall familiarize themselves with the record and hearing officer's report prior to rendering a decision. The board may adopt, modify or reject the hearing officer's report. The hearing officer shall submit a report to the board as soon as possible but in no event later than thirty (30) days after the hearing.

[16.10.6.26 NMAC – Rp 16 NMAC 10.6.26, 4/18/02]

**16.10.6.27 SIMULTANEOUS ACTIONS UNDER THE MEDICAL PRACTICE ACT AND THE IMPAIRED HEALTH CARE PROVIDERS ACT** Formal proceedings against a physician, physician assistant or anesthesiologist assistant may be taken by the board in accordance with the provisions of the Uniform Licensing Act. No action or investigation or proceedings under the Impaired Health Care Provider Act (Section 61-7-1 through Section 61-7-12 NMSA 1978) precludes the



board from investigating or acting simultaneously, in its sole discretion, under the Medical Practice Act. (61-6-1 through 61-6-34 NMSA 1978).

[16.10.6.27 NMAC – Rp 16 NMAC 10.6.27, 4/18/02]

**16.10.6.28 EVALUATION OF COMPETENCE** When the board has reason to believe that an applicant for licensure or a licensee is not competent to practice medicine it may require the applicant or licensee to take a competency examination or to be evaluated for competence by any means that has been endorsed or approved the board. (61-6-15, A & C)

[16.10.6.28 NMAC – Rp 16 NMAC 10.6.28, 4/18/02]

#### History of 16.10.6 NMAC

**Pre-NMAC History:** The material in this Part was derived from that previously filed with State Records Center & Archives under:

Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 06-21-93

BME Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 12-19-89

Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 06-21-93

BME Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 12-19-89

Rule 10, Hearings, filed 06-21-93

BME Rule 10, Hearings, filed 12-19-89

BME Rule 11, Transcripts, filed 12-19-89

BME R1-15, Transcripts, filed 01-22-85

Rule 12, Rules of Evidences, filed 06-21-93

BME Rule 12, Rules of Evidence, filed 12-19-89

BME Rule 13, Proposed Finding of Fact, Conclusions of Law Decision and Oral Arguments, filed 12-19-89

BME R1-15, Proposed Finding of Fact, Conclusions of Law, Decision and Oral Arguments, filed 01-22-85

Rule 14, Finding of Fact, Conclusions of Law, Decision and Order, filed 06-21-93

BME Rule 14 Finding of Fact, Conclusions of Law, Decision and Order, filed 12-19-89

Rule 22, Involuntary Restriction of License Under the Impaired Physician Act, filed 6-21-93.

#### History of Repealed Material:

16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action, - Repealed 4/18/02

## NEW MEXICO BOARD OF MEDICAL EXAMINERS

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS

#### PART 7 LICENSE EXPIRATION, RENEWAL, AND REINSTATEMENT

**16.10.7.1 ISSUING AGENCY:** New Mexico Board of Medical Examiners, hereafter called the board.

[16.10.7.1 NMAC – N, 4/18/02]

**16.10.7.2 SCOPE:** This Part applies to licensed physicians as well as physicians who have previously held a license to practice in New Mexico and wish to reinstate the expired, inactive, suspended, lapsed, or retired license.

[16.10.7.2 NMAC – N, 4/18/02]

**16.10.7.3 STATUTORY AUTHORITY:** This rules governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Section 61-6-21 NMSA 1978

[16.10.7.3 NMAC – N, 4/18/02]

**16.10.7.4 DURATION:** Permanent

[16.10.7.4 NMAC – N, 4/18/02]

**16.10.7.5 EFFECTIVE DATE** April 18, 2002 unless a later date is cited at the end of a section.

[16.10.7.5 NMAC – N, 4/18/02]

**16.10.7.6 OBJECTIVE:** This part establishes procedures for license expiration, renewal and reinstatement.

[16.10.7.6 NMAC – N, 4/18/02]

#### 16.10.7.7 DEFINITIONS:

**A. "Expired"** means a license that has not been renewed following the date of expiration. An expired license is not valid for practice in New Mexico.

**B. "Inactive"** means a license placed in a non-working status at the request of a physician not currently practicing in New Mexico.

**C. "Retired"** means a license that has been withdrawn from active or inactive status at the physician's request. A retired license cannot be used to practice medicine in New Mexico and a retired license may not subsequently be reinstated.

**D. "Voluntarily Lapsed"** means a license that is not renewed at the request of the physician.

[16.10.7.7 NMAC – N, 4/18/02]

**16.10.7.8 LICENSE EXPIRATION:** Physician and telemedicine licenses expire every three years on July 1. Licenses not renewed by July 1 of the expiration year are considered expired.

[16.10.7.8 NMAC – N, 4/18/02]

**16.10.7.9 RENEWAL PROCESS:** A completed renewal application, accompanied by the required fees and documentation must be post-marked or hand-delivered on or before July 1 of the expiration year.

[16.10.7.9 NMAC – N, 4/18/02]

**16.10.7.10 LICENSE RESPONSIBILITY:** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal form if one has not been received prior to license expiration.

[16.10.7.10 NMAC – N, 4/18/02]

**16.10.7.11 RENEWAL AFTER JULY 1 AND BEFORE AUGUST 16:** Renewal applications post-marked or hand delivered after July 1 and prior to August 16 of the renewal year must be accompanied by the completed renewal application, the triennial renewal fee and late fee indicated in 16.10.9.8 NMAC, and documentation of 75 hours of continuing medical education as required in 16.10.4 NMAC.

[16.10.7.11 NMAC – N, 4/18/02]

**16.10.7.12 RENEWAL AFTER AUGUST 15 AND BEFORE OCTOBER 1:** Renewal applications post-marked on or after August 16 but before October 1, of the renewal year must be accompanied by the completed renewal application, the triennial renewal fee and late fee indicated in 16.10.9.8 NMAC, and documentation of 75 hours of continuing medical education as required in 16.10.4 NMAC.

[16.10.7.12 NMAC – N, 4/18/02]

**16.10.7.13 CHANGE IN STATUS:** Physicians who do not want to maintain an active license to practice medicine in New Mexico may choose to place their license on inactive, retired or voluntary lapsed status at the time of renewal.

**A. Inactive Status.** A license may be placed on inactive status by the payment of the processing fee indicated in 16.10.9.8 NMAC before October 1 of the renewal year. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.7.16 NMAC and 16.10.7.17 NMAC.



**B. Retired Status.** On request, a license may be placed on retired status. A retired licensee cannot practice medicine with a retired license, and such license may not subsequently be reinstated. A physician with a retired license who chooses to reinstate the license must re-apply as a new applicant.

**C. Voluntary Lapsed Status.** A physician may inform the Board that he does not wish to renew an active license to practice medicine in New Mexico and will voluntarily allow the license to lapse. There is no charge for this change in status. A voluntarily lapsed license is not valid for practice in New Mexico. A physician with a voluntarily lapsed license may only be reinstated in accordance with the provisions of 16.10.7.16 NMAC and 16.10.7.17 NMAC.

[16.10.7.13 NMAC – N, 4/18/02]

**16.10.7.14 LICENSE SUSPENSION FOR NON-RENEWAL.** The Board shall summarily suspend the license of any physician who has failed within ninety days after the license expiration date to renew their license, to change the license status as indicated in section 15, to pay all required fees, to comply with continuing medical education requirements, or to provide required documentation.

[16.10.7.14 NMAC – N, 4/18/02]

**16.10.7.15 RENEWAL APPLICATION UNDELIVERABLE:** If the notice of renewal is returned to the board office and the licensee has not sent a change of address, the summary suspension order will be considered undeliverable and will not be mailed.

[16.10.7.15 NMAC – N, 4/18/02]

**16.10.7.16 LICENSE REINSTATEMENT WITHIN TWO YEARS OF DATE OF EXPIRATION:** A license that has expired, been suspended for non-renewal, placed in inactive, or voluntary lapsed status may be reinstated within two years of the expiration date by submitting the following documentation:

- A.** Written request for reinstatement,
- B.** Completion of a renewal application,
- C.** Payment of fees as indicated in Subsection K of 16.10.9.8 and Subsection E of 16.10.9.8,
- D.** Proof of completion of required continuing medical education as defined in 16.10.4 NMAC for the current year and the previous renewal cycle,
- E.** A copy of specialty certificate(s), and
- F.** List of licenses held in

any other state(s) and license status.

[16.10.7.16 NMAC – N, 4/18/02]

**16.10.7.17 LICENSE REINSTATEMENT AFTER TWO YEARS FROM DATE OF EXPIRATION:**

Restoration of a medical license to active status after two years from the date of expiration requires the physician demonstrate continued competence to practice medicine through the following documentation:

- A.** Completion of a reinstatement application;
- B.** Proof of completion of 75 hours of continuing medical education during the past three licensing years as defined in 16.10.4 NMAC;
- C.** Payment of fees as defined in 16.10.9.8 NMAC; and
- D.** Applicants who have not been in active practice for the previous two years may be required to pass an examination for current competency as defined in 16.10.3.11 NMAC.

**E.** In addition the Board may require a personal interview with a Board member and/or interview with the entire Board at a regularly scheduled meeting.

**F.** Consistent with the provisions of the Medical Practice Act, Section 61-6-30 NMSA 1978, the Board may impose terms and conditions on the reinstated license.

[16.10.7.17 NMAC – N, 4/18/02]

**16.10.7.18 REINSTATEMENT PROCESS.** All applicants approved for reinstatement must pay the renewal fee indicated in 16.10.9.8 NMAC. Applicants with a license that has been placed on inactive status are not required to pay any additional fees. Applicants for reinstatement whose license has been suspended for non-renewal or voluntarily lapsed must pay the reinstatement fee indicated in 16.10.9.8 NMAC in addition to the renewal fee. Reinstatement licenses are issued for a period not less than 24 months or more than 36 months from the date of approval.

[16.10.7.18 NMAC – N, 4/18/02]

**History of 16.10.7 NMAC: [RESERVED]**

## NEW MEXICO BOARD OF MEDICAL EXAMINERS

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS  
PART 13 USE OF DEVICES AND PROCEDURES BY UNLICENSED PERSONNEL**

**16.10.13.1 ISSUING AGENCY:** New Mexico Board of Medical Examiners, hereafter called the board.

[16.10.13.1 NMAC – Rp 16 NMAC 10.13.1, 4/18/02]

**16.10.13.2 SCOPE:** This part applies to new or established medical or surgical procedures and their use by unlicensed personnel under the supervision of the physician.

[16.10.13.2 NMAC – Rp 16 NMAC 10.13.2, 4/18/02]

**16.10.13.3 STATUTORY AUTHORITY:** These Rules of Practice and Procedure govern the use of medical or surgical devices and procedures by unlicensed personnel, or non-medical personnel under the supervision of a physician in New Mexico. These Rules are promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.13.3 NMAC – Rp 16 NMAC 10.13.3, 4/18/02]

**16.10.13.4 DURATION:** Permanent

[16.10.13.4 NMAC – Rp 16 NMAC 10.13.4, 4/18/02]

**16.10.13.5 EFFECTIVE DATE:** April 18, 2002, unless a different date is cited at the end of a section.

[16.10.13.5 NMAC – Rp 16 NMAC 10.13.5, 4/18/02]

**16.10.13.6 OBJECTIVE:** This part establishes the procedures whereby physicians licensed in New Mexico can delegate responsibility for certain medical or surgical procedures to unlicensed personnel with appropriate training and supervision, pursuant to section 61-6-17 (I), as amended in 1997.

[16.10.13.6 NMAC – Rp 16 NMAC 10.13.6, 4/18/02]

**16.10.13.7 DEFINITIONS:**

**A. “Supervising Physician”** means a physician licensed to practice in New Mexico who will provide oversight and guidance of unlicensed personnel.

**B. “Unlicensed personnel”** means an individual not licensed to practice as a physician or a physician assistant in New Mexico.

**C. Immediate premises** means in the same building or building complex.

**D. Direct supervision** means the supervising physician is in the

immediate premises.

[16.10.13.7 NMAC – Rp 16 NMAC 10.13.7, 4/18/02]

**16.10.13.8 USE OF LASERS AND LIGHT-ACTIVATED DEVICES FOR HAIR REMOVAL.** Unlicensed personnel may perform hair removal using lasers and light activated devices when the following requirements must have been met:

**A.** The supervising physician has interviewed the patient and executed and recorded an appropriate history and physical examination that indicates the need for, or the advisability of, the planned hair removal;

**B.** The unlicensed personnel who will perform the procedure must have received appropriate training in laser physics, clinical application of the device or devices, and recognition and management of complications that may result from the use of the device or devices.

**C.** The accountable, supervising physician must be on the immediate premises at all times during the procedure being performed by the unlicensed assistant;

**D.** The unlicensed assistant must be fully insured under the supervising physician's medical malpractice policy;

**E.** The patient must be informed and aware that the individual performing the procedure is an unlicensed assistant and is under the direct supervision of the supervising physician.

**F.** Reporting Requirements. The supervising physician shall report the following in writing to the Board of Medical Examiners:

(1) The name and local address of the unlicensed assistant who will be performing the procedure(s) under the physician's supervision;

(2) Documentation of training to include the name of the institution providing the training, the number of hours, a course outline, a resume of the primary instructor, and proof of successful completion of the training in the procedures to be performed;

(3) The report shall be submitted to the board at least twenty-one (21) days prior to the performance of the first planned procedure.

**G.** The patient shall sign a statement, which is kept in the medical record, acknowledging they have been informed that the unlicensed personnel performing the procedure is not licensed as a physician or a physician assistant.

**H.** Any violation of the provisions of this rule shall be disciplined

under the provisions of the Medical Practice Act, 61.6.15 (D)(29).

[16.10.13.8 NMAC – Rp 16 NMAC 10.13.8, 4/18/02]

#### History of 16.10.13 NMAC:

History of Repealed Material:

16 NMAC 10.13, Devices and Procedures; Use by Medical and Non-Medical Personnel – Repealed 4/18/02

### NEW MEXICO BOARD OF MEDICAL EXAMINERS

This is an amendment to 16.10.10 NMAC, Section 9 and 10

#### 16.10.10.9 REPORTING OF ADVERSE ACTIONS ON CLINICAL PRIVILEGES.

**A.** Actions that must be reported by the health care entity:

(1) Any professional review action that adversely affects the clinical privileges of a physician or physician assistant for a period longer than thirty days;

(2) Acceptance of the surrender of clinical privileges or any restriction of such privileges while the physician or physician assistant is under investigation by the entity relating to possible competency or improper professional conduct; or, in return for not conducting an investigation or proceeding.

(3) In the case of a professional society, when it takes professional review action which adversely affects the membership of a physician or physician assistant in the society

**B. Report Contents. All adverse actions must:**

(1) Be reported to the Board within thirty days of ~~[payment]~~ final action;

(2) Include at a minimum the name, license number, and social security number of the physician or physician assistant; a description of the act(s) or omission(s) or other reasons for the action or for the surrender of privileges; action taken, date of the action and effective date of action; and,

(3) The physician or physician assistant's official addendum to the Data Bank report.

**C. The following actions do not require reporting to the Board:**

(1) Actions based on the physician or physician assistant's association, or lack of association, with a professional society or association;

(2) Actions based on fees, advertising, or other competitive acts intended to solicit or retain business;

(3) Actions based on the physi-

cian or physician assistant's participation in prepaid group health plans, salaried employment, or any other manner of delivering health care services;

(4) Actions based on the physician or physician assistant's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or

(5) Any other matter that does not relate to the competence or professional conduct of a physician or physician assistant.

[16.10.10.9 NMAC – Rp 16 NMAC 10.10.8.3, 7/15/01; A, 4/18/02]

#### 16.10.10.10 REPORTING OF CREDENTIALING DISCREPANCIES.

Any health care entity that has received information from a physician or physician assistant where a discrepancy has been identified on an application or re-application that includes a signed attestation of accuracy, must report the discrepancy to the board within 90 days.

[16.10.10.10 NMAC – N, 7/15/01; A, 4/18/02]

### NEW MEXICO BOARD OF MEDICAL EXAMINERS

This is an amendment to 16.10.8 NMAC, Section 9

#### 16.10.8.9 DETERMINATION OF MEDICAL ETHICS

**A.** The board ~~[will begin any inquiry into a potential breach of medical ethics by reference to the latest published version of the "Current Opinions of the Judicial Council of the American Medical Association" or its successor publication ("Current Opinion").]~~ adopts the ethical standards set forth in the latest published version of the "Code of Medical Ethics Current Opinions with Annotations of the Council on Ethical and Judicial Affairs of the American Medical Association" or its successor publication ("Code of Medical Ethics").

**B.** The board reserves the right to impose discipline for breaches of medical ethics which may not be addressed in the ~~["Current Opinions"]~~ "Code of Medical Ethics", but which are nevertheless sufficiently serious to bring the offending conduct within the meaning of Section 61-6-15,D,(29) NMSA 1978.

[16.10.8.9 NMAC – Rp 16 NMAC 10.8.8.1 & 10.8.8.2, 7/15/01; A, 4/18/02]

## NEW MEXICO BOARD OF MEDICAL EXAMINERS

This is an amendment to 16.10.9 NMAC, Sections 8 and 11.

### 16.10.9.8 PHYSICIAN FEES:

~~A.~~ Application fee ~~for licensure by examination or endorsement of \$350~~ of \$100 for applicants providing source documentation through FCVS.

~~B.~~ Application fee of \$350 for applicants applying to the Board and not using the Federation Credential Verification Service.

~~B-C.~~ Interim permit fee of \$40.

~~C.~~ Initial license fee of \$60 for individuals receiving permanent licensure in November and \$112 for individuals receiving permanent licensure in May.

D. Triennial license renewal fee of \$220 plus a triennial fee to support the impaired physicians program of \$90.

E. Temporary license fee for a temporary camp or school license of \$25.

F. Temporary license fee for a temporary teaching/research license of \$100.

G. Processing fee of \$25 for placing a license on inactive status;

H. Late fee of \$100 for all physicians who renew their license to active status, or provide required documentation after June 30 but no later than August 15 of the year of expiration.

~~I.~~ Late fee of \$50 for all physicians who change their license to inactive status after June 30 but no later than August 15 of the year of expiration.

~~J-I.~~ Late fee of \$150 for physicians who renew their licenses to active status, or provide required documentation between August 16 and October 1 of the year of expiration.

~~K.~~ Late fee of \$75 for all physicians who change their license to inactive status between August 16 and October 1 of the year of expiration.

~~L-J.~~ Reinstatement fee of \$200, for reinstatement of a suspended license, which shall be in addition to other fees due and payable to the Board.

~~M-K.~~ Duplicate license fee of \$30.

~~N-L.~~ Duplicate renewal certificate fee of \$15.

~~O-M.~~ Postgraduate training license fee of \$10.

~~P-N.~~ Public service license fee, [granted as part of postgraduate training license], of \$50 annually.

~~Q-O.~~ Biennial application fee of \$100 for a physician supervising a pharmacist clinician.

[16.10.9.8 NMAC – Rp 16 NMAC 10.9.8.1, 7/15/01; A, 5/1/02]

### 16.10.9.11 MISCELLANEOUS FEES

A. Verification of exam scores fee of \$15.

B. Copying fee of \$0.25 per page for records held in the Board office.

C. License verification fee of \$25 per license for a letter of good standing to confirm the verification.

D. License verification fee of \$5 per license with a minimum charge of \$15 for verification of a list of licenses when the list contains the license numbers and physicians' names. No letters of good standing shall be issued for verifications from a list of this kind and notations regarding each verification shall be made on the list provided.

E. Copying fee of \$25 an hour to copy records stored in archives.

F. Fee of \$20 per copy for annual directory of physicians.

G. Returned check fee of \$25.

H. List of licensees on CD - \$100

I. Physician mailing labels - \$250, physician assistant mailing labels - \$50.

~~G-J.~~ Waiver. The Board may waive or reduce miscellaneous fees but only for good cause shown and documented. The NMMS, NMAPA, and UNMHSC will each be given one free list or CD annually.

[16.10.9.11 NMAC – Rp 16 NMAC 10.9.8.3 & 8.4, 7/15/01; A, 5/1/02]

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

### Explanatory Paragraph:

This is an amendment to Section 8 of 16.13.2 NMAC effective April 15, 2002.

### 16.13.2.8 FEES:

A. All fees are non-refundable.

B. Application and Licensure Fees for Exam Candidate:

(1) Application Fee: **\$150.00**

(2) Licensure Fee: **\$175.00**

C. Examination and Computer Based Testing Fees: These fees are determined by the current cost of the

national licensing exam and the computer based testing center's fees for scheduling services and use of its facility and computer equipment. These fees are payable to NAB by money order, certified check or credit card authorization; and are accompanied by a completed NAB Fee Payment Transmittal Form.

D. Reexamination Fee: Includes (a) the current cost of the national licensing exam, (b) the testing center's fee payable to NAB, and (c) an administration processing fee to the Board of **\$50.00**.

E. Renewal Fee: **\$175.00**

F. Application and Licensure Fees for Reciprocity Candidate:

(1) Application Fee: **\$150.00**

(2) Licensure Fee: **\$175.00**

G. Late Penalty Fee: **\$100.00**

H. Inactive Status Fee: **\$75.00**

I. Reactivation from Inactive Status Fee: **\$175.00**

J. Reactivation from Expired Status Fee: **\$275.00** (\$175.00 plus \$100.00 Penalty fee.)

K. Duplicate Renewal License Fee: **\$25.00**

L. Duplicate of Initial Wall License Fee: **\$60.00**

M. Written Verification of Licensure Fee: **\$10.00**

N. Administrative Fee for Application Packet: **\$10.00**. Application packet is also downloadable from the Board's Internet Website at <http://www.rld.state.nm.us> at no cost.

O. Administrative Fee for Copy of Rules and Regulations: **\$15.00**. Application packet is also downloadable from the Board's Internet Website at <http://www.rld.state.nm.us> at no cost.

P. Temporary Permit for Reciprocity Applicants: **\$125.00**

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

### Explanatory Paragraph:

This is an amendment to 16.13.4 NMAC effective April 15, 2002. The following sections were amended: 1, 8, 11, 12, and 13.

### 16.13.4.1 ISSUING AGENCY:

New Mexico Nursing Home Administrators Board [2055 South Pacheco, Suite 400 Santa Fe, New Mexico 87505 (505) 476-7122]

16.13.4.8 TEST DATES: The national licensing exam, available as of



January 1, 2000 in computer based format, may be scheduled by the candidate at the candidate's convenience during the Eligibility Period assigned to each eligible candidate on his or her Authorization Letter from the ~~[examination]~~ Examination Service (see Part 3 of 16.13 NMAC).

**A. Time Allotted For Examination:** Candidates shall have three (3) hours to take the NAB examination.

**B. Examination Tutorial:** Prior to an examination beginning, a tutorial will be presented to familiarize the candidate with the examination format. During the examination, candidates can move forward or backward between items on the exam. If they choose, they may mark items for later review.

**16.13.4.11 TEST RESULTS:** Candidates' pass/fail status ~~[shall not]~~ may be available to candidates from the CBT vendor. ~~[Score reports will only be released by the CBT vendor to the examination Service, which will then forward the results to the Board.]~~ The CBT vendor will only release score reports to the Examination Service, which will then forward the results to the Board. Within a reasonable time after the Board receives the test results from the ~~[examination]~~ Examination Service, the Board will inform each examination candidate, in writing, of individual test results. Exam score results will not be given over the phone.

**A.** A candidate may request that the Service transfer his or her examination score to multiple jurisdictions.

**B.** The candidate shall pay the Service a score transfer fee as set forth by the Service for each score transfer requested.

**16.13.4.12 REEXAMINATION POLICY:** Candidates failing or not completing an examination for reasons other than those set forth in Section 10 of Part 4 (this rule), may retake the same examination up to four (4) times in any twelve (12) month period.

**A.** However, candidates who wish to retake the examination will be required to reapply to the Board ~~for the examination in writing~~, and resubmit the ~~[examination and CBT]~~ Examination and Computer Based Testing fees payable to NAB (see 16.13.2.8.C and D NMAC); the reexamination processing fee payable to the Board for each examination they retake (see 16.13.2.8.D NMAC); and whatever exam application forms are required by NAB at the time.

**B.** The entire examination must be completed on all subsequent attempts.

**16.13.4.13 REAPPLICATION POLICY:** Candidates who do not successfully complete the examination ~~[within the twelve months and four tries after they receive their first Authorization Letter,]~~ have three more attempts within the twelve months after the first exam to try to pass the exam. If they do not pass the exam within the twelve-month, four-times limit, they must reapply for licensure entirely if they wish to be scheduled for the examination again. Reapplication for licensure involves going through the entire application for licensure process and requires re-submitting all the documents and meeting all other requirements listed in 16.13.3.9 NMAC.

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

**Explanatory Paragraph:** This is an amendment to 16.13.7 NMAC effective April 15, 2002. The following sections were amended: 1 and 10.

**16.13.7.1 ISSUING AGENCY:** New Mexico Nursing Home Administrators Board ~~[725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.]~~

**16.13.7.10 PRORATED FIRST RENEWAL:**

**A.** All current nursing home administrators licenses will expire on March 31 of the year. Individuals receiving their initial New Mexico nursing home administrators license may be required to renew their license in less than twelve (12) months depending on ~~[their birth month]~~ the first license issue date in order to get into the proper renewal cycle. In such cases, the renewal fee and the continuing education (CE) hours required will be prorated at the first renewal (Same calculation method used in 16.13.13.9 NMAC).

**B.** The Board will prorate the first renewal fee by multiplying one-twelfth of the annual renewal fee by the number of months from the month of first issuance up to and including the ~~[birth]~~ license expiration month (See 16.13.8.8 NMAC).

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

**Explanatory Paragraph:** This is an amendment to 16.13.8 NMAC effective April 15, 2002. The following sections were amended: 1 and 8.

**16.13.8.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board ~~[725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.]~~

**16.13.8.8 LICENSE RENEWAL REQUIREMENT:** Nursing home administrator licenses expire annually on the last day of ~~[the licensee's birth month]~~ March. All applicants for license renewal must complete and sign a Board-approved renewal application, meet the continuing education requirements (See Part 13 and 14 of 16.13 NMAC), and pay the required renewal fee (See Subsection E of 16.13.2.8 NMAC) before qualifying for license renewal.

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

**Explanatory Paragraph:** This is an amendment to 16.13.10 NMAC effective April 15, 2002. The following sections were amended: 1, 9 and 13.

**16.13.10.1 ISSUING AGENCY:** New Mexico Nursing Home Administrators Board ~~[725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.]~~

**16.13.10.9 LATE PENALTY:** License renewal applications postmarked after the last day of the renewal month **must** be accompanied by a late penalty fee in addition to the renewal fee as set forth in Subsections ~~[G and K]~~ G and J of 16.13.2.8 NMAC.

**16.13.10.13 TIME LIMITATION ON EXPIRED STATUS LICENSE:** Expired licenses ~~[which]~~ that are not reactivated within two (2) years from the expiration date shall lapse.

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

**Explanatory Paragraph:** This is an amendment to Section 8 of 16.13.11 NMAC effective April 15, 2002:

**16.13.11.8 LAPSED STATUS:** Licenses not reactivated from inactive or expired status within the time limitations set forth in 16.13.9.12 ~~[and]~~ or 16.13.10.13 NMAC shall lapse.



## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

### Explanatory Paragraph:

This is an amendment to 16.13.12 NMAC effective April 15, 2002. The following sections were amended: 8 and 10.

**16.13.12.8 PREREQUISITE REQUIREMENTS FOR REACTIVATION:** The licensee must meet the following requirements before his/her inactive or expired license will be reactivated:

A. Request from the Board a Reactivation Application Form or download it from the Board's Internet Website;

B. Complete, sign, and return the Reactivation Application Form within the time limitations set forth in 16.13.9.12 and 16.13.10.13 NMAC.

C. Submit verification of twenty-four (24) hours of continuing education completed within the previous twelve (12) months prior to the reactivation month; and

D. Remit the required fee(s) as set forth in Subsections I and J of 16.13.2.8 NMAC.

**16.13.12.10 PRORATED RENEWAL REQUIREMENTS:** In order to get the licensee back onto the regular renewal cycle with all current nursing home administrators licenses expiring on the last day of March of the year, [The] the next renewal period after reactivation may be shorter than twelve months depending upon the month in which the license is reactivated. This may require proration of the renewal fee and the number of continuing education hours required for the next renewal. Continuing education will be prorated at two (2) hours for each month before the [licensee's next birth month] next March. (Same calculation method used in 16.13.13.9 NMAC and 16.13.7.10 NMAC).

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

### Explanatory Paragraph:

This is an amendment to 16.13.13 NMAC effective April 15, 2002. The following sections were amended: 1, 8, 9, and 11.

**16.13.13.1 ISSUING AGENCY:** New Mexico Nursing Home Administrators Board [725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.]

### 16.13.13.8 HOURS REQUIRED:

A. Upon renewal, reactivation, or reinstatement, a minimum of twenty-four (24) contact (60-minute) hours of Board-approved continuing education must be accrued within the twelve (12) months immediately preceding the license expiration ~~[date]~~ month.

B. Up to six (6) **contact** hours accrued over the required number may be carried over to the next renewal period.

### 16.13.13.9 HOURS PRORATED:

A. ~~[The number of continuing education hours required for a licensee may be prorated by the Board.] The Board may prorate the number of continuing education hours required for a licensee to renew the license~~ (see 16.13.7.10 and 16.13.12.10 NMAC).

B. A newly licensed individual or a person who reactivates ~~[his/her] his or her~~ license and whose next ~~[birth month] renewal~~ occurs within less than twelve months after the license is issued will be required to earn contact hours equivalent to two (2) hours per month for each month the license is active from the month the license is issued or reactivated to the ~~[last day of the birth] renewal~~ month.

**16.13.13.11 INDIVIDUAL COURSES RECORDED ON APPLICATION:** The licensee must record each course offering on the continuing education record section of the renewal application form in the manner requested by the Board. Due to space limitations at the Board office, ~~[the verifications will not be retained by the Board once the continuing education activities have been reviewed and approved.] the Board will not retain copies of verifications of continuing education activities once they have been reviewed and approved.~~ The continuing education information recorded on the application form by the licensee is the only permanent record placed in the licensee's file.

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

### Explanatory Paragraph:

This is an amendment to 16.13.14 NMAC effective April 15, 2002. The following sections were amended: 1, 9, and 11.

### 16.13.14.1 ISSUING AGENCY:

New Mexico Nursing Home Administrators Board [725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.]

**16.13.14.9 APPROVED CONTINUING EDUCATION:** To be acceptable in New Mexico a continuing education activity must have been approved by a recognized approval body which has been approved by the Board, and must enhance the licensee's scope of professional development as related to his/her activities as a nursing home administrator. The participant must receive a certificate of attendance ~~[which] that~~ validates the number of approved continuing education hours awarded.

**16.13.14.11 ACADEMIC CREDIT OR CONTINUING EDUCATION UNITS:** ~~[Related education taken in an academic setting may be approved by the Board.] The Board may approve related education taken in an academic setting.~~ The licensee **must** provide **written** justification directly to the Board showing how the continuing education activity enhanced the licensee's scope of professional development as related to the licensee's activities as a nursing home administrator.

A. Academic credit from institutions of higher learning;

(1) One (1) academic credit is equal to fifteen (15) contact hours.

(2) No more than twenty-four (24) **converted academic credit** hours may be carried over to the next renewal period.

B. Continuing Education Units (CEU's) or contact hours awarded by continuing education divisions within educational institutions of higher learning.

(1) One (1) CEU is equal to ten (10) contact hours.

(2) Six (6) contact hours converted from CEU's may be carried over to the next renewal period.

C. It is recommended that approval be sought prior to renewal in the event the continuing education activity is not approved by the Board.

## NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

### Explanatory Paragraph:

This is an amendment to 16.13.17 NMAC effective April 15, 2002. The following sections were amended: 1 and 12.

#### 16.13.17.1 ISSUING AGENCY:

New Mexico Nursing Home Administrators Board [725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.]

#### 16.13.17.12 DISCIPLINARY ACTION:

In accordance with the Uniform Licensing Act, the Board has authority to impose penalties in disciplinary matters. The Uniform Licensing Act allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

**A. Formal Letters of Reprimand:** The Board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be a ~~[matters]~~ matter of public record.

**B. [RESERVED]**

**C. [RESERVED]**

**D. [RESERVED]**

**E. Prehearing Motions:** The Board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing.

**F. Settlement Agreements:** ~~[Following the issuance of a Notice of Contemplated Action, the Board may enter into a settlement agreement with the Respondent as a means of resolving a complaint.]~~ The Board may enter into a settlement agreement or mediation agreement with the Respondent as a means of resolving a complaint.

**G. [RESERVED]**

**H. Costs of Disciplinary Proceedings:** Licensees or license applicants shall bear all costs of disciplinary proceedings unless they are excused by the Board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section ?61-1-3 of the Uniform Licensing Act is not taken by the Board.

**I. Uniform Licensing Provision.** In accordance with Section ?61-1-7.G of the Uniform Act, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing infor-

mation to the Board shall be subject to disciplinary action.

**J. License Returned to the Board:** Any wall license, renewal license, or temporary permit issued by the Board must be returned to the Board subsequent to revocation or suspension. The item(s) listed must be returned in person or by certified mail no later than thirty (30) days after the suspension or revocation order by the Board.

**K. Federal Fraud and Abuse Data Bank:** ~~[As required by federal law, final adverse disciplinary actions taken by the Board against applicants or licensees will be reported to the Federal Health Care Integrity and Protection Data Bank (or its successor data bank), which was established by the enactment of the Federal Health Insurance Portability and Accountability Act of 1996.]~~ With regard to the Federal Health Care Integrity and Protection Databank (or its successor databank), which was established by the enactment of the Federal Health Insurance Portability and Accountability Act of 1996:

**(1)** The Board may report to the databank disciplinary actions taken by the Board that do not contain an admission or finding of guilt or liability against applicants or licensees.

**(2)** The Board must report to the databank disciplinary actions taken by the Board that do contain an admission or finding of guilt or liability against applicants or licensees.

**L. National Data Bank For Long Term Care Administrators:** ~~[The Board may report final adverse actions taken by the Board against applicants or licensees to the national data bank for long term care administrators established by the National Association of Boards of Examiners for Long Term Care Administrators.]~~ With regard to the national databank for long term care administrators established by the National Association of Boards of Examiners for Long Term Care Administrators (or its successor):

**(1)** The Board may report to the databank disciplinary actions taken by the Board that do not contain an admission or finding of guilt or liability against applicants or licensees.

**(2)** The Board must report to the databank disciplinary actions taken by the Board that do contain an admission or finding of guilt or liability against applicants or licensees.

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### Notice of Repeal

1 NMAC 3.2.93.669, Executive Records Retention and Disposition Schedule for the Health Policy Commission, is being repealed and replaced with the new part 1.18.669 NMAC, Executive Records Retention and Disposition Schedule, Health Policy Commission, effective April 11, 2002.

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

March 18, 2002

Donald L. Padilla, Records Management Division Director  
NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87505

Mr. Padilla:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rule:

1.18.669 NMAC, ERRDS, Health Policy Commission

A review of this rule shows that its impact is limited to the individual agency to which it pertains, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

L. Elaine Olah  
State Records Administrator

LEO/dlp

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

1.18.669 NMAC: EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULE (ERRDS), HEALTH POLICY COMMISSION

1. Subject Matter: 1.18.669

NMAC. Executive Records Retention and Disposition Schedule for the Health Policy Commission. This is a new rule that replaces 1 NMAC 3.2.93.669, Health Policy Commission Record Retention and Disposition Schedule filed April 18, 1997. Twenty- two sections were repealed and replaced with nineteen new sections that include the nine introductory sections. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This rule was done at the request of the Health Policy Commission, and legal counsel for the Health Policy Commission has reviewed and approved this rule.

2. **Persons Affected:** Record producing and keeping personnel of the Health Policy Commission. Persons and entities normally subject to the rules and regulations of the Health Policy Commission may also be directly or indirectly affected by this rule.

3. **Interests of persons affected:** Corporations, individuals, and employees of the Health Policy Commission.

4. **Geographical applicability:** Areas within the State of New Mexico covered by the Health Policy Commission and any person and entity outside the covered geographical area that conducts business with the Health Policy Commission.

5. **Commercially published material incorporated:** New Mexico Statutes Annotated 1978 and the Code of Federal Regulations were used as a reference in the development of this rule; however, they are not a substantial portion of this rule.

6. **Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505, telephone number: (505) 476-7900.

7. **Effective date of this rule:** 04/11/2002

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of the ERRDS, Health Policy Commission.

\_\_\_\_\_  
Roberta D. Joe                      Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.4 NMAC, Sections 312 and 511.

### 1.15.4.312 PAYMENT VOUCHER ~~[(FCD-C-FRAS-02)]~~:

A. **Program:** expenditure records

B. **Maintenance system:** ~~[RESERVED]~~ agency preference

C. **Description:** ~~[form used by state agencies to pay vendors external to New Mexico state government as well as to other state agencies. Form shows] hardcopy output form used to initiate payment for goods or services. Voucher may contain bar code, vendor code, vendor name and remittance address, agency name, page, date, agency code, document number, expiration date, contract number, warrant number, reference document, line, code, commodity line, invoice number, fund, organization program code, object code, revenue source, balance sheet account, report category, description, amount, total, payee signature, [agency approval, name and title,] agency authorized signature and date, etc.~~

#### D. **Retention:**

~~(1) medicaid or medicare related: six years after date created per Section 27-11-4 (A) NMSA 1978~~

~~(2) all others: three years after close of fiscal year in which created [5-4-67; 7-16-96; Rn, 1 NMAC 3.2.90.20.F312, 7-30-97; 1.15.4.312 NMAC - Rn, 1 NMAC 3.2.90.20.F312, 10/1/2000; A, 4/11/02]~~

### 1.15.4.511 PETTY CASH FUND FILES:

A. **Program:** miscellaneous financial records

B. **Maintenance system:** ~~[RESERVED]~~ agency preference

C. **Description:** records concerning the use of petty cash ~~[monies]~~. Files may include petty cash request, ~~[petty cash]~~ vouchers, ~~[petty cash]~~ bank statements, receipts, ~~[cash]~~ reconciliation, etc.

D. **Retention:** ~~[RESERVED] three years after close of fiscal year in which created~~

~~[7-16-96; Rn, 1 NMAC 3.2.90.20.F511, 7-30-97; 1.15.4.511 NMAC - Rn, 1 NMAC 3.2.90.20.F511, 10/1/2000; A, 4/11/02]~~

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.370.101

NMAC for Campaign Reporting Contributions and Expenditure File records.

### 1.18.370.101 C A M P A I G N REPORTING CONTRIBUTIONS AND EXPENDITURE FILES

A. **Program:** ethics

B. **Maintenance system:** alphabetical by office then by candidate and political committee

C. **Description:** file may contain campaign reporting forms A, B, C, and special events worksheet, campaign reporting system, (CRS) report printout, under \$1000 threshold campaign statement, political committee registration, and electronic filing certified and notarized cover page, late, incomplete or false campaign reports, failure or refusal to file and penalty ~~[(NOTE 1: campaign reporting may also be done electronically using the campaign reporting system, NOTE 2: reference 1 19-26.1 and 1 19-27, NMSA 1978)]. Campaign reporting may also be done electronically using the campaign reporting system.~~

D. **Retention:** five years after the date of filing then transfer to archives for review and final disposition [(1 19-32, NMSA 1978)]

[1.18.370.101 NMAC - Rp, 1 NMAC 3.2.93.370.10.101, 12/15/2000; A, 04/11/02]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.430, section 261.

### 1.18.430.261 EXAMINATION AUDIT FILES

A. **Program:** examination

B. **Maintenance system:** alphabetical by company name

C. **Description:** records concerning domestic insurer examinations which determine financial condition, contractual compliance, statute and regulations compliance, etc. File may contain annual statement, examination of accounts, records, transactions, affairs, assets, etc

D. **Retention:** ~~[five years after examination date]~~ seven years after issuance of examination report

E. **Confidentiality:** examination audit files are confidential ~~[prior to adoption by the superintendent]~~ a report of examination will be made available for public inspection in the insurance department [59A-4-1] 59A-4-11A, NMSA 1978.

[1.18.430.261 NMAC Rp, 1 NMAC 3.2.93.430.261, 12/15/00; A, 04/11/02]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.665 NMAC, adding new sections 101 and 102.

### 1.18.665.101 LEGISLATIVE ANALYSIS DATABASE:

**A. Program:** office of the secretary

**B. Maintenance system:** agency preference

**C. Description:** system used to capture, assign and track proposed bills for analysis that are brought before the legislature concerning issued related to health or the department. Database may contain proposed bills, assignment numbers, name of persons or teams analysis is assigned to, date of assignment, working analysis data, final analysis, etc.

**D. Retention:**

(1) data: one year from the close of calendar year in which created

(2) system: see general records retention and disposition schedule, general administrative records item 1.15.2.301 NMAC documentation tape file or item 1.15.2.302 NMAC for operation system backup.

[1.18.665.101 NMAC - N, 04/11/02]

### 1.18.665.102 ASSIGNMENT DATABASE:

**A. Program:** office of the secretary

**B. Maintenance system:** agency preference

**C. Description:** system used to capture, track and process information provided to constituents in response to letters and queries for information that is received either by mail or by referral from the Governor's office. Database may contain tracking database used to track assignments or tasks and the status of assigned tasks. Database may contain task name, date received, name of requester, date completed, etc.

**D. Retention:**

(1) data: one year from the close of calendar year in which created

(2) system: see general records retention and disposition schedule, general administrative records item 1.15.2.301 NMAC documentation tape file or item 1.15.2.302 NMAC for operation system backup.

[1.18.665.102 NMAC - N, 04/11/02]

[Input into this system is constituent correspondence or electronic queries.]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.449.108 NMAC.

### 1.18.449.108 DIVERSION PRO- GRAM FILE:

**A. Program:** Board of Nursing

**B. Maintenance system:** alphabetical by surname

**C. Description:** records concerning professionals that are substance dependent and have enrolled in an assistance program. File may contain monitoring contract, counselor evaluation, monitoring reports, counselor recommendations, closeout report, copy of NM nursing board actions, correspondence, memoranda, etc.

**D. Retention:**

**(1) program completed:** upon completion of program and discharge action of NM board of nursing

**(2) program not completed:** 30 days after final NM board of nursing action for incomplete program

**E. Confidentiality:** confidential pursuant to Sections 14-6-1 NMSA 1978 and 61-3-29.1E NMSA 1978. [12-30-98; 1.18.449.108 NMAC - Rn, 1 NMAC 3.2.93.449.108 & A, 04-11-02]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.631.887 NMAC for Work Opportunity Tax Credit Participant File records.

### 1.18.631.887 ~~[TARGET JOB TAX CREDIT]~~ WORK OPPORTUNITY TAX CREDIT PARTICIPANT FILE:

**A. Program:** employment security division, field services bureau, area office, ~~[JTPA]~~ work opportunity tax credit and special programs unit

**B. Maintenance System:** geographical-alphabetical, by field office and participant's last name

**C. Description:** ~~[contains (ETA 8469) applicant characteristics, (ETA 8468) voucher, (ES 339) eligibility determination request for certification, (ETA 8470) employer certification postmarked envelope]~~ file concerning the status of participant eligibility for target tax credit program certification. File may contain (ETA 9061) individual characteristics for work opportunity tax credit, (ETA 9062) conditional certification, (ETA 9063) employer certification, (Form 8850) pre-screening

and certification request, verification documents, judgment and sentence letter, (DD 214) US military discharge, ineligibility letter, etc.

**D. Retention:** ~~[three years after close of calendar year in which created]~~ four years from the date of certification or from the date of determinations which do not result in certification, per US Department of Labor ET Handbook 408, Second Edition, p. VIII-3 [9-21-98; 1.18.631.887 NMAC - Rn, 1 NMAC 3.2.93.631.24.807 & A, 4-11-2002]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### Notice of Renumber

On March 5, 2002 at a regular meeting of the New Mexico Commission of Public Records, the Commission approved the reformatting and renumbering of the following Records Retention and Disposition Schedules.

The effective date is April 11, 2002 for the following schedules:

*(see chart, page 347)*



<b>RRDS Name</b>	<b>Old NMAC No.</b>	<b>New NMAC No.</b>
GRRDS, General Hospital and Medical Center Records	1 NMAC 3.2.90.41	1.15.9 NMAC
ERRDS, General Services Department	1 NMAC 3.2.93.350	1.18.350 NMAC
ERRDS, Regulation and Licensing Department	1 NMAC 3.2.93.420	1.18.420 NMAC
ERRDS, Livestock Board	1 NMAC 3.2.93.508	1.18.508 NMAC
ERRDS, Middle Rio Grande Conservancy District	1 NMAC 3.2.93.750	1.19.10 NMAC

The effective date is April 17, 2002 for the following schedule:

<b>RRDS Name</b>	<b>Old NMAC No.</b>	<b>New NMAC No.</b>
ERRDS, Human Services Department	1 NMAC 3.2.93.630	1.18.630 NMAC

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

### TRAINING AND RECRUITING DIVISION LAW ENFORCEMENT ACADEMY

This is an amendment to 10.29.9 NMAC, Section 16.

#### 10.29.9.16 RENEWAL OF CERTIFICATION AFTER ABSENCE

##### A. Break in Law Enforcement Employment

(1) In the event a certified officer in the state of New Mexico leaves his position for any reason and is not employed as a full-time law enforcement officer for a period of more than two (2) years, but less than eight (8) years, such officer will be considered to be decertified, and will be required to meet all current certification requirements of the New Mexico law enforcement academy and successfully complete the certification by waiver of previous training program conducted by the New Mexico law enforcement academy.

(2) In the event a certified officer in the state of New Mexico leaves his position for any reason and is not employed as a full-time law enforcement officer for a period in excess of eight (8) years, such officer will be considered to be decertified and will be required to meet all current certification requirements and successfully complete the basic police officer training program.

(3) Those persons who hold a valid New Mexico police officer certification and are employed in an administrative capacity as a full-time police educator or trainer shall not be deemed to have left their position in law enforcement and shall not be required to reapply for certification as specified herein.

(4) The director of the New Mexico law enforcement academy shall have the authority to determine those positions as administrators or trainers that meet the requirements of Paragraph 3 of Subsection A of 10.29.9.16 NMAC above.

##### B. Minimum Allowable

**Employment** - An officer must show proof of having worked a minimum of six (6) consecutive months during a break in service of two (2) or less years as a full-time law enforcement officer for a recognized law enforcement agency of this or another State to retain their certification.

##### C. Military Service

**Impact on In-Service and Firearms Credits** - If a certified law enforcement officer or dispatcher, in good standing with the law enforcement academy, is called to active military duty, all biennial in-service and firearms qualifications requirements shall be suspended during the period of active military duty. The employing agency shall notify the law enforcement academy of the active military duty call-up and the date on which the call-up occurred. The suspension of the requirements for in-service and firearms training shall terminate 90 days after the officer/dispatcher leaves active military duty. Upon return from active military duty, the employing agency shall retrain or refresh the certified officer/dispatcher. The employing agency shall notify the law enforcement academy of the officer's/dispatcher's return and of the officer's retraining. Any necessary retraining shall occur within 90 days of return to commission. If the officer/dispatcher believes that military training which the officer/dispatcher received during the military call-up may qualify for in-service training or firearms qualifications requirements, the agency or officer/dispatcher may petition the law enforcement academy for permission to accept such military training in lieu of in-service training or firearms qualifications requirements. Such petitioning must be submitted in form as prescribed by the director and must include proof of such military training. The law enforcement academy's decision to accept credit for such training shall be at the sole discretion of the director.

[3-15-80...11-24-89; A, 6-29-00; 10.29.9.16 NMAC - Rn, 10 NMAC 29.9.16, 4/30/01; A, 3/29/02]

## NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PART 40 DEFICIENCIES CORRECTION UNIT: GENERAL PROVISIONS

**6.27.40.1 ISSUING AGENCY:** Public School Capital Outlay Council  
[6.27.40.1 NMAC - N, 3/29/02]

**6.27.40.2 SCOPE:** Public School Capital Outlay Council, Deficiencies Correction Unit, and public school districts  
[6.27.40.2 NMAC - N, 3/29/02]

**6.27.40.3 STATUTORY AUTHORITY:** The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.  
[6.27.40.3 NMAC - N, 3/29/02]

**6.27.40.4 DURATION:** This interim rule will remain in effect until June 30, 2006.  
[6.27.40.4 NMAC - N, 3/29/02]

**6.27.40.5 EFFECTIVE DATE:** March 29, 2002, unless a later date is cited at the end of a section.  
[6.27.40.5 NMAC - N, 3/29/02]

**6.27.40.6 OBJECTIVE:** The objective of this rule is to establish the general operating procedures of the Deficiencies Correction Unit of the Public School Capital Outlay Council.  
[6.27.40.6 NMAC - N, 3/29/02]

**6.27.40.7 DEFINITIONS:**  
A. "Deficiencies correction unit" ("DCU") means that unit created as part of the Public School Capital Outlay Council pursuant to Section 22-24-4.2 NMSA 1978;

B. "Director" means the

Director of the Deficiencies Correction Unit as appointed by the Council.  
[6.27.40.7 NMAC - N, 3/29/02]

#### **6.27.40.8 GENERAL REQUIREMENTS:**

A. The unit shall be headed by a director, selected by the Council.

B. The director shall employ or contract with such technical and administrative staff as necessary to carry out the requirements of Section 22-24-4.2 NMSA 1978.

C. The DCU shall:

(1) Work with local school districts to validate, verify and prioritize the assessments and projected costs to correct the deficiencies within the guidelines adopted by the Council. The validation process may include:

(a) access to public school premises to conduct on-site visits as deemed necessary by the Director;

(b) development of a scope of work and timeline for completion;

(c) estimate of costs and preliminary project budget;

(d) initial determination of best procurement method;

(2) Develop a statewide prioritization schedule for submission to the Council for approval that will give preference to those deficiencies for which the self-assessments indicate a reasonable expectation that the deficiencies will fall within the Level 1 priority grouping, as defined in 6.27.41.8 NMAC;

(3) Oversee all aspects of contracts to correct the outstanding deficiencies in the most prudent manner possible; including oversight of construction document preparation and the construction process;

(4) Conduct on-site inspections during the work to assure that the specifications are being met and periodically inspect all documents relating to the project;

(5) Require the use of standardized construction documents and processes for change orders;

(6) Perform such other duties as directed by the Council, consistent with the requirements of the Public School Capital Outlay Act;

(7) Adhere to applicable provisions of the Procurement Code, Section 13-1-28 et seq. NMSA 1978.

[6.27.40.8 NMAC - N, 3/29/02]

**6.27.40.9 COUNCIL DELEGATION OF AUTHORITY:** The Council grants the following authority to the DCU:

A. Develop agreements with districts for correction of deficiencies;

B. Enter into and carry out

contracts for design and construction on behalf of the Council, within approved budget;

C. Develop standardized contracts for professional design services, construction, and other contracts, as necessary to assure that allocated funds are expended in the most prudent manner possible;

D. Have access to the premises of a project and documentation relating to the project;

E. Require standardized reporting;

F. Issue payments for work completed;

G. Advise the Council of the need to make emergency allocations for correcting Level 1 deficiencies that require immediate action by the DCU to safeguard life, health, or property allocations. If the emergency necessitates action prior to the next Council meeting, the Director will immediately inform the Chair.

[6.27.40.9 NMAC - N, 3/29/02]

#### **6.27.40.10 REPORTS**

A. Director shall provide regular reports to the Council regarding the status of the deficiencies correction process and the status of individual projects funded pursuant to Section 22-24-4.1 NMSA 1978.

B. In accordance with a timeline established by the Council, the Director shall prepare recommendations to the Council for the requisite additional funding of deficiencies corrections.

[6.27.40.10 NMAC - N, 3/29/02]

#### **HISTORY OF 6.27.40 NMAC:** [Reserved]

### **NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL**

#### **TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PART 41 DEFICIENCIES CORRECTION: PRIORITIZATION CRITERIA**

**6.27.41.1 ISSUING AGENCY:**  
Public School Capital Outlay Council  
[6.27.41.1 NMAC - N, 3/29/02]

**6.27.41.2 SCOPE:** Public School Capital Outlay Council, Deficiencies Correction Unit, and public school districts  
[6.27.41.2 NMAC - N, 3/29/02]

#### **6.27.41.3 STATUTORY**

**AUTHORITY:** The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.

[6.27.41.3 NMAC - N, 3/29/02]

**6.27.41.4 DURATION:** This interim rule will remain in effect until June 30, 2006.

[6.27.41.4 NMAC - N, 3/29/02]

**6.27.41.5 EFFECTIVE DATE:** March 29, 2002, unless a later date is cited at the end of a section.

[6.27.41.5 NMAC - N, 3/29/02]

**6.27.41.6 OBJECTIVE:** The objective of the rule is to establish procedures for assessment and correction of outstanding deficiencies pursuant to the Public School Capital Outlay Act.

[6.27.41.6 NMAC - N, 3/29/02]

#### **6.27.41.7 DEFINITIONS:**

A. "code" means all applicable provisions of the current versions of all building, life safety, and health codes, including the following: New Mexico Building Code (14.7.2 NMAC), the Uniform Building Code (14.7.3 NMAC), the Uniform Fire Code (14.8.2 NMAC), the New Mexico Plumbing and Mechanical Code (14.9.2 NMAC), the Uniform Mechanical Code (14.9.3 NMAC), Boilers (14.9.4 NMAC), the National Electrical Safety Code (14.10.2 NMAC), the National Electrical Code (14.10.3 NMAC), the State of New Mexico Electrical Code (14.10.4 NMAC), and the Americans with Disabilities Act;

B. "deficiencies" means a condition or conditions in public school buildings and grounds that may adversely affect the health or safety of students and school personnel, including:

(1) health and safety/building code compliance such as fire code compliance, fire resistance and fire control capability, emergency lighting, and compliance with the Americans with Disabilities Act;

(2) building structural stability such as foundation/structure, exterior walls, roof, exterior, windows/doors, interior floors, walls and ceilings, and fixed equipment;

(3) mechanical/electrical systems defects such as plumbing, HVAC-combination heat/cool, insulation, and electrical/lighting;

D. "deficiency priority" means groupings of deficiencies in order of exigency;

E. "deficiencies rank" means the relative primacy of deficiencies of a given public school building and grounds as compared to the deficiencies of all other public school buildings and

grounds within a deficiency priority grouping;

F. "facility" means public school building and grounds of a public school, including a charter school, an administration building, a related school structure, supporting infrastructure or facilities, including teacher housing, as may be owned, acquired or constructed by the local school board and as necessary to carry out the powers and duties of the local school board.

