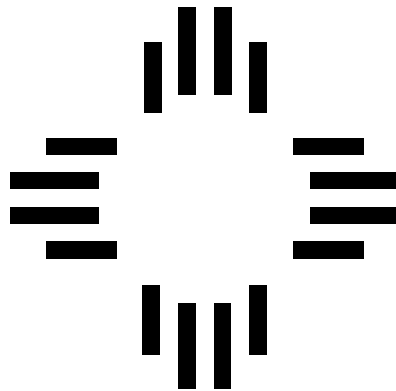


New Mexico Register

Volume XIII, Issue Number 8
April 30, 2002



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

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Administrative Law Division
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New Mexico Register

Volume XIII, Number 8

April 30, 2002

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Adopted Rules and Regulations

Effective Date and Validity of Rule Filings

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

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

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD (AQCB) NOTICE OF HEARING AND REGULAR MEETING.

On May 8th, 2002, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold several public hearings in the Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, One Civic Plaza, 500 Marquette Avenue NW, Albuquerque, NM 87102.

The hearings will address the following:

- * Proposed revision to 20.11.44 NMAC, Emissions Trading
- * Proposal to incorporate a revised 20.11.44 NMAC into the New Mexico State Implementation Plan (SIP) for air quality.
- * Proposal to renumber and reformat the Air Quality Regulations for Albuquerque and Bernalillo County.

The purpose of the first hearing is to receive testimony on proposed changes to the Emissions Trading regulation. The Board requested this action at their February hearing in relation to the newly adopted Regulation, 20.11.45 NMAC, Stationary Source Conformity. The Emissions Trading regulation was originally ratified in 1971 and has not been updated since. The proposed regulation revision would change the regulation to reflect state of the art mechanisms established nationally by the U.S. EPA and other state and local agencies. The proposed regulation will also allow the industrial sector more flexibility in complying with the newly established procedures for issuance of new and modified air quality permits for stationary source emissions. Immediately after the Part 44 hearing closes a second hearing will begin during which the Board will be asked to adopt the revised regulation into the SIP.

The final hearing will address the required reformatting changes to the Air Quality Regulations for Albuquerque and Bernalillo County, required by the State Records Center, to be consistent with the New Mexico Administrative Code. After the hearings close, the Board will open it's reg-

ular meeting, during which the board will be asked to adopt these proposals.

The Air Quality Control Board is the federally delegated air authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards.

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

Anyone intending to present technical testimony should submit a written notice of intent to: Attn: May Hearing Record, Mr. Isreal Tavarez, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, One Civic Plaza, 500 Marquette Avenue NW, in advance of the hearing. The notice shall include:

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

In addition, written statements to be incorporated into the public record should be sent to above Post Office Box address, and must identify the individual submitting the statement.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or call Mr. Neal Butt at (505) 768-2600.

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

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

**PO Box 509
Santa Fe, NM
505-827-6375**

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, May 3, 2002. The meeting will be held in the Conference Room of the Board Office, 491 Old Santa Fe Trail, Lamy Building, at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO ATHLETIC TRAINERS PRACTICE BOARD

**Athletic Trainers Practice Board
Rule Hearing and Meeting Notice**

Notice is hereby given that the New Mexico Athletic Trainers Practice Board will convene a public rule hearing at 9:30 a.m. on June 28, 2002 at the UNM Athletic Department, South Complex, Room 136, 1414 University Boulevard Albuquerque, NM. A regularly scheduled meeting will follow the rule hearing. During the regular

meeting, the Board may enter into Executive Session to discuss licensing matters.

The purpose of the rule hearing is to change fees to reflect an increase in 16.3.8.8 NMAC, "Fees".

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at 2055 S. Pacheco, Suite 300, Santa Fe, New Mexico 87505, call (505) 476-7098. All written comments must be submitted to the Board office no later than June 18, in order for the Board members to receive and review the comments prior to the hearing. Persons wishing to present their comments at the hearing will need seven (7) copies for distribution to the Board, Legal Counsel and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-7098 at least one week prior to the hearing/meeting or as soon as possible.

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION

NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the Commission Conference Room, 300 San Mateo N.E., Albuquerque, New Mexico, commencing in executive session at 3:00 o'clock p.m. on Tuesday, May 21, 2002. The public session will begin at 8:30 o'clock a.m. on Wednesday, May 22, 2002. The Commission will consider adoption of proposed new/amended rules for incorporation into the Rules Governing Horse Racing in New Mexico Nos. Subsection D (regarding veterinary practices) of 15.2.6.8 NMAC; 15.2.6.9 NMAC (regarding classification tables); Subsection C (regarding medication restrictions), Subsection D (regarding penalty recommendations and Subsection E (regarding confiscated contraband material) of 15.2.6.9 NMAC; Subsection D (regarding claiming races) of 15.2.4.8 NMAC; and 15.2.5.12 NMAC (regarding horses ineligible) and other matters of general business.

Copies of these proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87108, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

Kim Ahlbom

Deputy Agency Director

Dated: 04/12/2002

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

HOISTING OPERATOR'S LICENSURE EXAMINING COUNCIL MEETING

Notice is hereby given that the Hoisting Operator Licensure Examining Council will hold its regular meeting on Friday, June 7, 2002. The meeting will begin at 2:30 p.m. in the Construction Industries Division Conference Room, 1650-A University NE in Albuquerque, New Mexico. Council Members will consider agenda items and discuss other business that may require action. A copy of the Agenda will be available at the office of the Program Administrator prior to said meeting.

Anyone needing special accommodations is requested to notify the Program Administrator at 505-841-8020 - 1650 University NE-Suite 201, Albuquerque, New Mexico of such needs at least ten days prior to the meeting.

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.3 NMAC. The Albuquerque / Bernalillo Air Quality Control Board adopted these amendments during its February 13th, 2002 regular meeting. They determined that these changes to Part 3 provide clarification and make the transportation conformity process clearer by defining air quality credits, thus improving the previous procedure that did not quantify or qualify what credits were; and through new language clarifies transportation control measures (TCMs) and defines land use measures (LUMs), which are both tools that will allow the Middle Rio Grande Council of Governments (MRGCOG) to work with the Air Quality Division (AQD) in terms of adopting measures which will be accountable in terms of being able to quantify specify, identify, and be able to adopt these measures into the State Implementation Plan (SIP) as well as justify their use within the air quality conformity determination. 20.11.3 NMAC was also renumbered and reformatted from 20 NMAC 11.3 to conform to the current NMAC requirements.

20.11.3.5 EFFECTIVE DATE: July 1, 1998, unless a later date is cited at the end of a section. [7/1/98; 20.11.3.5 NMAC - Rn, 20 NMAC 11.03.I.5, & A, 6/1/02]

20.11.3.7 DEFINITIONS: Terms used but not defined in 20.11.3 NMAC shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority. In addition to the definitions in this section, 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

A. Air Agency: means the Air Quality Division (AQD) of the City of Albuquerque Environmental Health Department (EHD). The EHD, or its successor agency or authority, as represented by the department Director or his/her designee, is the lead air quality planning agency for Albuquerque/Bernalillo County nonattainment/maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing

AQCB regulations.

B. Air Quality Credit: means an air pollution emissions reduction benefit specifically identified by the TCTC that is attributable to a proposed TCM or LUM described in the TIP and/or MTP for the purpose of reducing motor vehicle air pollutants in order to achieve conformity. Air quality credits must not have been used to establish existing MVEBs.

C. Albuquerque Metropolitan Planning Area (AMPA): means that portion of State Planning and Development District 3 which comprises the area for which federal transportation funding allocated for areas of 200,000 or greater population is expended. The AMPA is described in the most recent transportation planning documents of the MPO.

D. Applicable Implementation Plan: is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

E. CAA: means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

F. Cause or Contribute to a New Violation: for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

G. Clean Data: means air quality monitoring data determined by EPA to meet the requirements of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

H. Conformity Analysis: means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

I. Conformity Determination: means the demonstration of consistency with motor vehicle emissions budgets for each pollutant and precursor identified in the applicable SIP. The

conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not:

(1) cause or contribute to any new violations of any standard in any area;

(2) increase the frequency or severity of any existing violation of any standard in any area; or

(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

J. Consultation: means the process by which affected agencies identified in 20.11.3.202 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful input, and, prior to taking any action, consider the views of the other agencies, and (except with respect to those actions for which only notification is required and those actions subject to (Subsection C of 20.11.3.202 NMAC and Subparagraph (g), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC) respond in writing to substantive written comments in a timely manner prior to any final decision on such action.

K. Control Strategy Implementation Plan Revision: is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

L. Design Concept: means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive bus way, etc.

M. Design Scope: means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate num-

ber and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

N. DOT: means the United States Department of Transportation.

O. EPA: means the United States Environmental Protection Agency.

P. FHWA: means the Federal Highway Administration of DOT.

Q. FHWA/FTA PROJECT: for the purpose of 20.11.3 NMAC, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

R. Fiscally Constrained: is as defined in 23 CFR Part 450.

S. Forecast Period: with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR Part 450.

T. FTA: means the Federal Transit Administration of DOT.

U. Highway Project: is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

V. Horizon Year: is a year for which the transportation plan describes the envisioned transportation system according to 20.11.3.203 NMAC.

W. Hot-Spot Analysis: an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

X. Increase the Frequency or Severity: means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Y. Land Use Measure (LUM): means a land use action, set of land use actions, or a land use plan specifically identified in the TIP and/or MTP and used by the MPO as the basis for air quality credits used to achieve air quality conformity. A LUM is an activity adopted as an ordinance by a municipal government, county government, or other entity empowered under the laws of the State of New Mexico to adopt land use actions and which may include, but not be limited to, planning and platting actions, subdivisions of land, zoning actions, or annexation/zoning actions. A LUM may be incorporated into the applicable implementation plan. The interagency consultation procedure shall be utilized to clarify any issues related to this definition.

Z. Lapse: means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

AA. Local Publicly Owned Transit Operator: means the current transit operator, the City of Albuquerque.

BB. Maintenance Area: means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

CC. Maintenance Plan: means an implementation plan under section 175A of the CAA, as amended.

DD. Metropolitan Planning Organization (MPO): is that organization designated as being responsible, together with the State DOT, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.

EE. Middle Rio Grande Council of Governments (MRGCOG): means the association of local governments within New Mexico State Planning and Development District 3 (Bernalillo, Sandoval, Tarrant, and Valencia Counties), which is designated by the Governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque Metropolitan

Planning Area.

FF. Milestone: has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

GG. Motor Vehicle Emissions Budget (MVEB): is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

HH. National Ambient Air Quality Standards (NAAQS): are those standards established pursuant to section 109 of the CAA.

II. NEPA: means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

JJ. NEPA Process Completion: for the purposes of 20.11.3 NMAC, with respect to FHWA and FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

KK. Nonattainment Area: means any geographic region of the United States, which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

LL. Project: means a highway project or transit project.

MM. Protective Finding: means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

NN. Public Involvement Committee (PIC): means the permanent advisory committee established by the MRGCOG to provide proactive public input to the transportation planning process.

OO. Recipient of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws: means any agency at any level of State, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate

FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

PP. Regionally Significant Project: means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

QQ. Safety Margin: means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

RR. Standard: means a National Ambient Air quality Standard.

SS. State Implementation Plan (SIP): (See Applicable implementation plan).

TT. State DOT: means the New Mexico State Highway and Transportation Department or its successor agency or authority, as represented by the department Secretary or his/her designee.

UU. Title 23 U.S.C.: means Title 23 of the United States Code.

VV. Transit: is mass transportation by bus, rail, or other conveyance, which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

WW. Transit Project: is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope,
- (2) Have independent utility or independent significance, i.e., be a reason-

able expenditure even if no additional transportation improvements in the area are made, and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

XX. Transportation Conformity Technical Committee (TCTC): means the group of transportation, planning and air quality staff of the MPO and local government staff, State DOT, EPA, FHWA, FTA, and the air agency responsible for evaluating and establishing the assumptions and circumstances for the application of transportation and air quality models.

YY. Transportation Control Measure (TCM): is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure used as the basis for air quality credits to achieve conformity and has [for] the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. A proposed TCM shall be identified in the TIP and/or MTP. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

ZZ. Transportation Improvement Program (TIP): means a staged, multiyear, intermodal program of transportation projects covering the AMPA, which is consistent with the metropolitan transportation plan (MTP), and developed pursuant to 23 CFR Part 450.

AAA. Transportation Plan: means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450 (Long Range Transportation Plan, or most current successor document).

BBB. Transportation Project: is a highway project or transit project.

CCC. Written Commitment: for the purposes of 20.11.3 NMAC means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable

implementation plan.

DDD. Acronyms

- (1) AMPA-Albuquerque Metropolitan Planning Area
- (2) AQCB-Albuquerque/Bernalillo County Air Quality Control Board
- (3) CAA-Clean Air Act, as amended
- (4) CFR-Code of Federal Regulations
- (5) CO-Carbon monoxide
- (6) DOT-U.S. Department of Transportation
- (7) EHD-Albuquerque Environmental Health Department
- (8) EPA-U.S. Environmental Protection Agency
- (9) FHWA-Federal Highway Administration, DOT
- (10) FTA-Federal Transit Administration, DOT
- (11) ISTEA-Intermodal Surface Transportation Efficiency Act of 1991
- (12) MPO-Metropolitan Planning Organization
- (13) MRGCOG-Middle Rio Grande Council of Governments
- (14) MTP-Metropolitan Transportation Plan
- (15) MVEB-Motor Vehicle Emissions Budget
- (16) NAAQS-National Ambient Air Quality Standards
- (17) NEPA-National Environmental Policy Act
- (18) NOx-Oxides of Nitrogen
- (19) PIC-Public Involvement Committee
- (20) PM10-Particulate matter less than or equal to 10 micrometers in diameter
- (21) SIP-State Implementation Plan (applicable implementation plan)
- (22) State DOT-NM Highway & Transportation Department
- (23) STIP-State Transportation Improvement Program
- (24) TCC-Transportation Coordinating Committee
- (25) TCM-Transportation control measure
- (26) TCTC-Transportation Conformity Technical Committee
- (27) TIP-Transportation Improvement Program
- (28) UTPPB-Urban Transportation Planning Policy Board
- (29) VOC-Volatile organic compound
- (30) VMT-Vehicle Miles Traveled [7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02]

20.11.3.12 AMENDMENT AND SUPERSESION OF PRIOR REGULA-

TIONS: This Part ~~repeals and replaces~~ ~~renumbers and amends~~ 20 NMAC 11.03, Transportation Conformity, which was filed with the State Records Center and Archives on ~~October 27, 1995~~ June 1, 1998 with an effective date of ~~December 1, 1995~~ July 1, 1998. All references to this regulation shall be understood as a reference to this Part. [7/1/98; 20.11.3.12 NMAC - Rn, 20 NMAC 11.03.1.12, & A, 6/1/02]

[H. APPLICABLE REQUIREMENTS]

20.11.3.202 CONSULTATION:

A. General:

Transportation plans and programs must be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo County. The MRGCOG, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo County. The applicable plans and programs are the TIP, which is included in the short-term transportation program for the AMPA, and the MTP. Projects in Bernalillo County but outside the AMPA, which are included in the Regional Transportation Improvement Program for District 3, are also subject to conformity requirements. The document serving to demonstrate conformity is the Transportation/Air Quality Conformity Finding. 20.11.3 NMAC provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, State DOT, and DOT with the air agency and EPA before making conformity determinations, and by the air agency and EPA with the MPO, State DOT, and DOT in developing applicable implementation plan revisions. This Transportation Conformity Regulation is an AQCB Regulation for Bernalillo County and is included in the State Implementation Plan revision pertaining to Transportation Conformity for Bernalillo County.

B. Interagency

Consultation Interagency Consultation Procedures: General Factors: The affected agencies shall participate in an interagency consultation process for the purpose of assuring that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e., transportation control measures (TCMs)), the MTP, the TIP, (under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents, and all conformity determinations

required by 20.11.3 NMAC.

(1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; State DOT; local publicly-owned transit operator; local government transportation and appropriate land use planning agencies (e.g., City of Albuquerque and Bernalillo County Planning Departments); and other federal and state agencies; as appropriate.

(2) Each lead agency in the consultation process required under Subsection D of 20.11.3.202 NMAC (i.e., the agency responsible for preparing the final document subject to the interagency consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall consider the views of each agency and respond in writing to substantive written comments submitted during the formal comment period prior to making a final decision on such document. Such written response shall be made part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1), of Subsection C of 20.11.3.202 NMAC below.

(3) Project planning, public involvement, management systems, project development, and other requirements for the MPO, State DOT, and the local publicly-owned transit operator are covered by the applicable DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

C. Interagency Consultation Procedures Roles and Responsibilities:

(1) Development of transportation plans and programs and associated conformity determinations.

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP, and technical analyses related to travel demand and other associated modeling, data collection, and coordination of consultation for these activities with the agencies specified in Paragraph (1), of Subsection B of 20.11.3.202 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO will be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in coordination with the EHD, will be the responsibility of the project-implementing agency through the NEPA process, or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO

document regarding public involvement procedures for transportation plans and programs, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP. The development and maintenance processes for the TIP and MTP, including associated conformity determinations, are explained in the MRGCOGs public involvement document.

(i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft conformity finding to the AQCB for their review with a minimum of fourteen (14) calendar days to provide comments. Upon release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP, TIP, and accompanying conformity documents to the AQCB and agencies in Paragraph (1), of Subsection B of 20.11.3.202 NMAC for review and comment before adoption and final approval by the UTPPB. Following review of the conformity determination, the AQCB shall state whether the MTP and /or TIP is in compliance with the applicable implementation plan. The MPO shall provide a review and comment period consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(b)(1), 49 CFR Section 613). Appropriate briefings to the AQCB shall be provided upon request.

(ii) The MPO shall provide information and appropriate advance notification on meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on transportation and air quality to each of the agencies specified in Paragraph (1), of Subsection B of 20.11.3.202 NMAC in accordance with the public involvement process, adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(b)(1), 49 CFR Section 613) and described in the MRGCOG's public involvement document. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.202 NMAC.

(2) Development of applicable implementation plans: Within the nonattainment/maintenance area, the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities, and coordination of these tasks with the agencies specified in Paragraph (1), of Subsection B of 20.11.3.202 NMAC through the TCTC as described in Subparagraph (a), of Paragraph (1), of Subsection D of 20.11.3.202 NMAC. Upon

release of the final draft of the SIP revision for public review, the EHD shall submit the final draft document to the UTPPB and agencies in Paragraph (1), of Subsection B of 20.11.3.202 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a 30 day review and comment period consistent with CAA requirements. Appropriate briefings to the UTPPB shall be provided upon request.

(3) The organizational level of regular consultation is described in Subsection B of 20.11.3.202 NMAC and Subsection C of 20.11.3.202 NMAC. ~~[The designated points of contact are]~~ All correspondence concerning consultation related to the Transportation Conformity SIP shall be addressed to the designated points of contact ~~[above]~~ below:

- (i) EPA:
Regional Administrator or designee;
- (ii) FHWA:
Division Administrator or designee;
- (iii) FTA: R e g i o n a l
Administrator or designee;
- (iv) State DOT:
Secretary of Transportation or designee;
- (v) MPO: M R G C O G
Executive Director or designee;
- (vi) EHD:
Director or designee;
- (vii) local publicly-
owned transit operator: Chief
Administrative Officer or designee;
- (viii) local governments
within the nonattainment/ maintenance
area: Chief
Administrative Officer or designee

(4) The MPO shall respond in writing to substantive written comments regarding the MTP, TIP, and related conformity determinations in accordance with the provisions of this Part. The project implementing agencies shall respond in writing to substantive written comments regarding projects in accordance with the provisions of this regulation. The air agency (EHD) shall respond in writing to substantive written comments regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of this Part. All formal comments (e.g., those received during the public comment period) and responses to those comments shall be included within final documents ~~[when]~~ before they are forwarded for review and final approval by the FHWA/FTA and/or EPA, as appropriate.