[6.27.41.7 NMAC - N, 3/29/02]

#### **6.27.41.8 PRIORITIES**

A. The following deficiency priorities are established in descending order of exigency:

(1) Level 1 deficiencies:

(a) present an immediate threat that may affect the health or safety of public school students and personnel;

(b) require immediate action to safeguard life, health or property;

(c) constitute a code violation that has or is reasonably expected to result in an action by a regulatory agency or entity having jurisdiction over public school buildings and grounds that the public school buildings and grounds or a portion thereof cannot be occupied and that the buildings and grounds are necessary to carry out the powers and duties of the local school board or charter school; or

(d) pose a critical life-safety risk because of code, regulations and major infrastructure issues essential to the operation of the school facility.

(2) Level 2 deficiencies:

(a) infrastructure improvements and building system repairs that pose a less immediate threat to the health and safety of students and school personnel;

(b) corrective action that is necessary to prevent the deficiency from rapidly degrading to a Level 1 priority;

(c) project that has a nominal, or marginal threat to the health or safety of public school students or staff; or

(d) Grandfathered code issues only requiring upgrade when performing a major renovation to the building, portion of the facility, or building system.

B. The DCU will prepare a list of existing deficiencies assessed and evident in public school buildings and grounds throughout the State and will categorize the deficiencies into Level 1 and Level 2. The DCU will make recommendations to the Council as to the relative deficiency priority and order of immediate need.

C. The DCU will verify and validate each project/school site for deficiencies, recommend corrective scope

of work, the cost to correct, timelines and procurement methodology. An agreement for the project will be established with the district, which will define the roles and responsibilities of the DCU and the district throughout the process. Agreements to correct outstanding deficiencies of charter schools shall be contingent upon the submission of documentation sufficient to ensure that the provisions of Article IX, Section 14 of the New Mexico Constitution (the "anti-donation clause") are not violated.

D. Agreements will be brought before the council for approval on a periodic basis.

[6.27.41.8 NMAC - N, 3/29/02]

#### **HISTORY OF 6.27.41 NMAC:** [Reserved]

### **NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL**

#### **TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PART 42 DEFICIENCIES CORRECTION: MANAGEMENT AND OVERSIGHT**

**6.27.42.1 ISSUING AGENCY:** Public School Capital Outlay Council  
[6.27.42.1 NMAC - N, 3/29/02]

**6.27.42.2 SCOPE:** Public School Capital Outlay Council, Deficiencies Correction Unit, and public school districts  
[6.27.42.2 NMAC - N, 3/29/02]

**6.27.42.3 STATUTORY AUTHORITY:** The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.  
[6.27.42.3 NMAC - N, 3/29/02]

**6.27.42.4 DURATION:** This interim rule will remain in effect until June 30, 2006.  
[6.27.42.4 NMAC - N, 3/29/02]

**6.27.42.5 EFFECTIVE DATE:** March 29, 2002, unless a later date is cited at the end of a section.  
[6.27.42.5 NMAC - N, 3/29/02]

**6.27.42.6 OBJECTIVE:** The objective of the rule is to establish procedures for oversight and management of projects funded for the correction of outstanding deficiencies pursuant to the Public School Capital Outlay Act.

[6.27.42.6 NMAC - N, 3/29/02]

**6.27.42.7 DEFINITIONS:**  
[Reserved]

**6.27.42.8 SYSTEM PROCESS:**  
A. Upon Council approval and final execution of the agreement between the DCU and the local school district, the DCU will assist the district to facilitate the completion of the deficiencies work. The DCU will further assist the districts to select and enter into contracts for design and construction to correct the deficiencies. The selection process and contract award shall be in accordance to the Procurement Code (Sections 13-1-28 et seq. NMSA 1978).

B. Projects authorized and funded after May 15, 2002 pursuant to Sections 22-24-4.1 and 22-24-4.2 NMSA 1978 may include a project management administrative fee to cover the cost of carrying out the provisions of these sections. The fee shall be a percentage, not to exceed three percent of the funds appropriated to the Public School Capital Outlay Fund pursuant to Laws of 2001, Chapter 338 for the purpose of correcting outstanding deficiencies, deemed necessary by the Council to provide oversight and to manage the projects.

C. DCU management and oversight involvement shall be either direct or indirect, depending on the degree of qualified personnel in the district and ability to provide proper oversight of the project. The process shall be defined in the district agreement and may include responsibilities for the following, which shall be accomplished through the use of standardized documents, procedures, and reports, and also include review, approval and payment for completed work at each phase:

(1) Pre-Design Phase:

(a) Assist districts in developing initial scope of project and budget;

(b) Assist in developing Request for Proposals for design professionals where necessary.

(2) Design Phase:

(a) Prepare or assist in developing contracts for design professionals, consultants and other required services;

(b) Final review and approval of schematic design documents for completeness;

(c) Periodic review and validation of scope of work, budget, schedule, value engineering, and plans and specifications;

(d) Final review and approval of construction documents for completeness;

(e) Issue or review Invitation to Bid;

(f) Assist or conduct pre-bid con-



ference;

- (g) Coordinate bid opening;
- (h) Review and evaluate bids.
- (3) Construction Phase
  - (a) Prepare or assist in development of contracts for construction;
  - (b) Assist or conduct pre-construction conference;
  - (c) Coordinate weekly project meeting with architect, engineer, consultants, district personnel, contractors and subcontractors;
  - (d) Provide interface for understanding of issues, disputes, and mediation;
  - (e) Review, approve and oversee changes to the work;
  - (f) Periodic review and validation of work to insure conformance with contract and industry standards of quality.
- (4) Project Close-out
  - (a) Verify all work complete;
  - (b) Coordinate operations and maintenance training;
  - (c) Review as-built drawings;
  - (d) Approve final close-out documents;
  - (e) Review warranties;
  - (f) Ensure final acceptance by district;
  - (g) Ensure all required documents related to the projects are properly held and archived;
  - (h) Ensure that one-year warranty inspections are conducted and oversee any required repairs or remedies.

D. At the completion of a project, surplus funds, including contingencies, will be reallocated by the Council.  
[6.27.42.8 NMAC – N, 3/29/02]

#### **6.27.42.9 INFORMATION MANAGEMENT AND REPORTS:**

A. The DCU will develop and require the use of standardized forms and other reporting methodology; as deemed necessary by the director to ensure that pertinent data and information is collected.

B. The DCU shall provide regular reports on the status of authorized projects.  
[6.27.42.9 NMAC – N, 3/29/02]

**HISTORY OF 6.27.42 NMAC:**  
[Reserved]

### **NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL**

#### **TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PART 43 DEFICIENCIES**

#### **CORRECTION:COUNCIL APPROVAL PROCEDURES**

**6.27.43.1 ISSUING AGENCY:**  
Public School Capital Outlay Council  
[6.27.43.1 NMAC – N, 3/29/02]

**6.27.43.2 SCOPE:** Public School Capital Outlay Council, Deficiencies Correction Unit, and public school districts  
[6.27.43.2 NMAC – N, 3/29/02]

**6.27.43.3 STATUTORY AUTHORITY:** The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.  
[6.27.43.3 NMAC – N, 3/29/02]

**6.27.43.4 DURATION:** This interim rule will remain in effect until June 30, 2006.  
[6.27.43.4 NMAC – N, 3/29/02]

**6.27.43.5 EFFECTIVE DATE:** March 29, 2002, unless a later date is cited at the end of a section.  
[6.27.43.5 NMAC – N, 3/29/02]

**6.27.43.6 OBJECTIVE:** The objective of the rule is to establish procedures for implementing allocations to correct deficiencies.  
[6.27.43.6 NMAC – N, 3/29/02]

**6.27.43.7 DEFINITIONS:**  
[Reserved]

#### **6.27.43.8 DEFICIENCIES RANKING APPROVAL PROCEDURES**

A. The Council shall receive the prioritized listings of existing deficiencies and, after considering the recommendations of the DCU, take action in a public meeting on the recommendations in an expeditious manner.

B. The Council will consider the comments of local school districts regarding the statewide prioritization before it makes a final determination.  
[6.27.43.8 NMAC – N, 3/29/02]

#### **6.27.43.9 PROJECT APPROVAL PROCEDURES**

A. The Council will consider each specific deficiency project agreement and, after a public hearing, will allocate funds for specific deficiencies correction projects.

B. If a local school district does not agree with the recommendations of the DCU for correcting existing deficiencies and such agreement cannot be agreed to, the local school district may submit written comments supporting its position and may appear before the Council in support of

its position.

C. The Council will consider the comments of a local school district regarding the agreement for correction of its existing deficiencies and will make a final determination.

D. Notwithstanding the provisions of paragraph A of this section, the Director of the DCU is authorized to allocate funds for emergency projects in accordance with paragraph F of 6.27.40.9 NMAC. Emergency allocations must be ratified by the Council at its next meeting.

E. Allocations shall be based on a district agreement, brought to the Council by the DCU, that includes:

- (1) the scope of work for the specific projects;
- (2) the project budget, including applicable project contingencies; administrative fees; and timeline for completion;
- (3) funding source; and
- (4) project delivery methodology.

F. Agreements between public school districts and the Council for deficiencies corrections require the approval of the Council.

G. Upon approval by the Council, the district will receive an executed district agreement.  
[6.27.43.9 NMAC – N, 3/29/02]

**6.27.43.10 EMERGENCY ALLOCATIONS.** An emergency fund of two-hundred fifty thousand dollars (\$250,000) shall be maintained within the available funding for correcting Level 1 deficiencies that require immediate action by the DCU to safeguard life, health, or property.  
[6.27.43.10 NMAC – N, 3/29/02]

**HISTORY OF 6.27.43 NMAC:**  
[Reserved]

### **NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL**

This is an amendment to 6.27.2 NMAC, sections 8, 9, and 10. The amendment also repeals section 12 in its entirety.

#### **TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 27 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL PART 2 APPLICATION AND [AWARD] GRANT PROCEDURES**

**6.27.2.1 ISSUING AGENCY:**  
Public School Capital Outlay Council  
[6.27.2.1 NMAC – N, 11/14/2000]

**6.27.2.2 SCOPE:** Public



School Capital Outlay Council and public school districts

[6.27.2.2 NMAC - N, 11/14/2000]

#### 6.27.2.3 STATUTORY

**AUTHORITY:** The Public School Capital Outlay Act, Section 22-24-5 NMSA 1978.

[6.27.2.3 NMAC - N, 11/14/2000]

#### 6.27.2.4 DURATION:

Permanent

[6.27.2.4 NMAC - N, 11/14/2000]

#### 6.27.2.5 EFFECTIVE DATE:

November 14, 2000 unless a later date is cited at the end of a section.

[6.27.2.5 NMAC - N, 11/14/2000]

**6.27.2.6 OBJECTIVE:** The objective of the rule is to establish application and grant procedures pursuant to the Public School Capital Outlay Act.

[6.27.2.6 NMAC - N, 11/14/2000]

#### 6.27.2.7 DEFINITIONS:

A. "Critical need" means that the project for which funding is requested addresses at least one of the following circumstances:

(1) health and safety problems at the facility;

(2) an immediate need for additional classrooms to relieve student overcrowding; or

(3) renovation projects that will forestall substantial capital outlay costs in the future.

B. "fund" means the Public School Capital Outlay Fund;

C. "MEM" means the total enrollment of students attending public school in a school district in the final funded prior school year. Kindergarten membership will be calculated in accordance with the provisions of the Public School Finance Act.

D. "maintenance" means the regular upkeep or preservation of condition of school buildings, including cost of ordinary repairs necessary and proper from time to time for that purpose.

E. "on-site visitation team" means staff as assigned by Council members to visit applicant districts.

[6.27.2.7 NMAC - N, 11/14/2000]

#### 6.27.2.8 CRITERIA FOR ELIGIBILITY

A. An application is eligible for consideration for a grant from the fund upon a determination by the Council that:

(1) a critical need exists requiring action;

(2) the residents of the school dis-

trict have provided available resources to the school district to meet its capital outlay requirements. This criterion is met by the applicant school district imposing a two (2) mill levy for the fiscal years in which the allocation will be distributed in accordance with the Public School Capital Improvement Act (Sections 22-25-1 through 22-25-10 NMSA 1978);

(3) the school district has used its capital resources in a prudent manner;

(4) the school district is in a county or counties which have participated in a reappraisal program and the reappraised values are on the tax rolls as certified by the property tax division of the taxation and revenue department;

(5) the school district has insured buildings under its control against property and casualty losses in accordance with the provisions of Section 13-5-3 NMSA 1978;

(6) unless a determination has been made by the Council and certified to the State Board of Education that, after January 1, 2001, either a constitutional amendment has been adopted that provides additional or supplemental revenue sources for public school capital outlay funding or another long term revenue source exists that is expected to exceed sixty million dollars (\$60,000,000) per year;

(a) the school district is indebted at not less than seventy five percent of the total debt authorized by law; or

(b) within the last three years immediately prior to the year for which the application for funding is made, the school district was indebted at not less than seventy five percent of the total debt authorized by law and received a grant from the Council for the initial stages of a project and currently has a critical need for an additional amount to complete the same project; and

(7) the school district has submitted a five-year facilities plan that includes enrollment projections.

B. If a determination has been made by the Council and certified to the State Board of Education that, after January 1, 2001, either a constitutional amendment has been adopted that provides additional or supplemental revenue sources for public school capital outlay funding or another long term revenue source exists that is expected to exceed sixty million dollars (\$60,000,000) per year, in all subsequent application and allocation cycles all school districts are eligible to apply for funding from the fund.]

#### 6.27.2.8 CRITERIA FOR ELIGIBILITY

An application is eligible for consideration for a grant from the fund upon a determination by the Council that:

A. a need exists requiring

action;

B. the residents of the school district have provided available resources to the school district to meet its capital outlay requirements. This criterion is met by the imposition of a two (2) mill levy in accordance with the Public School Capital Improvements Act (Sections 22-25-1 through 22-25-10 NMSA 1978) for the calendar year in which the grant is made;

C. the school district has used its capital resources in a prudent manner;

D. the school district has insured buildings under its control against property and casualty losses in accordance with the provisions of Section 13-5-3 NMSA 1978;

E. the school district:

(1) is indebted at not less than sixty-five percent of the total general obligation debt authorized by law; or

(2) within the last three years immediately preceding the year for which the application for funding is made, the school district was indebted at not less than sixty-five percent of the total debt authorized by law and received a grant from the Council for the initial stages of a project and currently has a critical need for an additional grant to complete the same project;

F. the school district has submitted a five-year facilities plan that includes:

(1) The school district's mission statement, facility goals and objectives, and the steps taken by the school district to address the priority of needs. The goals and objectives should include student education and community involvement.

(2) The steps taken to assess its needs in relationship to its mission and goals and the evaluation of the priority of those needs.

(3) A map of the school district addressing, at a minimum, the following factors: location of all current sites, land owned by the school district, location of any planned expansion (indicating whether the site is owned by the school district), school district growth areas, and other school district facilities.

(4) Background information on each current school district site, including a description of the facility, maximum student capacity of the facility, age of the building and other factors unique to the facility. The background information must include a schematic that provides: year built, date(s) of additions, renovations and remodels, classroom square footage, total site acreage, replacement cost, and future expansion capacity.

(5) The school district's self-needs assessment procedure and periodicity.

The description must address the school district's evaluation criteria and basis for priority order and assignment of evaluation criteria, and comparison of cost of requested new construction with remodeling and/or renovation cost.

(6) School district membership trends for the most recent three-year period and enrollment projections for the next three-year period.

(7) All projects listed and prioritized by individual school site. The list should include the funding source anticipated for each project; and

(8) a current preventative maintenance plan to which the school adheres for each public school in the district; and

G. the application includes:

(1) the capital needs of any charter schools located in the school district or the school district has shown that the capital needs of the charter schools are not as great as the capital needs requested in the application; and

(2) the facilities needed in the school district to implement a full-day kindergarten program or a showing that the need for facilities to implement the program is not as great as the capital needs requested in the application.

[6.27.2.8 NMAC N, 11/14/2000; A, 3/29/02]

#### **6.27.2.9 PRIORITIES FOR FUNDING**

A. Priorities for funding shall be given to those capital projects that:

(1) are necessary for health and safety;

(2) were previously funded by the Council but are not yet completed;

(3) are for school districts with low assessed valuation compared to other districts;

(4) provide necessary classrooms due to student population increases or that improve existing school facilities, including portable classroom facilities that have been used for a long period of time; and

(5) are renovation projects that will forestall substantial capital outlay costs in the future rather than new construction, unless health and safety concerns require new construction.

B. In establishing the priority for capital projects to be funded, the Council shall consider:

(1) the school district's total assessed valuation per student relative to other school districts in the State;

(2) the school district's remaining bonding capacity calculated from its bonding capacity on May 15 of the award year, as determined annually by the capital outlay unit;

(3) other sources of revenue available to the school district for capital outlay projects; and

(4) whether the project is shown as a priority project in the school district's most recent five-year facilities plan.

C. Maintenance projects will not be funded from money allocated to the Council.]

#### **6.27.2.9 GRANTS**

A. The Council will consider all applications meeting the requirements of this rule and, after public hearing, will either approve or deny each application. The Council will prioritize all applications and all allocations will be made on a priority basis, except:

(1) twenty million dollars (\$20,000,000) of the proceeds from supplemental severance tax bonds available for the funding cycle in fiscal years 2002 and 2003 will be set aside solely for projects in school districts that are eligible for grants from the fund and that receive grants from the federal government as assistance to areas affected by federal activity in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid";

(2) in the case of an emergency as determined by the Council, the order of priority will first reflect those projects previously funded but not yet completed, excluding expansion of those projects, and contingent upon maintenance of the required local support; and

(3) the total amount of assistance grants made in a fiscal year for the purpose of implementing full-day kindergarten programs shall not exceed five million dollars (\$5,000,000)

B. Priorities for funding shall be given to those capital projects that:

(1) are necessary for health and safety;

(2) were previously funded by the Council but are not yet completed;

(3) are for school districts with low assessed valuation compared to other districts;

(4) provide necessary classrooms due to student population increases or that improve existing school facilities, including portable classroom facilities that have been used for a long period of time; and

(5) are renovation projects that will forestall substantial capital outlay costs in the future rather than new construction, unless health and safety concerns require new construction.

C. In establishing the priority for capital projects to be funded, the Council shall consider:

(1) the school district's total assessed valuation per student relative to

other school districts in the State;

(2) the school district's remaining bonding capacity calculated from its bonding capacity on May 15 of the grant year, as determined annually by the capital outlay unit;

(3) other sources of revenue available to the school district for capital outlay projects; and

(4) whether the project is shown as a priority project in the school district's most recent five-year facilities plan.

D. Maintenance projects will not be funded from money allocated to the Council.

E. Grants for the capital needs of charter schools shall be contingent upon the submission of documentation sufficient to ensure that the provisions of Article IX, Section 14 of the New Mexico Constitution (the "anti-donation clause") are not violated.

[6.27.2.9 NMAC - N, 11/14/2000; A, 3/29/02]

#### **6.27.2.10 CRITERIA AND STANDARDS**

A. The five-year facilities plan submitted by the school district must include the following components:

(1) The school district's mission statement, facility goals and objectives, and the steps taken by the school district to address the priority of needs. The goals and objectives should include student education and community involvement.

(2) The steps taken to assess its needs in relationship to its mission and goals and the evaluation of the priority of those needs.

(3) A map of the school district addressing, at a minimum, the following factors: location of all current sites, land owned by the school district, location of any planned expansion (indicating whether the site is owned by the school district), school district growth areas, and other school district facilities.

(4) Background information on each current school district site, including a description of the facility, maximum student capacity of the facility, age of the building and other factors unique to the facility. The background information must include a schematic that provides: year built, date(s) of additions, renovations and remodels; classroom square footage, total site acreage, replacement cost, and future expansion capacity.

(5) The school district's self-needs assessment procedure and periodicity. The description must address the school district's evaluation criteria and basis for priority order and assignment of evaluation criteria, and comparison of cost of requested new construction with remodeling and/or

renovation cost.

~~(6) School district membership trends for the most recent three year period and projections for the next three year period.~~

~~(7) All projects listed and prioritized by individual school site. The list should include the funding source(s) anticipated for each project.~~

~~B. Council staff will prepare and make available to school districts a detailed guide setting forth the recommended components of a school district master facility plan and short/long term maintenance plan.]~~

#### **6.27.2.10 COUNCIL ASSISTANCE AND OVERSIGHT.**

A. The Council will assist school districts in identifying capital outlay needs and in preparing grant applications.

B. The Council will take such actions as are necessary to assist school districts in implementing the projects for which grants are made, including assistance with the preparation of requests for bids or proposals, contract negotiations and contract implementation.

C. The Council will take such actions as are necessary to ensure costs savings and efficiencies for school districts that are not large enough to maintain their own construction management staff.

D. The Council will implement reporting requirements to ensure that grants pursuant to Section 22-24-5 NMSA 1978 are expended in the most prudent manner possible and in a manner consistent with the original purpose of the grant award. The Council may direct appropriate staff to access the premises of any project, review documentation relating to the project, and present staff findings and recommendations regarding the project to the Council.

E. Upon a staff recommendation that a grant is not being expended in the most prudent manner possible and in a manner consistent with the original purpose of the grant award, the Council will provide written notice to the school district setting forth the deficiencies in the school district's implementation of the project or projects. The school district will have thirty (30) days from the receipt of the notice to correct the deficiencies or to provide a written plan to the Council setting forth the procedure to correct the deficiencies. Staff will provide a recommendation to the Council as to whether the school district has corrected the deficiencies or has provided a plan sufficient to correct the deficiencies. Upon a staff recommendation that the school district has not satisfactorily acted to correct the deficiencies, the Council will provide

written notice to the school district setting forth the date, time, and place for a meeting of the Council at which the school district may appear and show that it has corrected the deficiencies or has provided a plan sufficient to correct the deficiencies. Upon a determination by the Council that the school district has not corrected the deficiencies or provided a plan sufficient to correct the deficiencies, the Council may withhold all or part of the grant available for the project.

F. Upon a staff recommendation that a school district has substantially failed to comply with reporting requirements or other conditions established by statute, rule, or the grant award, or has failed to timely provide a plan sufficient to correct deficiencies after a Council determination to withhold all or part of a grant pursuant to Subsection E of 6.27.2.10 NMAC, and upon a determination by the Council that the school district has been advised of its failure to comply and has failed to remedy the noncompliance, the Council will direct staff to take over the direct administration of the project until completion or until otherwise directed by the Council.

G. Council staff will prepare and make available to school districts a detailed guide setting forth the recommended components of a school district master facility plan and short/long term maintenance plan.

[6.27.2.10 NMAC - N, 11/14/2000; A, 3/29/02]

#### **6.27.2.11 APPLICATION PROCESS**

A. Applications are transmitted to local school districts to solicit tentative capital outlay requirements of the school districts. Local school boards will submit applications in the format specified by the Council in accordance with timelines established by the Council. The Council may allow local school boards, on a case-by-case basis, to amend their applications. Acceptable reasons for changing priorities are those directly related to a change in financial status or situations which have occurred since original submission (e.g., legislative appropriations for public school capital outlay projects in the school district, new bond issues, an emergency or safety issue). The amended application must also contain a cover letter stating reason(s) for the amendment. Local school boards are encouraged to make amendments to applications prior to the on-site visit. This will ensure that the on-site visitation team reviews the new request.

B. Applications will be reviewed in accordance with the following

procedures:

(1) Applications are screened for completeness and compliance.

(2) On-site visits as necessary are made to the applicant districts.

(3) Council staff reviews the applications and information obtained from the on-site visits.

C. Applicant schools are provided an opportunity to formally present their application to the Council at a public meeting.

D. Council staff compiles information regarding each application and presents this information to the Council subcommittee so that it may develop initial recommendations for the entire Council.

E. A Council subcommittee presents its recommendations to the full Council for consideration at a public meeting. The Council determines which projects are approved for funding and the allocation amounts each district will receive.

[6.27.2.11 NMAC - N, 11/14/2000]

**6.27.2.12 [DETERMINATION OF GRANTS:** In determining allocations, the Council will ensure that at least twenty million (\$20,000,000) of the proceeds from supplemental severance tax bonds issued annually in fiscal years 2001 through 2003 be allocated solely for projects in districts that are eligible for funding and that receive grants from the federal government as assistance to areas affected by federal activity authorized by Title 20 of the United States Code, known as "PL 874 funds" or "impact aid." [RESERVED]

[6.27.2.12 NMAC - N, 11/14/2000; Repealed, 3/29/02]

**6.27.2.13 PORTABLE CLASSROOMS:** Applications by school districts for use or return of state-owned portable classroom buildings must be submitted to the Council.

[6.27.2.13 NMAC - N, 11/14/2000]

#### **HISTORY OF 6.27.2:**

6.27.2.12, Determination of Grants - Repealed 3/29/02

### **NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL**

This is an amendment to 6.27.3 NMAC, section 8.

#### **6.27.3.8 PROCEDURES FOR DISTRIBUTION OF COUNCIL AWARDS**

A. The Council awards funds for specific critical capital outlay



school district projects in an official meeting.

B. Once awards are made by the Council, recipient school districts will receive notification in the form of a certified letter, return receipt requested. This letter will explain: (1) the amount allocated for a specific project and (2) the funding source (i.e., General Fund, Severance Tax Fund or General Obligation Bond Fund). Award funds can be used only for projects specified in the award letter. Upon project completion, remaining balances will revert to the Council for further allocation.

C. Upon receipt of the letter notifying the public school district of approval of a project by the Council, the district must provide written notice to the Council or its designated staff of acceptance or rejection of the award. If the award is not accepted within thirty (30) days of receipt of the award letter, the Council may consider the award rejected.

D. Prior to the disbursement of any funds, the recipient school district must provide the Council staff with two sets of architectural plans with a financial plan explaining how and when funds are to be expended for review and approval of the project. Those projects which are of a non-construction nature only require a financial plan. These plans must be submitted at least 30 days prior to bidding date of the project (Section 22-20-1 NMSA 1978).

E. Plans must be submitted to the Department and approved in accordance with Sections 22-20-1 and 22-20-3 NMSA 1978, the Energy and Minerals Department, and Governor's Committee on Concerns of the Handicapped. The Department reviews plans and financial documents for congruence. The Department will notify the Council and applicable school district of approval. Building permits must be obtained through the Construction Industries Division.

F. Funds will flow to the school district after approval of the architectural plans as follows:

(1) If funding source is the General Fund:

(a) The school district may request in writing to the Council Staff, \$50,000 or 10% of the allocation, whichever is greater, for start-up costs. If the award amount is \$50,000 or less, the district may receive 75% of the total amount upon written request.

(b) The balance will be reimbursed to school districts for project expenses upon receipt of invoices, request for payment and Capital Outlay Progress Report.