(5) Prior to adoption of a TCM in the applicable implementation plan by the AQCB, the MPO shall, in consultation and coordination with the agencies identified in

Paragraph (1), of Subsection D of 20.11.3.202 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation development processes. ~~[After necessary TCMs are identified, the MPO will submit these TCMs to the AQCB for inclusion into the applicable implementation plan].~~ After approval of a TIP and/or MTP, all proposed TCMs shall be incorporated into the applicable implementation plan by the AQCB. The necessary TCMs will be specifically described in the applicable implementation plan. TCMs must also be cross-referenced to the approved TIP and/or MTP. EHD will coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan. ~~[The TCMs included in the applicable implementation plan and approved by the EPA as part of the applicable implementation plan shall receive priority funding for implementation within the MPOs, MTP and TIP funding processes.]~~ The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in the MPO's TIP and/or MTP.

(a) In the event that implementation of a TCM is infeasible in the time frame for that measure in the applicable implementation plan (as defined in Subsection C and Subsection J of 20.11.3.7 NMAC adopted by the AQCB, the parties in the interagency consultation process established pursuant to Paragraph (1), of Subsection B of 20.11.3.202 NMAC shall assess whether such a measure continues to be appropriate. Where the MPO and the AQCB concur that a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the process described in Subparagraph (a) through Subparagraph (e), of Paragraph (5), of Subsection C, of 20.11.3.202 NMAC to identify and adopt a substitute TCM.

(b) Any TCM in the applicable implementation plan may be substituted by another TCM without an implementation plan revision if the proposed measure meets the following provisions of this rule:

(i) The MPO will convene the TCTC to identify and evaluate possible substitute measures. Consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) A substitute TCM must provide for equivalent or greater emissions reductions than the TCM contained in the applicable implementation plan;

(iii) A replacement TCM shall be implemented in the time

frame established for the TCM contained in the applicable implementation plan. If the implementation date has already passed, a TCM selected pursuant to this rule that requires funding must be included in the first year of the next MTP and TIP adopted by the MPO; however, the substituted TCM must be implemented as soon as possible, but not later than one year from the date of the original TCM;

(iv) In order for the AQCB to adopt substitute TCMs, there must be evidence of adequate personnel, funding and authority under State or local law to implement and enforce the measures. Commitments to implement the substitute TCMs must be made by the agency with legal authority for implementation;

(v) The TCMs substituted under this section for purposes of the applicable implementation plan (as defined in Subsection C of 20.11.3.7 NMAC and Subsection J of 20.11.3.7 NMAC shall receive priority funding for implementation within the MPO's, MTP and TIP funding processes; and

(iv) No TCM shall be replaced until the substitute TCM has been adopted and the existing TCM in the applicable implementation plan has been rescinded by the AQCB. Adoption of a substitute TCM by the AQCB formally rescinds the previously applicable TCM and adopts the substitute measure(s).

(c) Public Participation: After the concurrence required under Subparagraph (c), of Paragraph (5), of Subsection C of 20.11.3.202 NMAC, the AQCB shall conduct a public hearing and comment process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after a reasonable public notice, which is considered to be at least 30 days prior to the hearing date. The AQCB shall ensure that:

(i) A notice given to the public by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) Each proposed plan or revision is available for public inspection in at least one location in the applicable area;

(iii) Notification has been made to the MPO, EPA, affected local agencies, and other interested parties; and

(iv) description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA within a reasonable time before the public hearing and at least 30 days prior to the close of the public comment period.

(d) Concurrence Process for Substitute TCMs:

(i) Before initiating any public participation process, the AQCB, MPO and EPA must concur with the appropriateness and equivalency of the substitute TCM;

(ii) The AQCB shall respond to all public comments and submit to EPA a summary of comments received during the public comment period along with the responses following the close of the public comment period;

(iii) The EPA shall notify the AQCB within fourteen (14) days if EPA's concurrence with the substitution has changed as a result of the public comments. Should the EPA fail to notify the AQCB within fourteen (14) days, EPA is deemed to concur;

(iv) All substitute measures must be adopted by the AQCB following the public comment period and EPA's concurrence described in Subparagraph (c), of Paragraph (5), of Subsection C of 20.11.3.202 NMAC.

(e) Technical Information: The analysis of substitute measures must be consistent with methodology used for evaluating measures in the nonattainment or maintenance plan. Where emissions models and/or transportation models have changed since those used for purposes of evaluating measures in the nonattainment or maintenance plan, the TCM to be replaced and the substitute measure(s) shall be evaluated using the latest modeling techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and assumptions must be consistent with EPA approved regional and hot-spot (for CO and PM₁₀) emissions models, the areas transportation model, and population and employment growth projections.

(f) Record Keeping: The AQCB will maintain documentation of approved TCM substitutions. The documentation will provide a description of the substitute and replaced TCMs, including the requirements and schedules. The documentation will also provide a description of the substitution process including the public and agency participation and coordination with the TCTC, the public hearing and comments process, EPA concurrence, and AQCB adoption. The documentation will be submitted to EPA following adoption of the substitute measure(s) by the AQCB, and made available to the public as an attachment to the applicable implementation plan

(6) Adoption of land use measures (LUMs) into the applicable implementation plan: All LUMs shall be incorporated into the applicable implementation plan by the AQCB. EHD will coordinate the necessary efforts to achieve inclusion of the LUM into the applicable implementation

plan. Prior to air quality credits associated with the LUM being applied to the air quality conformity determination for the TIP and/or MTP, one of the following must occur: 1) the appropriate local jurisdictions must have adopted the LUM or, 2) a written commitment to adopt the LUM by a certain date from the appropriate local jurisdictions shall have been submitted to the AQCB. The MPO shall submit the LUM or the written commitment to the AQCB and the AQCB shall submit the LUM or written commitment to the EPA for incorporation into the applicable implementation plan.

(a) In order to apply air quality credit to the air quality conformity determination, the MPO shall quantify the air quality benefits of the LUM, identify and/or develop a monitoring and reporting program which will evaluate effectiveness of the LUM, and describe any enforcement mechanisms that will ensure the success of the LUM. Sufficient detail must exist for the LUM so that relevant future land use decisions are clearly guided by the LUM.

(b) No fewer than 60 days and no more than 120 days prior to submitting the preliminary version of the MTP, TIP, and the draft conformity finding to the AQCB as required in Subsection C of 20.11.3.202 NMAC, the MPO shall submit to the AQCB the results of the monitoring and reporting program for the LUM. The MPO shall provide results of the monitoring and reporting program to the AQCB at least once every 3 years. Within the jurisdiction of the AQCB, if a person or entity responsible for implementing provisions of the LUM fails to take reasonable actions necessary to achieve the LUM, this may be deemed by the AQCB a violation of the applicable implementation plan. If the AQCB determines that the LUM is not making reasonable progress toward achieving the expected air quality benefits or if the AQCB determines that circumstances have changed such that implementation of the LUM has become infeasible, the AQCB and other responsible agency(ies) shall follow the steps outlined in Subparagraph (b), of Paragraph (7), of Subsection C of 20.11.3.202 NMAC to correct implementation deficiencies.

(7) General requirements for LUMs and TCMs. Implementation plan rules that pertain to TCMs that are included in the applicable implementation plan generally apply to LUMs. Procedures for substituting LUMs shall be consistent with procedures identified for substituting TCMs.

(a) Specific performance criteria will be included in the TIP and/or MTP for each LUM and TCM. The performance criteria will include the timing for implementation, the quantification of anticipated air

quality benefits, the responsible or lead agency for implementation, the method to measure whether the air quality benefits are being realized according to the timing and phasing of each LUM and TCM in the TIP and/or MTP, and any supporting policies or regulatory mechanisms needed to implement the LUM and TCM.

(b) If the AQCB determines that a LUM or TCM is not being implemented consistent with the performance criteria and, therefore, is not successfully achieving the anticipated air quality benefits, the AQCB can issue a declaration to the UTPPB and the agencies identified in Paragraph (1), of Subsection D of 20.11.3.202 NMAC that the AQCB has identified noncompliance with the applicable implementation plan. Appropriate actions will be taken by the AQCB and other responsible agencies to correct the deficiencies identified by the AQCB. Within 120 days from the date of the AQCB's declaration, the responsible agency(ies) shall submit a corrective action plan to the AQCB to address the deficiencies. LUMs or TCMs in the approved corrective action plan must comply with all requirements of this regulation pertaining to LUMs and TCMs. Failure to obtain AQCB approval of the action plan within 120 days after submission to the AQCB is a violation of this regulation.

D. Interagency Consultation Procedures: Specific Processes.

(1) Interagency consultation procedures, for the Bernalillo County nonattainment/ maintenance area, in accordance with Subsection C of 20.11.3.202 NMAC, shall involve the MPO (transportation, land use and transit members from within the AMPA), State DOT, EPA, FHWA, and FTA, and the air agency. The TCTC will serve as the agency for providing interagency consultation for the specific processes described below. The TCTC will include representatives as described in Paragraph (1), of Subsection B of 20.11.3.202 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC will meet at least quarterly and on an as-needed basis. The air agency, in consultation with the MPO, will be responsible for convening meetings and establishing meeting agendas.

(a) A TCTC shall be established by the air agency in cooperation with the MPO. The TCTC shall evaluate and participate in establishing the circumstances for the application of a transportation or air quality model (or models). Committee review will include VMT forecasting and associated methods and assumptions to be used in: 1) hot-spot and regional emissions

analysis in establishing motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions directly applicable to transportation, and 4) making the conformity determinations and planning assumptions identified in 20.11.3.207 NMAC. The TCTC will also review assumptions, analyses and results of the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP and transportation programs. The group shall function as a cooperative interagency effort to share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through interagency consultation. Regional modeling will be the responsibility of the MPO and the air agency as appropriate. Hot-spot analysis will be the responsibility of the lead agency of the project requiring the analysis. Before new models used in hot-spot or regional emissions analysis are adopted for general use, the TCTC will be provided an opportunity to review and comment. This process also applies to consultation on the design, schedule, and funding of research and data collection efforts regarding regional transportation models developed by the MPO (e.g., household travel transportation surveys) described in 20.11.3.207 NMAC. Every reasonable effort shall be made to resolve differences. New modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

(b) The TCTC will determine which minor arterials and other transportation projects should be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept, timing, and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1), of Subsection D of 20.11.3.202 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network, which is likely to lead to a meaningful increase in a particular pollutant for which the nonattainment area exceeds the NAAQs or for an area, which is designated as a maintenance area.

(c) The TCTC will evaluate whether projects otherwise exempted from meeting the regional and hot-spot conformity analysis requirements should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects exempted from being included in a regional conformity determination. Exempt projects are identified in 20.11.3.223 NMAC. The process used to reach a determination of exemption shall include an evaluation of whether or not the exempt project will interfere with or impede the implementation of TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If substantive air quality impact comments are received which indicate that an exempt project may adversely affect air quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate action necessary to address the adverse air quality impacts.

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule, and if not, what delays have been encountered, what obstacles to their implementation have been identified, and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures beyond those already in the SIP are deemed necessary through the consultation process of this regulation, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination will be made as part of the MPOs transportation policy planning process.

(e) The MPO shall provide notification through its transportation planning process, to the agencies represented on the TCTC of revisions and amendments to the MTP and TIP, which merely add or delete exempt projects identified in 20.11.3.223 NMAC.

(f) If Bernalillo County is designated as nonattainment for PM₁₀, the consultative process as specified in Subsection D of 20.11.3.202 NMAC shall be used to coordinate the identification of projects located at sites that have vehicle and road-

way emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring. A quantitative PM₁₀ hot-spot analysis shall be required for these projects in accordance with Subsection B of 20.11.3.220 NMAC. The air agency, in consultation with the MPO, shall advise the appropriate lead agency responsible for project development, of the identified projects and the basis for their identification.

(g) The MPO shall provide written notification to all the agencies in the MTP, TIP and conformity determination processes, including the AQCB, of revisions or amendments to those plans which merely add or delete exempt projects identified in 20.11.3.223 NMAC.

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by Subparagraph (c), of Paragraph (2), of Subsection G of 20.11.3.206 NMAC.

(2) Interagency consultation procedures shall include the agencies specified in Paragraph (1), Section D of 20.11.3.202 NMAC, which shall participate in the following processes:

(a) In addition to the triggers defined in 20.11.3.201 NMAC, the air agency may request a new conformity determination when emergency projects involve substantial functional, locational, and capacity changes, or that may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment, and the area includes another MPO, the responsibility for conducting conformity determinations on transportation activities, which cross borders of the MPOs or nonattainment areas, will be shared cooperatively by the agencies involved. An agreement shall be developed between the MPOs and other appropriate agencies of local and state government to address the responsibilities of each for regional emissions analysis.

(3) Although the Metropolitan Planning Area does not include all of the nonattainment/maintenance area of Bernalillo County, the MPO (which is also the Regional Planning Organization for all of Bernalillo County), in coordination with the State DOT, shall have the responsibility for conducting conformity analyses and conformity determinations on transportation activities for the entire nonattainment/maintenance area.

(4) Interagency consultation on regionally significant non-FHWA/FTA projects:

(a) Any group, entity, or individual planning to construct a regionally significant transportation project which is not a

FHWA/FTA project (including, a project for which alternative locations, design concept and scope, or the no-build option is still being considered), including those projects planned by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular basis through the MTP and TIP development processes, or as soon as they are identified, and immediate notification of the MPO of any changes to an existing plan, so that these transportation projects can be incorporated in regional emissions analysis and modeling for the nonattainment/maintenance area.

(b) The sponsor of any such regionally significant project, and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act with knowledge of any such projects through applications for approval, permitting or funding or otherwise, shall disclose them to the MPO in a timely manner. Such disclosures should be made not later than the first occasion on which any of the following actions is sought: any UTPPB action, or other action by government decision making bodies, necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project. At the earliest opportunity, the MPO should apprise the agencies participating in the consultation process identified above in Paragraph (1), of Subsection D of 20.11.3.202 NMAC of these projects and include them in the conformity analysis networks.

(c) In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant projects shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purpose of 20.11.3.218 NMAC.

(d) For the purposes of this section and 20.11.3.218 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action nec-

essary to authorizing a project occurs, such as any UTPPB action, or other action by government decision making bodies, necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(5) When there is not sufficient information to model the projects described in Paragraph (4), Of Subsection D of 20.11.3.202 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, and design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4), of Subsection D of 20.11.3.202 NMAC.

(6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting information on the approved MTP/TIP/conformity determination or adopted SIP revisions, respectively to all agencies listed in Paragraph (1), of Subsection D of 20.11.3.202 NMAC.

E. Resolving Conflicts:

(1) The air agency and the MPO (or State DOT where applicable) shall make a good-faith effort to address the major concerns of the other party and reach a resolution. In the event they are unable to reach agreement, the conflict shall be escalated to the governor.

(2) In the event that the parties agree that every reasonable effort has been made to address major concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing of the inability to resolve concerns or agree upon the final decision/action. Notification shall be provided by registered mail. This subparagraph shall be cited by the MPO in any such notification to the air agency.

(3) The air agency has 14 calendar days from the date of receipt of notification as required in Paragraph (2), of Subsection E of 20.11.3.202 NMAC to appeal to the Governor. Notification shall be provided by registered mail. This paragraph shall be cited by the air agency in any notification of a conflict which may require action by the Governor or his/her designee. If the air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The Governor or his/her designee shall issue a written decision on the appeal within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the Governor

within 14 calendar days from receipt of written notification, the MPO may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the members or staff of: the AQCB, Director of the City or County EHD, Secretary of the Environment Department, Chiefs of the State Air Quality or Air Pollution Control Bureaus, Environmental Improvement Board, Secretary of the State Highway and Transportation Department, State Highway Commission, or an MPO.

F. Public Consultation

Procedures: Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[7/1/98; 20.11.3.202 NMAC - Rn, 20 NMAC 11.03.II.3, & A, 6/1/02]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

5 NMAC 5.50, Industrial Development Training Program is hereby repealed and replaced by 5.5.50 NMAC, effective 04-30-2002.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

**TITLE 5 POST-SECONDARY
EDUCATION
CHAPTER 5 POST-SECONDARY
EDUCATION PROGRAMS
PART 50 INDUSTRIAL
DEVELOPMENT TRAINING PRO-**

GRAM**5.5.50.1 ISSUING AGENCY:**

Economic Development Department
[5.5.50.1 NMAC - Rp 5 NMAC 5.50.1, 04-30-2002]

5.5.50.2 SCOPE: The rules apply to New Mexico residents.

[5.5.50.2 NMAC - Rp 5 NMAC 5.50.2, 04-30-2002]

5.5.50.3 STATUTORY

AUTHORITY: General management of the industrial development training program shall be the responsibility of the industrial training board as prescribed by governing legislation (Section 21-19-7, NMSA 1978).
[5.5.50.3 NMAC - Rp 5 NMAC 5.50.3, 04-30-2002]

5.5.50.4 DURATION:

Permanent
[5.5.50.4 NMAC - Rp 5 NMAC 5.50.4, 04-30-2002]

5.5.50.5 EFFECTIVE DATE:

April 30, 2002, unless a later date is cited at the end of a section.
[5.5.50.5 NMAC - Rp 5 NMAC 5.50.5, 04-30-2002]

5.5.50.6 OBJECTIVE:

5.5.50 NMAC is intended to assist the development of New Mexico's economy by providing funds for training projects to prepare New Mexico residents for employment in new and/or expanding companies who manufacture or produce a product in New Mexico. Under some circumstances assistance may be provided to non-retail businesses in the service sector. The principal factor in evaluating proposals from service sector businesses will be the extent to which the service provided by the company will be exported to other states or will reduce the need for importing a service to New Mexico.

[5.5.50.6 NMAC - Rp 5 NMAC 5.50.6, 04-30-2002]

5.5.50.7 DEFINITIONS:

[Reserved]

5.5.50.8 REQUIREMENTS FOR FUNDING REQUESTS:

Submission of a proposal is a requirement for funding consideration. The proposal consists of the following: an application; a training budget; a training plan; the State of New Mexico unemployment insurance (UI) report for the latest quarter (businesses currently doing business in the State of New Mexico); history/background of the company and a marketing and operations plan; and

financial statements from the three (3) previous years manifesting financial solidity.

A. The training plan must include:

(1) learning objectives, a course description, course goals, a course outline and job descriptions for each position for which the company or public educational institution will provide training;

(2) the trainer's qualifications to teach the course; and

(3) the education-training/experience required of the applicants. The training plan must provide quantitative and qualitative performance standards to assure that training is based on special company requirements and can be evaluated for effectiveness.

B. Performance standards may include:

(1) oral, written or demonstrative tests to determine each trainee's level of knowledge and skills before and after training;

(2) measures to determine whether company goals and objectives are being met, such as increased customer sales and service and increased production efficiency; and

(3) trainee wage data showing the benefit of training in higher wages earned. The Industrial Training Board shall verify that the training requirements for which training funds are requested constitutes custom-designed training for unique skills.

C. The application shall provide verification that the training requirements are unique to the applying company and that the training cannot be obtained from the local college or technical-vocational institutions.

D. Each program funded will be evaluated to determine the benefits of the training program to the trainees and the company based on the performance standards and measures identified in the proposal.

Companies with fewer than twenty (20) employees located in a non-metro area or in an economically distressed area (Cibola, Mora, Guadalupe, Rio Arriba, Luna, San Miguel, McKinley and Taos) of New Mexico are eligible for the modified/short-form proposal.

E. The board utilizes a scoring tool in which to rank proposals. The scoring tool includes elements and gives credit to proposals that identify or demonstrate the following:

(1) Being a headquarter facility,

(2) Targeted industry for New Mexico (technologically emerging industry, telecommunications, food processing, electronics, component manufacturing, biotechnology, optics, and semiconductors),

(3) Financially soundness,

(4) Return on Investment - to include: impact on local/state economy (number of jobs; payroll, average wage which positively impacts county, local wages; increase in household earnings; increase in per capita income; annual local purchases impacting local/state sales taxes; dollar amount of new construction; percentage that product is exported outside of NM; environmental impact; and overall community support),

(5) Charitable/Community contribution,

(6) Quality of Jobs/Status of Trainees - jobs will be created in high-tech or emerging occupations; benefits; wages that are higher than county wage and are 50% above national average wage, and are higher than the county OES wage as outlined by the NMDOL, and

(7) Willingness to hire residents participating in the Workforce Investment Act or other state/federal programs.