(c) ~~The district will certify that it will retain an amount not less than 5% nor more than 10% of the total project award~~

~~against a contract until all aspects of the project have been completed and the district takes ownership of the project or building.~~  
[Reserved]

(d) School districts will be paid directly. Vendors will not be paid on behalf of school districts.

(e) Upon project completion, remaining balances from an award not used in full will revert to the Council for subsequent allocation.

(2) If funding source is Severance Tax Bonds or General Obligation Bonds:

(a) School districts cannot request money prior to expenditure of funds.

(b) Before funds can be forwarded to a school district for reimbursement:

(i) The associated bonds must be sold. (Bond sales take place twice a year, generally in the months of May and September.)

(ii) The funds are available for draw down 30 days after the sale date.

(iii) A draw-down request with associated documentation as set out in Paragraph 3 of Subsection F of 6.27.3.8 NMAC should be sent to the Department.

(iv) The school district will certify that it will retain an amount not less than 5% nor more than 10% of the total project award against a contract until all aspects of the project have been completed and the district takes ownership of the project or building.

(3) Draw-down procedures for Severance Tax, Supplemental Severance Tax, and General Obligation Bonds are as follows:

(a) Submit to the Department of Education, Agency Support Division (one time); Tax Compliance Certificate, Signature Authorization Form, and Authorization Agreement for Wire Transfer Services.

(b) A draw request is submitted with each request for reimbursement and must be accompanied with one copy (front & back) of cancelled warrants/checks, invoices and a Capital Outlay Progress Report.

(c) The minimum draw-down amount is \$1,500 unless a lesser amount is remaining balance of the project.

(d) Timelines for draw down on funds:

(i) The Department processes draw-downs on the 10th and 20th of each month through an agreement with the State Board of Finance.

(ii) Draw downs must be received by the Department no later than five (5) working days prior to the distribution date.

(e) Upon project completion,

remaining balances will revert to the Council for further allocation.

[6.27.3.8 NMAC - N, 11/14/2000; A, 3/29/02]

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## NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

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This Part 14 NMAC 10.3, National Electrical Code 1999, filed 05-07-1999, is hereby repealed and replaced by 14.10.3 NMAC, effective 06-01-2002.

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## NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

### TITLE 14 HOUSING AND CONSTRUCTION CHAPTER 10 ELECTRICAL CODES PART 3 NATIONAL ELEC- TRICAL CODE 2002

**14.10.3.1 ISSUING AGENCY:**  
The Construction Industries Division of the Regulation and Licensing Department.  
[14.10.3.1 NMAC - Rp, 14 NMAC 10.3.1, 06-01-02]

**14.10.3.2 SCOPE:** This rule applies to individuals doing electrical work within the state of New Mexico.

**A.** 14.10.3 NMAC has a broad scope, covering all electrical work performed in the state of New Mexico, including:

(1) installations of electric conductors and equipment within or on buildings or other structures, including mobile homes, recreational vehicles, and floating buildings, and other premises as yards, carnivals, parking, and industrial substations;

(2) installations of conductors and equipment that connect to the supply of electricity;

(3) installations of other outside conductors and equipment on the premises;

(4) installations of optical fiber cable; and

(5) installations in buildings used by the electric utility, such as office buildings, warehouses, garages, machine shops, and recreational buildings that are not an integral part of a generating plant, substation or control center.

**B.** The 2002 National Electrical Code does not address the following:



(1) installation in ships, watercraft other than floating buildings, railway rolling stock, aircraft, or automotive vehicles other than mobile homes and recreational vehicles;

(2) installation underground in mines and self-propelled mobile surface mining machinery and its attendant electrical trailing cable;

(3) installations of railways for generation, transformation, transmission or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communications purposes;

(4) installations of communications equipment under exclusive control of electric utilities located outdoors or in building spaces used exclusively for such installations; and

(5) installations, including associated lighting under the exclusive control of electric utilities for the purpose of communications, metering, generation, control, transformation, transmission or distribution of electric energy. Such installations being located in buildings used exclusively by the utility, on or along public highways, streets, roads, etc., or outdoors on private property by established rights such as easements. [14.10.3.2 NMAC – Rp, 14 NMAC 10.3.2, 06-01-02]

#### 14.10.3.3 STATUTORY

**AUTHORITY:** Pursuant to Section 60-13-9 (F) of the Construction Industries Licensing Act, NMSA 1978, the construction industries division of the regulation and licensing department has adopted 14.10.3 NMAC. This section provides as follows: "The division shall adopt all building codes and minimum standards as recommended by the trade bureaus and approved by the commission so that the public welfare is protected, uniformity is promoted and conflicting provisions are avoided". Section 60-13-44 (A) of the Construction Industries Licensing Act, NMSA 1978, states: "The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring".

[14.10.3.3 NMAC – Rp, 14 NMAC 10.3.3, 06-01-02]

#### 14.10.3.4 DURATION :

Permanent; until later amended, repealed or replaced.

[14.10.3.4 NMAC – Rp, 14 NMAC 10.3.4, 06-01-02]

#### 14.10.3.5 EFFECTIVE DATE:

June 1, 2002, unless a later date is cited at the end of this section [14.10.3.5 NMAC – Rp, 14 NMAC 10.3.5, 06-01-02]

#### 14.10.3.6 OBJECTIVE: The

objective of 14.10.3 NMAC is to promote the general welfare of the people of the state of New Mexico by providing for the protection of life and property through standards that, when complied with, will result in an installation essentially free from hazards. Further, the code is intended to provide uniformity in electrical standards.

[14.10.3.6 NMAC – Rp, 14 NMAC 10.3.6, 06-01-02]

#### 14.10.3.7 DEFINITIONS : [RESERVED]

#### 14.10.3.8 ADOPTION OF

**14.10.3 NMAC:** Adoption of the 2002 National Electrical Code (14.10.3 NMAC) was recommended by the electrical bureau and formally approved by the construction industries commission on January 18, 2002.

**A.** This part supersedes 14 NMAC 10.3, the National Electrical Code 1999, filed with the state records center on May 7, 1999.

**B.** This part adopts by reference the 2002 National Electrical Code **(in its entirety)**, attached as exhibit 1". (Exhibit 1" is the publication entitled the 2002 National Electrical Code, published by national fire protection association, Batterymarch Park, Quincy, MA 02269, and copyrighted 2002. Their website is located at <http://www.nfpa.org>.)

**C.** This part shall be referred to as (and cited in short form as): 14.10.3 NMAC.

[14.10.3.8 NMAC – Rp, 14 NMAC 10.3.8, 06-01-02]

#### HISTORY of 14.10.3 NMAC:

**Pre-Nmac Regulatory Filing History:** The material in this part was derived from that previously filed at the state records center and archives under:

CIC EAB 67-2, 1963 Electrical Code, filed 8-21-67;

CIC EAB 67-3, 1966 Electrical Code, filed 8-21-67;

CIC EB 68-1, 1969 Electrical Code, filed 10-29-68;

CIC 71-1, 1971 Electrical Code, filed 12-1-71;

CIC 74-7, 1975 National Electrical Code, filed 11-20-74;

CIC 77-4, 1978 National Electrical Code, filed 11-1-77;

CID EB 81-1, 1981 National Electrical Code, filed 2-9-81;

CID EB 83-1 National Electric Code 1984, filed 12-29-83;

CID-EB-86-1, National Electric Code 1987, filed 11-18-86;

CID EB 89-1, National Electric Code 1990, filed 12-18-89;

CID EB 93-1, National Electric Code 1993,

filed 2-24-93.

**History of Repealed Material:** The material in this part was derived from that previously filed at the state records center and archives under: 14 NMAC 10.3, National Electrical Code 1996, filed 2-15-96.

14 NMAC 10.3, National Electrical Code 1999, filed 05-07-99

### NEW MEXICO REGULATION AND LICENSING DEPARTMENT MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.2.17 NMAC; 14.12.2.18 NMAC; 14.12.2.53 NMAC:

#### 14.12.2.17 INSTALLERS AND REPAIRMEN:

**A.** An installer's license entitles its holder to install manufactured homes for remuneration or consideration as provided for by these regulations.

**B.** A repairman's license entitles its holder to modify and repair manufactured homes for remuneration or consideration as provided for by these regulations. An exception to this rule is a person(s) who makes manufacturer's warranty repairs and is employed and paid wages by a New Mexico licensed manufacturer or its designated agent. Such person(s) are not required to maintain a repairman's license.

**C.** Licenses for installers and repairmen shall be classified as MHD-1, MHD-2, or MHD-3.

**(1)** MHD-1 shall permit the holder to level ground and place piers to support a manufactured home, to attach and tighten tie-downs, to connect existing water and sewer lines and to connect electrical cable to the home's approved existing receptacle and to install and repair skirting.

**(2)** MHD-2 shall permit the holder to perform all functions of an MHD-1 and to make structural repairs, alterations and modifications.

**(3)** MHD-3 shall permit the holder to perform all the functions of an MHD-2 and to service and repair natural gas piping and appliances, change and adjust orifices in a manufactured home prior to connection to L.P. gas, and to service and repair plumbing and electrical systems ~~the scope of an MHD-3 license shall be extended to install gas yardlines manufactured homes by taking and passing the appropriate examination administered by the Division~~.

**(4)** The scope of an MHD-3 licensee shall be extended to install gas yardlines to manufactured homes upon acquiring an appropriate endorsement from

the Division. No endorsement shall be issued to any individual until he has passed with a satisfactory score an examination approved and adopted by the Division.

(5) The scope of an MHD-3 licensee shall be extended to install feeder assemblies from the on-site utility terminal to the manufactured home not to exceed 30 feet. The provisions for obtaining a separate electrical endorsement shall include a minimum of 2 years in the last 10 years of verifiable experience performing electrical work on manufactured homes or related equipment. No endorsement shall be issued to any individual until he has passed with a satisfactory score an examination approved and adopted by the Division.

D. Structural repairs, alterations and modifications allowed by classifications MHD-2 and MHD-3 are limited to the manufactured itself and include awnings and porches supported by the home. Any structural repair, alteration or modification outside the manufactured home, including any concrete construction other than small pads for support posts, is not included under the MHD-2 or MHD-3 classifications. Licensees must comply with provisions of the Construction Industries Licensing Act. Sections 60-13-1, et. seq., NMSA 1978, to build any structure which requires a license under that Act.

E. Waiver: The Division may, upon request, waive separate licensure for any person holding a valid license in the electrical, mechanical or LP gas classifications issued under the Construction Industries Licensing Act (Sections 60-13-1, et. seq., NMSA 1978), as amended, and may permit such person to act in the capacity of an installer or repairman for electrical, mechanical or LP gas work on a manufactured home within the scope of such license. Any person requesting a waiver, in accordance with this provision, shall furnish proof satisfactory to the Division of his status as a licensee of the Construction Industries Division or its successor. Nothing in this provision shall be construed as a waiver of any obligation to comply with any other requirement of the Manufactured Housing Act or these regulations, including the bonding requirements of these regulations.

F. An installer or repairman shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal working hours by a representative of the Division. A post office box, secretarial service, telephone answering service or similar entity does not constitute an actual physically established location for purposes

of this subsection.

[14.12.2.17 NMAC – Rp, 14 NMAC 12.2.17, 9-14-00; A, 3-29-02]

#### 14.12.2.18 SALESPERSONS:

A. A salesperson's license entitles its holder to be employed, either directly or indirectly, with or without remuneration or consideration by a dealer or broker to engage in sales or lease-purchases of new and pre-owned manufactured homes through that dealership or brokerage as allowed by employer's license.

B. Each salesperson shall be licensed individually.

C. Custody of License.

(1) A salesperson's license shall be in the custody of his employer.

(2) Each salesperson shall be issued a ~~[pocket]~~ wallet card by the Division. The card shall contain the licensee's name, license number and the address of the employer.

D. Change of employment.

(1) When any salesperson is discharged or transfers his place of employment, the employer shall return the salesperson's license to the Division within ten (10) days of the date of termination. The Division shall place the ~~[returned license in suspension as provided in Section 27]~~ license in an inactive status.

(2) Upon employing a salesperson whose license has been returned to the Division, ~~[the employer shall notify the Division of the salesperson's new employment. The]~~ the Division, upon notification from the new employer and the request for ~~[re-issuance]~~ transfer, shall ~~[reissue]~~ transfer the salesperson's license for the remainder of any unexpired term of such license. The Division shall also issue a new ~~[pocket]~~ wallet card.

E. A salesperson or associate broker shall not work for, be employed by or conduct transactions for more than one dealer or broker at the same time.

F. All transactions handled by or involving a salesperson must be reviewed and supervised by the employing dealer or broker. All documents prepared by the salesperson, in a transaction, must be reviewed by the dealer or broker.

G. A salesperson shall not act as a salesperson while his license is in the custody of the Division.

H. ~~[A dealer or broker shall promptly return a salesperson's license to the Division upon the termination of the salesperson's employment.]~~

[14.12.2.18 NMAC – Rp, 14 NMAC 12.2.18, 9-14-00; A, 3-29-02]

#### 14.12.2.53 ELECTRIC CONNECTIONS:

A. General Requirements:

(1) All manufactured homes shall be connected to the electrical power by means of a four (4) wire connection, with the fourth (4th) (green) wire acting as an equipment ground, grounding the home to the service pole or pedestal.

(2) No electrical power connection shall be spliced unless the splice is protected in an approved weather-tight raceway.

(3) Aluminum wire may be used in the State of New Mexico in size #2 or larger

~~[(a) Aluminum wire may be used in the State of New Mexico for a grounding conductor]~~

~~[(b)](a)~~ Aluminum wire shall not be directly connected to copper wire without the use of an approved disconnect device.

~~[(c)](b)~~ Metallic gas, water, waste pipes, and air-circulating ducts on a manufactured home shall be bonded. They will be considered bonded if they are attached to the terminal on the chassis by clamps, solderless connectors, or by suitable grounding type straps.

~~[(d) An MHD-3 license (subsequent to obtaining a separate electrical endorsement from the Division) is authorized to hard wire directly into an electrical pole or pedestal or install electrical utilities.]~~

~~[(e)](c)~~ All electrical wiring installed to an evaporative cooler must be installed in a protective conduit and the cooler must be installed in accordance to the manufacturer's listed instructions.

(4) The manufacturer's electrical installation instructions must be followed on all new homes installed in the State of New Mexico.

B. Power Cords:

(1) If the manufactured home is rated ~~[by the manufacturer at]~~ less than one hundred (100) AMPs ~~[or less]~~ and does not use an underground electrical supply, a listed power cord of the proper sizing may be installed pursuant to the manufacturer's installation manual or the National Electric Code (NEC).

(2) Only one (1) power cord may be connected to a manufactured home.

(3) The power cord must be a single continuous length and shall not exceed either the length requirements of the (NEC) or the rated ampacity, including voltage drop.

(4) When a power cord is used, it shall be protected at the connection by an over-load device sized pursuant to the NEC and the ampere rating of the cord.

(5) The power supply to the manufactured home shall be a feeder assembly consisting of not more than one manufac-

tured home power-supply cord with integral molded cap~~[or a permanently installed circuit]~~.

(6) If the manufactured home has a power-supply cord, it shall be permanently attached to the distribution panelboard or to a junction box permanently connected to the distribution panelboard, with the free end terminating in an attachment plug cap ~~[or direct wired into a fusible disconnect]~~.

(7) A listed clamp or the equivalent shall be provided at the distribution panelboard knock out to afford strain relief for the cord to prevent strain from being transmitted to the terminals when the power-supply cord is handled in its intended manner.

(8) The cord shall be of an approved type with four conductors, one of which shall be identified by a continuous green color or a continuous green color with one or more yellow stripes for use as the grounding conductor.

(9) Length of Supply Cord: The overall length of a power-supply cord, measured from the end of the cord, including bared leads, to the face of the attachment- plug cap shall not be less than 21 feet and shall not exceed 36 ½ feet. ~~[The length of cord from the face of the attachment plug cap to the point where the cord enters the manufactured home shall not be less than 20 feet.]~~

(10) The power-supply cord shall bear the following marking: "For use with manufactured homes."

(11) The point of entrance of the feeder assembly to the manufactured home shall be in the exterior wall, floor, or roof, in the rear third section of the manufactured home.

(12) Where the cord passes through walls or floors, it shall be protected by means of conduit and bushings ~~[or equivalent]~~. The cord may be installed within the manufactured home walls, provided a continuous raceway is installed from the branch- circuit panelboard to the underside of the manufactured home floor. The raceway may be rigid conduit, electrical metallic tubing or polyethylene (PE), polyvinylchloride (PVC) or acrylonitrile-butadiene-styrene (ABS) plastic tubing having a minimum ~~[wall thickness of nominal 1/8 inch]~~ schedule forty.

C. Underground Electrical Supply:

(1) Manufactured homes which are rated at one hundred (100) AMPS and over, and which use an underground electrical supply, must be connected by a permanently installed feeder ~~[circuit]~~ assembly.

(2) ~~[The wire size used shall be determined by the wire size needed for the calculated load as described in the National Electrical Code, NFPA No. 70-1996 edition,~~

~~Articles 338 and 339, and Tables 310-16 & 310-18, as amended.] All underground feeder assemblies shall meet the requirements set forth in the edition of the National Electrical Code currently in effect pursuant to the Construction Industries Licensing Act, and must comply with Manufacturers installation manual.~~

~~[(3) The wire may be "direct burial cable" type UF or USE, or protected in raceways of rigid metal conduit, PVC Schedule 80, or equivalent, from twenty-four (24) inches below the ground line to the point of entering the service box and from twenty-four (24) inches below the ground line to the point of entrance on the manufactured home or any other exposed area of the circuit. Direct burial cable may not be left exposed to the air outside an approved raceway or junction box anywhere along its length.]~~

~~[(4) If direct burial cable is not used, the cable shall be installed in an approved raceway throughout the length of the circuit as described in the National Electrical Code, NFPA No. 70-1996 edition, Article 300-5 and 300-6, and buried at the proper depth for the type of raceway used.]~~

~~[(5) The power supply shall be protected by an approved overload device, at the source, rating and amperage of not greater than the rated amperage of the cable.]~~

D. Overhead Electrical Feeder:

(1) A manufactured home may have an overhead feeder installed provided it meets the following requirements.

(2) The mast weatherhead must be installed in accordance with the instructions provided by the manufacturer and must be located on the load bearing exterior wall.

E. Overhead Electrical Supply:

(1) Overhead Electrical Supply may only be made to a manufactured home that is installed on ~~[a]~~ an approved permanent foundation and pursuant to Section ~~[57]~~ 14.12.2.57 NMAC ~~[of these regulations]~~.

(2) The mast weatherhead must be installed in accordance with the instructions provided by the manufacturer and the NEC, and must be located on the load bearing exterior wall.

F. All connections must be installed in accordance with ~~[Article 230]~~ the service requirements of the National Electrical Code, NFPA No. 70~~[1996 edition, as amended]~~ as set forth in the edition of the National Electrical Code currently in effect pursuant to the Construction Industries Licensing Act. [14.12.2.53 NMAC – Rp, 14 NMAC 12.2.46, 9-14-00; A, 3-29-02]

## NEW MEXICO OFFICE OF THE STATE AUDITOR

### NOTICE:

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective March 29, 2002. It will be replaced with the same rule name and number, 2.2.2 NMAC *Requirements for Contracting and Conducting Audits of Agencies*, which will become effective March 29, 2002.

## NEW MEXICO OFFICE OF THE STATE AUDITOR

### TITLE 2 PUBLIC FINANCE CHAPTER 2 AUDITS OF GOVERNMENTAL ENTITIES PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES

2.2.2.1 ISSUING AGENCY: Office of the State Auditor, 2113 Warner Circle, Santa Fe, NM 87505-5499 [2.2.2.1 NMAC – Rp 2.2.2.1 NMAC, 3-29-02]

2.2.2.2 SCOPE: All agencies covered under the Audit Act and any independent public accountants interested in conducting financial and compliance audits of agencies of the State of New Mexico. [2.2.2.2 NMAC – Rp 2.2.2.2 NMAC, 3-29-02]

2.2.2.3 STATUTORY AUTHORITY: The Audit Act Section 12-6-12, requires the State Auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance accepted auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978). The Audit Act (12-6-1 through 12-6-14, NMSA 1978) provides the State Auditor authority to conduct financial and compliance audits in accordance with governmental auditing, accounting and financial reporting standards, local, state and federal laws, rules, and regulations. The Audit Act also gives the State Auditor the authority to perform special audits of the financial affairs and transactions of an agency, in whole or in part, in situations deemed necessary.

[2.2.2.3 NMAC – Rp 2.2.2.3 NMAC, 3-29-02]

2.2.2.4 DURATION:



Permanent[2.2.2.4 NMAC – Rp 2.2.2.4 NMAC, 3-29-02]

**2.2.2.5 EFFECTIVE DATE:** March 29, 2002, unless a later date is cited at the end of a Section.

[2.2.2.5 NMAC – Rp 2.2.2.5 NMAC, 3-29-02]

**2.2.2.6 OBJECTIVE:** The objective is to establish procedures and requirements for the contracting and conducting of state governmental audits.  
[2.2.2.6 NMAC – Rp 2.2.2.6 NMAC, 3-29-02]

**2.2.2.7 DEFINITIONS:**

A. "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate courts, district attorneys and charitable institutions for which appropriations are made by the legislature; every political subdivision of the state, created under either general or special act, which receives or expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; school districts; and every office or officer of any of the above.

B. "Auditor" means State Auditor or Independent Public Accountant

C. "AICPA" means American Institute of Certified Public Accountants

D. "CHE" means Commission on Higher Education

E. "CFR" means Code of Federal Regulations

F. "CPE" means Continuing Professional Education

G. "COSO" means Committee on Sponsoring Organizations of Treadway Commission

H. "DFA" means Department of Finance and Administration

I. "FASS" means Financial Assessment Subsystem

J. "FDIC" means Federal Deposit Insurance Corporation

K. "FDS" means Financial Data Schedule

L. "GAAP" means Accounting Principles Generally Accepted in the United States

M. "GAGAS" means Generally Accepted Governmental Auditing Standards

N. "GASB" means Governmental Accounting Standards Board

O. "GAAS" means

Auditing Standards Generally Accepted in the United States

P. "GSD" means General Services Department

Q. "HUD" means U.S. Department of Housing and Urban Development

R. "IPA" means Independent Public Accountant

S. "IRC" means Internal Revenue Code

T. "NCUSIF" means National Credit Union Shares Insurance Fund

U. "NMAC" means New Mexico Administrative Code

V. "NMSA" means New Mexico Statutes Annotated

W. "OMB" means Office of Management and Budget

X. "PHA" means Public Housing Authority

Y. "PHAS" means Public Housing Management Assessment System

Z. "REAC" means Real Estate Assessment Center

AA. "REC" means Regional Education Cooperative

BB. "RCC" means Regional Center Cooperative

CC. "RSI" means Required Supplemental Information

DD. "State Auditor" means elected official, personnel of his office designated by him or independent auditors designated by him

EE. "SAS" means Statement on Auditing Standards

FF. "SBE" means State Board of Education

GG. "UFRS" means Uniform Financial Reporting Standards

HH. "U.S. GAO" means U. S. General Accounting Office

[2.2.2.7 NMAC – Rp 2.2.2.7 NMAC, 3-29-02]

**2.2.2.8 THE AUDIT CONTRACT:**

A. Section 12-6-14 NMSA 1978 (Contract Audits) permits the State Auditor to delegate the conduct of audits to an independent public accounting firm (IPA) for the audit of a prescribed period. The Public Accountancy Act (61-28A-1 to 61-28A-28 NMSA 1978) states only certified public accountants (CPAs) holding a current permit to practice issued by the New Mexico State Board of Public Accountancy (Board) and whose firm is registered with the Board shall audit financial statements. IPAs shall submit a firm profile to the State Auditor. Firms are required to notify the State Auditor of changes to the firm profile as information becomes available. The State Auditor shall approve contracts only

with IPAs who have **submitted a complete and correct** firm profile and who have complied with all the requirements of this Rule including:

(1) Section 2.2.2.14, Continuing Education and Quality Control Requirements;

(2) Section 2.2.2.8 I, Independence Requirements; and

(3) For an IPA who has previously audited agencies under this Rule, they must have complied in the past with:

(a) Section 2.2.2.9, Report Due Dates; and

(b) Section 2.2.2.13, Review of Audit Reports and Working Papers of this Rule.

B. The State Auditor shall notify each agency, in writing, whether the audit is to be conducted by the State Auditor or an IPA.

C. If the audit is to be conducted by an IPA, the agency shall comply with the following procedures to obtain audit services:

(1) The agency shall identify all elements or services to be solicited upon receipt of notification, and request quotations or proposals for each identifiable element:

(a) Financial Statement Audit;

(b) Federal Single Audit;

(c) Financial Statement Preparation;

(d) GASB 34 and 35 Implementation; and

(e) Other (i.e. housing authority, charter school, other component units).

(2) Audit services costing **no more than \$20,000 (exclusive of gross receipts tax)** should be considered small purchases. The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. A multi-year proposal (not to exceed three years) exceeding \$20,000 for all three years is not considered a small purchase.

(3) For audit services costing **over \$20,000 (exclusive of gross receipts tax)**, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (13-1-1 to 13-1-199 NMSA 1978); New Mexico General Services Department (GSD) Rule 1.1.4 NMAC, **Procurement Code Regulations**, if applicable; and New Mexico Department of Finance and Administration (DFA) Rule 2.40.2 NMAC, **Governing the Approval of Contracts for the Purchase of Professional Services**. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with procurement requirements stated in the Federal Office of Management



and Budget's, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, (OMB A-102 Common Rule). Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*.

(4) In accordance with Section 13-1-150 NMSA 1978 (Multi-term Contracts), the agency may, and is strongly encouraged to, request a multi-year proposal to provide services, not to exceed a term of **three** years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the **same price, terms and conditions as stated on the original proposal**. Exercising such option to extend must be by mutual agreement of the parties to the contract and with the approval of the State Auditor. In the event that either of the parties to the contract elects not to extend or the State Auditor disapproves the recommendation for renewal, the agency shall use the procedure to solicit services pursuant to paragraph 2 and paragraph 3 of Subsection 2.2.2.8.C of this Rule.

(5) The agency shall evaluate all competitive sealed proposals or quotations received pursuant to paragraph 2 and paragraph 3 of Subsection 2.2.2.8.C of this Rule using a two-step evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., should be included in the IPA selection process. Each IPA shall initially be evaluated on the basis of experience and qualifications. After the initial top three selections, the IPAs shall be evaluated on the basis of cost. The agency shall use the evaluation form attached to this Rule as Appendix A.

(6) After completing its evaluation for each IPA, the agency shall submit to the State Auditor, **on or before May 31**:

(a) A cover letter indicating the name of firm being recommended, mentioning whether the proposal is for an "annual" or "multi-year";

(b) The fully completed and signed evaluation form for the IPA being recommended. If you are in year 2 or 3 of a multi-year proposal, submit a copy of part II of the evaluation form from the previous year; and

(c) A listing of professional services contracts the agency has with any IPA on State Auditor's approved list.

(7) If the agency refuses to make

a recommendation by the deadline, the State Auditor may conduct the audit.

(8) **The State Auditor may also file any necessary civil action in the Santa Fe District Court to ensure compliance with this requirement. If court action is required, the agency will be responsible for attorney fees and associated costs and expenses to resolve this matter.**

(9) The agency shall retain all procurement documentation, including completed evaluation forms, for three years.

(10) In the event the agency's recommendation is not approved by the State Auditor, the State Auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency will promptly submit its next recommendation. This process will continue until an acceptable choice is approved. During this process, whenever a recommendation is not approved, the agency may petition the State Auditor, within 15 days or prior to June 1, (whichever comes first) for reconsideration, whereas the petitioner presents evidence in support of its recommendation. The State Auditor will set the time and place for an informal administrative hearing in a timely manner with consideration given the petitioner's circumstances.

D. The State Auditor will use **discretion** and may not approve:

(1) Audit contract recommendations that do not serve the best interest of the public or the agency because of one or more of the following:

(a) Lack of experience of the IPA;

(b) IPA has conducted the audit of the same agency for six consecutive years. The IPA shall not conduct the agency audit for a two-year period after conducting the agency audit for a period of six consecutive years;

(c) Lack of competence or staff availability employed by the IPA;

(d) Circumstances that may cause untimely delivery of the audit report;

(e) Unreasonably high or low cost to the agency;

(f) Terms contained in the proposed contract, which the State Auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) Lack of compliance with the Procurement Code or this Rule; or

(h) Any other reasons determined by the State Auditor to be in the best interest of the State of New Mexico.

(2) Audit contract recommendations of any IPA which has:

(a) Breached a prior-year contract;

(b) Failed to deliver an audit report on time;

(c) Failed to comply with state laws or regulations of the State Auditor;

(d) Performed nonaudit related services for an agency without prior approval of the State Auditor;

(e) **Performed nonaudit services under a separate contract for services that may be disallowed by GAGAS independence standards (see Section 2.2.2.8.I of this Rule);**

(f) **Failed to respond, in an acceptable manner, to the audit report or working paper review;**

(g) **Indicated a lack of independence in fact or appearance;**

(h) Failed to cooperate in providing prior-year working papers to successor IPAs;

(i) Has not adhered to external quality control review standards as defined by GAGAS and Section 2.2.2.13.B of this Rule; or

(j) Otherwise, in the opinion of the State Auditor, shown itself to be unfit to be awarded a contract.

(3) Any audit which the State Auditor decides to perform himself or with contracted IPAs [consistent with the October 6, 1993 stipulated order *Vigil v. King* No. SF 92-1487(C)], and pursuant to Section 12-6-3 NMSA 1978 (Annual and Special Audits) even if previously designated an agency for audit by an IPA.

E. The State Auditor shall provide audit contract forms which must be used by the agency. **Only** forms provided by the State Auditor will be accepted and shall:

(1) Be completed and returned in the number of required copies and **within fifteen (15) calendar days** as stated in the approval letter of IPA selection;

(2) Bear original signatures;

(3) Have the IPA's combined reporting system number verified by the Taxation and Revenue Department (TRD) for all state agencies whose contracts are approved through DFA's Contracts Office, prior to submission to the State Auditor; and

(4) Include the amount for each portion of the audit which covers the elements or services as well as the portion of the audit which covers federal funds.

F. The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the State Auditor with the firm profile. The amount maintained should be commensurate with risk assumed. The IPA must provide to the State Auditor, prior to expiration, updated insurance information.

G. A breach of any terms of the contract shall be grounds for immedi-

ate termination of the contract. **The injured party may seek damages for such breach from the offending party.** IPAs knowingly making false statements, assurances, or disclosures will be automatically disqualified from conducting audits of agencies in New Mexico.

H. The IPA shall notify the agency and the State Auditor, **in writing**, of any changes in staff assigned to perform the audit. The IPA must update the firm profile to reflect the staffing changes. The IPA shall not subcontract any portion of the services to be performed under the audit contract without the **prior written approval** of the State Auditor. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the State Auditor as required in Subsection 2.2.2.8.A of this Rule. The audit contract shall specify subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid.

I. The second general standard (**Government Auditing Standards** issued by the Comptroller General of the United States, 1994 Revision) as amended January 25, 2002 is: "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, should be **free both in fact and appearance from personal, external, and organizational impairments to independence.**" The amendment describes two overarching principles an audit organization must consider before agreeing to perform nonaudit services in order to avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the auditor is not independent in conducting audits. Audit organizations should not provide nonaudit services that involve performing management functions or making management decisions and they should not audit their own work or provide nonaudit services in situations where the nonaudit services are significant/material to the subject matter of audits.

(1) The GAGAS Amendment No. 3, **Independence**, applies to all New Mexico audits covered by the Audit Act effective for fiscal years ended June 30, 2002, and thereafter.

(2) This standard places responsibility on each auditor and the audit organization to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The following is substantially an excerpt from the AICPA fact sheet summarizing the key provision of the new GAGAS standards.

(a) The State Auditor will not

approve any contract for nonaudit services to be provided by the same IPA who performs the agency's annual audit for the following services: maintaining or preparing the audited agency's basic accounting records; taking responsibility for basic financial or other records that the audit organization will audit; posting transactions (whether coded or not coded) to the agency's financial records or to other records that subsequently provide data to the agency's financial records; recommending a single individual for a specific position; conducting an executive search or a recruiting program for the audited agency; and operating or supervising the operation of the agency's information technology system.

(b) The State Auditor may approve a contract for the following nonaudit services to be provided by the same IPA who performs the agency's annual audit in circumstances where the two overarching principles (above) are not violated and the seven required safeguards are met. Safeguard (1) requires the IPA to preclude personnel who provided the nonaudit services from planning, conducting, or reviewing audit work related to the nonaudit service. Safeguard (2) precludes the IPA from reducing the scope and extent of the audit work beyond the level that would be appropriate if the nonaudit work was performed by another unrelated party. Safeguard (3) requires the IPA to document its consideration of the nonaudit service, and document its rationale that providing the nonaudit service does not violate the two overarching principles. Safeguard (4) requires the IPA to establish and document an understanding with the audited agency regarding the objectives, scope of work, and product or deliverables of the nonaudit service, before performing the nonaudit services. The IPA should also document an understanding with management that management is responsible for the substantive outcomes of the work. Safeguard (5) requires the IPA's quality control system for compliance with independence requirements to include policies and procedures to assure consideration of the effect on the ongoing, planned, and future audits when deciding whether to provide nonaudit services and a requirement to have the understanding with management of the audited agency documented. The understanding should be communicated to management in writing. Documentation must specify management's responsibility for the nonaudit service, management's qualifications to conduct the required oversight, and that management's responsibilities were performed. Safeguard (6) requires that in cases where nonaudit services by their nature impair the audit organization's

ability to meet either or both of the overarching principles for certain types of audit work, the audit organization should communicate to management of the audited agency, before performing the nonaudit service, that the audit organization would not be able to perform subsequent audit work related to the subject matter of the nonaudit service. Safeguard (7) requires that for audits selected in the peer review, all related nonaudit services should be identified to the audit organization's peer reviewer and the audit documentation made available for peer review.

(i) Basic accounting services that **may** be allowed: (a) Preparing draft financial statements based on management's chart of accounts and trial balance and any adjusting, correcting, and closing entries that have been approved by management; preparing draft notes to the financial statements based on information determined and approved by management; (b) Preparing a trial balance based on management's chart of accounts; (c) Maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset; (d) Proposing adjusting and correcting entries that are identified during the audit so long as management makes the decision on accepting the entries.

(ii) Payroll services that **may** be allowed are: (a) computing pay amounts for the agency's employees based on agency maintained and approved time records, salaries or pay rates, and deductions from pay; (b) generating unsigned payroll checks; (c) transmitting client approved payroll to a financial institution provided management has approved the transmission and limited the financial institution to make payments only to previously approved individuals.

(iii) Preparing routine tax filings in accordance with federal tax laws and rules and regulations **may** be allowed.

(iv) Human resource services that **may** be allowed to assist management in its evaluation of potential candidates are limited to activities such as: (a) serving on an evaluation panel to review applications; and (b) interviewing candidates to provide input to management in arriving at a listing of best qualified applicants to be provided to management.

(v) Providing information technology services **may** be allowed if limited to services such as advising on system design, system installation, and system security if management acknowledges responsibility for the design, installation, and internal control over the agency's system and does not rely on the auditor's work

as the primary basis for determining: (a) whether to implement a new system; (b) the adequacy of the new system design; (c) the adequacy of major design changes to an existing system; or (d) the adequacy of the system to comply with regulatory or other requirements.

(vi) Providing appraisal or valuation services **may** be allowed if limited to services such as: (a) reviewing the work of the agency or a specialist employed by the agency where the agency or specialist provides the primary support for the balances recorded in financial statements or other information that will be audited; (b) valuing an agency's pension, other post-employment benefit, or similar liabilities provided management has determined and taken responsibility for all significant assumptions and data.

(vii) Contracts for gathering and reporting unverified external or third-party data to aid legislative and administrative decision-making **may** be allowed.

(viii) Services advising an agency regarding its performance of internal control self-assessments **may** be allowed.

(ix) Services assisting a legislative body by developing questions for use at a hearing **may** be allowed.

(3) The IPA shall provide a list of all contracts entered into with any governmental agency submitted with the profile to the State Auditor. The list should state all financial audit, special audit, or nonaudit services provided or to be provided beginning on January 1, 2000, and thereafter.

(4) The agency and IPA shall not enter into any financial, special audit or any other nonaudit service contract without the prior written approval of the State Auditor. All financial, special audit or any other nonaudit service contracts are subject to approval by the State Auditor. The agency and IPA must provide the State Auditor with a copy of any report generated.

J. The State Auditor will approve progress and final payments as follows:

(1) Section 12-6-14 NMSA 1978 (Contract Audits) provides that State Auditor may approve progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(2) Progress payments up to 79% **do not** require State Auditor approval, providing the agency certifies receipt of services. If requested by the State Auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 80% to 90% **do** require State Auditor approval after being approved by the

agency.

(3) The State Auditor may allow only the first 50% of progress payments to be made without State Auditor approval for an IPA whose previous audits were submitted after the due date specified in Section 2.2.2.9 of this Rule.

(4) Section 12-6-14 NMSA 1978 (Contract Audits), provides that final payment under an audit contract may be made by the agency to the IPA only after the State Auditor has stated, in writing, that the audit has been conducted in a competent manner in accordance with contract provisions and this Rule. The State Auditor's determination with respect to final payment shall be stated in the letter accompanying the release of the report to the agency, subject to a comprehensive review by the State Auditor.

(5) Section 12-6-14 1978 (Contract Audits) also provides that "no payment of public funds may be made to an independent auditor unless a contract is entered into and approved."

#### K. Financial Statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.

(2) **The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records,** prepare financial statements in accordance with accounting principles generally accepted in the United States, and provide complete, accurate, and timely information to the IPA as requested to meet the deadline imposed in Subsection 2.2.2.9.A of this Rule.

(3) If there are differences between the financial statements and the books, the IPA should provide the adjusting entries to the agency to reconcile the report to the books.

(4) If the IPA prepared the financial statements, in conformance with Section 2.2.2.8.I of this Rule, this fact must be disclosed in the notes to the financial statements; however, **the agency is responsible for the contents of the financial statements.** All efforts will be made by the agency to assist the IPA with the preparation of the financial statements and notes thereon, to complete the audit report timely and in compliance with Subsection 2.2.2.9.A of this Rule.

#### L. Working Papers:

(1) The working papers are to be retained for a minimum of three years from the date shown on the opinion letter of the audit report, or longer if requested by the federal oversight or cognizant agency or the State Auditor. The State Auditor shall have access to the working papers at the discretion of the State Auditor.

(2) When requested by the State Auditor, all working papers or clear legible copies shall be delivered to the State Auditor.

(3) The working papers of a predecessor IPA are to be made available to a successor IPA in accordance with SAS No. 84. Any costs incurred will be borne by the requestor. If the successor IPA finds that the predecessor IPA's working papers do not comply with applicable auditing standards and this Rule or do not support financial data presented in the audit report, the successor IPA shall notify the State Auditor, in writing, specifying all deficiencies. If the State Auditor determines that the nature of deficiencies noted are of such significance to deem that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this Rule, any of the following actions may be taken:

(a) The State Auditor may require the predecessor IPA to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) The State Auditor may deny the issuance of future audit contracts; and

(c) The State Auditor may refer the predecessor IPA to the New Mexico State Board of Public Accountancy for possible licensure action.

M. **Government Auditing Standards, Amendment No. 2, Auditor Communication**, broadens who the IPA must communicate with and requires the auditor to communicate specific information regarding the nature and extent of testing and reporting on compliance with laws and regulations and internal control over financial reporting during the planning stages of a financial statement audit to reduce the risk that the needs or expectations of the parties involved may be misinterpreted (GAGAS 4.6.3 through 4.6.9).

(1) IPAs shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate official of the agency.

(2) Within 10 days of the entrance conference, the IPA shall submit to the State Auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which will facilitate meeting the audit due date in Section 2.2.2.9.A of this Rule.

N. Amendment of any of the contract provisions will be made upon forms used in the normal course of business by the agency. **Delivery dates are not subject to amendment.** Work performed beyond the originally proposed work, such



as preparation of financial statements, supporting schedules or special procedures, shall be negotiated and compensated only upon amendment of the original contract.

**All amendments must be approved by the State Auditor.**

O. The State Auditor may terminate an audit to be performed by an IPA after determining that the audit has been unduly delayed or for any other reason and perform the audit entirely or partially with IPAs contracted by him [consistent with the October 6, 1993, stipulated order *Vigil v. King* No. SF 92-1487(C)]. The notice of termination of the contract will be in writing.

[2.2.2.8 NMAC – Rp 2.2.2.8 NMAC, 3-29-02]

### **2.2.2.9 REPORT DUE DATES:**

A. Annual audit reports are to be received by the State Auditor on or before the date specified in the audit contract. If a due date falls on a weekend or holiday, the audit report is due the following workday. If the report is mailed to the State Auditor, it should be post marked no later than the due date to be considered filed timely. The State Auditor will grant no extensions of time to deliver the audit reports. **If an agency's financial records are incomplete or require significant adjustment at the time the audit report is due, the IPA shall issue the audit report with the appropriate opinion rendered, no later than the due date specified by this Rule.** The IPA is not to allow the agency additional time to complete its accounting functions when such an allowance will cause the audit to be late. The IPA or agency may consult the State Auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the IPA to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to assure an unqualified opinion.

(1) The audit report due dates are as follows:

(a) Regional Center Cooperatives, Regional Education Cooperatives, Cooperative Educational Services and Independent Housing Authorities **September 30**

(b) Hospitals **October 15**

(c) School Districts, Counties, and Higher Education **November 15**

(d) Municipalities, Special Districts, and Local WorkForce Investment Boards **December 1**

(e) State Agencies and Councils of Governments **December 15**

(f) Agencies with a fiscal year-end other than June 30th must submit the audit report **5 months After the Fiscal Year-End**

(g) Separate audit reports (if applicable) for Component Units (i.e. housing authorities, charter schools, hospitals, foundations etc) that are a department or component unit of another governmental agency are due the **same date the primary government's audit report is due.**

(2) Audit reports for agencies submitting auditor recommendations after the due dates specified above, will be due 30 days after the auditor recommendation has been approved by the State Auditor.

(3) If an audit report is not received on or before the due date by the State Auditor, the report is late and not in compliance with the requirements of Section 2.2.2.9.A of this Rule. A current-year audit finding regarding this instance of noncompliance must be included in the audit report.

B. As in any contract, both parties can and are encouraged to negotiate a delivery date prior to the regulated due date specified in Section 2.2.2.9.A of this Rule. No delivery date, however, may exceed the regulated due date specified in Section 2.2.2.9.A of this Rule.

C. The IPA shall deliver to the State Auditor either a "draft" or e-mail a copy of the finalized audit report or the required number of copies indicated in the audit contract on or before the delivery due date; however if a "draft" or e-mail copy is submitted, once the State Auditor has accepted it, the required number of copies must be received before the release of the audit report. The IPA shall deliver to the agency, the number of copies of the audit report indicated in the audit contract **only** after the State Auditor has officially released the audit report. Every member of the agency's governing authority shall receive a copy of the audit report.

D. The agency and IPA may agree to a contract provision that unjustified failure to meet delivery requirements by either party to the contract may result in liability for a specified amount of liquidated damages from the offending party.

E. IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the State Auditor.  
[2.2.2.9 NMAC – Rp 2.2.2.9 NMAC, 3-29-02]

### **2.2.2.10 GENERAL CRITERIA:**

A. Audit Scope:

(1) The audit shall cover the whole reporting agency, the primary gov-

ernment and any component units of the governmental agency.

(a) All entities for which the primary government is financially accountable (GASB 14 paragraph 10) must be included within the financial statements of the primary government. The primary government and/or its auditors must determine whether an operation is a component unit of the primary government, as defined by GASB Statement No. 14. The flowchart at GASB 14 paragraph 132 is helpful. All agencies for which the primary government is financially accountable must be included in the financial reports of the primary government by discrete presentation unless otherwise approved by the State Auditor. Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested, in writing, from the State Auditor in order to present an agency as other than a discrete component unit. The request for exemption must include evidence supporting the request. The approval of the State Auditor for the exemption is required prior to issuing the report. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government (GASB 14 paragraph 44-50).

(b) **The State Auditor requires the component units to be audited by the same auditor who audits the primary government.** Requests for exemption from this requirement must be submitted to the State Auditor in writing.

(c) The level of planning materiality required by the State Auditor is at the individual fund level within the component unit.

(d) Disclosure requirements for individual component units should be met by including combining statements after the notes to the financial statements that include all component unit funds, not just the major ones. Presentation of the underlying fund types of the individual component units is required when separately issued financial statements of the component units are not available. The combining statements should be at the level of detail that discloses information required by GASB 14 paragraph 51. When GASB 34 is implemented, fiduciary type component unit funds will appear in the Statement of Fiduciary Net Assets with the fiduciary-type funds of the primary government, per GASB 34 paragraph 63.

(e) When separately issued financial statements of the component units are not available, individual budget comparison statements should follow the combining statements when a legally adopted budget exists for a fund.



(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the following:

(a) For agencies that have not implemented GASB Statement No. 34, the general purpose financial statements, the combining financial statements (including budgetary comparisons, where appropriate) by fund type, and the individual fund and account group financial statements. The level of planning materiality required by the State Auditor is at the individual fund level. The State Auditor requires that the budget comparison statements be audited and be included as part of the basic financial statements.

(b) For agencies that have implemented GASB Statement 34, the basic financial statements, shall consist of the government-wide financial statements, fund financial statements, budget comparison statements and notes to the financial statements, along with combining financial statements and individual fund budget comparison statements (where appropriate). The Management Discussion and Analysis (MD&A) is required supplementary information that the auditor should apply certain limited procedures to and report deficiencies in, or the omission of, in the Independent Auditor's Report (SAS AU 558.06). The level of planning materiality required by the State Auditor is at the individual fund level. The State Auditor requires that the budget comparison statements be audited and be included as part of the basic financial statements.

**B. House Joint Memorial 24 (Pertaining to GASB Statements 34 and 35) of the Forty-Fifth Legislature – First Session 2001:**

(1) "Whereas, the governmental accounting and standards board has adopted Statements 34 and 35, which effectively change governmental accounting for all governmental agencies in New Mexico; and

(2) Whereas Statements 34 and 35 change the format and contents of government financial statements and also include a government's infrastructure that may now be depreciated; and

(3) Whereas, the American Institute of Certified Public Accountants will be forthcoming with an audit guideline that will compel certified public accountants to render an adverse opinion on an audit of the financial statements of an entity that does not fully implement Statements 34 and 35 within established staggered timelines; and

(4) Whereas, the federal government uses the audits of government agencies as one of several criteria to evaluate fund proposals submitted by government

agencies; and

(5) Whereas, investment firms, banks and other investors use audits of government agencies to assess a bond rating and interest and ultimately to decide whether to invest in state, county, municipal or other governmental indebtedness, and

(6) NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that all state agencies, state oversight agencies, school districts, colleges and universities and any other agencies that receive governmental funds take action to institute the Governmental Accounting Standards Board Statement 34 and 35 to ensure timely and accurate implementation; and

(7) BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the State Auditor for distribution to all government agencies."

C. Legislation regarding budget adjustment requests (BARs) prevents or restricts many budget transfers or increases. The IPA shall satisfy himself that these restrictions are not being violated by direct payment or other unauthorized transfers.

D. Legislation can designate a fund as "reverting or non-reverting. The IPA must review the law which appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted, and to whom. The law will also indicate the deadline for the required reversion. Appropriate audit procedures must be performed to determine compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes should fully disclose the reverting versus non-reverting nature of an appropriation. The financial statements must disclose the specific legislation that makes a fund or appropriation non-reverting. If non-reverting appropriations are commingled with reverting appropriations, the notes to the financial statements must disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions see Section 2.2.2.12 A of this Rule.

E. Governmental Auditing, Accounting and Financial Reporting Standards: The audits shall be conducted in accordance with:

(1) Generally Accepted Government Auditing Standards (GAGAS) issued by the U.S. General Accounting Office, latest edition and amendments;

(2) *Codification of Statements on Auditing Standards* (SAS) issued by the AICPA, latest edition (see Appendix C);

(3) *OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations*;

(4) SOP 98-3, *Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards*, latest edition;

(5) AICPA Audit and Accounting Guide, *Audits of State and Local Governmental Units* (ASLGU), latest edition;

(6) AICPA Audit and Accounting Guide, *Audits of Health Care Organizations*, latest edition;

(7) AICPA Audit and Accounting Guide, *Audits of Colleges and Universities*, latest edition;

(8) AICPA Audit and Accounting Guide, *Audits of Employee Benefit Plans*, latest edition; and

(9) 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies*, latest edition.

F. The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States. Governmental accounting principles are identified in the *Codification of Governmental Accounting and Financial Reporting Standard (GASB)*, latest edition (see Appendix B). Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB and other applicable pronouncements issued by Financial Accounting Standards Board (FASB).

G. IPAs who perform government audits are expected to maintain professional libraries with current editions of the above publications. The audit guides published by Practitioners Publishing Company (PPC) are practice aides only and are not considered to be authoritative.

H. State Compliance: An IPA shall identify significant state statutes and rules and regulations applicable to the governmental agency under audit and perform tests of compliance. In addition to those significant state statutes, rules and regulations identified by the IPA, the following state statutes and constitutional provisions will be tested:

(1) Procurement Code (13-1-1 to 13-1-199 NMSA 1978);

(2) Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978);

(3) Personnel Act (10-9-1 to 10-9-25 NMSA 1978);

(4) Public Money Act (6-10-1 to 6-10-63 NMSA 1978);

(5) Public School Finance (22-8-1 to 22-8-42 NMSA 1978);

(6) Investment of Public Money (6-8-1 to 6-8-21 NMSA 1978);

(7) Public Employees Retirement Act (10-11-1 to 10-11-38 NMSA 1978);

(8) Educational Retirement Act (22-11-1 to 22-11-45 NMSA 1978);

(9) Sale of Public Property (13-6-1 to 13-6-4 NMSA 1978);

(10) Anti-Donation Clause (NM Constitution Article IX, Section 14);

(11) Special, Deficiency, and Specific Appropriations (appropriation laws applicable for the year under audit);

(12) Budget Compliance (6-3-1 to 6-3-25 NMSA 1978);

(13) Lease Purchase Agreements; (6-6-11 to 6-6-12, *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328, 1989);

(14) INMAC 1.2.1, Accounting and Control of Fixed Assets of State Government;

(15) 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Agencies; and

(16) Article IX of the State Constitution limits on indebtedness.

I. Federal Compliance: The following government pronouncements establish requirements and give guidance for a Single Audit.

(1) **Single Audit Amendments of 1996**; (Public Law 104-156);

(2) Generally Accepted **Government Auditing Standards** (GAGAS) issued by the U.S. General Accounting Office, latest edition and amendments;

(3) OMB Circular A-21, **Cost Principles for Educational Institutions**, latest edition;

(4) OMB Circular A-87, **Cost Principles for State, Local, and Indian Tribal Governments**, latest edition;

(5) OMB Circular A-102, **Grants and Cooperative Agreements with State and Local Governments**, latest edition;

(6) OMB Circular A-110, **Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations**, latest edition;

(7) OMB Circular A-133, **Audits of States, Local Governments and Non-Profit Organizations**, latest edition;

(8) OMB Circular A-133 **Compliance Supplement**, latest edition; and

(9) OMB **Catalog of Federal Domestic Assistance** (CFDA), latest edition;

J. Audit Findings:

(1) Section 12-6-5 NMSA 1978 (Reports of Audits) states each report shall set out in detail, in a separate section, **any** violation of law or **good accounting practices** found by the audit or examination. Therefore, all findings should be included in the annual audit report. **“There is no level of materiality in government audit-**

**ing and all violations must be disclosed because “public monies” are involved.”**

(2) The second planning standard for financial audits per Generally Accepted **Government Auditing Standards** (GAGAS), issued by the U.S. General Accounting Office (Section 4.7, 4.10 and 4.11), requires the auditor to follow up on known material findings and recommendations from previous audits. This includes findings reported in financial, special and internal audits. In addition to this standard, the IPA will report the status of **all** prior-year findings by reference number (i.e. 00-1, 00-2) and descriptive title in the audit report as being resolved or repeated in the current-year.

(3) Current-Year:

(a) All current-year audit findings shall have a reference number and a short title that identifies the finding (i.e. 02-1, 02-2, 02-3).

(b) A memorandum on potential audit findings should be prepared and submitted to agency management as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. Findings are not subject to negotiation but should comply with good accounting practices. If applicable, the agency should also prepare a corrective action plan. **The agency shall respond, in writing, to the IPAs memorandum of findings within 10 workdays. Responses to the audit findings should be included in the audit report. Lack of agency responses within the 10 days does not warrant delay of the audit. If the responses are not received, indicate that they were not received and the reason why after each finding.**

(c) Each audit finding (including unresolved prior-year findings) shall specifically state and describe the following:

(i) Condition (quantify where possible-number of instances, dollar amounts, etc.);

(ii) Criteria (which must include specific reference to the law, regulation, or other guidance that was violated);

(iii) Effect;

(iv) Cause;

(v) Recommendation;

and  
(vi) Agency Response (i.e., agency comments and a specific corrective action plan).

(4) Failure to file the audit report by the due date set in Section 2.2.2.9 of this Rule is considered noncompliance with this Rule and shall be a current-year finding.

(5) If an agency has entered into any professional services contract with an IPA without written State Auditor approval,

this should be reported as a finding of non-compliance with Section of 2.2.2.8.I of this Rule.

(6) Component unit findings must be included in the primary government financial audit report.

(7) A release of the audit report by the IPA or agency prior to being officially released by the State Auditor is a violation of state statute and will require an additional finding in the audit report.

K. Exit Conference:

(1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component unit's (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. If component unit representatives cannot attend the combined exit conference a separate exit conference must be held with the component unit's governing authority and top management. The date of the conference(s) and the names and titles of personnel attending must be stated in a concluding paragraph of the audit findings and recommendations section of the audit report.