[5.5.50.8 NMAC - Rp 5 NMAC 5.50.8, 04-30-2002]

5.5.50.9 PROGRAM

DESCRIPTION: Governing legislation provides for two (2) basic types of training projects described under the Industrial Development Training Program: public educational institution classroom training and In-Plant Training (or a combination of the two). Training assistance of up to 1,040 hours (six months) per trainee is available under the program. The O*NET (Occupational Information Network) is used to determine the number of training hours required. The O*NET system is available at the Department of Labor (DOL) website: www.dol.state.nm.us. Go to Links, then to America's Workforce Network, and follow the instructions that will assist you in this process.

A. Public Educational

Institution Classroom Training: Training is conducted by a New Mexico public educational institute in a classroom setting, on campus or at the work site, and may be customized to meet the specific needs of the company. In the event that adequate training opportunities are not available through the public institutions, private institutions may be considered. Classroom size and the actual content of training projects may be negotiated with the educational institute and implemented where at least three trainees are enrolled. The institute will provide a separate proposal.

(1) Trainees must be full time, year-around employees to participate in the training program and must be guaranteed full-time employment with the contracted company upon successful completion of

training.

(2) Payment for classroom training services shall be made only for a qualified and approved program.

(3) The contracted institution and/or the participating company shall work with the Economic Development Department to establish the contract, its content, scope and standards of the classroom training to ensure that the program meets or exceeds the company's skill requirements.

(4) Contracts with postsecondary institutions may only include up to five percent overhead charges. However, the company may wish to pay the additional overhead.

(5) The executed contract shall comply with the governing legislation.

B. In-Plant Training:

Training is conducted at the participating company's facility and generally involves on the job training (OJT) and/or "hands-on" skill development. The training must be customized to develop essential skills unique to the company's needs. In-Plant Training projects may be negotiated and implemented where at least three trainees are enrolled. Rural: If a company has fewer than twenty (20) employees and is located in a non-metro or economically distressed (Cibola, Mora, Guadalupe, Rio Arriba, Luna, San Miguel, McKinley and Taos) area of New Mexico, then there is no minimum hiring requirement

(1) Training must be for full-time, year-around employees to participate in the training program and must be guaranteed full-time employment with the contracted company upon successful completion of training.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff.

(3) The contracted company shall work with the Economic Development Department to establish the contract, its content, scope and standards of the training to ensure that the program meets or exceeds the company's skill requirements.

(4) The executed contract shall comply with governing legislation.

C. Retraining: No

retraining of current company employees is allowed under the program. Only new hires are eligible.

[5.5.50.9 NMAC - Rp 5 NMAC 5.50.9, 04-30-2002]

5.5.50.10 PROGRAM REQUIREMENTS AND QUALIFICATIONS:

The following requirements are established for companies and trainees in compliance with governing legislation to

assure maximum control and success in the implementation of the industrial development training program.

A. Trainee Qualifications and Requirements:

(1) Training applicants must be new hires and must have resided within the state for a minimum of one year immediately prior to the commencement training.

(2) All trainees must have completed the training in order for the business to receive funding.

(3) All applicants must be eligible under the Federal Fair Labor Standards Act.

(4) Company supervisors, management, administrative and professional positions, are ineligible to participate in the program as trainees. Only employees classified as labor production workers, manufacturers, customer service representatives, reservation clerks, etc. are eligible.

(5) Training may not exceed the hours agreed to in the final contract, and shall not exceed 1,040 hours/trainee.

(6) Trainees shall not have terminated high school (grade 12) except by graduation within the three months prior to commencement of training.

(7) Trainees shall be expected to meet company policies on attendance, performance evaluation, and other personnel standards.

(8) Trainees who have participated in a previous Industrial Development Training Program are ineligible to participate again with the same company.

(9) Trainee job classifications shall remain fixed during the period of enrollment unless otherwise amended with Board approval.

(10) The company has the exclusive decision in the selection of the trainees.

(11) Trainees must be full time; year around employees to participate in the training program and must be guaranteed full-time employment with the contracted company upon successful completion of training.

(12) Trainees' start dates must not precede the actual contract date. Trainees hired before the contract date do not qualify for reimbursed wages unless the trainees were hired less than two months prior to the Board meeting for which the company is seeking funding, and will not exceed 25% of the total amount being requested. In this case, adjustments will be made to the training hours for trainees whose hire dates are found to be earlier than the contract date.

(13) Employees hired through a temporary agency are considered new hires, however, hours worked under temporary status will be deducted from the total hours eligible, as outlined by the O*NET.

B. Training Project Qualifications and Requirements:

(1) Training shall not exceed one thousand forty (1,040) hours or six months of training per trainee for the total duration of training. Should the company train beyond this amount, it is the company's responsibility to compensate the trainee.

(2) Trainee wages will be reimbursed upon completion of the training.

(3) The Board uses the O*NET (Occupational Information Network) as a guide in the establishment of training hours for a job classification. The applicant should comply with its use.

(4) The Board shall award training hours based on the range suggested by the O*NET unless the application clearly substantiates that additional hours are required. The Board shall ensure that the occupational titles match those of the requested position and that the training hours do not exceed the O*NET guideline. In determining the appropriate number of training hours, the Board shall examine the training plan, the training objectives, and the hourly wage associated with the position. The Board shall review the company's educational and experience requirements of the applicants to determine degree of match with the company's job descriptions.

Duration of reimbursable training time:

Job Zone	Definitions	SVP Range/Conversion	Training Hours	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	20	4
2	Some preparation needed	4.0 to < 6.0	640	40	8
3	Medium preparation needed	6.0 to < 7.0	960	80	16
4	Considerable preparation needed	7.0 to < 8.0	1040	120	24
5	Extensive preparation needed	8.0 and above	1040	130	26

*O*NET 98 Viewer* - The O*NET system is available at the Department of Labor (DOL) website: www.dol.state.nm.us Go to Links, then to America's Workforce Network and follow the instructions that will assist you in this process.

(5) Persons employed to provide the instructional services shall be exempt from the minimum requirements established in the state plan for other state vocational education programs.

(6) Training must be full time based on the company's scheduled work-week. **(not less than 36 working hours per week)**

(7) Contracts shall not be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts unless a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the Federal Trade Commission and the Indian Arts and Crafts Board of the Department of Interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

C. C o m p a n y Qualifications and Requirements:

(1) The contractual agreement will be prepared and mailed out to the company within 15 working days after the Board approval date.

(2) The company entering into a contractual agreement with Economic Development Department shall return the contractual agreement to the Department within 15 business days from the issue date.

(3) The contractor shall complete the hiring of trainees within six (6) months of the contract start date. After six (6) months, funds not utilized and related to the positions not hired will revert back to the program.

(4) The company shall provide the Department with a schedule of trainees who meet the six (6) month contractual requirement monthly.

(5) Each project is subject to compliance reviews throughout the term of the contract. The compliance review will consist of program and fiscal surveys.

(6) The company shall make arrangements to have a Final Audit at the end of the contract. The audit shall be performed by an independent accounting firm registered with the New Mexico Regulation and Licensing Department, Board of Accountancy. The cost is added to the contract at a rate determined by the Industrial Development Training Board.

(7) Yearly follow-ups are conducted to show effectiveness of the program.

(8) Project Proposals and Contract Amendments must be submitted to the Economic Development Department, Economic Development Division, no later than one month before the Industrial Training Board meetings, which are held on the second Friday of each month. The alternate date for Board meetings is the third Friday of the month.

(9) Company job openings must be registered with the New Mexico Department of Labor (NMDOL), Workforce Development Centers. The company is encouraged to use the NMDOL Workforce Development Centers in hiring eligible applicants referred to the program. The company is also encouraged to advertise through the placement office at the local post-secondary educational institution. A list of all post-secondary, public and proprietary institutions is available from the Commission on Higher Education.

(10) In the spirit of the welfare-to-work state initiative, the company is strongly encouraged to explore and participate in other state/federally funded job training programs as administered by the Department of Labor, Health & Human Services, et. al. However dual participation in two separate programs by the same trainee is prohibited.

(11) The company shall have the exclusive decision in the selection of trainees.

(12) The company is required to inform trainees that they are being partially funded by the IDTP.

(13) A company whose employees are compensated based on piecework shall not be reimbursed for training costs.

(14) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible to apply for future participation.

D. Duration of Contract: The term of the contract will be based on a one-year time period, which will allow the contractor to complete its obligation to conduct the agreed upon training. However, the contractor shall complete the hiring of trainees within six (6) months of the contract start date. After six (6) months, funds not utilized and related to the positions not hired will revert back to the program

E. Reapplication: While funding considerations are first given to new applicants, companies who have participated in the past may reapply for assistance through the Industrial Development Training Program upon submission of a new proposal. Information must be included in the proposal to document trainee retention, promotions, audit results, and company growth relating to the persons who participated in the program. Funding consideration will be based on but not be limited to: salary range, county unemployment, types of jobs, impact on local economy, number of jobs, number of previous awards, past performance, and benefits provided. In order to be refunded the company must demonstrate an expansion beyond its peak employment as established by the

first application. Companies that fail to comply with all established operating requirements and closeout procedures from the initial contract are not eligible to apply for future participation. Reimbursement of training costs shall be made to the participating company or public educational institution in accordance with the terms of the training contract. The rate established in the contract shall remain the same for the length of the agreement.

[5.5.50.10 NMAC - Rp 5 NMAC 5.50.10, 04-30-2002]

5.5.50.11 R E I M B U R S E - MENTS, EXTENSIONS AND AMEND- MENTS:

Reimbursement of training costs shall be made to the participating company or public educational institution in accordance with the terms of the training contract. Reimbursements will be based upon the number of trainees who have completed the training program. Training/work shall be full-time. The rate established in the contract shall remain the same for the length of the agreement. The participating company or the educational institution will submit time records and reimbursement invoices on established Economic Development Division forms to the New Mexico Economic Development Department, which is the payment agent. Claim for reimbursement can be submitted during the contract period, when trainees complete the number of contracted hours. The Claim for Reimbursement package must include one original signature and must be notarized. Failure to fully and accurately complete the Claim for Reimbursement Package will require sending the claim back to the company for correction. This process may cause delay in payment. The mailing address for all reimbursement forms (company and educational institutions) is the following:

Industrial Development Training Project
Administrator
New Mexico Economic Development
Department
P. O. Box 20003
Santa Fe, NM 87504-5003

Physical address to be used for Federal Express or special handling packages:

Industrial Development Training Project
Administrator
New Mexico Economic Development
Department
Joseph M. Montoya Bldg.
1100 St. Francis Drive
Santa Fe, NM 87505-4147

Reimbursement from the state will be based on the negotiated contractual agreement that includes a wage range outlined in the con-

tract to meet any wage adjustments during the training period.

A. Public Educational Institution Classroom Training

Reimbursement: Classroom training may occur as part of the trainee's on-the-job training program. Payment for classroom training services shall be restricted to instructional costs and may not exceed five (5%) percent overhead charges. Instructional costs for classroom training conducted by an educational institution may include instructional salaries, fringe benefits, supplies and materials, textbooks, expendable tools, and other costs associated in conducting the training program. The rate of reimbursement to the institution is 100% of all training costs. The Claim for Reimbursement package must include one original signature and must be notarized. Copies of instructor's time log, travel log, invoices for supplies, textbooks, etc. must be attached in order to support the claim for reimbursement. No training equipment may be purchased or rented using (IDTP) funds. Cost allowed for classroom training:

- (1) Supplies
- (2) Textbooks
- (3) Other costs that are clearly defined by the training institution in the proposal, and must be included in the Training Budget that is part of the contractual agreement.

B. Company In-Plant Training Reimbursement:

Reimbursement from the state will be based on the negotiated contractual agreement that includes a wage range outlined in the contract to meet any wage adjustments during the training period.

- (1) Training costs will be reimbursed to the company based on the Project Summary written in the contract. Urban rates must not exceed fifty percent (50%) of the trainees' hourly wages multiplied by the hours trained. Urban is defined as the city limits of Albuquerque, Santa Fe, Los Alamos, Las Cruces and Rio Rancho.

- (2) Businesses outside the urban areas as listed above, will be reimbursed at sixty percent (60%).

- (3) If a company is located in an economically distressed (Cibola, Mora, Guadalupe, Rio Arriba, Luna, San Miguel, McKinley and Taos) area of New Mexico the said company is eligible for sixty-five percent (65%) reimbursement. The board defines economic distressed based on per capita income and unemployment and/or per g Board's discretion when a severe or specific negative economic impact has occurred in an area of New Mexico.

- (4) If a company is located or expands to a currently designated Enterprise Zone, the said business can be

reimbursed at a rate deemed eligible for an economically distressed area. A company cannot relocate to an Enterprise Zone or rural area for the sole purpose of obtaining the increased rates.

- (5) Trainee hours shall not exceed one thousand and forty (1,040) hours per trainee based on the company's scheduled workweek and not to exceed forty (40) hours per week. The company shall compensate training hours that exceed the contracted amount. In some special instances, a company operates a "compressed workweek", where an employee works 40 hours in three or four days.

- (6) A company whose employees are compensated based on piece work shall not be reimbursed for training costs.

- (7) No payments shall be made under any accepted training contract for rental of facilities unless facilities are not available on-site or at an educational institution.

C. Travel and Per Diem Reimbursement for Trainees and Trainers:

- (1) Total travel cost is not to exceed five (5%) of the total project cost.

- (2) Trainee travel and per diem will be consistent with the rates as designated by location (urban, rural, or economically distressed) and must be pursuant to the DFA rule 95-1 of the Department of Finance and Administration's regulations governing the Per Diem and Mileage Act. The cost is associated when training occurs out of state and at the company's headquartered plant.

- (3) Trainer travel and per diem may be allowed if approved in the details of the contract. When travel is required, per diem is limited to the rates as designated by location (urban, rural, or economically distressed) and must be pursuant to Rule 95-1 of the Department of Finance and Administration's regulations governing the Per Diem and Mileage Act. The cost is associated when trainers are brought in from out of state.

D. Amendments and Extensions:

Due to funding limitations, the Industrial Development Training Board has ceased approving program extensions until further notice. However, under limited circumstances, the board may review and may make exceptions to this rule. Amendments to the contract are allowed and companies may submit an amendment request to the Industrial Training Board. When requesting an amendment to the original contract, the company must provide supporting documentation to justify the amendment. All amendments shall include: (1) a current financial statement, (2) correspondence requesting the change, and (3) a completed amendment form. If a company requests an

amendment increasing the original contract by more than 20%, a new application must be submitted. Amendment requests which are administrative in nature and do not impact the original budget amount by more than \$5,000 (above or below), may be executed by staff (ie. Job classification changes, company name change, wage ranges, etc.). The program manager and division director or his designee will approve all staff executed contract changes. Otherwise, the Industrial Training Board must approve all contract amendments. Staff may execute amendments without board approval if only to allow completion of a contract within a six-month period. All project amendment requests must be submitted in writing one month prior to the board meeting. The board meetings are held on the second Friday of every month. Amendments must commence within thirty (30) days from the approval date. [5.5.50.11 NMAC - Rp 5 NMAC 5.50.11, 04-30-2002]

5.5.50.12 OTHER REPORTING REQUIREMENTS:

A. Trainee Data Form:

The completed Trainee Data Form must be sent to the following address:

Industrial Development Training Project Administrator
New Mexico Economic Development Department
P. O. Box 20003
Santa Fe, New Mexico 87504-5003

Physical address to be used for Federal Express or special handling packages:
Industrial Development Training Project Administrator
New Mexico Economic Development Department
Joseph M. Montoya Bldg.
1100 St. Francis Drive
Santa Fe, NM 87505-4147

B. Individual Training

Records: The company is responsible for completing an individual training form for each employee/trainee. These records do not have to be submitted to Economic Development; however, they are subject to review during compliance visits and program surveys.

[5.5.50.12 NMAC - Rp 5 NMAC 5.50.12, 04-30-2002]

5.5.50.13 GLOSSARY/REFERENCE:

A. Expanding Company:

An existing business requiring additional employees or workforce due to a market or product expansion. A company who buys out an existing company shall not be considered a new company.

B. New Company: A

company not currently in operation in the state showing evidence of intent to establish operations in New Mexico.

C. Fair Labor Standards

Act: A Federal law establishing federal minimum wage and requiring employers to pay time and one-half of employee's regular rate for hours in excess of 40 hours per work week. All companies are encouraged to investigate and determine whether they fall under the Fair Labor Standards Act or State law.

D. Peak Employment:

Peak employment will be based on the employment base at the time of the initial contract, plus the number of employees funded through the program during previous participation. The Board will utilize the State of New Mexico unemployment insurance (UI) report for the latest quarter to determine peak employment at initial application and at the time of reapplication to ensure an expansion is indeed occurring.

E. Southwestern Arts and Crafts:

Refer to Department of Interior Indian Arts and Crafts Board; Indian Arts and Crafts Association; Council of Better Business Bureau; Federal Trade Commission.

F. Department of Labor Workforce Development Centers:

More information pertaining to the New Mexico Department of Labor can be accessed via the Internet at: <http://www.dol.state.nm.us/> [5.5.50.13 NMAC - Rp 5 NMAC 5.50.15, 04-30-2002]

HISTORY OF 5.5.50 NMAC:

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING REGULATIONS
PART 4 FISHERIES**

19.31.4.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.4.1 NMAC - Rp 19.31.4.1 NMAC, 4-15-02]

19.31.4.2 SCOPE: Sportfishing. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 through 34 of Title 19.
[19.31.4.2 NMAC - Rp 19.31.4.2 NMAC, 4-15-02]

19.31.4.3 S T A T U T O R Y

AUTHORITY: 17-1-14 and 17-1-26, and 17-2-1 NMSA 1978, provide that the New Mexico State Game Commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.
[19.31.4.3 NMAC - Rp 19.31.4.3 NMAC, 4-15-02]

19.31.4.4 DURATION: April 15, 2002 through March 31, 2006.
[19.31.4.4 NMAC - Rp 19.31.4.4 NMAC, 4-15-02]

19.31.4.5 EFFECTIVE DATE: April 15, 2002 unless a different date is cited at the end of individual Sections.
[19.31.4.5 NMAC - Rp 19.31.4.5 NMAC, 4-15-02]

19.31.4.6 OBJECTIVE : Establishing open seasons, bag limits, and other rules pertaining to management and harvest of the fisheries resources of New Mexico.
[19.31.4.6 NMAC - Rp 19.31.4.6 NMAC, 4-15-02]

19.31.4.7 DEFINITIONS : Specific terms as used in this regulation are defined.

A. Boundary Descriptions

(1) "U.S.", as used in boundary descriptions herein, shall mean United States Highway.

(2) "N.M.", as used in boundary descriptions herein, shall mean New Mexico State Road.

(3) "I", as used in boundary descriptions herein, shall mean Interstate Highway.

B. "Daylight hours" shall mean from one-half hour before sunrise to sunset.

C. A "barbless" lure or fly shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto a hook to resemble or simulate insects, bait fish, or other foods. A fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

D. "Chum" as used herein, is organic material that is not injurious to aquatic life and is used to attract fish.

E. "Snagging" as used herein, is the intentional taking of fish with hooks, gang hooks, or similar devices where

the fish is hooked in a part of the body other than the mouth.

F. "Bait fish" is defined as those nongame fish which are not otherwise protected by statute or regulation.

G. "Angling" shall mean taking or attempting to take fish by hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.
[19.31.4.7 NMAC - Rp 19.31.4.7 NMAC, 4-15-02]

19.31.4.8 TROUT WATERS AND WARM WATERS:

A. Regular Trout Waters: The following are designated as regular trout waters: all streams, lakes and ponds lying within the following described areas except licensed Class A lakes and lakes, ponds, and ranch tanks not fed by public waters and not open to public fishing.