(2) The IPA shall deliver to the agency a draft audit report (must be stamped “Draft”) and a list of the **“passed audit adjustments”** at the exit conference. The draft audit report shall include the independent auditor's report, a complete set of financial statements, notes to the financial statements, audit findings that include response from agency management, status of prior-year audit findings, and the reports on compliance and internal control required by auditing standards and the Single Audit Act. Section 2.2.2.10.BB of this Rule and SAS 89 **Audit Adjustments** provides an explanation regarding the list of “passed audit adjustments.” The agency will have at least ten (10) workdays to review the draft audit report and report to the IPA any issues that need to be resolved prior to submitting the report to the State Auditor. The audit report shall be delivered to the State Auditor **with a copy of “passed audit adjustments”** attached, on or before the due date specified in Section 2.2.2.9.A of this Rule.

(3) Section 12-6-5 NMSA 1978 (Reports of Audits) provides that an audit report does not become a public record, subject to public inspection, until ten days after it is released by the State Auditor to the agency audited. The Attorney General's **Open Meetings Act Compliance Guide** states that the agency being audited is governed by a public body subject to the Open Meetings Act and where discussion of the report occurs at an exit conference at which a quorum of the members of that body is present, such an exit conference **shall not**

be open to the public in order to preserve the confidentiality of the information protected by Section 12-6-5 NMSA 1978.

(4) Pursuant to the Open Meetings Act (10-15-1 to 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public.

(5) Because the audit process will not have been completed at the time of the exit conference, neither the IPA nor agency personnel shall release any information relating to the audit, including the working papers, until the audit becomes a public record. However, the State Auditor shall have access to the working papers at his discretion. Agencies subject to the Open Meetings Act (Act) will schedule an exit conference during closed meetings in compliance with this Act. The final audit report shall be presented and accepted by the governing authority of the agency, if applicable, at a **public meeting** after the audit becomes a public record.

L. Possible Violations of Criminal Statutes in Connection With Financial Affairs:

(1) Every agency and IPA, pursuant to Section 12-6-6 NMSA 1978 (Criminal Violations), shall notify the State Auditor immediately, in writing, upon discovery of any possible criminal statute violation in connection with its financial affairs. The notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned. The State Auditor will determine whether a special audit is warranted based upon the written information provided. If warranted, the State Auditor will conduct the special audit. The IPA shall not enter into **any financial or special** audit contract unless selected through a process consistent with the procurement code and subject to the **prior written approval** of the State Auditor. A copy of the report shall be provided to the State Auditor.

(2) The State Auditor shall immediately report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

M. C o m p e n s a t e d Absences:

(1) Vacation pay and other compensated absences should be computed in accordance with the requirements of GASB Statement No. 16, *Accounting for Compensated Absences*, and be reported in the financial statements. The notes to the financial statements should disclose the accounting treatment applied to compensated absences.

(2) If GASB 34 has been imple-

mented by the agency, the Statement of Net Assets, governmental activities column should report both the current and long-term portions of the compensated absence liability because the government-wide financial statements report all liabilities.

N. Special Revenue Funds Authority: The authority for creation of special revenue funds must be shown in the audit report (i.e., cite the statute number, executive order, resolution number, or other specific authority) in the divider page or notes to the financial statements.

O. Public Monies:

(1) Pledged Collateral by Banks:

(a) All audit reports should disclose the collateral requirements in the notes to the financial statements. In addition, there should be a supplementary schedule to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S&L) that is a depository for public funds. The schedule should disclose the type of security (i.e. bond, note, treasury, bill, etc), security number, CUSIP number, **fair market value** and maturity date. The schedule should also disclose the name of the custodian and the place of safe keeping for all collateral. If the bank balances of deposits as of the balance sheet date are entirely insured or collateralized with securities held by the agency or by its agent in the agency's name, that fact should be stated. If not, disclosures should be made in accordance with GASB Statements No. 3 and 31.

(b) If the pledged collateral in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17 NMSA 1978), there should be a finding in the audit report. No security is required for the deposit of public money that is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Shares Insurance Fund (NCUSIF) according to Section 6-10-16 NMSA 1978. The supplementary schedule of collateral requirements should be calculated separately for each bank and disclosed in the report as follows:

(i) Total amount of deposit in bank or credit union	\$300,000
(ii) Less: FDIC or NCUSIF coverage*	<u>100,000</u>
(iii) Total uninsured public funds	200,000
(iv) 50% collateral requirement	
	(Section 6-10-17 NMSA 1978)
	<u>100,000</u>
(v) Pledged Security	<u>100,000</u>
(vi) Over (Under)	\$ 0

[\*The FDIC issued an advisory

opinion (FDIC 94-24) on June 13, 1994, stating that public funds are entitled to \$100,000 insurance for time or savings deposits and \$100,000 for demand deposits deposited within the state in compliance with 12 CFR Subsection 330.14(b)]

(c) Repurchase agreements must be covered by 102% of pledged collateral (Section 5-10-10 H, NMSA 1978) and must be disclosed in the supplemental schedule of pledged collateral.

(d) Applicable Statutes: Agencies who deposit and invest public monies are subject to provisions of the following sections:

(i) Chapter 6, Article 10, Public Money, NMSA 1978; and

(ii) Chapter 22, Article 8, Public School Finance, NMSA 1978.

(e) There should be compliance testing for all local public bodies subject to the above sections. If the agency is not complying with the statutes, there should be a finding in the audit report.

(f) All monies coming into all agencies, i.e., vending machines, fees for xerox copies, telephone charges, etc., shall be considered public monies and be accounted for.

(g) The State Treasurer's Office monitors the collateralization of the bank accounts of most state agencies. If the collateralization of a state agency's bank accounts is monitored by the State Treasurer's Office, the IPA only need to include a note stating that the accounts are monitored by the State Treasurer's Office and that the State Treasurer issues separate financial statements which disclose the collateral pledged to secure these deposits. If the collateralization of a state agency's bank accounts is not monitored by the State Treasurer's Office, then the IPA needs to confirm the collateral held by the bank in much the same manner as would be done in the audit of a local government or school district.

(2) List of Individual Deposit Accounts and Investments: Each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) Name of depository (i.e., bank, credit union);

(b) Account name;

(c) Type of account (checking, savings, investment);

(d) Bank balance of deposits and investments as of the balance sheet date; and

(e) Reconciled balance of deposits and investments as of the balance sheet date, as reported in the financial statements.



(3) Repurchase Agreements: Section 6-10-10 NMSA 1978 (Deposit and Investment of Funds) was amended effective July 1, 1994, allowing certain agencies to invest in repurchase agreements with certain stipulations and prerequisites.

(4) Cities, counties, and other non-state agencies that have investments in the State Treasurer external investment pool (the Local Government Investment Pool) must include the following disclosures in the notes to their financial statements (GASB Statement No. 31 paragraph 15):

(a) The investments are valued at fair value based on quoted market prices as of the valuation date;

(b) The State Treasurer Local Government Investment Pool is not SEC registered. Section 6-10-10 I, NMSA 1978, empowers the State Treasurer, with the advice and consent of the State Board of Finance, to invest money held in the short-term investment fund in securities that are issued by the United States government or by its departments or agencies and are either direct obligations of the United States or are backed by the full faith and credit of the United States government or are agencies sponsored by the United States government. The Local Government Investment Pool investments are monitored by the same investment committee and the same policies and procedures that apply to all other state investments;

(c) The pool does not have unit shares. Per Section 6-10-10.1F, NMSA 1978, at the end of each month all interest earned is distributed by the State Treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts fund were invested; and

(d) Participation in the local government investment pool is voluntary.

**B u d g e t a r y Presentation:**

(1) The Statements of Revenues and Expenditures Budget and Actual, shall include the amount of prior-year cash balance required to balance the budget. The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled and disclosed in the notes to the financial statements or on the face of the financial statement.

(2) For agencies that have adopted GASB 34, a budget comparison statement for each of the major funds presented, and one for the aggregated nonmajor funds, must be included as part of the basic financial statements in front of the notes. Individual fund budget comparison schedules must be included after combining statements for each fund that has a legally adopt-

ed budget that is not already presented in front with the basic financial statements. All budget comparisons must show the original and final appropriated budget, the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

**(3) It is a requirement of the State Auditor that budget comparison statement be audited.**

**Q.** Appropriations to Agencies: The budget comparison presented in the financial statements must be at least at the same appropriation level as the approved budget to demonstrate compliance with legal requirements. See 2.2.2.12.A.(4) of this Rule for the list of the old and new budget categories. If actual expenditures exceed budgeted expenditures within a category it must be reported in a finding. If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables required to balance the budget) that fact must also be reported in a finding. Revenue categories of appropriations to state agencies are listed below. The budget comparison statements must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the appropriation, either the old or new categories shown on Section 2.2.2.12.A.(4) of this Rule.

(1) State General Fund;

(2) Other State Funds;

(3) Internal Service Funds/Inter-Agency Transfers; or

(4) Federal Funds.

**R.** Deferred Compensation Plans:

(1) GASB Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, was issued to reflect a change in the legal status of Internal Revenue Code (IRC) Section 457. The provisions of IRC Sections 457 deferred compensation plans were amended to state that a plan shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan are held in trust for the exclusive benefit of participants and their beneficiaries. Previously, the amounts deferred under an IRC Section 457 plan were legally the property of the sponsoring employer government. Under these new requirements, the government no longer owns the amounts deferred by employees or related income on those amounts.

(2) The change in the law requires existing plans to establish a trust to hold IRC Section 457 plan assets by January 1, 1999. Sponsor governments must adopt the provisions of GASB Statement No. 32 for

periods beginning after December 31, 1998, or in the period the government complies with the law change, if earlier. A government is considered to hold plan assets in a fiduciary capacity only if it 1) has significant administrative responsibility for the plan or 2) performs the investment function for the plan.

(3) Agencies that implement GASB 34 should be aware that GASB 32 has been amended by GASB 34. See GASB 34 paragraphs 69 through 72 and examples E-1 and E-2 for guidance on reporting fiduciary funds.

**(4) GASB Statement No. 32 does not require specific note disclosures.**

**S.** Consideration of the Internal Control in a Financial Statement Audit:

(1) SAS No. 55, *Consideration of Internal Control in a Financial Statement Audit*, and SAS No. 78, *Consideration of Internal Control in a Financial Statement Audit*: An Amendment to SAS No. 55, and Governmental Auditing Standards, Section 4.21 to 4.29, provide guidance to IPAs related to consideration of internal control as part of an audit. SAS No. 78, replaces the SAS No. 55 definition and description of internal control with the definition and description from *Internal Control-Integrated Framework*, published by the Committee on Sponsoring Organizations of the Treadway Commission (the COSO Report).

(2) Audits performed under OMB Circular A-133 require additional consideration on internal control regardless of the assessed level of control risk. The control environment, risk assessment, information and communication, control activities and monitoring components of internal control which assure compliance will in most instances require further understanding and test controls whether or not such tests represent the most efficient approach. Assessing control risk at the maximum for efficiency reasons will not decrease the testing of controls required in a Single Audit. The requirement is to test internal control even if the IPA has assessed control risk at the maximum and is taking a substantive approach to the audit of the financial statements.

(3) Financial audits performed under this Rule, require the same level of consideration of internal control as that required by a Single Audit performed in accordance with OMB Circular A-133. This is a special requirement of the State Auditor.

(4) The IPA is required to document the understanding of internal control, risk assessment and test of controls in the working papers of the financial audit.

**T.** Lease Purchase



#### Agreements:

(1) The New Mexico Supreme Court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement. (Any agreements executed prior to that date may not be extended or amended without compliance with the guidelines of Montano v. Gabaldon, 108 N.M. 94, 766 P.2d 1328).

(2) The Attorney General interpreted Montano to mean that long-term contracts for professional services, leases, and real property rental agreements may still be entered into within the constraints of the Bateman Act and the Procurement Code. However, any agreement which is in effect for more than one fiscal year, including leases of real property, must have a provision allowing the agency to terminate the agreement at will at anytime, or at least at the end of each fiscal year, without penalty. Furthermore, the agency must have no "equitable or moral" duty to continue to make payments under the contract. The agreements must also contain a non-appropriation clause allowing for termination of the agreement in the event the agency decides not to appropriate funds for each fiscal year.

(3) The Attorney General subsequently opined that if the source of funds to repay the debt is solely repaid from the project revenue or from a special non-general-tax fund and not from any general tax revenue, then the debt, be it in the form of bonds or a lease purchase agreement, is not the sort of debt which triggers the constitutional requirement of approval by the voters. This is the teaching of the Connelly case relied on by the court in Montano. Montano did not reverse Connelly, Seward and the other cases which have consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues.

(4) If specific questions as to the constitutionality of a particular lease agreement remain, an independent legal opinion should be obtained from the Attorney General.

U. Inter-fund Transfers: All inter-fund transfers must balance. If there are transfers to other agencies, the amounts must be segregated and explained in the notes to the financial statements.

V. Required Auditor's Reports:

(1) Reports issued for agencies should follow the examples contained in the AICPA Audit and Accounting Guide, *Audits of State and Local Governmental Units*, issued May 1, 2001. Appendix D includes Examples 1 through 5 revised to reflect the

requirements of SAS 93 with references to auditing standards generally and accounting principles generally accepted in the United States of America. Revised reports are also available from the AICPA's website at <http://www.aicpa.org/belt/a133main.htm>.

(2) Proper implementation of GASB 34 and/or GASB 35 will impact the auditor's opinion in the Independent Auditor's Report.

(a) An adverse opinion shall result if anything less than a full set of financial statements as required by GASB 34 and/or GASB 35, are presented.

(b) An adverse opinion shall result if the old model is presented instead of the new model under GASB 34 and/or GASB 35.

(c) A modified opinion may result if a component unit fails to implement GASB 34 and/or GASB 35 in the same fiscal period as the primary government.

(d) An adverse opinion will result if infrastructure is excluded from the government-wide statements and it is significant.

(3) GAAP is defined by GASB 34 and/or 35 once the implementation date for the entity passes. "Rule 203 of the Code of Professional Conduct of the AICPA states: 'A member shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by Council to establish such principles that has a material effect on the statements or data taken as a whole, ' " (SAS AU Sec 508.14).

(4) A revised AICPA audit guide is expected to be available September 2002. Auditors should follow the guidance and report examples in the revised guide when it becomes effective.

#### W. Service Organizations:

(1) SAS No. 88 amends SAS No. 70, *Reports on the Processing of Transactions by Service Organizations*, to help IPAs determine what additional information they might need when auditing the financial statements of an agency that uses a service organization to process transactions. SAS No. 70 provides guidance an IPA should consider when auditing the financial statements of an agency that uses a service organization to process certain transactions. SAS No. 70 also provides guidance for an IPA who issues reports on the processing of

transactions by a service organization for use by other IPAs.

(2) SAS No. 70 (AU 324.03) defines a service organization as an organization that is engaged to provide either or both of the following services:

(a) Execution of transactions and maintenance of the related accountability; and

(b) Recording of transactions and processing of related data.

(c) The following are examples of service organizations:

(i) Tax collection authorities;

(ii) EDP service centers that process transactions and related data for others;

(iii) Regional educational service centers;

(iv) Bank trust departments that invest and hold assets for employee benefit plans or others;

(v) Payroll service companies that process payroll transactions and make payroll disbursements; and

(vi) Potentially public housing authority fee accountants.

(3) When a governmental agency uses a service organization (as defined by AU 324.03), its transactions are processed through another organization's financial reporting system and are subject to that organization's controls. If the use of the service organization is significant to planning and performing the audit, the IPA should obtain an understanding of the client's financial reporting system and internal controls for information produced by that organization in accordance with SAS No. 70.

X. Disposition of Computers: Sections 13-6-1 through 13-6-2 NMSA 1978 and the procurement code govern the disposition of fixed assets. Prior to disposing of a computer, an agency shall erase all licensed software and any electronic media pertaining to the agency. The agency will certify in writing the erasure of the hard drive and submit the certification along with the notification of the proposed disposition of property to the State Auditor at least thirty days prior to taking action. The IPA shall test for compliance with this requirement. This is a special requirement of the State Auditor.

Y. Joint Powers Agreement:

(1) All joint powers agreements must be listed in a supplementary schedule in the audit report. The schedule should include the following:

(a) Participants;

(b) Responsible party for operations;

- (c) Description;
- (d) Beginning and ending dates of agreement;
- (e) Total estimated amount of project and portion applicable to agency;
- (f) Amount agency contributed in current fiscal year;
- (g) Audit Responsibility;
- (h) Fiscal agent if applicable; and
- (i) Name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements see Section 2.2.2.10.Z (Self-Insurance) Section of this Rule.

Z. Self Insurance: Those agencies that have self-insurance agreements should disclose the data in the notes to the financial statements. The note should include the name of the agency that is providing the insurance and the amount of contribution by the agency to the fund during the year. Reserves should be reviewed to determine if the reserves are actuarially sound. There should be full disclosure in the notes to the financial statements.

AA. Non-exchange Transaction Revenue Recognition: GASB Statement No. 33 establishes accounting and financial reporting standards for the non-exchange transactions of state and local governments. It is effective for fiscal years starting after June 15, 2000. A non-exchange transaction occurs when a government (including the federal government) either gives value to another party without directly receiving equal value in exchange or receives value from another party without directly giving equal value in exchange. There are four types of non-exchange transactions: derived tax revenues (income and motor fuel taxes); imposed non-exchange revenues (property tax, fines and penalties, and property forfeitures); government-mandated non-exchange transaction revenues (federal programs that state or local governments are mandated to perform, state programs that local governments are mandated to perform); and voluntary non-exchange transactions (grants, entitlements, and donations by nongovernmental entities, including private donations.) On both the accrual and modified accrual basis of accounting, revenue recognition is required for non-exchange transactions in the financial statements unless the transaction is not measurable (reasonably estimable). For guidance in applying the accrual basis of revenue recognition see GASB 33 paragraphs 16 through 28. For guidance in applying the modified accrual basis of revenue recognition, see GASB 33 paragraphs 29 and 30. Implementation of GASB 34 will require revenue recognition on both basis of

accounting: full accrual basis in the government-wide statements; and modified accrual basis in the fund financial statements. Common application issues are listed below.

(1) Property taxes are an example of "imposed non-exchange" revenue. According to GASB 33 paragraph 18, "Governments should recognize revenues from property taxes, net of estimated refunds and estimated uncollectible amounts, in the period for which the taxes are levied, even if the enforceable legal claim arises or the due date for payment occurs in a different period." For modified accrual presentation, property tax revenues are recognized when they become available. Available means due or past due and receivable within the current period, usually within 60 days. (NCGAI 3 paragraph 8)

(2) New Mexico capital projects funds drawn down from the State Board of Finance are voluntary non-exchange revenues to the capital project recipients. The State Board of Finance, as the provider has restrictions and eligibility requirements related to the requests for draw downs that pay for the capital projects. On the full accrual basis of accounting, project recipients should recognize receivables and revenues when all applicable eligibility requirements of the State Board of Finance are met (GASB 33 paragraph 21). On the modified accrual basis of accounting, recipients should recognize revenues in the period when all applicable eligibility requirements have been met and the resources are available (GASB 33 paragraph 29(d)).

(3) There will be no direct increases to contributed capital under GASB 33, all inflows from non-exchange transactions must be reported as revenue (GASB 33 paragraph 93). This is consistent with the statement in GASB 34 that "All proprietary fund revenues, including capital contributions and additions to permanent and term endowments, should be reported in the statement of revenues, expenses, and changes in fund net assets (GASB 34 paragraph 103).

BB. SAS 89 Audit Adjustments:

(1) Statement on Auditing Standards (SAS) 89, issued December 1999, is effective for fiscal years beginning on December 15, 1999. Per the AICPA summary, SAS 89 is designed to encourage management to record adjustments aggregated by the auditor. It clarified management's responsibility for the disposition of financial statement misstatements brought to its attention. The engagement letter should state that management is responsible for adjusting the financial statements to correct material misstatements (if the agency

prepared the financial statements). In the representation letter, management should affirm to the auditor that the effects of any uncorrected financial statement misstatements aggregated by the auditor are immaterial, both individually and in total (if the agency prepared the financial statements). In such cases, a summary of any misstatements that management did not correct in their financial statements must be included in or attached to the management representation letter.

(2) SAS 89 requires the auditor to inform those who have oversight of the financial reporting process about uncorrected misstatements aggregated by the auditor during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements taken as a whole. Those having oversight of the financial reporting process are generally the governing board or an audit committee. This is a list of audit adjustments determined by the auditor that did not get included in the audited financial statements. **The auditor must present this list of "passed adjustments" to the agency management and governing board representatives in the exit conference. A copy of the list must be attached to the audit report submitted to the State Auditor for review.** In the event no audit adjustments were omitted from the financial statements a memo stating that there were "no passed adjustments" should take the place of the list of "passed adjustments."

[2.2.2.10 NMAC – Rp 2.2.2.10 NMAC, 3-29-02]

#### 2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. The Accountability in Government Act (AGA) (Chapter 15, Laws of 1999) provides a general process for implementation of performance-based budgeting over a four-year period.

B. For agencies whose performance measures are included in the General Appropriations Act, the agency shall include a schedule of performance data (outcomes, outputs, efficiency, etc.) if, the schedule is required by the agencies oversight agency such as DFA, CHE and SDE and preparation guidelines are issued by the oversight agency.

C. The auditor's responsibilities for performing procedures and reporting on Required Supplemental Information (RSI) is provided in SAS No. 52, *Omnibus Statement on Auditing Standards* 1987 (AICPA, Professional Standards, vol. 1, AU 558, *Required Supplemental Information*). The auditor ordinarily should apply the following limit-

ed procedures to RSI.

(1) Inquire of management about the methods of preparing the information, including:

(a) whether it is measured and presented within prescribed guidelines;

(b) whether methods of measurement or presentation have been changed from those used in the prior period and the reasons for any such changes; and

(c) any significant assumptions or interpretations underlying the measurement or presentation.

(2) Compare the information for consistency with:

(a) management's responses to foregoing inquiries;

(b) audited financial statements; and

(c) other knowledge obtained during the audit.

(3) Consider whether to include representations on RSI in the management representation letter.

D. Apply additional procedures, if any, that other AICPA SASs, SAS, Interpretations, Audit and Accounting Guides, or Statements of Position prescribe for specific types of RSI.

E. Make additional inquiries if applying the foregoing procedures causes the auditor to believe that the information may not be measured or presented within applicable guidelines.

F. The IPA should report on the Performance Data in either an agency-prepared or auditor submitted document when:

(1) The required performance data is omitted;

(2) The auditor concludes that the measurement or presentation of the performance data departs materially from prescribed guidelines;

(3) The auditor is unable to complete the prescribed procedures; and

(4) The auditor is unable to remove substantial doubts about whether the performance data conforms to prescribed guidelines.

G. The IPA generally has no reporting requirement; however, the IPA may disclaim an opinion on the information.

[2.2.2.11 NMAC – Rp 2.2.2.11 NMAC, 3-29-02]

**2.2.2.12 SPECIFIC CRITERIA:** The applicable specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, the appropriate state statutes should be reviewed in planning governmental audits.

#### A. PERTAINING TO

#### AUDITS OF STATE AGENCIES:

(1) Encumbrances  
Reconciliation:

(a) DFA maintains an encumbrance system for all state agencies under its jurisdiction.

(b) The state agency is responsible for preparing a list of the valid encumbrances and a reconciliation with DFA. The differences in the reconciliation must be disclosed in the notes to the financial statements, by category of expenditure and by appropriation level.

(2) Special, Deficiency, and Specific Appropriations:

(a) The financial statements must disclose special, deficiency, and specific appropriations in the financial statements and shall be explained in the notes to the financial statements, when appropriate. The original appropriation, expenditures to date, outstanding encumbrances and unencumbered balances shall be disclosed in a supplementary schedule or in a note to the financial statements.

(b) Any special, deficiency, and specific appropriation balances that are not reverted at the balance sheet date must be presented as unearned or deferred revenue or as a part of the "Reserved for Subsequent Year's Expenditures" depending on the nature of the transaction and must be fully explained in the notes to the financial statements. This is a special requirement of the State Auditor.

(3) Fund Balance: At a minimum, financial statements must disclose the following two components of fund balance:

(a) Reserved Fund Balance. In general, an agency can only reserve fund balance related to encumbrances, inventories, and petty cash, as these balances are considered expenditures under the state's budgetary basis of accounting. All other reservations must be specifically required or authorized by legislation. The notes to the financial statements must disclose the specific legal authority for all reservations of fund balance.

(b) Unreserved, Designated for Future Expenditures: Certain funds have specific legal authority to accumulated unreserved fund balance. These funds are called non-reverting funds. "Financial statements should disclose, as unreserved, designated for future expenditure," the amount of fund balance designated by legislation to be a non-reverting fund. Since the Legislature usually makes appropriations to the organization and not funds, past practices may have to be looked at to determine to which fund within the organization the Legislature intended the appropriation to be credited.

(4) Books of Record:

(a) DFA maintains a central

accounting system of state accounts for cash and budgetary control purposes. The DFA may require original documents to be processed through them for vouchers, transfers, and budget adjustments; therefore, the IPA must use discretion to determine whether to rely upon the original documents that are filed with DFA or the copies at the agency.

(b) DFA has made changes to the chart of accounts. There are now five appropriation unit codes instead of the previous eleven. Statements of revenues and expenditures presented throughout the financial statements must continue to be presented at the old appropriation code level. Budget comparison statements must be presented using the level of appropriation reflected in the agency appropriation for the current-year.



New Appropriation Code	Old Appropriation Name	Old Appr Unit
200	Personal Services	000
200	Employee Benefits	010
400	In-State Travel	020
400	Maintenance & Repairs	030
400	Supplies	040
300	Contractual Services	050
400	Operating Costs	060
400	Other Costs	070
400	Capital Outlay	080
400	Out-of-State Travel	095
500	Other Financing Uses	150
600	Refunds, Reversions, Annuity	160

The updated revenue codes follow a format that facilitates GASB 34 revenue classification:

Revenue Code	Type of Revenue
XXX3	Program Charges for Services
XXX4	Program Operating Revenue
XXX5	Program Capital Contrib/Grants
XXX6	General Revenue
XXX7	Addition to Employee Retirement Plan
XXX8	Other Financing Sources
XXX9	Special Items/Extraordinary
XXX0	Transfers

For more detail about the chart of accounts see the DFA website.

(5) Reversions to State General Fund:

(a) All reversions to the State General Fund must be identified in the financial statements by the fiscal year of appropriation (e.g. Reversion to State General Fund FY 01). The gross amount of the appropriation and the gross amount of the reversion must be stated separately.

(b) 6-5-10 NMSA 1978 requires all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30, as adjusted, shall revert to the general fund within ten days of release of the audit report for that fiscal year.

(6) Transfers of Cash Between Agencies that are not Payments for Materials or Services:

(a) Intra-agency transfers between funds should offset. Reasons for intra-agency transfers should be fully explained in the notes to the financial statements.

(b) Inter-agency transfers that are not payments for materials or services rendered should be segregated from intra-agency transfers and should be fully explained in the notes to the financial statements along with the agency number and cash account to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than notes, but agency and cash account numbers must be shown.

(c) The IPA is also responsible for performing audit procedures on all inter-agency transfers of cash that are not payment for goods and services between the receiving and transferring agency.

(d) All transfers to and from CAS fund 853, the State General Fund Appropriation Account, must be clearly identifiable in the audit report as State General Fund appropriations, reversions, or collections.

(7) General Services Department (GSD) Capital Projects: GSD records the State of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency must capitalize those assets based on actual amounts expended, in accordance with GSD instructions issued in 1 NMAC 1.2.1.10, *Valuation of Assets*.