(1) Northern Area: That portion of New Mexico bounded by a line starting at the intersection of I-25 with the Colorado-New Mexico state line and running south along I-25 to its junction with U.S. 64; thence, south and west on U.S. 64 to its junction with N.M. 58 at Cimarron; thence, south and east on N.M. 21 to its junction with I-25; thence, south, west, and southwest on I-25 and U.S. 84-85 to its junction with U.S. 285-84 at Santa Fe; thence, north on U.S. 285-84 to its intersection with N.M. 502; thence, west on N.M. 502 to the west bank of the Rio Grande; thence, southwesterly along the west bank of the Rio Grande to its intersection with N.M. 44 at Bernalillo; thence, north and west on N.M. 44 to its intersection with U.S. 550; thence, west on U.S. 550 to the west bank of the Animas River; thence, north along the west bank of the Animas River to the Colorado-New Mexico state line; thence, east along the state line to its intersection with I-25. (Except the San Juan River from U.S. 64 bridge at Blanco downstream to N.M. 44 bridge at Bloomfield.)

(2) Ruidoso Area: That portion of New Mexico bounded by a line starting at the junction of U.S. 54 and N.M. 506 and running north on U.S. 54 to its intersection with U.S. 380 at Carrizozo; thence, east on U.S. 380 to its junction with N.M. 246 at Capitan; thence, north and east on N.M. 246 to the eastern boundary of the Lincoln National Forest; thence, south to Tinnie; thence, west on U.S. 380 to Hondo; thence, south on a north-south line to the junction of N.M. 24 and U.S. 82 north of Dunken; thence south and west on N.M. 24 to Piñon; thence, south approximately one mile to N.M. 506; thence, west along N.M. 506 to its junction with U.S. 54 at Paxton.

(3) Gila Area: That portion of New Mexico bounded by a line starting at the junction of U.S. 180 with the Arizona-New Mexico state line and running north along the state line to its intersection with U.S. 60; thence, east on U.S. 60 to its junction with N.M. 52 west of Magdalena; thence, south on N.M. 52 to Winston and west along the road to Chloride and the eastern boundary of the Gila National Forest; thence, south along the forest boundary to its intersection with N.M. 152 east of Kingston; thence, west on N.M. 152 to its junction with U.S. 180 at Central; thence, west and northwest on U.S. 180 to its junction with the Arizona-New Mexico state line. (Except Bear Canyon Lake.)

(4) In Sandoval County: all of Las Huertas (Ellis Creek);

(5) In San Juan County: the Animas River from the 550 highway bridge in the City of Aztec and downstream to its confluence with the San Juan River;

(6) In Torrance County: all of Tajique Creek;

(7) In Union County: all of Dry Cimarron;

(8) In Cibola County: Bluewater Creek;

(9) Pecos River from I-25 south to the southeast boundary of Villanueva State Park;

(10) The following lakes, ponds, and reservoirs: Alice, Bluewater, Blue Hole Park Ponds, Chiuilla Well, Clayton, Lake Farmington, Jackson, Maloya, Maxwell Lake 13, McAllister, McGaffey, Power Dam, Manzano, and Ramah.

(11) In Sierra County, Rio Grande from Elephant Butte Dam downstream to, and including, Caballo Lake.

B. Winter Trout Waters: The following are designated as winter trout waters from November 1 through March 31 of the effective years: Sumner Lake Stilling Basin; that portion of the Black River extending from one mile upstream to one mile downstream of Higby Hole and located in Sections 8 and 9, T. 24 S., R. 28 E., N.M.P.M., in Eddy County; that portion of the Pecos River from the southeast boundary of Villanueva State Park downstream to, but not including Santa Rosa Lake; the following drains: Albuquerque, Atrisco, Belen Riverside, Bernalillo, Corrales, Peralta, and Tome; and the following lakes: Bataan, Bear Canyon, Bill Evans, Bosque Redondo, Bottomless Lakes, Burn, Carlsbad Municipal, Carrizozo, Chaparral, Conservancy Park, Escondida, Eunice, Greene Acres, Green Meadow, ponds on Harry McAdams Park, Jal, Ned Houk Lakes, Oasis Park, and Van.

C. Warm Waters: "Warm waters", as used herein, shall include all

streams, lakes, and ponds except those designated as trout waters above, and except licensed Class A lakes.

[19.31.4.8 NMAC - Rp 19.31.4.8 NMAC, 4-15-02]

19.31.4.9 SEASON DATES:

A. General Seasons: All trout and warm waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:

(1) Special Waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister Lake, Upper and Lower Charette Lakes, Maxwell Lakes 13 and 14, and Clayton Lake.

(b) All waters in the Valle Vidal (Vermejo Tract of the Carson National Forest) shall be open from July 1 through December 31.

(c) Bonito Lake shall be open from April 1 through November 30.

(d) Burns Canyon Lake at Parkview Trout Hatchery and Santa Cruz Lake shall be open from April 1 through October 31.

(2) Waters on National Wildlife Refuges Waters on U. S. National Wildlife Refuges shall be open for the taking of game fish in accordance with regulations of the U. S. Fish and Wildlife Service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the Fish and Wildlife Service has not regulated season dates.

B. Special Kokanee Salmon Seasons, Dates, and Location

(1) The following waters shall be open October 1 through December 31 for the special kokanee salmon season: Abiquiu Reservoir, Chama River from El Vado Lake upstream to the west boundary of the Rio Chama Wildlife and Fishing Area, Eagle Nest Lake, El Vado Lake, and Navajo Lake.

(2) Heron Lake and the Pine River shall be open for the special kokanee salmon season from November 15 through December.

(3) Heron Lake, including the Willow Creek tributary, and the Pine River shall be closed to kokanee salmon fishing between October 1 and November 14.

[19.31.4.9 NMAC - Rp 19.31.4.9 NMAC, 4-15-02]

19.31.4.10 HOURS OF FISHING:

A. Day and night fishing for all species of game fish shall be permitted in all waters during the open season, **except** Alto, Bonito, Butler Street, and Eagle Nest Lake where fish may be taken or

fished for only between the hours of 5 a.m. and 10 p.m.; and U. S. Fish and Wildlife Service waterfowl refuges where fish may be taken or fished for only during the hours posted at the refuge.

B. Fishing at Burns Canyon Lake located at Parkview Trout Hatchery, Red River Hatchery Pond at the Red River State Fish Hatchery, Glenwood Pond at the Glenwood State Fish Hatchery, waters within the Valle Vidal portion of the Carson National Forest, and Maddox Lake shall be during **daylight hours only**.

C. Fishing at Ned Houk Park Lakes and Greene Acres shall be during the **hours posted** by the City of Clovis; fishing at Santa Cruz Lake shall be between the **hours of 6 a.m. and 10 p.m.** [19.31.4.10 NMAC - Rp 19.31.4.10 NMAC, 4-15-02]

19.31.4.11 DAILY BAG AND POSSESSION LIMITS:

A. Trout

(1) Waters with Reduced Bag Limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, Rainbow, Cutthroat, Lake, Brook Trout and Kokanee Salmon

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in 19.31.4.11(A. 2.a) NMAC (above).

(3) Special Kokanee Salmon Season: During the special kokanee salmon season, the daily bag limit shall be 12 kokanee salmon in addition to the daily bag limit for trout, and no more than 24 kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess kokanee salmon at Heron Lake and Pine River during the closed kokanee salmon season (October 1 through November 14).

(4) Special Trout Waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters, where only barbless lures or flies may be used, the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached; In Rio Arriba County: all waters lying within or adjacent to the Little Chama Valley Ranch (Edward Sargent Wildlife Area) including the Rio Chamito, Sexton Creek, and Rio Chama, excluding Nabor

Creek and Nabor Lake; In Colfax County; the Shuree Lakes on the Valle Vidal; In Taos County: a posted portion of the Rio Pueblo between the bridge at Mile Marker 55 on State Hwy. 518 upstream approximately 1 mile to the Canon Tio Maes Trailhead; In San Miguel County: an approximately 1-1/2 mile posted portion of the Pecos River beginning approximately 1/2 mile above the confluence of the Mora River (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba County: a posted portion of the Chama River approximately 2.9 miles within the boundaries of the Rio Chama Wildlife and Fishing Area; In Catron County: a posted portion of Gilita Creek from the Gila Wilderness boundary downstream approximately 5 miles to its confluence with Snow Creek; In Rio Arriba County: a posted portion of the Rio De Los Pinos from USFS Boundary 24 at the junction of Forest Road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos County: a posted portion of Red River from the confluence of Goose Creek 1 mile upstream.

(b) The limit on the following section of the San Juan River where only barbless lures or flies may be used shall be: In San Juan County, in a posted portion of the San Juan River, from a point beginning approximately 1/4 mile downstream of Navajo Dam and extending downstream 3.5 miles to the east side of Section 16: the daily bag limit shall be 1 trout and no more than 1 trout shall be in possession except in the catch-and-release section. The angler must stop fishing in the section defined once the daily bag limit is reached.

(c) On those sections of the following waters, where only barbless lures or flies may be used, no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan County: a posted portion of the San Juan River from Navajo Dam downstream approximately 1/4 mile. In Sandoval County: a posted portion of the Rio Cebolla from the Seven Springs Day Use Area upstream to its headwaters. In Sandoval County: a posted portion of the San Antonio River from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20). In Sandoval County: a posted portion of the Rio Guadalupe from the Porter Landing Bridge downstream approximately 1.3 miles to Llano Loco Spring. In Taos County: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson National Forest downstream for approximately 2.4 miles to the confluence of Latir Creek. In Sierra County: the Rio las Animas within the Gila National Forest, Black Range

Ranger District. In Mora County: the Pecos River in the Pecos Wilderness, above Pecos Falls. In Rio Arriba County: Nabor Creek and Nabor Lake on the Edward Sargent Wildlife Area. In San Miguel and Santa Fe Counties: Doctor Creek from 1/4 mile above its confluence with Holy Ghost Creek upstream to its headwaters. In Mora County: Rio Valdez in the Pecos Wilderness from 1/4 mile below Smith Cabin upstream to its headwaters. In San Miguel and Mora Counties: Jack's Creek from the water falls located 1/4 mile downstream of NM Highway 63 crossing upstream to its headwaters. In Taos and Colfax Counties: any stream on the Valle Vidal (Vermejo Tract - Carson National Forest).

(d) In Colfax County: on a posted section of the Cimarron River from the lower end of Tolby Campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession. Terminal gear shall be restricted to barbless lures and flies.

(5) On the following waters, the daily bag limit shall be 3 trout and no more than 3 trout may be in possession, although there are no special restrictions regarding the use of legal gear.

(a) In Taos County: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos Junction Bridge.

(b) In Taos County: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River State Fish Hatchery downstream to its confluence with the Rio Grande.

(c) In Taos County: the designated fishing pond at Red River State Fish Hatchery.

(d) In Rio Arriba County: on a posted portion of the Rio Chama from the base of Abiquiu Dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu.

(e) In Sierra County: the Rio Grande from the power line crossing upstream of the confluence with Cuchillo Creek downstream to and including Caballo Lake.

(f) In Lincoln County: The Rio Ruidoso from the boundary between the Mesalero Apache Reservation and the City of Ruidoso downstream to Fridenbloom Drive.

(6) Gila Trout: It shall be unlawful for any person to possess Gila trout (*Oncorhynchus gilae*).

B. Warm-Water Fishes:

The daily bag limit for game fish other than trout shall be as listed below and the pos-

session limit shall be twice the daily bag limit.

(1) Striped bass 2 fish

(2) Largemouth, smallmouth, and spotted bass 5 fish

(3) Walleye 5 fish

(4) Crappie 20 fish

(5) White bass and white bass x striped bass hybrid 25 fish

(6) Northern pike 10 fish

(7) Catfish (all species, except bullheads) 15 fish

(8) All other warm-water game species 20 fish

C. **The following exception shall apply:**

(1) At Tingley Beach in Albuquerque; Lake Van (Chaves County); Oasis State Park; Greene Acres Lake (Curry County); Burn Lake (Dona Ana County); Escondida Lake (Socorro County); Aztec Pond (San Juan County); McGaffey Lake (McKinley County); Bataan Lake (Eddy County); Chaparral Lake (Lea County); Bosque Redondo (De Baca County); Carrizozo Lake (Lincoln County); Green Meadow Lake; Eunice Lake; and Jal Lake (Lea County): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan County, in the San Juan and Animas Rivers, not including Navajo Lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02]

19.31.4.12 SIZE LIMITS:

A. Salmonids

(1) On that section of the San Juan River where only barbless lures or flies may be used, any trout taken that are less than 20 inches long shall be immediately returned to the water and no fish under 20 inches shall be possessed in that section; provided, however, that no fish may be possessed in the catch-and-release water section.

(2) On Shuree Lakes, on the Valle Vidal Tract, any trout taken that are less than 15 inches long shall be immediately returned to the water.

(3) In Colfax County, a posted portion of the Cimarron River where only barbless lures or flies may be used (and more specifically described in Subsection A of 19.31.4.11 NMAC above), any trout taken that are less than 16 inches long shall be immediately returned to the water.

(4) In Sierra County: a posted portion of the Rio Grande above the confluence of Cuchillo Creek (more specifically described in Subsection A of 19.31.4.11 NMAC above) any trout taken that are less

than 16 inches long shall be immediately returned to the water.

(5) Any trout taken that are less than 12 inches long shall be immediately returned to the water in the following locations:

(a) In San Miguel County: a posted portion of the Pecos River where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(b) In Lincoln County: a posted section of the Rio Ruidoso where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(c) In Taos County: a posted section of the Red River from the confluence with Goose Creek 1 mile upstream.

B. Black Basses

(1) Any largemouth or spotted bass taken which is less than 14" long shall be immediately returned to the water.

(2) Any smallmouth bass taken which is less than 12" long shall be immediately returned to the water.

C. **Walleye:** Any walleye taken which are less than 14" long shall be immediately returned to the water.

[19.31.4.12 NMAC - Rp 19.31.4.12 NMAC, 4-15-02]

19.31.4.13 MANNER AND METHOD OF TAKING OR FISHING FOR GAME FISH - LEGAL GEAR:

A. Angling

(1) In all open waters, game fish may be fished for by angling. Persons may use two poles in all waters other than trout waters, except in Caballo Reservoir where two poles may be used.

(2) In the Special Trout Waters specified in Subsection A of 19.31.4.11 NMAC, trout shall be fished for only by angling with barbless lures or flies, and no natural or prepared baits of any kind shall be used.

(3) No person shall angle for game fish by snagging, except for kokanee salmon during the special kokanee season at those listed waters.

(4) In the Special Trout Water specified in Subsection A of 19.31.4.11 NMAC, trout shall be fished for only angling with artificial lures and flies on which the hooks have no barbs or the barbs have been bent closed; soft plastic lures may be used.

B. Trotlines

(1) Trotlines may be used in all warm waters except the following lakes: Bataan, Bear Canyon, Bernardo Waterfowl Management Area, Bill Evans, Bottomless, Burn, Carlsbad Municipal, Chaparral, Escondida, Eunice, Greene Acres, Green

Meadow, Jal, La Joya Waterfowl Management Area, Carrizozo Lake, Maddox, Oasis Park, Tingley Beach, Ned Houk Ponds, and Van

(2) Trotlines may be used in the following trout waters: the Chama River from the northern boundary of the "Monastery of Christ in the Desert" downstream, including Abiquiu Lake; the Gila River proper downstream from its junction with the East Fork of the Gila; Navajo Lake; Caballo Lake; and the Rio Grande downstream from the confluence of the Chama River, excluding that section below Elephant Butte Dam described in section Subsection A of 19.31.4.11 NMAC.

C. Spears, Gigs, and Arrows

(1) Spears, gigs, and arrows with barbs that are discharged beneath the water may be used in all waters open to fishing.

(2) In addition, during the season established by Subsection B of 19.31.4.9 NMAC, kokanee salmon may be taken by the use of spears, gigs, and arrows with barbs that are discharged above or below the water and not driven by explosives, gas, air, or crossbow.

D. Attracting or Concentrating Fish

(1) Game fish may be taken with the aid of artificial lights.

(2) During open fishing seasons, it shall be lawful to chum to attract or concentrate fish in the following waters only: all warmwaters; and the following trout waters: the Gila River proper downstream from its junction with the East Fork of the Gila; and the Rio Grande proper downstream from the confluence of the Chama River, excluding that section below Elephant Butte Dam described in Subsection A of 19.31.4.11 NMAC.

(3) It shall be unlawful in all Special Trout Waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

E. Use of Bait Fish

(1) Bait fish may be used in all warm waters and winter trout waters.

(2) Bait fish other than carp (*Cyprinus carpio*), carpsucker (*Carpionodes carpio*), buffalo (*Ictiobus bubalus*), or shad (*Dorosoma spp.*) may be used for bait or chum in the following trout lakes only: Abiquiu, Clayton, Jackson, Laguna Madre, Lake 13, Navajo, Power Dam Lake, and Springer; and in the following trout streams: Animas River, Pecos River downstream from N.M. 63 bridge at Pecos, and the Rio Grande (excluding the section described in

Subsection A of 19.31.4.11 NMAC).

(3) Use of gar (*Lepisosteus spp.*) and goldfish (*Carassius auratus*) for bait fish is prohibited in all waters.

(4) Use of red shiner (*Cyprinella lutrensis*) as a bait fish is prohibited in all waters of the Gila and San Francisco drainages.

(5) Use of live bait fish other than red shiner and fathead minnow (*Pimephales promelas*) is prohibited in all waters of the Pecos drainage. Live bait fish may not be used in Bitter Lake National Wildlife Refuge and Bottomless Lakes State Park.

[19.31.4.13 NMAC - Rp 19.31.4.13 NMAC, 4-15-02]

19.31.4.14 WATERS WITH AGE OR HANDICAPPED USE RESTRICTIONS:

A. Only persons **under 12 years of age** may fish in the following waters: Shuree Kids' Ponds on Valle Vidal (Vermejo Tract-Carson National Forest); Valley Improvement Association ponds at Belen, Young Pond in Las Cruces, Harris Pond in Las Vegas, Spring River Park at Roswell, and the Brood Pond at Seven Springs State Fish Hatchery.

B. Only persons **under 12 years of age, those 65 years and over, and handicapped persons** may fish in the designated Red River Hatchery Pond located at the Red River State Fish Hatchery, Blue Hole Park Pond (formerly Santa Rosa Seniors Pond), Estancia Park Lake at Estancia, and in ponds located in Harry McAdams Park.

C. **Only handicapped persons and those under 12 years of age** may fish in the Red River City ponds, and in the posted small Pond at Cowles.

D. **Olympic Pond:** Only persons under 12 years of age and those 65 years and over may fish in Olympic Pond located at Angel Fire.

[19.31.4.14 NMAC - Rp 19.31.4.14 NMAC, 4-15-02]

19.31.4.15 [RESERVED]

[19.31.4.15 NMAC - Rp 19.31.4.15 NMAC - Repealed, 4-15-02]

19.31.4.16 CLOSED WATERS:

A. Waters Closed to Fishing

(1) In Catron County: Big Dry Creek from Golden Link Cabin upstream through its headwaters.

(2) In Catron County: Iron Creek from the "barrier" upstream to its headwater in the Gila Wilderness.

(3) In Catron County: Little Creek from the "barrier" upstream through all tributaries.

(4) In Catron County: McKenna, and Spruce and Sacaton creeks.

(5) In Catron and Sierra counties: Main Diamond Creek above the point of confluence with East Fork of Diamond Creek and the South Diamond Creek drainage.

(6) In Colfax County: a posted area lying within 300 feet of Eagle Nest Dam, which is closed to entry.

(7) In Colfax County: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(8) In Grant County: East Fork of Mogollon Creek upstream of waterfalls near FS Trail No. 153, including Trail Canyon, South Fork Mogollon, and Woodrow Canyon creeks.

(9) In Grant County: McKnight Creek.

(10) In Grant County: Sheep Corral Creek.

(11) In Lincoln County: posted areas of Alto Reservoir and Bonito Lake near the outlets.

(12) In Catron County: White Creek from waterfall near White Creek Cabin upstream to headwaters.

(13) In Grant County: Black Canyon from "barrier" upstream to headwaters, including Aspen Canyon and Fall Canyon creeks.

(14) In Sandoval County: All waters within the Valles Caldera Natural Preserve in the Jemez Mountains formerly known as the Baca Location (formally described in 19.30.4 NMAC).

B. Taking Fish From Hatchery Waters: No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood Pond at the Glenwood State Fish Hatchery, Red River Hatchery Pond at the Red River State Fish Hatchery, Brood Pond at Seven Springs Hatchery, and Burns Canyon Lake at Parkview State Fish Hatchery. Additionally, the Director may expressly authorize other limited fishing at the State's fish hatcheries based on management needs.

C. Taking Fish From or Through the Ice: Fish may be taken from or through the ice except on the following waters: Santa Cruz Lake, Monastery Lake and Springer Lake.

[19.31.4.16 NMAC - Rp 19.31.4.16 NMAC, 4-15-02]

19.31.4.17 [RESERVED]

[19.31.4.17 NMAC - Rp 19.31.4.17 NMAC, 4-15-02]

19.31.4.18 ESTABLISHING FREE FISHING DAYS: The first Saturday in June and the last Saturday in September during the effective dates of this regulation, are established as free fishing days whereby anglers may fish public waters in New Mexico as otherwise provided by regulation, but without benefit of a fishing license or Habitat Improvement Stamp.

[19.31.4.18 - Rp 19.31.4.18 NMAC, 4-15-02]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.10.7 NMAC and 15.1.10.44 NMAC

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

A. "Act" means the Gaming Control Act.

B. "additional payout" means a supplemental payout that is not reflected in the gaming machine pay table (e.g., double jackpot).

C. "allocate" means the transfer of an allocating racetrack's right to operate a number of its authorized gaming machines to the receiving racetrack.

D. "allocation agreement" means a written contract between an allocating racetrack and a receiving racetrack.

E. "allocating racetrack" means a racetrack gaming operator licensee that has allocated or is proposing to allocate a number of its authorized gaming machines to a receiving racetrack pursuant to a valid allocation agreement.

[E]F. "allowable gaming expenses" means the following bona fide expenses in reasonable and customary amounts: (a) purchase prices of non-cash prizes; (b) security and surveillance expenses; (c) independent accountant's fees; (d) license fees, including renewals and gaming machine license fees; (e) utilities attributable to the licensed premises; (f) installment payments to an independent administrator or lease payments for licensed gaming machines; (g) gaming device repair and maintenance; (h) gaming employee salaries and employment taxes; (i) gaming supplies; (j) approved management fees; and (k) licensed premises repair and maintenance.

[D]G. "balance of net take" means the amount of net take remaining after the gaming operator licensee pays the

gaming tax, income and other applicable taxes, and allowable gaming expenses as set forth in this rule.

[E]H. "charitable purposes" means activities that promote, directly or indirectly, the well-being of the public at large or the benefit of an indefinite number of persons in the State; the term "charitable purposes" does not include operating expenses of the organization.

[F]I. "credit slip" means a cash-out ticket for winnings earned on a gaming machine that provides for credit play.

[G]J. "educational purposes" means activities or uses that develop the capabilities of individuals by formal instruction.

[H]K. "gaming credit" means an accumulation of awards on a gaming machine display screen rather than from the dispensing of winnings from a hopper; one gaming credit equals the denomination of the game being played.

[H]L. "independent administrator" means (a) a bank licensed by the State of New Mexico or a national bank with an office in New Mexico; or (b) an insurance company admitted to transact business in New Mexico with a Best Insurance rating of "A+" or other equivalent rating; and (c) one that is not an affiliate of the gaming operator licensee.

M. "receiving racetrack" means a racetrack gaming operator licensee that is proposing to receive, or has received pursuant to a valid allocation agreement, allocated gaming machines from an allocating racetrack.

[H]N. "management contractor" means any person that has entered into a management contract with a gaming operator licensee; a management contractor may not be an affiliate of the licensee.

[K]O. "nonprofit operator licensee" means a qualified nonprofit organization that has obtained a gaming operator's license pursuant to the provisions of the Act and board regulations.

[E]P. "periodic payments" means a series of payments that are paid at least annually and includes annuities.

[M]Q. "person" means a legal entity or individual.

[N]R. "promotion" means a short-term program designed to stimulate participation in gaming activities by patrons through advertising and the award of cash and non-cash prizes; "promotion" includes the gift of nominal value items, such as T-shirts and mugs.

[O]S. "representative copy" means a reproduction of the intended advertising in substantially the same form as the final advertising for the promotion.

[P]T. "State" means the State of New Mexico.

[Q]U. "this title" means Title 15, Chapter 1 of the State Administrative Code.

[R]V. "trust" means an irrevocable fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another. [N, 12/31/98; 15.1.10.7 NMAC - Rn & A, 15 NMAC 1.10.7, 3/31/00; A, 04/30/02]

15.1.10.44 ALLOCATION OF GAMING MACHINES

A. Only racetrack gaming operator licensees are eligible to allocate gaming machines or receive allocated gaming machines.

B. Gaming machines may be allocated only pursuant to a valid allocation agreement. The allocation agreement must:

(1) specify the number of gaming machines to be allocated;

(2) specify the terms of the allocation agreement;

(3) provide that the allocation agreement confers to the receiving racetrack only the right to operate the gaming machines;

(4) establish terms of payment for use of the allocated gaming machines;

(5) specify that the receiving racetrack will be responsible for payment of the gaming tax and all fees associated with the licensing of the allocated gaming machines;

(6) specify that the receiving racetrack be responsible for statutorily required payments based on net take, including payment of twenty percent of the net take from the allocated gaming machines to horsemen's purses and one-quarter of one percent of the net take to fund or support programs for the treatment and assistance of compulsive gamblers;

(7) provide that the receiving racetrack may not allocate the gaming machines;

(8) specify the party responsible for repairs and maintenance of the allocated gaming machines;

(9) provide that the allocation agreement cannot be modified without approval of the board and the New Mexico Racing Commission; and

(10) provide that the allocation agreement will not become effective until approved in writing by the board and the New Mexico Racing Commission.

B. No allocation agreement may cause the number of gaming machines on the licensed premises to exceed the number authorized by the Act.

C. The board will take

action on a proposed allocation agreement at a public meeting of the board. The board may disapprove any allocation agreement if the board determines that:

(1) the allocation agreement fails to meet the minimum requirements described in this section;

(2) the allocating racetrack or receiving racetrack is not in compliance with minimum internal controls or other statutory requirements or board rules;

(3) the proposed allocation would otherwise be contrary to the public health, safety and welfare.

D. Movement of any allocated machine is subject to notice requirements established by board rules and procedures.

[15.1.10.44 NMAC - N, 4/30/02]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.290.400 NMAC, Sections 9 through 12 and 14, which will be effective on May 1, 2002. The Medical Assistance Division is issuing the following changes to the eligibility regulations: the definition of Developmentally Disabled has been changed to include additional types of disabilities; the number of days a waiver recipient may remain in a hospital, nursing facility, or Intermediate Care Facility for the Mentally Retarded before waiver eligibility is lost has been changed from a full calendar month to sixty (60) consecutive days; and the number of days waiver services may be suspended before waiver eligibility is lost has been changed from a full calendar month to sixty (60) consecutive days. This rule was also reformatted and renumbered from 8 NMAC 4.WAV.400.

8.290.400.9 HOME AND COMMUNITY-BASED WAIVER SERVICES - Category 090, 091, 093, 094, 095, 096:

The Human Services Department (HSD) is the single state agency designated to administer the Medicaid program in New Mexico. The Department of Health (DOH) and the Human Services Department is charged with developing and implementing home and community-based waiver services (HCBWS) to [furnish] be furnished Medicaid applicants/recipients who [qualify both financially and medically] meet both financial and medical criteria for an institutional level of care. [with case management and other supportive services.] Provision of these services under a waiver allows applicants/recipients to receive the care required at home at less cost than in [a nursing facil-

ity or acute care hospital [42 CFR 435.217]. To be eligible for any of the waiver programs, the care an institution. The services to be furnished under the waiver must be cost-effective, [which means that the total]. This means the aggregate cost of care must be an amount less than the cost of maintaining [the individual in an institution] individuals in institutions at the appropriate level of care. The types of services for which Medicaid recipients [who are eligible for a particular waiver varies based on federal approval] are eligible vary based on the individual waiver. See Medical Assistance Division Program Manual [for a given waiver] for the standards for individual waiver of covered services and program policies for all waiver services. [This section contains controlling] The following sections contain the eligibility policy for all waiver services. [The program policy manual for waiver services contains controlling program policies for all waiver services.] Unless specifically approved by the Medical Assistance Division Director, no other policies, procedures, or rules of any kind apply.

[2/1/95; 8.290.400.9 NMAC - Rn, 8 NMAC 4.WAV.400 & A, 5/1/02]

8.290.400.10 BASIS FOR DEFINING THE GROUP: Eligibility for applicants/recipients who apply for waiver services is determined as if he/she were actually institutionalized, although this requirement has been waived. Entry into some of the waiver programs may be based upon the number of Unduplicated Recipient positions (UDRs) (i.e., slots). [available in a given area. In some areas, there may be a waiting list for UDRs.] Some waiver categories require individuals to be placed on a central registry. The individual waiver program manager [or representative at DOH is responsible for notifying the county Income Support Division (ISD) office when a UDR position becomes available.] is responsible for notifying ISD when an individual is allocated into a waiver program.

A. Disabled and Elderly (D&E) Waiver: The Disabled and Elderly Waiver identified as Categories 091 (elderly), 093 (blind) and 094 (disabled) was approved effective July 1983, subject to renewal. To qualify as disabled or blind for the purposes of this waiver, disability or blindness must have been determined to exist by the Disability Determination [Services] Contractor (DDC). To qualify as an elderly person for purposes of this waiver, the applicant/recipient must be sixty-five (65) years of age or older. Applicants/recipients must also meet both the financial and non-financial eligibility requirements and meet the medical level of care for nursing

facility services.

B. Developmentally Disabled (DD) Waiver: The Developmental Disabled Waiver identified as Category 096 was approved effective July 1984, subject to renewal. This waiver is designed to furnish services to applicants/recipients ~~[who have a severe chronic disability as determined by DDS, other than a primary diagnosis of mental illness attributable to a mental or physical impairment. To qualify for the DD waiver, an individual must be diagnosed with a developmental disability, require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF MR), and meet all other applicable financial and non-financial requirements for the waiver programs.]~~ who meet the definition of a developmental disability and mental retardation or specific related condition as determined by the Department of Health and the DDC in accordance with the approved DD waiver criteria, including the following:

(1) ~~[The severe chronic disability must have manifested before twenty two (22) years of age, be likely to continue indefinitely, and result in substantial functional limitations in three or more major areas of life activity. These areas are: self care, receptive/expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.]~~ The individual has a developmental disability, defined as a severe chronic disability, other than mental illness, that:

(a) is attributable to a mental or physical impairment, including the result of trauma to the brain, or a combination of mental and physical impairments;

(b) is manifested before the person reaches the age of twenty-two years (22);

(c) is expected to continue indefinitely;

(d) results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency; and

(e) reflects the person's need for a combination and sequence of special or interdisciplinary treatment, generic or other support and services that are of lifelong or extended duration and are individually planned and coordinated.

~~(2) [Individuals who are diagnosed with mental retardation, cerebral palsy, epilepsy, or autism, and who have at least one functional limitation in an area of major life activity are considered developmentally disabled.] The individual also has mental retardation or a specific related condition, limited to cerebral palsy, autism (Asberger Syndrome), seizure disorders, chromosomal disorders (e.g. Downs), syndrome disorders, inborn errors of metabolism, and developmental disorders of brain formation.~~

(3) The individual must also require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF-MR), and meet all other applicable financial and non-financial eligibility requirements.

C. Medically Fragile (MF) Waiver: The Medically Fragile (MF) Waiver identified as Category 095 was established effective August, 1984 subject to renewal. To be eligible for the Medically Fragile Waiver, an applicant/recipient must meet the level of care required for admission to an Intermediate Care Facility for the Mentally Retarded (ICF/MR), and meet all other applicable financial and non-financial eligibility requirements.

(1) To qualify for the MF waiver an individual must ~~[in addition to having]~~:

(a) have a developmental disability, developmental delay, or ~~[are] be~~ at risk for developmental delay ~~[or are at risk for developmental delay must have a medically fragile condition defined as a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary and is characterized by one or more of the following:]~~ as determined by the DDC, and

(b) be diagnosed with a medically fragile condition prior to the age of twenty-two (22), defined as a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary, and which is characterized by one or more of the following:

(i) ~~[There is]~~ A life threatening condition characterized by reasonably frequent periods of acute exacerbation, which require frequent medical supervision and/or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(ii) ~~[The individual requires]~~ Frequent, time-consuming administration of specialized treatments, which are medically necessary;

(iii) ~~[The individual is dependent]~~ Dependency on medical tech-

nology such that without the technology a reasonable level of health could not be maintained. Examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen.

(iv) ~~[Diagnosis of a medically fragile condition must be made by twenty two (22) years of age. There is no maximum age limit for receipt of services under this waiver. The applicant's/recipient's circumstances are characterized by]~~ Periods of acute exacerbation of a life-threatening condition, the need for extraordinary supervision or observation, frequent or time-consuming administration of specialized treatments, dependency on mechanical (life) support devices, and developmental delay or disability. ~~[Diagnosis of a medically fragile condition must be made by twenty two (22) years of age. There is no maximum age limit for receipt of services under this waiver.]~~

D. Acquired Immunodeficiency Syndrome (AIDS) and AIDS Related Condition (ARC) Waiver: The Acquired Immunodeficiency Syndrome (AIDS) and AIDS Related Condition Waiver designated as Category 090, was established effective July 1987, subject to renewal. This waiver serves applicants/recipients diagnosed with AIDS/ARC. Applicants/recipients must ~~[meet]~~ require institutional level of care and ~~[meet]~~ all other applicable financial and non-financial eligibility requirements. [2/1/95; 3/15/96; 8.290.400.10 NMAC - Rn, 8 NMAC 4.WAV.402 & A, 5/1/02]

8.290.400.11 GENERAL RECIPIENT REQUIREMENTS: Eligibility for the waiver programs is always prospective. Applicants/recipients must meet, or expect to meet, all non-financial eligibility criteria in the month for which determination of eligibility is made.

A. Enumeration: An applicant/recipient must furnish ~~[their]~~ his/her Social Security number. Medicaid eligibility is denied or terminated for an applicant/recipient who fails to furnish his/her Social Security number.

B. Citizenship: Refer to Medical Assistance Program Manual Section Section 11 of 8.200.410 NMAC.

C. Residence: To be eligible for Medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have ~~[demonstrated]~~ declared an intent to remain in the state. If the applicant/recipient does not have the present mental capacity to declare intent, the applicant's/recipient's representative may assume responsibility for the dec-

laration of intent. If the applicant/recipient does not have the mental capacity to declare intent and there is no representative to assume this responsibility, the state where the applicant/recipient is living will be recognized as the state of residence. If waiver services are suspended because the recipient is temporarily absent from the state but is expected to return within ~~[one calendar month]~~ sixty (60) consecutive days at which time waiver services will resume, the Medicaid case remains open. If waiver services are suspended for any other reason for sixty (60) consecutive days, the Medicaid case is closed after ~~[provision of notice]~~ appropriate notice is provided to the recipient.

D. Non-Concurrent Receipt Of Assistance: ~~[The]~~ Home and Community-Based Waiver (HCBS) services furnish Medicaid benefits to an applicant/recipient who qualifies both financially and medically for institutional care but who, with provision of waiver services, can receive the care he/she needs in the community at less cost to the Medicaid program than the appropriate level of institutional care. Individuals receiving services under a HCBS Waiver may not receive concurrent services under Nursing Facility (NF), ICF-MR, Personal Care or any other HCBS.

(1) **SSI Recipients:** Applicants receiving Supplemental Security Income (SSI) benefits are categorically eligible for waiver services. No further verification of income, resources, citizenship, age, disability, or blindness is required. The applicant must, however, meet the level of care requirement.

(2) **Married SSI Couples:** All married SSI couples where neither member is institutionalized in a Medicaid-certified facility are treated as separate individuals for purposes of determining eligibility and benefit amounts beginning the month after the month they began living apart. See Section 8012 of the Omnibus Budget Reconciliation Act of 1989. In the case of an initial application, or reinstatement following a period of ineligibility, when members of a married couple are not living together on the date of application or date of request for reinstatement, each member of the couple is considered separately as of the date of application or request, regardless of how recently the separation occurred.

[2/1/95, 4/30/98; 8.290.400.11 NMAC - Rn, 8 NMAC 4.WAV.410, 411, 412, 413, 414 & A, 5/1/02]

8.290.400.12 SPECIAL RECIPIENT REQUIREMENTS:

A. **Age:** To be considered ~~[aged]~~ elderly, an applicant/recipient must

be sixty-five (65) years of age or older. See 8.281.400.16 NMAC, AGE, for information on verification of age.

B. **Blind:** To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses or must be considered blind for practical purposes. The ~~[ISS]~~ ISD worker is responsible for submitting medical reports to ~~[DDS]~~ the DDC, if necessary. See 8.281.400.17 NMAC, BLIND, for information on documentation and verification of blindness.

C. **Disability:** To be considered disabled, an applicant/recipient must be unable to engage in any substantial gainful activity because of any medical determinable physical, developmental, or mental impairment, which has lasted, or is expected to last, for a continuous period of at least twelve (12) months. The ~~[ISS]~~ ISD worker is responsible for submitting medical reports to ~~[DDS]~~ the DDC, if necessary. See 8.281.400.18 NMAC, DISABILITY, for information on documentation and verification of disability.

D. **Requires Institutional Care:** An institutional level of care must be recommended for the applicant/recipient by a physician, ~~[licensed to practice medicine or]~~ nurse practitioner or a doctor of osteopathy, licensed to practice in the State of New Mexico. Institutions are defined as acute care hospitals, nursing facilities (either High NF or Low NF as defined by Medicaid regulations) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). Level of care reviews are completed by the Medical Assistance Division (MAD) Utilization Review Contractor.

[2/1/95; 8.290.400.12. NMAC - Rn, 8 NMAC 4.WAV.420, 421, 422, 424, 429 & A, 5/1/02]

8.290.400.14 REPORTING REQUIREMENTS:

A Medicaid applicant/recipient, case manager, direct service provider and/or any other responsible party must report any changes in circumstances which may affect the ~~[applicant/recipient's]~~ applicant's/recipient's eligibility within ten (10) days of the date of the change to the county Income Support Division (ISD) office. These changes include but are not limited to: changes in income, resources, living arrangements, or marital status. The ~~[ISS]~~ ISD worker must evaluate the effect of the change and take any required action as soon as possible; however, the action must take effect no later than the end of the month following the month in which the change took place.

[2/1/95; 8.290.400.14 NMAC - Rn, 8 NMAC 4.WAV.450 & A; 5/1/02]

**NEW MEXICO
HUMAN SERVICES
DEPARTMENT**

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.290.500 NMAC, Sections 17 and 21, which will be effective on May 1, 2002. The Medical Assistance Division changed "ISS" to "ISD worker". This rule was also reformatted and renumbered from 8 NMAC 4.WAV.500.

8.290.500.17 DEEMING RESOURCES:

See 8.281.500.17 NMAC. The resources of the custodial parent(s) are deemed available to the applicant/recipient for the entire calendar month in which the allocation letter is issued by the waiver program manager or the representative ~~[notifying]~~ notifies the ~~[ISS]~~ ISD worker that a UDR is available for the applicant/recipient. Beginning with the month following the month in which the allocation letter was issued, only the resources directly attributable and available to the applicant/recipient are counted and compared to the resource limit.