(8) State-owned Motor Vehicle Inventory: Successful management of the state-owned vehicles pursuant to the Transportation Services Act (15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate fixed assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the fixed assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(9) Fixed Assets Inventory:

(a) The Audit Act (12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment whose cost is over \$1,000. Neither the statute nor Rule 1 NMAC 1.2.1 "Accounting and Control of Fixed Assets of State Government" requires that agencies remove items from their fixed asset inventory whose value is less than \$1,000; and

(b) The State Auditor encourages agencies to maintain a separate accountability report (listing) for management purposes of those items that cost less than \$1,000. This listing will not be reflected in the financial statements.

(10) Independent Auditor's Report: The Independent Auditor's Report for state agencies, district attorneys, district courts, and educational institutions created by the New Mexico Constitution must include an explanatory paragraph preceding the opinion paragraph. The explanatory paragraph should reference the Summary of Significant Accounting Principles disclosure regarding the reporting agency, and indicate that the financial statements present the financial position and results of operation of only that portion of the financial reporting agency of the State that is attributable to the transactions of the agency. See Example A.15 in the AICPA Audit and Accounting Guide, *Audits of State and Local Governmental Units*.

(11) GASB 34 Revenue Classification: The State of New Mexico is the primary government of the component unit agencies.

(a) All resource flows (except loans, repayments, and similar "balance sheet" transactions) between a primary government and its **discretely presented** component units are required to be reported as external transactions – revenues and expenses – in both the primary government's financial statements and the component unit(s) separately issued financial statements. Resource flows between the primary government and blended component units (legally separate from the primary government in form, but not in substance) are reported as revenues and expenses in separately issued reports of those component units but should be reclassified as transfers (internal activity) when included in the primary government's financial statements.

(b) When a state agency receives a federal grant directly from the federal grantor, restricted for use in a particular program, that receipt is revenue to the receiving agency. It should be recorded in central accounting system revenue code 5194 if it can be used either for operating expenses or for capital expenditures of the program at



the discretion of the agency. It should be recorded in revenue code 5195 if it must be used for capital purposes – to purchase, construct, or renovate capital assets associated with that specific program (GASB 34 paragraph 50). In these cases the federal grants will appear as program revenues in the GASB 34 Statement of Activities. In the event a federal multipurpose grant is directly received from the federal grantor, it should appear as general revenue on the GASB 34 Statement of Activities (GASB 34 paragraph 50). If a state agency receives a federal grant passed through from another state agency that receipt should be recorded in the DFA transfer account 9950 “Intra-State WTS-FED Grants;” and it must appear as a transfer on the GASB 34 Statement of Activities.

#### B. PERTAINING TO HOUSING AUTHORITIES:

(1) **The State of New Mexico currently has 47 Housing Authorities that are included under the Audit Act:**

(a) Independent	5
(b) Component units or department of municipalities	33
(c) Component units or department of counties	8
(d) Component unit of the state	1

(2) The Housing Authority must be included in the financial report of the primary government by discrete presentation unless otherwise approved by the State Auditor.

(a) Discrete presentation shows financial data of the component unit in a column, to the right of and separate from the financial data of the primary government. See GASB 14 paragraphs 44 through 50 for additional guidance.

(b) The primary government and/or auditor must make the determination whether the housing authority is a component unit of the primary government. See Section 2.2.2.10.A(1) of this Rule for guidance in this determination. In the event the primary government and/or auditor determine that the housing authority is a department of, rather than a component unit of the primary government, a request for exemption from the discrete presentation requirement must be submitted to the State Auditor explaining why the housing authority is not a blended component unit. The request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request must address these issues:

(i) The Housing Authority is not a corporation registered with the Public

Regulation Commission;

(ii) There was never a resolution or ordinance making the housing authority a public body corporate; and

(iii) The housing authority was authorized under Section 3-45-1 NMSA, 1978, Municipal Housing Law.

(c) Upon receipt of the exemption from the requirement for discrete presentation, granted by the State Auditor, the housing authority department or program would be included in the financial report of the primary government like any other department or program of the primary government.

(d) **An annual exemption is required.**

(3) For Housing Authorities that are component units, the financial data for all funds of the housing authority must be accounted for in proprietary funds.

(4) The IPA shall issue a **separate audit report** to the Housing Authority.

(a) The Independent Auditor's Report in the separate report on the public housing authority must include an explanatory paragraph preceding the opinion paragraph. The explanatory paragraph should reference the Summary of Significant Accounting Principles disclosure regarding the reporting agency, and indicate that the financial statements present the financial position and results of operation of only that portion of the financial reporting agency of the primary government (city or county) that is attributable to the transactions of the housing authority. See Example A.15 in the AICPA Audit and Accounting Guide, *Audits of State and Local Governmental Units*.

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold a separate entrance and exit conference with housing authority's management and a member of the governing board. The separate housing authority audit report is due on or before the due date specified in Section 2.2.2.9 of this Rule. The IPA shall provide the Housing Authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the Housing Authority.

(c) Notice PIH 2002-4 (HA) dated February 11, 2002, requires all public housing authorities to submit one copy of the completed audit report including the findings to the HUD office for review, effective for fiscal years ended June 30, 2001.

(5) Housing Authority audits shall be conducted by the same IPA who performs the audit of the local government. Separate audit contracts will not be

approved. The local governments are encouraged to include representatives from the Housing Authority in the IPA selection process.

(6) On September 1, 1998, the U.S. Department of Housing and Urban Development (HUD) published in the Federal Register the Uniform Financial Reporting Standards (UFRS) Rule implementing requirements of 24 CFR, Part 5, Subpart H, for the electronic filing of financial information by agencies receiving HUD financial assistance. In March 2001, HUD published *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS)*. These guidelines can be found on the R E A C website at [http://www.hud.gov/reac/pdf/ufrs\\_22801.pdf](http://www.hud.gov/reac/pdf/ufrs_22801.pdf). Both the Housing Authority and the IPA must follow these guidelines in order to comply with the UFRS.

(7) The Public Housing Management Assessment System (PHAS) Rule, establishes procedures for the assessment of:

- (a) physical condition;
- (b) financial health;
- (c) management operations; and
- (d) resident service and satisfaction.

(8) The Real Estate Assessment Center (REAC) is the HUD national management center created to receive and evaluate these electronic submissions and to assess the condition of HUD owned and assisted developments. REAC developed the Financial Assessment Subsystem (FASS) specifically to facilitate the financial health portion of the overall PHAS assessment. Public Housing Authority (PHA) financial information must be submitted to REAC electronically by the PHA on FASS using a template known as the Financial Data Schedule (FDS).

(9) REAC will utilize the information electronically filed on the FDS to provide scoring of approximately 3,200 PHAs receiving HUD financial assistance. This scoring is part of an overall requirement for REAC to assist HUD with improving the management of assets funded with HUD financial assistance. The purpose of the new electronic assessment system is to enhance public trust by creating a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable.

(10) Although the agreed-upon procedures are separate from the audit engagement, for administrative purposes, they will be included in the same contract as the audit engagement.

(11) In order to insure accuracy

and consistency of FDS data in the assessment process for PHA assets, REAC requires:

(a) Audited annual basic financial statements prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) for governmental agencies, as prescribed by the Governmental Accounting Standards Board (GASB);

(b) Attestation by IPAs on FDS data as to its "fair presentation in relation to audited basic financial statements" in accordance with the audit provisions of the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards (SAS) No. 29, *Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents*; and

(c) A separate attestation agreed-upon procedures engagement under AICPA *Statement on Standards for Attestation Engagements* (SSAE) No.4, Agreed-Upon Procedures Engagements where the auditor compares the electronically submitted data in the REAC staging database to the hard copy of the audit report and FDS.

(12) Electronic FDS filing is required under the UFRS Rule beginning with PHA fiscal years ending on or after September 30, 1999. A PHA must submit its preliminary FDS electronically within two months after its fiscal year end based on unaudited financial statements. A final FDS based on audited financial statements must be filed within the earlier of 30 days after receipt of the IPA's report or 9 months after a PHA's fiscal year-end (pursuant to OMB Circular A-133 subpart C subsection .320)

(13) While the above requirements are separate from the audit requirements of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, REAC has designed its data requirements to correspond with OMB Circular A-133 audits. For example, the audit of a PHA's basic financial statements often is required by OMB Circular A-133. That audit also serves as the basis for PHA preparation of and IPA reporting on the FDS and involvement in the electronic submission process. Only the FDS and certain other information required by OMB Circular A-133 must be submitted electronically to HUD by the PHA.

(14) These guidelines address the requirements for electronic submission of data for those PHAs subject to OMB Circular A-133. However, under New Mexico law, all PHAs are subject to audit requirements and must submit audited financial data.

(15) More information about REAC and the UFRS Rule can be found on

the REAC web site at <http://www.hud.gov/reac/ufr.pdf>. Any questions related to this guide should be referred to the director of PHA Finance, Real Estate Assessment Center at (202) 708-4932 x 3142.

### C. PERTAINING TO SCHOOL DISTRICTS:

(1) Regional Center Cooperative (RCC) and Regional Education Cooperative (REC) Audits:

(a) For accounting purposes, RCCs and RECs are considered joint ventures, in accordance with the GASB *Codification of Governmental Accounting and Financial Reporting Standards*, Section J50 "Accounting for Participation in Joint Ventures and Jointly Governed Organizations".

(b) A separate financial and compliance audit is required on activities of RCCs and RECs. The IPA shall provide a copy of this report to the participating school districts and the New Mexico Department of Education once the report has been released by the State Auditor. The presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America.

(c) Audits of RECs should test for compliance with SBE Regulation 6 NMAC 11.3.2 relating to RECs.

(d) On-behalf payments for fringe benefits and salaries made by RCCs and RECs for employees of school districts should be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with Sec. N50.131.

(2) School District Audits must address the following issues:

(a) Audits of school districts shall test for compliance with SBE Regulation 6 NMAC 20.2.1, *Governing Budgeting and Accounting for New Mexico Public Schools and School Districts* and the *Manual of Procedures*, primarily Supplement 7, Cash Controls, (pages 7-1 through 7-13).

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule will account for cash in the same categories as used by the District in its monthly cash reports to the State Department of Education.

(c) On-behalf payments of salaries and fringe benefits made for school district employees by RCCs and RECs must be accounted for in accordance with GASB Cod. Sec. N50.129 through .133 and dis-

closed in accordance with Sec. N50.134. "Employer governments should obtain information about the amount of on-behalf payments for fringe benefits and salaries from the paying entity or the third-party recipient; interentity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts." (GASB 24 paragraph 9)

(d) Any joint ventures or other entities created by the school districts are agencies subject to the Audit Act.

(e) Agency Fund Reporting:

(i) Under the old reporting model, the Combining Statement of Changes in Assets and Liabilities - All Agency Funds shall show all individual agency funds of the school district.

(ii) When GASB 34 is implemented, the statement of changes in fiduciary net assets will omit agency funds. Therefore, it is a requirement of the State Auditor that a schedule be included in the audit report, showing the changes in the individual funds of the school district.

(3) Pertaining to Charter Schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school. A charter school is considered a public school, accredited by the state board of education and accountable to the school district's local school board for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) In defining a school district's financial reporting agency, certain GASB 14 criteria must be applied to determine whether the district (primary government) has any component units that must be included. A charter school is a component unit of its sponsoring school district. The charter schools must be included in the financial statements of their sponsoring school districts by discrete presentation. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government.

(c) GASB 14 paragraph 50 requires the presentation of combining financial statements for discretely presented component units. Presentation of the underlying fund types of the individual component units is required since separately issued financial statements of the component units are not available. The combining statements should appear in the report with the other combining statements and should be at the level of detail that will include disclosure of information required by GASB 14

paragraph 51.

(d) The State Auditor requires that individual budget-to-actual comparison statements for the charter schools be included in the financial report following the combining statements to demonstrate compliance with legally adopted budgets.

(4) New Mexico Public Schools Insurance Authority (NMPSIA): Both legal compliance and substantive tests should be performed at the agency level on these transactions.

**D. PERTAINING TO LOCAL PUBLIC BODIES:**

(1) Tax Roll Reconciliation – County Governments: Counties must include two supplementary schedules. The first schedule is a “Tax Roll Reconciliation of Changes in the County’s Treasurer’s Property Taxes Receivable” showing the June 30th receivable balance **with an additional breakout of the receivable for the past 10 years**. The second schedule titled “County Treasurer’s Property Tax Schedule” must show by agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current-year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year, by agency. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASB 33. See 2.2.2.10.AA of this Rule for more information regarding GASB 33 property tax revenue recognition. Property taxes levied on January 2001 are budgeted for the fiscal year July 1, 2001 through June 30, 2002. If the county does not have the information required for these schedules there should be a related audit finding.

(2) The following is an example of a tax roll reconciliation schedule:

(3) An example of the schedule titled “County Treasurer’s Property Tax Schedule “ is on Appendix D.

STATE OF NEW MEXICO (NAME) COUNTY TAX ROLL RECONCILIATION – CHANGES IN PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 2002	
Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charged to treasurer for fiscal year	4,466,602
Adjustments:	
Increases in taxes receivables	3,066
Charge off of taxes receivables	(6,144)
Total receivables prior to collections	5,104,814
Collections for fiscal year ended June 30, 2002	(4,330,993)
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
1992	0
1993	29
1994	556
1995	1,848
1996	3,381
1997	5,498
1998	13,169
1999	34,134
2000	167,729
2001	547,477
Total taxes receivable	<u>\$ 773,821</u>

**E. PERTAINING TO AUDITS OF COLLEGES AND UNIVERSITIES:**

(1) Budget Comparison Statements: The Legislature appropriates money to various levels in the universities. A budget comparison in the financial statements must show that there has been compliance with the individual appropriations. **The State Auditor requires that every institution include budget comparison statements in the audit report** whether GASB 34 has been implemented or not. The budget comparison statements must follow the general purpose financial statements (or the basic financial statements for GASB 34 implementers) and appear before the notes to the financial statements in the report.

(a) The budget comparison statement must include columns for the original budget, the final budget, actuals, and the variance of actuals from budget, for each campus, in sufficient detail to determine compliance with each category of appropriated revenue, expenditure, and transfer shown in the law. See Sections 2.2.2.10.Q and 2.2.2.12.A.(4) of this Rule for additional detail regarding category levels of appropriations.

(b) The auditor must confirm the final adjusted and approved budget with the Commission on Higher Education (CHE).

(2) Component Unit Issues



(a) Educational institutions determined to be a component unit of the State of New Mexico must have a paragraph preceding the opinion paragraph in the Independent Auditor's Report referring to the Summary of Significant Accounting Principles disclosure regarding the reporting agency, and indicate that the financial statements present the financial position and results of operation of only that portion of the financial reporting agency of the state that is attributable to the transactions of the educational institution.

(b) Legally separate entities that meet the criteria set forth in GASB 14 to qualify as a component unit of the educational institution must be included in the financial statements of the educational institution in accordance with GASB 14 and Section 2.2.2.10.A (1) of this Rule.

(3) The level of planning materiality required by the State Auditor for audits of all educational institutions is at the individual fund level before and after GASB 34 implementation.

(4) Institutions scheduled to implement GASB 34 and GASB 35 should use the business-type activities model for reporting purposes.

(a) See Section 2.2.2.10.M.(2) of this Rule for reporting of compensated absence liability under this model.

(b) Special appropriations should be clearly shown in the Statement of Revenues, Expenses, and Changes in Fund Net Assets or explained in the notes to the financial statements. Any unexpended balances of such appropriations that do not require reversion, should be shown as "Restricted" net assets at the fiscal year-end and explained in the notes to the financial statements. See Section 2.2.2.12.A.(5) of this Rule for more information regarding reversions.

(5) Institutions still reporting under the old model should follow the format in the AICPA Industry Audit Guide, *Audits of Colleges and Universities*.

(a) The liability for vacation pay should be shown in current unrestricted funds under this model.

(b) Special appropriations should be clearly shown in the financial statements or explained in the notes to the financial statements. Any unexpended balances in the appropriations at year-end that do not require reversion should be shown as designated for subsequent year's expenditures. See Section 2.2.2.12.A.(5) of this Rule for more information regarding reversions.

[2.2.2.12 NMAC – Rp 2.2.2.12 NMAC, 3-29-02]

## 2.2.2.13 REVIEW OF AUDIT REPORTS AND WORKING PAPERS:

A. Section 12-6-14(D) NMSA requires that the State Auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract. All audits under contracts approved by the State Auditor are subject to review.

(1) The State Auditor conducts a preliminary review of all audit reports received for proper reporting and presentation of financial statements, note disclosures and audit findings.

(2) The State Auditor notifies the IPA regarding any deficiencies found during the review process. The IPA shall submit related corrections or notification of disagreement with the review comments to the State Auditor **within ten days** of receipt of the deficiency notification.

(3) A copy of the deficiency comments will be mailed to the agency, by the State Auditor, if the IPA does not respond to the deficiency notification. These deficiency comments are considered public documents and may be requested by the agency.

B. Released audit reports may be subject to a comprehensive desk and working paper review by the State Auditor. These review checklists are public document and are available upon request. If during the course of such a quality control review, the State Auditor determines that deficiencies noted are significant enough that the audit was not performed in accordance with auditing standards generally accepted in the United States of America and/or this Rule, any or all of the following action(s) may be taken:

(1) The IPA may be required to correct the working papers and reissue the audit report to the agency, and any others receiving copies;

(2) The IPA may be denied the issuance of future audit contracts; or

(3) The IPA may be referred to the New Mexico Public Accountancy Board for possible licensure action.

C. Results of Review:

(1) A letter will be issued upon completion of each report or working paper review to advise the IPA of the results of the review. The IPA is required to respond to each review comment as directed.

(2) Any corrective actions will be approved by the State Auditor based on the recommendation of the in-charge reviewer.

(3) The IPA may request a review of the recommended action by the State Auditor. If requested, the State Auditor will schedule a conference, within fifteen days, to allow the IPA an opportunity to analyze the results of the desk or working paper review and present any information the IPA deems appropriate.

D. External Report

Reviews: Revisions to the audit reports from reviews conducted by the Federal Inspector General Offices and the State Auditor will be made by the IPA to all copies of the audit report held by the agencies and the State Auditor.

[2.2.2.13 NMAC – Rp 2.2.2.13 NMAC, 3-29-02]

## 2.2.2.14 CONTINUING EDUCATION AND QUALITY CONTROL REQUIREMENTS:

A. The IPAs should be aware that effective January 1, 1989, individuals responsible for planning, directing, conducting substantial portions of the field work, or reporting on government audits should complete at least 24 of the 80 hours of continuing education and training in subjects directly related to the governmental accounting or auditing environment. The State Auditor requires that the 24 hours in governmental and auditing be completed prior to beginning any audit engagement. At least 20 of the 80 hours should be completed in any one-year of the two-year period. An Individual Firm Profile Worksheet shall be completed for each employee indicating governmental CPE courses taken for the past two-year period. The IPAs must also meet the requirements set forth in the Public Accountancy Act (61-28A-14.D NMSA 1978). The State Auditor may request proof of compliance with the continuing education requirements.

B. The U. S. GAO proposed changes to *Government Auditing Standards* (GAGAS) that would become effective for financial audits of periods ending on or after January 1, 2003, require that "each auditor performing work under GAGAS should complete, every 2 years, at least 80 hours of CPE which directly contributes to the auditor's professional proficiency to perform such work. At least 20 hours should be completed in any one year of the two-year period. In addition, auditors responsible for planning or directing an assignment, performing substantial portions of the field work, or reporting on the assignment under GAGAS should complete at least 24 of the 80 hours of CPE in subjects directly related to the government environment and to government auditing. If the audited agency operates in a specific or unique environment, auditors should receive CPE that is related to that environment." The State Auditor supports these proposed changes to the "yellow book" and will adopt them when they are implemented by GAGAS.

C. The IPAs should be aware that the U.S. GAO Government Auditing Standards (GAGAS), Section 3.31 requires each audit organization conducting



audits in accordance with these standards have an appropriate internal quality control system in place and undergo an external quality control review (peer review). Section 3.33 states, "Organizations conducting audits in accordance with these standards should have an external quality control review at least once every 3 years by an organization not affiliated with the organization being reviewed."

(1) Audit organizations should have an external quality control review completed (that is, report issued) within 3 years from the date they start their first audit in accordance with these standards. Subsequent external quality control reviews must be completed within 3 years after the issuance of the prior review. Reviewers shall meet the requirements of Section 3.34 of GAGAS.

(2) If the firm is unable to complete its external quality control review by the required due date, it will render the firm ineligible from conducting audits of governmental agencies. **Extension requests to complete the external quality control review that are approved by the administering organization will not be accepted by the State Auditor.**

(3) Audit firms shall provide the most recent external quality control peer review report to the agency upon submitting a bid proposal or offer. The external quality control review report and the corresponding letter of comments completed for the IPA, **and a list of the governmental audits selected for peer review** shall be submitted to the State Auditor. Failure to submit the required documentation, or an opinion less than **modified**, will disqualify the IPA from doing governmental audits.

(4) The State Auditor performs its own quality control review of IPA audit reports and working papers. When the result of the State Auditor's quality control review differs significantly from the external quality control report and corresponding letter of comments, the State Auditor will no longer accept external peer review reports performed by that reviewer. In making this determination, the State Auditor will take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the State Auditor reviews are engagement-specific reviews.

(5) The State Auditor is adopting U. S. GAO Government Auditing Standards (GAGAS) proposed revision requirements for external peer reviews:

(a) "Individuals conducting peer reviews of an audit organization's system of quality control should have thorough knowledge of GAGAS and the government environment relative to the work being

reviewed.

(b) Reviewers should be independent (as defined in GAGAS) of the audit organization being reviewed, its staff, and the assignments selected for review. An organization is not permitted to review the organization that conducted its most recent external peer review. Also, the employing organization of the peer reviewers should have received an unqualified opinion on the review of their organization's system of quality controls. **The IPA will submit a copy of his/her peer reviewer's peer review with the profile information to the State Auditor.** See Section 2.2.2.8.A of this Rule for additional information regarding the profile submission.

(c) Reviewers should have knowledge and training on how to perform a peer review and should use professional judgment in conducting and reporting the results of the review.

(d) This review should include a review of the organization's internal quality control policies and procedures, reports, audit documentation, and other necessary documents (for example, independence statements, outside employment requests, financial disclosure reports, and CPE documentation). The review should also include contacts with various levels of the reviewed organization's professional staff to assess their understanding of and compliance with relevant quality control policies and procedures.

(e) Reviewers should use one of the following approaches to selecting assignments for review: (1) select assignments that provide a reasonable cross section of the assignments performed by the reviewed organization in accordance with GAGAS or (2) select assignments that provide a reasonable cross section of the reviewed organization's work subject to quality control requirements, including one or more assignments performed in accordance with GAGAS.

(f) The review should be sufficiently comprehensive to provide a reasonable basis for concluding whether the reviewed audit organization complied with its system of quality control to provide the organization with reasonable assurance of conforming with professional standards in the conduct of its work. Reviewers may scale back the peer review procedures based on the reviewer's evaluation of the adequacy and results of the reviewed organization's monitoring efforts.

(g) Reviewers should prepare a written report(s) communicating the results of the external peer review. The report should indicate the scope of the review, including any limitations thereon, and should express an opinion on whether the

system of quality control of the reviewed organization was in place and operating effectively to provide reasonable assurance that established policies and procedures and applicable government auditing standards were followed. The report should also describe the reason(s) for any modifications to the opinion. When there are matters that resulted in a modification to the standard report, reviewers should report a detailed description of the findings and recommendations to enable the reviewed organization to take appropriate actions. To help users of the peer review report understand the peer review process, each report should be accompanied by an attachment describing the process, including how peer reviews are planned and performed.

(6) The State Auditor requires the location of the external quality control review to be the office of the firm under review, regardless of whether the firm reviewed is a sole practitioner and regardless of the number of firm employees. External quality control reviews performed at a location other than the office of the firm under review will not be accepted by the State Auditor.

#### D. **House Joint Memorial 76 (Requesting an Aggressive Application of Public Accountancy Regulations and Standards)**

(1) "WHEREAS, New Mexicans rely on the expert and professional audit opinions of public accountants; and

(2) WHEREAS, the public trust in an international accounting firm and other auditors of publicly traded companies has recently been shaken by allegations that the ethical and professional standards were not adhered to and not properly enforced in the audits of a recently bankrupt major publicly traded corporation; and

(3) WHEREAS, public funds are used for audits of the state, counties, municipalities, state educational institutions and other political subdivisions; and

(4) WHEREAS, state law requires auditors conducting audits of the state, counties, municipalities, state educational institutions and other political subdivisions to report any violation of law or violation of standard accounting practices; and

(5) WHEREAS, state law requires the State Auditor to examine and audit the financial affairs of every agency in accordance with generally accepted auditing standards; and

(6) WHEREAS, the New Mexico Society of Certified Public Accountants and the New Mexico Society of Public Accountants have committees of public accountants who review and approve required peer reviews within the accounting profession; and

(7) WHEREAS, the New Mexico Public Accountancy Board is responsible for protecting the public interest by regulating the practice of public accountancy through enforcement and licensing measures;

(8) NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the New Mexico Public Accountancy Board be requested to aggressively apply its regulations and peer review program to ensure that public accountants conducting audits of state, counties, municipalities, state educational institutions and other political subdivisions strictly adhere to the professional standards and requirements adopted by the public accounting profession in an appropriate climate of professional independence; and

(9) BE IT FURTHER RESOLVED that the New Mexico Public Accountancy Board and the State Auditor, in conjunction with the New Mexico Society of Certified Public Accountants and the New Mexico Society of Public Accountants, work to ensure strict adherence to public accountancy regulations and standards; and

(10) BE IT FURTHER RESOLVED that the New Mexico Public Accountancy Board and the State Auditor report their findings and recommendations to the Legislative Finance Committee by December 1, 2002; and

(11) BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the State Auditor, the New Mexico Public Accountancy Board, the New Mexico Society of Certified Public Accountants and the New Mexico Society of Public Accountants.”  
[2.2.2.14 NMAC – Rp 2.2.2.14 NMAC, 3-29-02]

#### **HISTORY of 2.2.2 NMAC:**

##### **Pre-NMAC Regulatory Filing History**

The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5-14-71; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5-27-71; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6-1-72; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6-1-72; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2-28-74; SA Rule No. 74-

2, Rotation of Assignments, filed 2-28-74; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11-3-78; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5-28-80; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12-17-82; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4-10-84; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1-28-85; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgements and Compensated Absences, filed 4-16-80; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6-12-85; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6-17-85; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6-17-85; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1-20-86; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3-20-86; SA Rule No. 86-3, Professional Services Contracts, filed 7-9-86; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-13-87; SA Rule 87-2, Approval of Audit Contracts, filed 4-2-87; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8-14-87; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-10-88; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-10-89; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-1-90; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5-7-90; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-13-91; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-6-92; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-93; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-94; Amendment 1 to SA

Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5-16-94; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-16-95; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4-2-96.