[2/1/95, 1/1/97; 8.290.500.17 NMAC - Rn, 8 NMAC 4.WAV.519 & A, 5/1/02]

8.290.500.21 DEEMED INCOME:

See 8.281.500.21 NMAC and following subsections. The income of the custodial parent(s) is deemed available to the applicant/recipient for the entire calendar month in which the allocation letter is issued by the waiver program manager or the representative ~~[notifying]~~ notifies the ~~[ISS]~~ ISD worker that a UDR is available for the applicant/recipient. Beginning with the month following the month in which the allocation letter was issued, only the income directly attributable and available to the applicant/recipient is counted and compared to the income limit.

[2/1/95, 1/1/97; 8.290.500.21 NMAC - Rn, 8 NMAC 4.WAV. 523 & A, 5/1/02]

**NEW MEXICO
HUMAN SERVICES
DEPARTMENT**

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.290.600 NMAC, Sections 10, 11, 12 and 14, which will be effective on May 1, 2002. The Medical Assistance Division is issuing the following changes to the eligibility regulations: the definition of Developmentally Disabled has been changed to include additional types of disabilities; the number of days a waiver recipient may remain in a hospital, nursing facility, or Intermediate Care Facility for the Mentally Retarded before waiver eligibility

is lost has been changed from a full calendar month to sixty (60) consecutive days; and the number of days waiver services may be suspended before waiver eligibility is lost has been changed from a full calendar month to sixty (60) consecutive days. This rule was also reformatted and renumbered from 8 NMAC 4.WAV.600.

8.290.600.10 BENEFIT DETERMINATION: Application for the waiver programs is made using the "Application/Redetermination of Eligibility for Medical Assistance of Aged, Blind, and Disabled Individuals" (Form MAD 381). ~~and is~~ Upon notification by the appropriate program manager that an unduplicated recipient (UDR) is available for waiver services, applicants are registered on the ~~198C~~ ISD2 system. Applications must be acted upon and notice of approval, denial, or delay sent out within thirty (30) days ~~of~~ from the date of application, or within sixty (60) days if a disability determination is required from ~~DDS~~ the DDC. ~~The ISS informs the applicant/recipient of the time limits, nature and length of the waiting list, if any, and the effect the waiting list has on the approval or denial of his/her application.~~ The applicant/recipient must assist in completing the application, may complete the form him/herself, or may receive help from a relative, friend, guardian, or other designated representative. To avoid a conflict of interest, a case manager ~~must~~ or any other Medicaid provider may not complete the application ~~nor~~ or be a designated representative.

A. **Representatives Applying on Behalf of Individuals:** If a representative makes application on behalf of the applicant/recipient, that representative will continue to be relied upon for information regarding the ~~applicant/recipient's~~ applicant's/recipient's circumstances. The ~~ISS~~ ISD worker will send all notices to the applicant/recipient in care of the representative.

B. **Additional Forms:** The following forms are also required as part of the application process:

(1) The applicant/recipient or representative must complete and sign the Primary Freedom of Choice of Case Management Agency form at the time ~~the application is registered~~ of allocation; and

(2) The applicant/recipient or representative must sign the Applicant's Statement of Understanding at the time waiver services are declined or terminated.

C. **Additional Information Furnished During Application:** The ~~ISS offers~~ ISD worker provides an explanation of the waiver programs, including, but not limited to, income

and resource limits and possible alternatives, such as institutionalization. The ~~ISS~~ ISD worker refers potentially eligible applicants/recipients to the Social Security Administration to apply for Supplemental Security Income (SSI) benefits. If a disability decision by ~~DDS~~ the DDC is required, but has not been made, the ~~ISS~~ ISD worker must follow established procedures to refer the case for evaluation. [2/1/95; 1/1/97; 8.290.600.10 NMAC - Rn, 8 NMAC 4.WAV.620 & A, 5/1/02]

8.290.600.11 INITIAL BENEFITS:

A. ~~At~~ The application for Home and Community-Based Waiver Services ~~can be~~ is approved when ~~at~~ the following factors of eligibility have been met: financial, non-financial, and level of care. An application will be initiated when the ISD worker ~~the ISS~~ is notified by the appropriate program manager that a UDR position is available for the ~~applicant/recipient~~ registrant (with the exception of the AIDS waiver) ~~and the plan of care~~. After the individualized service plan has been in effect for thirty (30) days, ~~After the initial thirty (30) days,~~ the application is approved effective the first day of the ~~plan of care~~ individualized service plan, unless income/resources deemed to a minor child from his/her parents ~~makes~~ results in the ~~child ineligible~~ child's ineligibility for the initial month. See 8.290.500.17 NMAC, DEEMING RESOURCES, and 8.290.500.21 NMAC, DEEMED INCOME. ~~If a UDR position is not available for the applicant/recipient, the ISS denies the application, completes the "Referral to Waiver Program Manager" (Form MAD 325) and the Primary Freedom of Choice Form and sends both to the appropriate program manager. The program manager places the applicant/recipient's name in the pool of potential eligibles maintained by DOH. After receiving notification from DOH that a UDR position is available, the ISS sends the applicant an appointment letter and a new application packet containing the forms listed above. When the completed application packet is returned to the ISS, copies are sent to the appropriate waiver program manager, and to the designated case management agency. Upon determining that eligibility exists on all factors except the level of care, the ISS sends the "MAW Notification of Action" (Form DOH 052) to the appropriate program manager and to the case manager. When the level of care is received by the program manager or designee, it is forwarded to the ISS together with the plan of care (AKA: Individual Service Plan) so that processing of the application may be completed.~~

B. **Notice of Determination:** Applicants determined to be ineligible for waiver services are notified of the reason for the denial and provided with an explanation of appeal rights. ~~If the application is denied for lack of a UDR, the ISS also refers the name of the potential recipient to the appropriate program manager.~~

C. Applicants determined to be eligible for waiver services are notified of the approval. [2/1/95; 1/1/97; 8.290.600.11 NMAC - Rn, 8 NMAC 4.WAV.623 & A, 5/1/02]

8.290.600.12 ONGOING BENEFITS:

A. **Regular Reviews:** A complete redetermination of eligibility must be performed annually by the ~~ISS~~ ISD worker for each open case ~~at least annually~~. The redetermination includes contact with the applicant/recipient or his/her representative to review financial and non-financial eligibility.

B. **Additional Reviews:** Additional reviews are scheduled by the ~~ISS dependent~~ ISD worker depending upon the likelihood that the ~~applicant/recipient's~~ applicant's/recipient's income, resources or medical condition will change. The following are examples of frequently encountered changes which affect eligibility:

- (1) Social Security cost-of-living increases;
- (2) VA cost-of-living increases;
- (3) Rental income may be sporadic and require review every three (3) months; and
- (4) Level of care ~~determinations are repeated periodically so the end date on the annualized abstract must be posted for follow up~~ review.

[2/1/95; 1/1/97; 8.290.600.12 NMAC - Rn, 8 NMAC 4.WAV.624 & A, 5/1/02]

8.290.600.14 CHANGES IN ELIGIBILITY: If the recipient ceases to meet any of the eligibility criteria, the case is closed following provision of advance notice as appropriate. See 8.200.430.9 NMAC and following subsections for information about notices and hearing rights.

A. **Non-Provision of Waiver Services:** To continue to be eligible for waiver services, an applicant/recipient must ~~receive the~~ be receiving waiver services other than case management. [42 CFR Section 435.217]. If waiver services are no longer being provided (e.g., a suspension) and are not expected to be provided ~~for at least a full calendar month~~ for sixty (60) consecutive days, the recipient is **ineligible** for the waiver category and the

case must be closed after appropriate notice is provided by the ISD worker.

B. Admission to a Hospital, ~~or~~ Nursing Facility, or Intermediate Care Facility for the Mentally Retarded (ICF-MR): If a waiver recipient enters an acute care hospital, ~~or~~ a nursing facility, or an ICF-MR and remains for more than ~~[a full calendar month]~~ sixty (60) consecutive days, the waiver case must be closed and an application for Institutional Care Medicaid must be processed [immediately]. The recipient is not required to complete a new application if the periodic review on the waiver case is not due in either the month of entry into the institution or the following month. If the waiver recipient is institutionalized within less than [a full calendar month] sixty (60) consecutive days and still receives waiver services [within that calendar month] within that time frame, the waiver case is not closed and an application for Institutional Care Medicaid need not be ~~[approved]~~ processed.

C. Reporting Changes in Circumstances: The primary responsibility for reporting changes in the recipient's circumstances rests with the recipient and/or representative. At the initial eligibility determination and all on-going eligibility redeterminations, the ~~[ISS]~~ ISD worker must explain the reporting responsibilities requirement to the applicant/recipient and/or representative and document that such explanation was given. In the event that waiver services ~~[should]~~ cease to be provided, the case manager or the ~~[DOH]~~ Waiver program manager (or designee) must immediately notify the Income Support Division office of that fact by telephone. The telephone call is to be followed by a written notice to the ~~[ISS]~~ ISD worker. [2/1/95; 1/1/97; 8.290.600.14 NMAC - Rn, 8 NMAC 4.WAV.630 & A, 5/1/02]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.3 NMAC, Sections 10 and 13 which will be effective on May 1, 2002. The Medical Assistance Division amended language to include In Home Respite as a new service. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.734.

8.314.3.10 ELIGIBLE PROVIDERS:

A. Upon approval of New Mexico Medical Assistance Program Provider Participation Agreements by

MAD, providers who meet the following requirements are eligible to be reimbursed for furnishing waiver services to recipients:

(1) Standards established by the HCBSW program; and

(2) Provide services to recipients in the same scope, quality and manner as provided to the general public. See 8.302.1 NMAC, Provider Agreements.

B. Once enrolled, providers receive a packet of information, including Medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD and the Department of Health (DOH). Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

C. Qualifications of Case Management Agency Providers: Agencies must meet the standards developed for this HCBSW program by the applicable division of the New Mexico Department of Health. Case management assessment activities necessary to establish eligibility are considered administrative costs.

D. Qualifications of Case Managers: Case managers employed by case management agencies must have the skills and abilities necessary to perform case management services for recipients who are medically fragile, as defined by the HCBSW standards for this waiver program. Case managers must be registered nurses, as defined by the New Mexico State Board of Nursing and have a minimum of two (2) years of supervised experience with the target population in one or more areas of pediatrics, critical care or public health.

E. Qualifications of Home Health Aide Service Providers:

(1) Home health aide services must be provided by a licensed home health agency, a licensed Rural Health clinic or a licensed or certified Federally Qualified Health Center using only home health aides who have successfully completed a home health aide training program as described in 42 CFR 484.36(a) (1) and (2); or who have successfully completed a home health aide training program described in the New Mexico Regulations governing Home Health Agencies, DOH 91-2 (PHD), Part IV 406.(A) through (D). Additionally, home health aides providing services must be deemed competent through a written examination and meet competency evaluation requirements specified in the 42 CFR 484.36(b) (1), (2) and (3); or meet the requirement for documentation of training or competency evaluation specified in the New Mexico Regulations Governing Home Health Agencies, DOH 91-2 (PHD), Part IV 406.(E) and (F).

(2) Supervision: Supervision must be performed by a registered nurse and shall be in accordance with the New Mexico Nurse Practice Act. Supervision must occur at least once every sixty (60) days in the client's home and be specific to the Individualized Service Plan. All supervisory visits must be documented in the client's file.

(3) The supervision of home health aides is an administrative expense to the provider and is not billable as a direct service.

F. Qualifications of Private Duty Nursing Providers:

(1) Private duty nursing services must be provided by a licensed home health agency, a licensed rural health clinic, or a licensed or certified Federally Qualified Health Center, using only registered nurses or licensed practical nurses holding a current New Mexico Board of Nursing license and having a minimum of one year of supervised nursing experience.

(2) **Supervision:** Supervision must be performed by a registered nurse and shall be in accordance with the New Mexico Nurse Practice Act. Supervision must be specific to the Individualized Service Plan.

(3) The supervision of nurses is an administrative expense to the provider and not billable as a direct service.

G. Qualifications of Therapy Providers: Physical therapy services must be provided by a Physical Therapist currently licensed by the State of New Mexico. Occupational therapy services must be provided by an Occupational Therapist currently licensed by the State of New Mexico, and registered with the American Occupational Therapy Association OR be a graduate of a program in Occupational Therapy approved by the Council on Medical Education of the American Occupational Therapist Association. Speech therapy services must be provided by a speech therapist currently licensed by the State of New Mexico and certified by the National Association for Speech and Hearing.

H. Qualifications of Psycho-Social Counseling Providers:

Psycho-social counseling services must be provided by a psychiatrist, psychologist/psychoanalyst, or social worker licensed in New Mexico or a counselor with a master's degree in family or guidance and counseling.

I. Qualifications of Institutional and In-home Respite Care Service Providers: Institutional providers must be an approved New Mexico Medicaid provider of institutional care services and must hold a valid New Mexico institutional license issued by the Department of Health.

Federal regulations prohibit payment for room and board services under the waiver. Respite care services are the exception to this statutory prohibition. Under 42 CFR 440.180(g), use of Medicaid waiver funds to reimburse room and board as a part of respite care services will be permitted when such services are provided in an institution. When respite care services are provided to an eligible individual by an institution, that individual will not be considered a resident of the institution for purposes of waiver eligibility. In-home respite services are provided by a licensed home health care agency, a licensed or certified Federally Qualified Health Center, or a Licensed Rural Health Clinic.

J. Qualifications of Nutritional Counseling Providers: Nutritional Counseling must be furnished by a licensed Dietitian registered by the Commission on Dietetic Registration of the American Dietetic Association. [2/1/95, 4/15/96; 8.314.3.10 NMAC - Rn, 8 NMAC 4.MAD.734.1 & A, 5/1/02]

8.314.3.13 COVERED WAIVER SERVICES: This Medicaid waiver covers the following services for a specified number of medically fragile recipients as an alternative to institutionalization. The program is limited by the number of federally authorized unduplicated recipient (UDR) positions and program funding.

A. Case Management Services: Case managers provide a link between recipients and care providers and coordinate the use of community resources needed for that care. The scope of the case manager's duties includes the following:

- (1) Assess the recipient's medical and social needs and functional limitations, using a needs assessment instrument, in cooperation with recipients, primary care givers and families;
- (2) Develop and implement an Individualized Service Plan (ISP);
- (3) Coordinate and monitor the delivery of services;
- (4) Evaluate the effectiveness of services provided under the ISP and revise the plan as necessary;
- (5) Reassess the recipient's need for and use of HCBSW services and arrange for financial eligibility redetermination and level of medical care determination annually or at more frequent intervals as the recipient's condition warrants;
- (6) Mobilize the use of "natural helping" networks, such as family members, church members and friends; and
- (7) Provide the documentation required by the HCBSW program and regular Medicaid for accountability for services and expenditures.

B. Home Health Aide: Home health aides perform simple procedures such as an extension of therapy services, bowel and bladder care, ostomy site care, personal care, ambulation and exercise, household services essential to health care at home, assistance with medications that are normally self-administered, reporting changes in patient conditions and needs, and completing appropriate records.

C. Private Duty Nursing: DOH requires certain standards to be maintained by the private duty nursing care provider with which it contracts. In carrying out their role for DOH, private duty nursing care agencies must:

- (1) Employ only RN's and LPN's licensed in the State of New Mexico;
- (2) Assure that all nurses delivering services are culturally sensitive to the needs and preferences of the individuals and their families. Based upon the client's individual language needs or preferences, nurses may be requested to communicate in a language other than English;
- (3) Inform the case manager immediately of the agency's inability to staff according to the ISP;
- (4) Develop and implement an individual nursing plan in conjunction with the client's physician and case manager in a manner that identifies and fulfills the client's specific needs;
- (5) Immediately inform the case manager of physician-ordered changes regarding the client's needs;
- (6) Document all assessments, observations, treatments and nursing interventions;
- (7) Document and report to the case manager any non-compliance with the ISP;
- (8) Document any incidence of client harm, medication error, etc. in accordance with the New Mexico Nursing Practice Act.

D. Physical, Occupational and Speech Therapy Services: This Medicaid waiver covers medically necessary therapy services. The amount, duration, and goals of therapy services must be included in an ISP. A therapy treatment plan must be developed with the initiation of therapy services and updated at least every six (6) months. The therapy treatment plan includes the following:

- (1) Developmental status of the recipients in areas relevant to the service provided;
- (2) Treatment provided, including the frequency and duration; and
- (3) Recommendation for continuing services and documentation or results.

E. Psycho-Social Counseling Services: This Medicaid waiv-

er provides services to the Medically Fragile client, their parents, family members or primary care givers. Psycho-social Counseling includes assessment, treatment, evaluation and follow-up services to assist the client, parents, family members or primary care givers with the development of coping skills related to preserving the family's efforts to maintain the client at home.

F. Institutional and In-home Respite Care Services: ~~[This Medicaid waiver covers a maximum of twenty eight (28) days of institutional respite services per year. The case manager and family are]~~ This Medicaid waiver covers Respite Care as outlined in the Individual Service Plan (ISP). The Interdisciplinary Team (IDT) is responsible for determining the need for [Institutional] Respite Care. [Services. Institutional] Respite Care [Services are] is furnished at home or in a hospital or nursing facility (NF) Low NF level of care, or an ICF/MR meeting the qualifications for provider certification.

G. Nutritional Counseling: Nutritional counseling is designed to meet unique food and nutrition requirements of individuals with medical fragility and developmental disabilities. Examples of individuals who may require Nutritional Counseling are children or adults with specific illnesses such as failure to thrive, gastroesophageal reflux, dysmotility of the esophagus and stomach etc., or who require specialized formulas, or receive tube feedings or parenteral nutrition. This does not include oral-motor skill development such as that provided by a speech language pathologist.

[2/1/95, 4/15/96; 8.314.3.13 NMAC - Rn, 8 NMAC 4.MAD.734.4 & A, 5/1/02]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.2 NMAC, Sections 10, 12, 13, 14 and 17.

1.13.2.10 A C I D - F R E E ARCHIVAL STORAGE CONTAINERS:

- A.** Document storage box 15 ¼ in. x 10 ¼ in. x 5 in. - ~~[\$2.95]~~ 3.00
- B.** Document storage box 15 ¼ in. x 10 ¼ in. x 2 in. - ~~[\$2.90]~~ 2.95
- C.** Record storage box 15 in. x 12 in. x 10 in. - ~~[\$3.70]~~ 3.80
- D.** Full telescope box 15 in. x 11 ½ in. x 3 in. - ~~[\$4.75]~~ 4.85
- E.** Full telescope box 24 ½ in. x 20 ½ in. x 3 in. - ~~[\$6.15]~~ 6.35
- F.** Clam shell box 15¼ in. x 10 ¼ in. x 3 ½ in. - \$3.05

G. Newspaper box 25 in. x 19 in. x 2 1/2 in. - \$9.25

H. Legal size folder full tab package (100 count) - ~~20.00~~ 20.55

I. Letter size folder full tab package (100 count) - ~~17.50~~ 18.00

J. Corrugated board, 40 in. x 60 in. sheet - ~~6.05~~ 6.20
[1.13.2.10 NMAC - N, 3/14/01; A, 04/30/02]

1.13.2.12 MICROPHOTOGRAPHY FEES:

A. Microfilm to paper copies.

(1) 8 1/2 x 11 - \$0.50

(2) 8 1/2 x 14 - \$0.60

B. Self-service microfilm to paper copies.

(1) 8 1/2 x 11 - \$0.10

(2) 8 1/2 x 14 - \$0.10

(3) 11 x 14 - \$0.15

C. Microfilm duplication - agency masters.

(1) 16mm - \$11.00 per reel

(2) 35mm - \$12.00 per reel

D. Microfilm duplication services - archival collections.

(1) 16mm - \$12.00 per reel

(2) 35mm - \$16.00 per reel

E. Compact disk duplication services - archival collections.

(1) Spanish archives of New Mexico I (SANM I) - \$1,250.00

(2) Spanish archives of New Mexico II (SANM II) - \$250.00

(3) Translations - \$125.00

(4) Mexican archives of New Mexico (MANM) - \$725.00

(5) Territorial archives of New Mexico (TANM) - \$7,340.00

(6) Sender Collection - \$50.00

~~E.~~ **F.** Microfilm processing. 16mm and 35mm - \$19.85 per reel

[7/1/95, 9/15/98, 12/15/98; 1.13.2.12 NMAC - Rn, 1 NMAC 3.100.10 & A, 3/14/01; A, 04/30/02]

[Of the items listed under Subsection E, above, only the *Translations* are available as of April 2002; others are scheduled for completion in Fiscal Years 2003 through 2005. Also, item costs cited under Subsection E are for the collections. For costs for partial collections, see 1.13.2.17 NMAC, *Electronic Copies of Records*.]