##### **History of Repealed Material:**

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies – 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies, Repealed, 3-30-01; 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies, Repealed 3-29-02

## Appendix A

## NEW MEXICO STATE AUDITOR'S OFFICE

## Audit Contract Proposal Evaluation Form

## Part One

Name of Agency \_\_\_\_\_

Agency Contact \_\_\_\_\_ Phone # \_\_\_\_\_

Audit Firm Name \_\_\_\_\_ Date Completed \_\_\_\_\_

<u>Evaluation Criteria</u>	Points	Points Awarded
<b>Section I. <u>Capability of Firm</u></b>		
A) The firm has the resources to perform the type and size of audit required. # of firm team members _____ Total audit hours available _____	0-5	
B) The firm meets independence standards to perform your audit.	0-2	
C) External Quality Control Review (Peer Review)		
1. Peer review results: Obtain most recent copy of the external quality control review report including letter of comments		
2. - Report received _____ Unmodified 6 - 10 Modified 1 - 5	0-10	
<b>If report is less than modified (adverse) STOP HERE. FIRM DOES NOT QUALIFY.</b>		
3. Results of reference checks and agency's prior experience with firm (check should include timeliness, planning, technical expertise, etc.).	0-10	
D) Organization and completeness of proposal or bid.	0-3	
Section I Total		
<b>Section II. <u>Work Requirements &amp; Audit Approach</u></b>		
A) Knowledge of audit objectives, agency needs, and product to be delivered.	0-5	
B) Proposal or bid contains a sound technical plan and realistic estimate of time to complete major segments of the audit: planning; interim fieldwork; fieldwork; and reporting. Start Date _____ End Date _____	0-5	
C) Plans for using agency staff, including internal auditors.	0-3	
D) If the proposal or bid is for a multi-year contract, approach for planning and conducting the work efforts of subsequent years.	0-2	
Section II Total		
<b>Section III. <u>Technical Experience</u></b>	0-10	
A) Governmental audit experience of on-site manager Name of on-site manager _____		
B) Team audit experience:		
1. Specialization in your type of agency (e.g., state agencies, schools, hospitals, counties, cities, etc.)	0-10	
2. GASB 34 and 35 Experience	0-7	
3. Experience with Housing Authorities	0-4	
4. Experience with Charter Schools	0-4	
C) Attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.	0-5	
Section III Total		
<b>Section IV. <u>Firm Strengths or Weaknesses</u></b>	0-5	
Specify _____		
Section IV Total		
Total All Sections		

Submit a copy of this form for the proposal selected to the State Auditor along with the Agency recommendation letter.

## Appendix A

New Mexico State Auditor's Office  
Agency Audit Contract Proposal Evaluation Form  
Part Two

Name of Agency _____	Phone # _____
Agency Contact _____	
Audit Firm _____	

Cost is to be evaluated **ONLY** upon completion of Part One of this two-part evaluation form. Evaluate cost separately for the top THREE CHOICES ONLY from Part One. ADD parts One and Two in making your FINAL recommendation.

EVALUATION CRITERIA		
<b>COST</b>	Maximum Points	Points Awarded
Award a maximum of 10 points		
Lowest Cost Proposal \$ _____ / Subtotal This Proposal \$ _____ = _____ x 10 = Points Awarded _____	10	
Multi-Year Proposal Y <input type="checkbox"/> ( _____ year of _____ year proposal) N <input type="checkbox"/>		

BREAKDOWN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	1 <sup>st</sup> Year Hours FYE 6/30/____	1 <sup>st</sup> Year Cost FYE 6/30/____	2 <sup>nd</sup> Year Hours FYE 6/30/____
			2 <sup>nd</sup> Year Cost FYE 6/30/____
			3 <sup>rd</sup> Year Hours FYE 6/30/____
			3 <sup>rd</sup> Year Cost FYE 6/30/____
Financial Statement Audit	_____	_____	_____
Federal Single Audit	_____	_____	_____
Financial Statement Preparation	_____	_____	_____
GASB 34/35 Implementation	_____	_____	_____
Other (i.e. housing authorities, charter schools))	_____	_____	_____
SUB TOTAL	_____	_____	_____
Gross Receipts Tax		_____	_____
TOTAL COMPENSATION		=====	=====

<b>SCORE</b>	Maximum Points	Points Awarded
SCORE, Part One: Bring forward score from Part One of Evaluation Form	90	
<b>FINAL SCORE</b>	100	

Evaluated By

Name and Title _____	Date _____
Name and Title _____	Date _____
Name and Title _____	Date _____

[2.2.2 NMAC Appendix A – Rp 2.2.2 NMAC Appendix A, 3-29-02]



## GASB STATEMENTS AND EFFECTIVE DATES

## Appendix B

GASBS	TITLE	EFFECTIVE DATE
1	Authoritative Status of NCGA Pronouncements and AICPA Industry Audit Guide	On issuance July 1984
2	Financial Reporting of Deferred Compensation Plans Adopted under the Provisions of Internal Revenue Code Section 457	Financial statements for periods ending after 12/15/86
3	Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements	Financial statements for periods ending after 12/15/86
4	Applicability of FASB Statement No. 87, "Employers' Accounting for Pensions," to State and Local Government Employers	On issuance September 1986
5	Disclosure of Pension Information by Public Employee Retirement Systems and State Systems and State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 12/15/86
6	Accounting and Financial Reporting for Special Assessments	Financial statements for periods beginning after 06/15/87
7	Advance Refundings Resulting in Defeasance of Debt	Fiscal periods beginning after 12/15/86
8	Applicability of FASB Statement No. 93, "Recognition of Depreciation by Not-for-Profit Organizations," to Certain State and Local Governmental Entities	On issuance January 1988
9	Reporting Cash Flows of Proprietary and Nonexpendable Trust and Governmental Funds Governmental Entities that Use Proprietary Fund Accounting	Financial statements for fiscal years beginning after 12/15/89
10	Accounting and Financial Reporting for Risk Financing and Related Insurance Issues	Public entity risk pools: periods beginning after 06/15/90, Entities other than pools: periods Beginning after 06/15/94
11	Measurement Focus and Basis of Accounting – Governmental Fund Operating Systems	Deferred by GASB 17 to periods beginning approximately two years after an implementation standard is issued (early application not permitted)

## GASB STATEMENTS AND EFFECTIVE DATES

## Appendix B

GASBS	TITLE	EFFECTIVE DATE
12	Disclosure of Information on Post-employment Benefits Other than Pension Benefits by State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 06/15/90
13	Accounting for Operating Leases with Scheduled Rent Increases	Proprietary and similar trust funds: prospectively for leases with terms beginning after 06/30/90 - Governmental and similar trust funds: Measurement criteria – prospectively for leases with terms beginning after 06/30/90; Recognition criteria- to changes: one for financial statements for periods approximately two years after an implementation standard is issued (early application not permitted)
14	The Financial Reporting Entity	Financial statements for periods beginning after 12/15/92
15	Governmental College and University Accounting and Financial Reporting Models	Financial statements for periods beginning after 06/15/92
16	Accounting for Compensated Absences	Financial statements for periods beginning after 06/15/93
17	Measurement Focus and Basis of Accounting – Governmental Fund Operating Statements: Amendment of the Effective Dates of GASB Statement 11 and Related Statements (an Amendment of GASB Statements 10, 11 and 13	On issuance June 1993
18	Accounting for Municipal Solid Waste Landfill Closure and Post-closure Care Costs	Financial statements for periods beginning after 06/15/93
19	Governmental College and University Omnibus Amendment of GASB Statements 10 and 15)	Pell grants - periods beginning after 06/15/93: Risk financing activities - periods beginning after 06/15/94
20	Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities that use Proprietary Fund Accounting	Financial statements for periods beginning after 12/15/93
21	Accounting for Escheat Property	Financial statements for periods beginning after 06/15/94

## GASB STATEMENTS AND EFFECTIVE DATES

## Appendix B

GASBS	TITLE	EFFECTIVE DATE
22	Accounting for Taxpayer-Assessed Tax Revenues in Governmental Funds	Financial statements for periods beginning after 06/15/94
23	Accounting and Financial Reporting for Refundings of Debt Reported by Proprietary Activities	Financial statements for periods beginning after 06/15/94
24	Accounting and Financial Reporting for Certain Grants and Other Financial Assistance	Financial statements for periods beginning after 06/15/95
25	Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 26 in the same fiscal year
26	Financial Reporting for Post-employment Health Care Plans Administered by Defined Benefit Pension Plans	Financial statements for periods beginning after 06/15/96 - Earlier implementation is encouraged; however, implement GASB 25 in the same fiscal year
27	Financial Reporting for Pensions by State and Local Employers	Financial statements for periods beginning after Earlier implementation is encouraged
28	Accounting and Financial Reporting for Securities Lending Transactions	Financial statements for periods beginning after 12/15/95 Earlier implementation is encouraged
29	The Use of Not-for-Profit Accounting and Financial Reporting Principles by Governmental Entities	Financial statements for periods beginning after 12/15/94 - For entities that have applied the AICPA Not-for-Profit model but previously have not followed the governmental accounting and financial reporting standards required by Paragraphs 5 and 6 of this statement, the provisions of those governmental standards are effective for financial statements for periods beginning after 12/15/95 Earlier application is encouraged
30	Risk Financing Omnibus - an amendment of GASB Statement No. 10	Financial statements for periods beginning after 6/15/96
31	Accounting and Financial Reporting for Certain Investments and for External Investment Pools	Financial statements for periods beginning after 6/15/97

## GASB STATEMENTS AND EFFECTIVE DATES

## Appendix B

GASBS	TITLE	EFFECTIVE DATE
32	Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans	Financial statements for periods beginning after 12/31/98 or when plan assets are held in trust under the requirements of IRC Section 457, subsection (g), if sooner
33	Accounting and Financial Reporting for Non-Exchange Transactions	Financial statements for periods beginning after June 15, 2000 – Earlier implementation is encouraged
34	Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments	<p>The requirements of this Statement are effective in three phases based on a government's total annual revenues in the first fiscal year ending after June 15, 1999. Governments with total annual revenues (excluding extraordinary items) of \$100 million or more (phase 1) should apply this Statement for periods beginning after June 15, 2001. Governments with at least \$10 million but less than \$100 million in revenues (phase 2) should apply this Statement for periods beginning after June 15, 2002. Governments with less than \$10 million in revenues (phase 3) should apply this Statement for periods beginning after June 15, 2003. Earlier application is encouraged. Governments that elect early implementation of this Statement for periods beginning before June 15, 2000, should also implement GASB Statement No. 33, <i>Accounting and Financial Reporting for Non-exchange Transactions</i>, at the same time. If a primary government chooses early implementation of this Statement, all of its component units also should implement this standard early to provide the financial information required for the government-wide financial statements.</p> <p>Prospective reporting of general infrastructure assets is required at the effective dates of this Statement. Retroactive reporting of all major general governmental infrastructure assets is required four years after the effective date on the basic provisions for all major general infrastructure assets that were required or significantly reconstructed, or that received significant improvements, in fiscal years ending after June 30, 1980. Phase 3 governments are encouraged to report infrastructure retroactively, but may elect to report general infrastructure prospectively only.</p>



## GASB STATEMENTS AND EFFECTIVE DATES

## Appendix B

GASBS	TITLE	EFFECTIVE DATE
35	Basic Financial Statement – and Management’s Discussion and Analysis – For Public Colleges and Universities	Colleges and Universities that are a unit of a state or local government will implement the new standards at the same time as their primary government, generally for fiscal years beginning July 1, 2001.
36	Recipient Reporting for Certain Shared Non-exchange Revenues	This Statement should be implemented simultaneously with Statement 33, for periods beginning after June 15, 2000.
37	Basic Financial Statements and Management’s Discussion and Analysis for State and Local Governments: Omnibus (An amendment of GASB Statement No. 21 and No. 34)	<p>This Statement should be implemented simultaneously with Statement 34. For governments that implemented Statement 34 prior to the issuance of this Statement, this Statement’s requirements are effective for financial statements for periods beginning after June 15, 2000. Accounting changes adopted to conform to the provisions of this Statement should be applied retroactively, if practical, by restating financial statements for all prior periods presented. If restatement is not practical, the cumulative effect of applying this Statement, if any, should be reported as a restatement of beginning net assets, fund balances, or fund equity, as appropriate, for the earliest period restated. In the period this Statement is first applied, the financial statements should disclose the nature of any restatement and its effect. Also, the reason for not restating prior periods presented should be explained</p> <p>The provisions of this Statement need not be applied to immaterial items.</p> <p>The requirements of this Statement are effective in three phases based on the revenues of the government as described in paragraph 143 of Statement 34;</p> <ul style="list-style-type: none"> <li>• Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002.</li> <li>• Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002.</li> <li>• Phase 3 governments should apply this</li> </ul>

## GASB STATEMENTS AND EFFECTIVE DATES

## Appendix B

GASBS	TITLE	EFFECTIVE DATE
		<p>Statement for fiscal periods beginning after June 15, 2003.</p> <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented only if Statement 34 has also been implemented.</p> <p>The provisions of this Statement need not be applied to immaterial items.</p>
38	Certain Financial Statement – Note Disclosures	<p>The requirements of this Statement are effective in three phases on the revenues of the government as described in paragraph 143 of Statement 34:</p> <ul style="list-style-type: none"> <li>Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002.</li> <li>Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002.</li> <li>Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003.</li> </ul> <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented only if Statement 34 has been implemented.</p> <p>The provision of this Statement need not be applied to immaterial items.</p>

[2.2.2 NMAC Appendix B – Rp 2.2.2 NMAC Appendix B, 3-29-02]

## AICPA STATEMENTS ON AUDITING STANDARDS

## Appendix C

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
1	Codification of Auditing Standards and Procedures	See Part II of Cross-References To SASs section
7	Communications Between Predecessor and Successor Auditors	315
8	Other Information in Documents Containing Audited Financial Statements	550
12	Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments	337
19	Client Representation	333
21	Segment Information	435
22	Planning and Supervision	311
25	The Relationship of Generally Accepted Auditing Standards to Quality Control Standards	161
26	Association With Financial Statements	504
29	Reporting on Information Accompanying the Basic Financial Statements in Auditor Submitted Documents	551
31	Evidential Matter	326
32	Adequacy of Disclosure of Financial Statements	431
37	Filings Under Federal Securities Statutes	711
39	Audit Sampling	350
41	Working Papers	339
43	Omnibus Statements on Auditing Standards	150.06; 331.14 350.46; 420.15 901.01; 901.24 901.28
45	Omnibus Statement on Auditing Standards-1983	313; 334
46	Consideration of Omitted Procedures After the Report Date	390
47	Audit Risk and Materiality in Conducting an Audit	312
48	The Effects of Computer Processing on the Audit of Financial Statements	311.03; 311.09-10; 326.12
50	Reports on the Application of Accounting Principles	625
51	Reporting on Financial Statements Prepared for Use in Other Countries	534
52	Omnibus Statement on Auditing Standards-1987	551.15; 558
53	The Auditors Responsibility to Detect and Report Errors and Irregularities	316A
54	Illegal Acts by Clients	317
56	Analytical Procedures	329
57	Auditing Accounting Estimates	342
58	Reports on Audited Financial Statements	508
59	The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern	341
60	Communication of Internal Control Related Matters Noted in an Audit	325
61	Communication With Audit Committees	380
62	Special Reports	623
64	Omnibus Statement on Auditing Standards-1990	341.12; 508.83; 543.16

## AICPA STATEMENTS ON AUDITING STANDARDS

## Appendix C

SAS No.	Title	AU Section
65	The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements	322
67	The Confirmation Process	330
69	The Meaning of <i>Present Fairly in Conformity With Generally Accepted Accounting Principles</i> in the Independent Auditor's Report	411
70	Reports on the Processing of Transactions by Service Organizations	324
71	Interim Financial Information	722
72	Letters for Underwriters and Certain Other Requesting Parties	634
73	Using the Work of a Specialist	336
74	Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance	801
76	Amendments to Statement on Auditing Standards No. 72, <i>Letters for Underwriters and Certain Other Requesting Parties</i>	634.01; 634.09; 634.10; 634.34 AT 300.01
77	Amendments to Statements on Auditing Standards No. 22, <i>Planning and Supervision</i> , No. 59, <i>The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern</i> , and No. 62, <i>Special Reports</i>	311.05; 341.13; 544.02; 544.04; 623.05; 623.08
78	Consideration of Internal Control in a Financial Statement Audit: An Amendment to Statement on Auditing Standards No. 55	319
79	Amendment to Statement on Auditing Standards No. 58, <i>Reports on Audited Financial Statements</i>	508
80	Amendment to Statement on Auditing Standards No. 31, <i>Evidential Matter</i>	326
81	Auditing Investments	332
82	Consideration of Fraud in a Financial Statement Audit	316
83	Establishing an Understanding with the Client	310
84	Communications Between Predecessor and Successor Auditors	315
85	Management Representations	333
86	Amendment to SAS No. 72, <i>Letters for Underwriters and Certain Other Reporting Parties</i> . Amendment is effective for comfort letters issued on or after June 30, 1998.	634
87	Restricting the Use of an Auditor's Report Statement is effective for reports issued after December 31, 1998	532
88	Service Organization and Reporting on Consistency	324; 420
89	Audit Adjustments	310.06; 333.06; 333.16; 380.09; and 380.10
90	Audit Committee Communications	380.03; 380.11; and 722.25-.27
92	Auditing Derivatives Instruments, Hedging Activities and Investments in Securities	332



**AICPA STATEMENTS ON AUDITING STANDARDS**411 (title)  
411.01; 508.08  
and 622**Appendix C**

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
93	Omnibus Statement on Auditing Standards - 2000	315.02; 315.12
94	The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit	319
95	Generally Accepted Auditing Standards	150

[2.2.2 NMAC Appendix C– Rp 2.2.2 NMAC Appendix C, 3-29-02]

Appendix D									
STATE OF NEW MEXICO (NAME) COUNTY PROPERTY TAX SCHEDULE FOR THE YEAR ENDED JUNE 30, 2002									
Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Grant County:									
General advalorem 1992	\$ 2,425,000		\$ 2,419,667	\$ -	\$ 2,419,667	\$ -	\$ 5,333	\$ -	\$ -
General advalorem 1993	2,433,762	50	2,428,733	50	2,428,733	-	5,000	-	29
General advalorem 1994	2,475,960	500	2,471,071	500	2,471,071	-	4,333	-	556
General advalorem 1995	2,476,000	200	2,471,152	200	2,471,152	-	3,000	-	1,848
General advalorem 1996	2,477,989	700	2,471,810	700	2,471,810	1,844	2,798	-	3,381
General advalorem 1997	2,475,896	-	2,467,744	-	2,467,744	1,995	2,654	-	5,498
General advalorem 1998	2,476,998	2,442	2,461,329	2,442	2,461,329	1,805	2,500	-	13,169
General advalorem 1999	2,484,500	27,558	2,450,366	27,558	2,450,366	-	-	-	34,134
General advalorem 2000	2,485,000	488,209	2,317,271	488,209	2,317,271	-	-	-	167,729
General advalorem 2001	2,490,000	1,942,523	1,942,523	1,942,523	1,942,523	-	-	-	547,477
Total General advalorem	22,276,105	2,462,182	21,481,999	2,462,182	21,481,999	5,644	20,285	-	773,821
Non-rendition fees:									
Non-rendition fees 1992	6,500	\$ -	\$ 6,475	\$ -	\$ 6,475	\$ -	\$ 25	\$ -	\$ -
Non-rendition fees 1993	6,500	-	6,450	-	6,450	-	50	-	-
Non-rendition fees 1994	6,500	-	6,445	-	6,445	-	55	-	-
Non-rendition fees 1995	6,500	-	6,425	-	6,425	-	75	-	-
Non-rendition fees 1997	6,500	-	6,475	-	6,475	-	25	-	-
Non-rendition fees 1997	6,520	-	6,450	-	6,450	-	70	-	-
Non-rendition fees 1998	6,520	-	6,460	-	6,460	-	60	-	-
Non-rendition fees 1999	6,520	-	6,420	-	6,420	100	100	-	-
Non-rendition fees 2000	6,520	-	6,425	-	6,425	95	95	-	-
Non-rendition fees 2001	6,520	6,520	6,520	6,520	6,520	-	-	-	-
Total Non-rendition fees	65,100	6,520	64,545	6,520	64,545	195	555	-	\$ -
Copper production:									
Copper production 1992	1,598,000								
Copper production 1993	1,598,000								
Copper production 1994	1,598,000								
Copper production 1995	1,598,000								
Copper production 1996	1,598,000								
Copper production 1997	1,598,000								
Copper production 1998	1,598,000								
Copper production 1999	1,598,000								
Copper production 2000	1,598,000								
Copper production 2001	1,598,437	1,598,437	1,598,437	1,598,437	1,598,437	-	-	-	-
Total Copper production	1,598,437	1,598,437	1,598,437	1,598,437	1,598,437	-	-	-	-
Re-appraisal program:									
Re-appraisal program 1992	\$ 27,808	\$ -	\$ 27,808	\$ -	\$ 27,808	\$ -	\$ -	\$ -	\$ -
Re-appraisal program 1993	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1994	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1995	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1996	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1997	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1998	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 1999	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2000	27,808	-	27,808	-	27,808	-	-	-	-
Re-appraisal program 2001	\$ 27,808	\$ 27,808	\$ 27,808	\$ 27,808	\$ 27,808	\$ -	\$ -	\$ -	\$ -
Total Re-appraisal program	278,080	27,808	278,080	27,808	278,080	-	-	-	\$ -
Hospital bond:									
Hospital bond 1992	\$ 107	\$ -	\$ 107	\$ -	\$ 107	\$ -	\$ -	\$ -	\$ -
Hospital bond 1993	107	-	107	-	107	-	-	-	-
Hospital bond 1994	107	-	107	-	107	-	-	-	-
Hospital bond 1995	107	-	107	-	107	-	-	-	-
Hospital bond 1996	107	-	107	-	107	-	-	-	-
Hospital bond 1997	107	-	107	-	107	-	-	-	-
Hospital bond 1998	107	-	107	-	107	-	-	-	-
Hospital bond 1999	107	-	107	-	107	-	-	-	-
Hospital bond 2000	107	-	107	-	107	-	-	-	-
Hospital bond 2001	107	107	107	107	107	-	-	-	-
Total Hospital bond	107	107	107	107	107	-	-	-	-
Total Grant County	24,217,829	4,095,054	23,423,168	4,095,054	23,423,168	5,839	20,840	-	773,821

STATE OF NEW MEXICO (HAME) COUNTY PROPERTY TAX SCHEDULE (Continued) FOR THE YEAR ENDED JUNE 30, 2002										Appendix D
Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End	
<b>Municipalities:</b>										
City of Bayard 1992	\$ 16,500	\$ -	\$ 16,500		\$ 16,500	\$ -	\$ -	\$ -	\$ -	-
City of Bayard 1993	16,500	-	16,480		16,480	-	20	-	-	-
City of Bayard 1994	16,500	-	16,475		16,475	-	25	-	-	-
City of Bayard 1995	16,500	-	16,500		16,500	-	-	-	-	-
City of Bayard 1996	16,500	-	16,500		16,500	-	-	-	-	-
City of Bayard 1997	16,500	-	16,433		16,433	-	67	-	-	-
City of Bayard 1998	16,500	-	16,455		16,455	-	45	-	-	-
City of Bayard 1999	16,500	-	16,400	-	16,400	100	100	-	-	-
City of Bayard 2000	16,500	901	16,450	901	16,450	50	50	-	-	-
City of Bayard 2001	16,500	16,000	16,500	16,000	16,500	-	-	-	-	-
Total City of Bayard	165,000	16,901	164,693	16,901	164,693	150	307	-	-	-
Village of Hurley 1992	\$ 8,000	\$ -	\$ 7,975	\$ -	\$ 7,975	\$ -	\$ 25	\$ -	\$ -	-
Village of Hurley 1993	8,000	-	8,000	-	8,000	-	-	-	-	-
Village of Hurley 1994	8,000	-	7,970	-	7,970	-	30	-	-	-
Village of Hurley 1995	8,000	-	8,000	-	8,000	-	-	-	-	-
Village of Hurley 1996	8,000	-	7,950	-	7,950	-	50	-	-	-
Village of Hurley 1997	8,000	-	7,940	-	7,940	-	60	-	-	-
Village of Hurley 1998	8,000	-	7,930	-	7,930	-	70	-	-	-
Village of Hurley 1999	8,000	-	7,925	-	7,925	-	75	-	-	-
Village of Hurley 2000	8,000	43	7,950	43	7,950	50	50	-	-	-
Village of Hurley 2001	8,000	8,000	8,000	8,000	8,000	-	-	-	-	-
Total Village of Hurley	80,000	8,043	79,640	8,043	79,640	50	360	-	-	-
Village of Santa Clara 1992	\$ 5,000	\$ -	\$ 4,950	\$ -	\$ 4,950	\$ -	\$ 50	\$ -	\$ -	-
Village of Santa Clara 1993	5,000	-	4,975	-	4,975	-	25	-	-	-
Village of Santa Clara 1994	5,000	-	4,990	-	4,990	-	10	-	-	-
Village of Santa Clara 1995	5,000	-	4,950	-	4,950	-	50	-	-	-
Village of Santa Clara 1996	5,000	-	4,960	-	4,960	-	40	-	-	-
Village of Santa Clara 1997	5,000	-	4,970	-	4,970	-	30	-	-	-
Village of Santa Clara 1998	5,000	-	5,000	-	5,000	-	-	-	-	-
Village of Santa Clara 1999	5,000	-	4,950	-	4,950	10	50	-	-	-
Village of Santa Clara 2000	5,000	708	4,955	708	4,955	20	45	-	-	-
Village of Santa Clara 2001	5,000	5,000	5,000	5,000	5,000	-	-	-	-	-
Total Village of Santa Clara	50,000	5,708	49,700	5,708	49,700	30	300	-	-	-
Town of Silver City 1992	\$ 205,287	\$ -	\$ 205,287	\$ -	\$ 205,287	\$ -	\$ -	\$ -	\$ -	-
Town of Silver City 1993	205,287	-	205,187	-	205,187	-	100	-	-	-
Town of Silver City 1994	205,287	-	205,237	-	205,237	-	50	-	-	-
Town of Silver City 1995	205,287	-	205,262	-	205,262	-	25	-	-	-
Town of Silver City 1996	205,287	-	205,257	-	205,257	-	30	-	-	-
Town of Silver City 1997	205,287	-	205,262	-	205,262	-	25	-	-	-
Town of Silver City 1998	205,287	-	205,287	-	205,287	-	-	-	-	-
Town of Silver City 1999	205,287	-	205,237	-	205,237	50	50	-	-	-
Town of Silver City 2000	205,287	-	205,262	-	205,262	25	25	-	-	-
Town of Silver City 2001	205,287	205,287	205,287	205,287	205,287	-	-	-	-	-
Total Town of Silver City	2,052,870	205,287	2,052,565	205,287	2,052,565	75	305	-	-	-
Total Municipalities	2,347,870	235,939	2,346,598	235,939	2,346,598	305	1,272	-	-	-
Grand Total	\$ 26,565,699	\$ 4,330,993	\$ 25,769,766	\$ 4,330,993	\$ 25,769,766	\$ 6,144	\$ 22,112	\$ -	\$ -	773,821

[ 2.2.2 NMAC Appendix D - N, 3-29-02 ]

End of Adopted Rules and Regulations Section

## 2002 SUBMITTAL DEADLINES AND PUBLICATION DATES

<b>Volume XIII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

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