1.13.2.13 PHOTOGRAPH AND MOTION PICTURE FILM REPRODUCTION:

~~A.~~ Requests for duplication of photographs for which no copy negative is available shall be charged the cost of the negative plus the cost of the print.

~~B.~~ **A.** Requests for duplication and reproduction of photographs and

film that are covered under Section 14-3-15.1 NMSA 1978 or are copyrighted or otherwise contractually restricted shall be accompanied by a letter of intent describing the proposed use and SRCA form 96-18 "conditions for publication/reproduction."

~~C.~~ **E** - 6 color processing.

(1) 135/36 - \$8.10

(2) 135/24 - \$6.50

(3) 120 - \$5.50

(4) 4 x 5 - \$3.40

(5) 8 x 10 - \$7.05

~~D.~~ **B** - Black and white processing from 35mm or 2 1/4 negative.

(1) Negative - \$7.05

(2) 4 x 5 - \$4.40

(3) 5 x 7 - \$5.50

(4) 8 x 10 - \$8.00

(5) 11 x 14 - \$12.30

(6) Copy slide - \$5.00

~~E.~~ **B.** Prints from digital images.

(1) 5 x 7 - \$12.00

(2) 8 x 10 - \$12.00

~~F.~~ **C.** Video copies.

(1) Video cassette copies - ~~20.00~~ 30.00

(2) 3/4 in. broadcast tape, 30 min - ~~42.00~~ 50.00

(3) 3/4 in. broadcast tape, 60 min. - ~~46.00~~ 60.00

~~G.~~ **D.** Where items are fragile or require specialized handling, the SRCA may charge the costs of the additional labor. [7/1/95, 4/30/96, 12/15/98; 1.13.2.13 NMAC - Rn, 1 NMAC 3.100.11 & A, 3/14/01; A, 04/30/02]

1.13.2.14 SRCA PUBLICATIONS:

A. Calendar to the Spanish archives of NM II - \$10.00

B. Calendar to the Mexican archives of NM - ~~2.00~~ 6.00

C. Calendar to the territorial archives of NM - ~~2.00~~ 6.00

D. Calendar to land grant records - \$10.00

E. Calendar to the Sender collection - ~~10.00~~ 12.00

F. Guide to "lost" records of Zuni - ~~5.00~~ 7.00

G. Microfilm manual - \$18.50

H. Genealogy charts - \$3.50

I. New Mexico administrative code training manual - extra copies (individuals attending training receive one copy of the manual without charge) - \$22.50

J. Billy the Kid Packet - \$36.00

K. Guide to the Archdiocese of Santa Fe: the AASF and LDS Series - \$7.00

L. New Mexico County Marriage Register Inventory - \$7.00

M. Picture postcards - \$5.00

[7/1/95, 9/15/98, 12/15/98; 1.13.2.14 NMAC - Rn, 1 NMAC 3.100.12 & A, 3/14/01; A, 04/30/02]

1.13.2.17 ELECTRONIC COPIES OF RECORDS: Electronic copies of records - \$0.0005 per byte, in full or in part.

[1.13.2.17 NMAC - N, 04/30/02]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.14.2 NMAC, Sections 7, 10 and 12.

1.14.2.7 DEFINITIONS.

A. "Administrator" means the state records administrator and the individual responsible for carrying out the purposes of the Public Records Act, specifically Section 14-3-15 NMSA 1978.

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. See Sections 14-3-2 and 14-3-15 NMSA 1978.

C. "Approved microphotography system" means a microphotography system that has been approved in writing by the administrator under the provisions of Section 14-3-15 NMSA 1978.

D. "CD-ROM mastering process" means the creation of the first recording (the master) in the compact disk-read only memory replication process.

E. "CD-ROM premastering" see premastering.

F. "Compact disk" means read-only optical disk available in formats for audio, data and other information.

G. "Compact disk-read only memory" means optical disk that is created by a mastering process and used for reading.

H. "Compact disk-write once read many" means an optical disk that is written and then available for reading.

I. "Density" means the light-absorbing or light-reflecting characteristics of a photographic image, filter, etc.; or the number of pixels per square inch.

J. "Document accountability" means the process whereby original documents are compared against the images produced, so that the film ensures the validity and integrity of the images.

~~J.~~ **K.** "Dots per inch" means

the measurement of output device resolution and quality, e.g., number of pixels per inch on display device. Measures the number of dots horizontally and vertically.

[K-]L. "Enhancement algorithms" means the set of techniques for processing an image so that the result is visually clearer than the original image.

[L-]M. "JPEG" means the specific compressed image file format specified by ISO. [See JPEG acronym]

[M-]N. "Master" (noun) means:

(1) in micrographics, the original microform produced from which duplicates or intermediates can be obtained (ISO); and

(2) in electronic imaging, the first recording, one from which duplicates can be obtained.

[N-]O. "Master" (verb) means creating the first recording.

[O-]P. "Microphotography" means the transfer of images onto storage media including but not limited to film, tape, disk, or other information storage techniques that meet the Performance Guidelines for Legal Acceptance of Public Records produced by information technology system technologies pursuant to regulations adopted by the commission of public records. See Section 14-3-2 NMSA 1978.

[P-]Q. "Microphotography program manager" means the person responsible for the microphotography system program in a state agency.

[Q-]R. "Microphotography system" means all microphotography equipment, services, policies, procedures and supplies that together create, store and reproduce public records.

[R-]S. "Open system" means a system that implements sufficient open specifications for interfaces, services, and supporting formats to enable properly engineered image processing applications that can be ported with minimal changes across a wide range of systems; can inter-operate with other applications on local and remote systems; and can interact with users in a manner that facilitates access and maintenance of public records on such systems.

[S-]T. "Open system environment" means the comprehensive set of interfaces, services, and supporting formats, plus user aspects, for portability or interoperability of applications and data.

[T-]U. "Optical disk" means the medium that will accept and retain information in the form of marks in a recording layer that can be read with an optical beam. See also compact disk-read only memory, rewritable optical disk and write-once read many optical disk.

[U-]V. "Pixel" means the smallest element of a display surface that

can be independently assigned color or intensity.

[W-]W. "Premaster" means the intermediate recording from which a master will be created.

[W-]X. "Premastering"

(1) includes the conversion to digital code, the addition of error correction codes and the intelligent preprocessing of the data records; and

(2) the phase of CD-ROM production in which machine-readable and bit-stream data are converted to optical disk.

[X-]Y. "Records" means information preserved by any technique in any medium, now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology.

[Y-]Z. "Records custodian" means the statutory head of an agency which creates or maintains the records that are being microphotographed, or his designee.

[Z-]AA. "Resolution" means the ability of a system to record fine detail, or the measure of that fine detail.

[AA-]BB. "Scanner" means a device that converts a document into binary (digital) code by detecting and measuring the intensity of light reflected from paper or transmitted through microfilm.

[BB-]CC. "Tag image file format" means the standardized format for storage of digitalized images, which contains a header or tag that defines the exact data structure of the associated image.

[7-29-96, 1-12-98; 1.14.2.1.7 NMAC - Rn, 1 NMAC 3.2.60.1.7 & A, 12-29-00; A, 04/30/02]

1.14.2.10 STANDARD FOR MICROFILM. To maintain the integrity of the original records and to ensure that the microfilm produced is an adequate substitute for the original record and serves the purpose for which such records were created and or maintained the following standard shall be adhered to:

A. Microphotography program manager shall successfully complete the microphotography and records and information management training provided by the state records center.

B. A microfilm system will be determined to meet the minimum standard of the New Mexico Commission of Public Records if the combined results of the consumable (i.e. film, chemicals, etc.) and equipment producing microfilm meet the standards developed and/or approved by the American National Standards Institute. (see 1.14.2.17 NMAC). The requirements of the most current revisions of said standard shall prevail unless otherwise specified

in this rule.

C. The microfilm shall be complete and contain all information shown on the original records.

D. Documents from different record series may be filmed on a single roll provided destruction dates coincide.

E. State agencies shall maintain an index for the purpose of tracking all records microfilmed.

F. Methylene blue test.

(1) Methylene blue test shall be conducted monthly.

(2) Systems producing more than 10 rolls per week, shall maintain proof of biweekly test results.

(3) Residual thiosulphate ion shall not exceed 1.4 micrograms per square centimeter as tested by the methylene blue test.

(4) Test results shall be maintained for the retention period of the records on microfilm produced (until film is eligible for destruction).

(5) Annual proof of methylene blue testing shall be submitted to the state records center and archives.

G. Resolution. The required resolution for source document microfilm is based on filming a microcopy Test Chart.

(1) Rotary cameras. A minimum resolving power of 2.5 shall be read on the required test chart.

(2) Planetary cameras. A minimum resolving power of 4.0 shall be read on the required test chart.

(3) Resolution readings shall be determined by following the procedures for determining microfilm resolution as set forth in ANSI/AIIM MS23.

(4) The required test chart shall appear at the beginning and end of each roll.

H. Density maximum (Dmax). The required background transmission density (relative Dmax) for source document microfilm is based on filming a target consisting of a blank sheet of 20 lb white bond paper.

(1) Paper records dated prior to 1960, the relative Dmax shall read between .9 and 1.19.

(2) Paper records dated 1960 and after, the relative Dmax shall read between .85 and 1.29.

(3) Density targets shall appear at the beginning and end of each roll.

I. Density minimum (Dmin). The required base plus fog density (relative Dmin) for unexposed processed microfilms must not exceed 0.10.

J. Splicing and erasures. Roll form master negative microfilm shall have no splicing or erasures between certification statements, unless expungement of

a particular image or images is authorized in writing by the custodial agency.

K. Statement of intent and purpose. A certification statement shall be filmed as the first and last document on the roll of film. For roll form microfilm, a statement of intent and purpose shall be filmed at the beginning and end of each roll of film.

L. Certification plaque for filmstrip form microfilm:

(1) A certification plaque shall be filmed at the beginning and end of each filmstrip.

(2) No splicing or erasures are allowed between the certification plaques, unless expungement of a particular image or images is authorized in writing by the custodial agency.

M. Each roll of source document microfilm shall be identified by a start of roll target and an end of roll target.

N. Master negative microfilm shall be ~~submitted~~ inspected by state agencies or by vendors filming for agencies ~~[to the state records center for film inspection]~~. Inspection shall consist of verification of the following:

- (1) targets;
- (2) indexing;
- (3) labeling;
- (4) ~~[status of program manager]~~ document accountability;
- (5) density;
- (6) resolution; and
- (7) visual observation of major defects and errors.

O. ~~[Agencies may elect to have inspections performed by entities other than SRCA staff. If alternate inspection services are used, agencies shall have the prior written approval of the administrator. Inspections by alternate service.]~~ Master microforms stored at the state records center are subject to audit by the state records center and archives staff at any time and shall comply with the standards set out in Subsection N of 1.14.2.10 NMAC. ~~[Noncompliance with standards shall result in the revocation of approval of the use of an alternate inspection service. Alternative services shall calibrate their densitometers to correspond to readings obtained by densitometers at the state records center.]~~

P. Agencies shall inspect duplicate film for the following:

- (1) major defects and errors;
- (2) indexing accuracy;
- (3) document accountability; and
- (4) legibility.

Q. Microforms failing to pass inspection by ~~[the SRCA, alternate inspection service, or]~~ the agency or the vendor filming for the agency shall be refilmed.

R. Disposition of origi-

nals.

(1) Prior to the final disposition of any microfilmed paper records, all requirements of this rule shall be met.

(2) Agencies shall submit a request for destruction which includes the following information:

(a) a statement that the records for destruction have been microfilmed;

(b) that the microfilm has been filmed in accordance to NM microphotography standards;

(c) roll numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

(3) Agencies not required to submit a request for destruction to the NM state records center shall maintain a certificate of record destruction, which meets the requirements of the Public Records Act. This certificate shall include:

(a) a statement that the records for destruction have been microfilmed;

(b) that the microfilm has been filmed in accordance to NM microphotography standards;

(c) roll numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

S. Labeling of all master microfilm roll containers shall include the following information:

(1) name and address of the custodial agency;

(2) date filmed;

(3) identification of the first and last document on the roll of film;

(4) records series names and corresponding records retention and disposition schedule item number;

(5) disposition trigger dates (i.e. date file closed, date contract terminated, etc.);

(6) name and address of the entity producing the roll of film; and

(7) roll number.

T. Microfilm targets. The following targets shall be used to be in compliance with this rule:

(1) Statement of intent and purpose. Statement of intent and purpose contains the following information:

(a) authority under which microfilming is being done;

(b) name of the agency for which the microfilming is being done;

(c) statement that the records microfilmed are the actual records of the agency, and that the records were created as part of the normal course of business;

(d) statement that it is the policy of the agency to microfilm specified records as part of the normal course of business, and

(when applicable) that the backlog will be microfilmed as part of a conversion process to maintain a valid and cost efficient record keeping program;

(e) statement that it is the policy of the agency to microfilm specified records to maintain as the legal copy of record in lieu of paper, and that the paper records are destroyed after microfilming in accordance with all requirements of the Public Records Act; and

(f) name, title, and signature of records custodian or microphotography program manager.

(2) Certification plaque:

(a) certification plaque A will be filmed on the first and last image of a filmstrip; and

(b) certification plaque B will be filmed on single image filmstrips, such as aperture cards

(3) Resolution target. An original chart shall be utilized for filming.

(4) Density target. A 20lb. bond sheet of paper shall be utilized for filming.

~~[(4)]~~ (5) Start of roll target. Start of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming;

(e) name of camera operator; and

(f) description of first record image on the roll of film.

~~[(5)]~~ (6) End of roll target. End of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming and name of camera operator; and

(e) description of last record image on the roll of film.

U. Microfilm image sequence and spacing. The following image sequence and spacing shall be used:

(1) Start of roll:

(a) film leader;

(b) statement of intent and purpose;

(c) resolution target;

(d) density target;

(e) start of roll target; and

(f) four spaces.

(2) Record images. Source documents are to be filmed between the start and end of roll targets.

(3) End of roll:

(a) four spaces;

- (b) end of roll target;
- (c) density target;
- (d) resolution target;
- (e) statement of intent and purpose; and
- (f) film trailer.

V. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall identify individual records by relevant use and criteria.

(1) Indexing requirements will vary from agency to agency, and, within an agency document type by document type. An indexing schema shall take into consideration compliance with freedom of information laws. Indexing requirements include:

(a) Data elements required for search and retrieval shall be defined by each submitting agency for each record series. Access requirements of current and future end-users shall be considered.

(b) Objective coding elements are those identifiers that do not require subjective assessment. Examples of objective coding elements include document date, document type, author, recipient, etc.

(2) Indexing retrieval software. Where an automated index is selected, the software used to search the index and to display index records found shall address user interface issues.

W. All master negative microfilm shall be stored off-site (for security purposes) for the full period prescribed by the agency's records retention and disposition schedule.

X. An agency shall produce a minimum of one working copy of microfilm.
[9-8-77, 5-27-79, 1-7-81, 1-13-82, 3-29-92, 4-6-92, 7-29-96, 8-24-96, 1-12-98; 1.14.2.10 NMAC - Rn, 1 NMAC 3.2.60.1.9& A, 12-29-00; A, 4/30/02]

1.14.2.12 STANDARD FOR COMPUTER OUTPUT MICROFILM (COM). To maintain the integrity of the original records and to ensure that the COM produced is an adequate substitute for the original record and serves the purpose for which such records were created and or maintained, the following standard shall be adhered to:

A. A COM system will be determined to meet the minimum standards of the New Mexico commission of public records if the combined results of the consumable (i.e. film, chemicals, etc.) and equipment producing COM meet the standards developed and or approved by the American National Standard Institute (see 1.14.2.17 NMAC). The requirements of the most current revision of the standard shall

prevail, unless otherwise specified in this rule.

B. An agency intending to place records on COM shall complete a COM statement of intent and purpose (form SRCA 2000-5) and submit it to the state records center for approval by the administrator.

C. The approved COM statement of intent and purpose shall be used as the target in producing COM. The records center will maintain a copy of the statement on file.

D. Methylene blue test.

(1) Residual thiosulphate ion shall not exceed 1.4 micrograms per square centimeter as tested by the methylene blue test.

(2) Annual proof of methylene blue testing shall be submitted to the state records center and archives.

(3) Test results shall be maintained for the retention period of the records on COM produced (until COM is eligible for destruction).

E. Master negative COM shall have a minimum resolution of 2.8 as read on the test chart prescribed in ANSI/AIIM MS 1-1996. The COM unit shall be tested for resolution adherence each day of operation.

F. The density of master negative COM shall be no less than 1.5. The COM unit shall be tested for density adherence each day of operation.

G. Each computer output microfiche shall have an identifier image as part of the microfiche index. The image shall include title of record being filmed, creating agency, and date filmed.

H. All master negative COM shall be stored off site (for security purposes) for the full period prescribed by the agency's records retention and disposition schedule.

I. An agency shall produce a minimum of one working copy of COM.

J. Master negative film shall be ~~submitted~~ inspected by state agencies or by vendors filming for agencies ~~to the state records center for film inspection~~. Inspection shall consist of verification of the following:

- (1) targets;
- (2) indexing;
- (3) labeling;
- (4) ~~[status of program manager]~~ document accountability ;
- (5) density;
- (6) resolution; and
- (7) visual observation of major defects and errors.

K. ~~[Agencies may elect to have inspections performed by entities~~

~~other than SRCA staff. If alternate inspection services are used, agencies shall have the prior written approval of the administrator. Inspections by alternate service.]~~ Master microforms stored at the state records center are subject to audit by the state records center and archives staff at any time and shall comply with the standards set out in Subsection J of 1.14.2.12 NMAC. ~~[Noncompliance with standards shall result in the revocation of approval of the use of an alternate inspection service.]~~

L. COM failing to pass inspection by ~~the SRCA, alternate inspection service, or~~ the agency or the vendor filming for the agency shall be remastered.

M. Agencies shall inspect duplicate COM for the following:

- (1) major defects and errors;
- (2) indexing accuracy;
- (3) document accountability; and
- (4) legibility.

N. Disposition of originals.

(1) Prior to the final disposition of any microphotographed paper records, all requirements of this rule shall be met.

(2) Agencies shall submit a request for destruction which includes the following information:

(a) a statement that the records for destruction have been microphotographed;

(b) that the COM has been mastered in accordance to NM microphotography standards;

(c) envelope numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

(3) Agencies not required to submit a request for destruction to the NM state records center shall maintain a certificate of record destruction, which meets the requirements of the Public Records Act. This certificate shall include:

(a) a statement that the records for destruction have been placed on COM;

(b) that the COM has been mastered in accordance to NM microphotography standards;

(c) envelope numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

O. Labeling of all master microfilm roll containers shall include the following information:

(1) name and address of the custodial agency;

(2) date created;

(3) identification of the first and last document on the COM;

(4) records series names and corresponding records retention and disposition schedule item number;

(5) disposition trigger dates (i.e. date file closed, date contract terminated, etc.);

(6) name and address of the entity producing the roll of film; and

(7) envelope number.

P. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall identify individual records by relevant use and criteria.

(1) Indexing requirements will vary from agency to agency, and, within an agency document type by document type. An indexing schema shall take into consideration compliance with freedom of information laws. Indexing requirements include:

(a) Data elements required for search and retrieval shall be defined by each submitting agency for each record series. Access requirements of current and future end-users shall be considered.

(b) Objective coding elements are those identifiers that do not require subjective assessment. Examples of objective coding elements include document date, document type, author, recipient, etc.

(2) Indexing retrieval software. Where an automated index is selected, the software used to search the index and to display index records found shall address user interface issues where microphotography images are stored on COM.

[11-16-82, 12-20-88, 1-19-89, 3-29-92, 7-29-92, 8-24-96; 1.14.2.12 NMAC - Rn, 1 NMAC 3.2.60.1.10 & A, 12-29-00; A, 4/30/02]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

13 NMAC 4.7, Continuing Education Requirements, filed May 27, 1997, is repealed effective May 1, 2002.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

**TITLE 13 INSURANCE
CHAPTER 4 LICENSING OF
INSURANCE PROFESSIONALS
PART 7 CONTINUING EDUCATION
REQUIREMENTS**

13.4.7.1 ISSUING AGENCY:
New Mexico Public Regulation
Commission, Insurance Division.

[13.4.7.1 NMAC - Rp, 13 NMAC 4.7.1, 5-

1-02]

13.4.7.2 SCOPE:

A. This rule applies to all licensed agents, brokers, limited surety agents, solicitors, bail bond solicitors, property bondsmen, nonresident agents, and nonresident brokers unless exempted by subsection B of this section.

B. The continuing education requirements of this rule shall not apply to:

(1) holders of limited licenses issued pursuant to NMSA 1978 Section 59A-12-18;

(2) persons who have been licensed as agents, solicitors, nonresident agents or nonresident brokers for 25 years or more;

(3) persons who maintain a license solely for the purpose of receiving renewal fee residuals and who do not otherwise transact the business of insurance;

(4) agents of fraternal benefit societies licensed pursuant to NMSA 1978 Section 59A-44-33; or

(5) nonresident agents and nonresident brokers who are licensed in another state or country and who are subject to continuing education requirements in the state or country in which they are licensed.
[13.4.7.2 NMAC - Rp, 13 NMAC 4.7.2, 5-1-02]

13.4.7.3 STATUTORY AUTHORITY: NMSA 1978 Sections 59A-2-9 and 59A-12-26.

[13.4.7.3 NMAC - Rp, 13 NMAC 4.7.3, 5-1-02]

13.4.7.4 DURATION: Permanent.

[13.4.7.4 NMAC - Rp, 13 NMAC 4.7.4, 5-1-02]

13.4.7.5 EFFECTIVE DATE: May 1, 2002 unless a later date is cited at the end of a section.

[13.4.7.5 NMAC - Rp, 13 NMAC 4.7.5, 5-1-02]

13.4.7.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Section 59A-12-26 by setting forth continuing education requirements for licensees.

[13.4.7.6 NMAC - Rp, 13 NMAC 4.7.6, 5-1-02]

13.4.7.7 DEFINITIONS: As used in this rule:

A. approved course means a course of instruction approved by the committee as satisfying the continuing education requirements of this rule.

B. committee means the Insurance Continuing Education Committee.

C. credit hour means fifty (50) minutes of actual instruction or self-study time in an approved course.

D. licensee means an agent, broker, limited surety agent, solicitor, bail bond solicitor, property bondsman, nonresident agent, or nonresident broker within the scope of this rule.

[13.4.7.7 NMAC - Rp, 13 NMAC 4.7.7 and 4.7.13, 5-1-02]

13.4.7.8 INSURANCE CONTINUING EDUCATION COMMITTEE:

A. The Superintendent shall appoint an Insurance Continuing Education Committee that shall serve at his pleasure. The committee shall be a volunteer committee and shall not be entitled to per diem or other reimbursement or remuneration.

B. The committee shall approve individual courses of instruction for continuing education credit, notify the Superintendent of approved courses as they are approved, and make recommendations regarding continuing education courses and other matters assigned by the Superintendent.

C. The committee shall not approve any continuing education course that does not provide a method by which a provider can assure that a licensee has completed the course.

[13.4.7.8 NMAC - Rp, 13 NMAC 4.7.8, 5-1-02]

13.4.7.9 REQUIREMENTS FOR LICENSEES:

A. Hours required annually.

(1) Title insurance licensees shall annually complete seven (7) credit hours of approved courses covering title insurance.

(2) All other licensees shall annually complete fifteen (15) credit hours of approved courses covering some or all of the kinds of insurance for which they are licensed.

B. No carry-over. No licensee may carry over credit hours earned in one (1) compliance year to the next compliance year.

C. No duplicate credit. No additional credit will be granted to a licensee for completion of the same approved course more than once in any three (3) year period.

[13.4.7.9 NMAC - Rp, 13 NMAC 4.7.9, 5-1-02]

13.4.7.10 COURSE CON-

TENT: Individual courses shall be a minimum of 2 credit hours in length.

A. Ethics. At least one (1) of the annual continuing education credit hours shall be devoted to ethics and shall be designed to improve the licensee's understanding of the transaction of insurance business, including professional and ethical conduct, fiduciary obligations and duties, and responsible insurance agency management.

B. Insurance subjects. The remaining instruction time shall be designed to refresh the licensee's understanding of basic insurance principles and coverages, applicable laws and Insurance Division rules, and recent and prospective changes to them.

C. Approved learning formats. A course may utilize any combination of formal classroom instruction, lectures, seminars, panel discussions, question-and-answer periods, correspondence courses, web-based courses, courses on media disk, audiotapes, and videotapes as long as the provider can assure that a licensee has completed the course.

[13.4.7.10 NMAC – Rp, 13 NMAC 4.7.10, 5-1-02]

13.4.7.11 PROVIDER REQUIREMENTS:

A. Course content. A provider of an approved course shall assure that:

(1) the curriculum offered relates to insurance subjects, or subjects which relate to the individual licensee's transaction of insurance business; and

(2) the course has significant intellectual or practical content and that its primary objective is to increase the participant's professional competence as a licensee.

B. Statement of approved courses: Providers of approved courses shall include the following written statement in the course materials for each approved course: "This course has been approved by the Insurance Continuing Education Committee as New Mexico Insurance Continuing Education Course Number [insert number] for [insert number] hours of credit."

C. Presenters. A provider of an approved course shall assure that presenters for all courses are qualified by practical or academic experience to teach the subject to be covered. For purposes of this rule, practical or academic experience shall include, but not be limited to, actual experience related to the kind of insurance which is the subject of the course, undergraduate or graduate educational training, or professional insurance industry designations such

as the Chartered Property Casualty Underwriter (CPCU), Chartered Life Underwriter (CLU), and Fellow of the Life Management Institute (FLMI) designations;

D. Course completion. A provider shall assure that each licensee completes the course either by:

(1) monitoring the course to witness attendance and participation; or

(2) requiring submission of a test or other written work evidencing understanding of the course material.

E. Certificates of completion.

(1) A provider shall issue to a licensee within 10 days of the date a licensee completes an approved course a certificate of completion signed by an authorized representative of the provider.

(2) The certificate of completion shall be on the form prescribed by the Superintendent and shall contain the following information:

(a) the licensee's name and social security number;

(b) the course title, course number, and number of credits of the completed course; and

(c) the date the licensee completed the course.

F. Records. A provider shall maintain records of attendance and course completion for a minimum of three (3) years and make such records available to the Superintendent or the committee upon reasonable request.

[13.4.7.11 NMAC – Rp, 13 NMAC 4.7.11, 5-1-02]

13.4.7.12 REPORTING REQUIREMENTS:

A. Continuing education credit year. The continuing education credit year shall begin on October 1 of each year and end on September 30 of the following year.

B. Verified statement of completion of continuing education requirements. A licensee shall file a verified statement indicating that the licensee has completed the required number of credits of approved courses. The verified statement for the prior continuing education credit year shall be on the form prescribed by the Superintendent, shall contain original signatures, and shall be filed with the Superintendent no later than October 31 of each year.

C. Fees. A licensee shall submit the fee prescribed by subsection F of NMSA 1978 Section 59A-12-26 to the Superintendent together with the licensee's verified statement.

D. Credit to licensee. The Superintendent will not credit continuing

education credits to a licensee until the Superintendent receives the verified statement of completion and the fee from the licensee.

E. Records. A licensee shall maintain copies of certificates of completion of approved courses and verified statements for a period of three (3) years.

[13.4.7.12 NMAC – Rp, 13 NMAC 4.7.15, 5-1-02]

13.4.7.13 LIST OF APPROVED COURSES:

The Superintendent shall maintain a list of approved courses. All interested parties may obtain copies of the list upon request and upon payment of a reasonable fee determined by the Superintendent.

[13.4.7.13 NMAC – Rp, 13 NMAC 4.7.14, 5-1-02]

13.4.7.14 AUDITING PROCEDURES:

A. All continuing education records submitted or maintained pursuant to this rule are subject to audit by the Superintendent.

B. If the Superintendent finds a certificate of completion to be incomplete or questionable, the Superintendent shall issue a notice of deficiencies requiring the provider, within thirty (30) days of receipt of the notice, to provide the missing information, submit accurate and detailed evidence of attendance, or otherwise correct the deficiencies.

[13.4.7.14 NMAC – Rp, 13 NMAC 4.7.16, 5-1-02]

13.4.7.15 PENALTIES:

A. The Superintendent may, in accordance with NMSA 1978 Section 59A-11-15, revoke, suspend or refuse to continue the license of a licensee who fails to comply with this rule and may impose other applicable administrative penalties authorized by the Insurance Code.

B. A provider who submits a falsified certificate of completion, or who fails to respond to the Superintendent's notice of deficiencies, shall be subject to all applicable penalties provided by law.

[13.4.7.15 NMAC – Rp, 13 NMAC 4.7.17, 5-1-02]

HISTORY OF 13.4.7 NMAC:

Pre-NMAC history. The material in this rule was previously filed with the State Records Center as:

SCC 85-2, In Re to Article II: Rules Regarding Continuing Education Requirements, on April 17, 1985; SCC-85-11, Insurance Department Regulation 12 - Insurance Agents, Brokers and Solicitors, on October 10, 1985;

SCC-91-3-IN, Continuing Education Requirements of Insurance Agents, Brokers, and Solicitors, on January 31, 1992.

NMAC history.

Recompiled as 13 NMAC 4.7, Continuing Education Requirements, effective 7-1-97.
13.4.7 NMAC, Continuing Education Requirements, effective 5-1-02

History of repealed material.

13 NMAC 4.7, Continuing Education Requirements, effective 5-1-02

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

TITLE 13 INSURANCE CHAPTER 19 NON-ADMITTED OR SURPLUS LINES INSURANCE PART 4 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

13.19.4.1 ISSUING AGENCY:
Public Regulation Commission, Insurance Division.
[13.19.4.1 NMAC – N, 05-01-02]

13.19.4.2 SCOPE: Unless exempted by subsection C, this rule applies to any multiple employer welfare arrangement that:

A. is established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise:

(1) medical, surgical, or hospital care or benefits; or

(2) benefits in the event of sickness, accident, disability, death or unemployment; and

B. meets at least one of the following conditions:

(1) transacts business, operates or plans to operate in New Mexico;

(2) includes a member whose principal place of business is in New Mexico or who is doing business in New Mexico; or

(3) provides or offers to provide benefits to participants or their beneficiaries who reside in New Mexico.

C. This rule does not apply to a multiple employer welfare arrangement that is:

(1) established or maintained under or pursuant to one or more agreements that the United States Secretary of Labor finds to be a collective bargaining agreement;

(2) established or maintained by a rural electric cooperative or a rural telephone cooperative association as those terms are defined in the Employee Retirement Income Security Act of 1974 (29 United States Code Section 1002(4)); or

(3) fully insured by an authorized insurer or that otherwise has satisfactorily demonstrated to the Superintendent that it is subject to the jurisdiction of another agency of this state or the federal government in accordance with the Health Care Benefits Jurisdiction Act, NMSA 1978, Section 59A-15-17 (1991).

[13.19.4.2 NMAC – N, 05-01-02]

13.19.4.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-2-9 and 59A-15-20.

[13.19.4.3 NMAC – N, 05-01-02]

13.19.4.4 DURATION: Permanent.

[13.19.4.4 NMAC – N, 05-01-02]

13.19.4.5 EFFECTIVE DATE: May 1, 2002, unless a later date is cited at the end of a section.

[13.19.4.5 NMAC – N, 05-01-02]

13.19.4.6 OBJECTIVE: The purpose of this rule is to implement the provisions of NMSA 1978, Section 59A-15-20 and to ensure the safe and proper operation of multiple employer welfare arrangements in New Mexico.

[13.19.4.6 NMAC – N, 05-01-02]

13.19.4.7 DEFINITIONS: In addition to the definitions contained in the Insurance Code, NMSA 1978, Chapter 59A, as used in this rule:

A. authorized insurer has the definition ascribed thereto in paragraph B of NMSA 1978, Section 59A-1-8. For purposes of this rule, nonprofit health care plans holding a valid and subsisting certificate of authority, issued by the Superintendent under NMSA 1978, Chapter 59A, Article 47, and health maintenance organizations holding a valid and subsisting certificate of authority, issued by the Superintendent under NMSA 1978, Chapter 59A, Article 46, shall also be defined as authorized insurers;

B. business plan means the comprehensive, detailed plan by which a multiple employer welfare arrangement conducts or proposes to conduct its business;

C. fully insured by an authorized insurer means that:

(1) an authorized insurer is directly obligated by contract to provide all of the covered services or benefits pursuant to or

under a MEWA;

(2) the authorized insurer assumes all of the risk for payment of all covered services or benefits; and

(3) the liability of the authorized insurer for payment of the covered services or benefits is directly to the individual employee, member or dependent receiving the covered services or benefits.

D. member means an employer that participates in a multiple employer welfare arrangement.

E. multiple employer welfare arrangement or MEWA has the meaning given in NMSA 1978, Section 59A-1-8.1 of the New Mexico Insurance Code;

F. premium means the consideration for the benefits being provided, by whatever name called. Any assessment, contribution, membership fees or dues, policy, surety, or similar fee or charge in consideration for the benefits being provided is deemed part of the premium.

[13.19.4.7 NMAC – N, 05-01-02]

13.19.4.8 CERTIFICATE OF REGISTRATION:

A. All MEWAs shall obtain and maintain a certificate of registration pursuant to this rule.

B. Any MEWA that transacts business, operates or plans to operate in this state without a certificate of registration shall be considered an unauthorized insurer within the meaning of NMSA 1978, Chapter 59A, Article 15 and all remedies and penalties prescribed in such article shall be fully applicable.

[13.19.4.8 NMAC – N, 05-01-02]

13.19.4.9 APPLICATION FOR CERTIFICATE OF REGISTRATION:

A. A person wishing to obtain a MEWA certificate of registration pursuant to this rule shall file an application and business plan with the Superintendent. The application and business plan shall include the following:

(1) a certified copy of the articles of incorporation, if applicable, or other formative documents establishing the structure under which the MEWA is to operate and demonstrating that the MEWA is organized or authorized to do business under applicable New Mexico law;

(2) copies of all articles, bylaws, agreements, constitutions, rules or regulations establishing and governing the operation of the MEWA;

(3) copies of all management, administration or trust agreements created in connection with the MEWA;

(4) employee welfare benefit plan documents, including contracts, certificates,

agreements or other instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the MEWA;

(5) name, address, and telephone number of each association, group, entity or member organization involved in the MEWA and the name, address, and telephone number of each officer, director, partner, or trustee of the association, group, entity or member organization participating in the MEWA;

(6) a description of all sources of financing for the MEWA;

(7) a copy of the MEWA's summary plan description, written in a manner calculated to be understood by the average plan participant and sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the MEWA's plan. The summary plan description shall state the following:

(a) name, type of administration of the plan, plan number, tax identification number, effective date of the plan, the year the plan ends, and whether the records of the plan are kept on a calendar, policy, or fiscal year basis;

(b) name, address, telephone number and New Mexico license number of the plan administrator;

(c) name, address, telephone number and New Mexico license number of the claims administrator;

(d) name, address and telephone number of the plan fiduciary, sponsor, trustee or trustees;

(e) plan requirements with respect to eligibility for participation and benefits, including information on how dependents are covered under the plan, and special or open enrollment requirements;

(f) a description of all benefits under the plan, including, where applicable, maximum benefit amounts, calendar year deductibles, out-of-pocket maximum amounts, pre-certification and special deductibles, eligible expenses, pre-existing conditions, exclusions and a description of provisions relating to nonforfeitable benefits if any are included in the plan;

(g) a description of circumstances which may result in termination, disqualification, ineligibility, or denial or loss of benefits;

(h) the identity of any organization or entity through which care or benefits are provided, including all health care provider networks;

(i) a description of COBRA continuation coverage;

(j) the procedures to be followed in presenting claims for benefits under the plan; and

(k) remedies and appeal provi-

sions available under the plan for the redress of claims which are denied in whole or in part;

(8) current financial statements of the MEWA that shall include at a minimum: balance sheet, income statement, cash flow statement and detailed listing of assets developed according to generally accepted accounting principles;

(9) an actuarial opinion prepared, signed, and dated by a person who is a member of the American Academy of Actuaries stating that appropriate loss and loss adjustment reserves have been established and that adequate premiums are being charged;

(10) an affidavit from an officer, director, fiduciary or trustee of the MEWA that, to the best of his knowledge and belief, the MEWA is in compliance with all applicable provisions of the Employee Retirement Security Act of 1974 (29 United States Code Section 1001, et seq.);

(11) a copy of an indemnity agreement jointly and severally binding the MEWA and each member thereof to meet the obligations of the MEWA in a form approved by the Superintendent;

(12) a copy of the most recent Form M-1 filed by the MEWA with the United States Department of Labor, Pension and Welfare Benefits Administration;

(13) an affidavit from an officer, director or trustee of the MEWA certifying that the MEWA is administered by an authorized insurer or an authorized third-party administrator licensed in the State of New Mexico;

(14) an affidavit from an officer, director or trustee of the MEWA certifying that all association members and their employees shall be eligible for participation in the MEWA plan;

(15) a copy of all stop-loss or reinsurance commitments, binders or policies insuring the MEWA or its members for health care benefits being provided;

(16) proof of compliance with 13.19.4.11 NMAC, 13.19.4.12 NMAC and 13.19.4.14 NMAC through 13.19.4.18 NMAC; and

(17) any additional information requested by the Superintendent.

B. At filing of the application, the applicant shall pay to the Superintendent the applicable filing fee as specified in NMSA 1978, Section 59A-6-1. The filing fee shall not be refundable.

C. An application for certificate of registration is not complete until the MEWA has met, to the satisfaction of the Superintendent, all the requirements of this section.

[13.19.4.9 NMAC - N, 05-01-02]

13.19.4.10 REVIEW OF APPLI-

CATION:

A. The Superintendent shall examine the application and supporting documents submitted by the applicant and shall have the power to conduct any investigation that the Superintendent may deem necessary and to examine under oath any persons interested in or connected with the MEWA. The Superintendent is not required to act formally on an incomplete application.

B. Within a reasonable time, the Superintendent shall issue to the MEWA a certificate of registration upon finding that the applicant MEWA has met all requirements, or the Superintendent shall notify the applicant setting forth reasons for a denial upon finding that the applicant MEWA has not met all of the requirements of this rule. An unsuccessful applicant may file a new application for a certificate of registration at any time.

[13.19.4.10 NMAC - N, 05-01-02]

13.19.4.11 MODIFICATIONS

OR AMENDMENTS: All modifications or amendments to the business plan of any MEWA, including but not limited to amendments to articles of incorporation, bylaws or trust documents, shall be submitted for prior approval to the Superintendent.

[13.19.4.11 NMAC - N, 05-01-02]

13.19.4.12 DEPOSIT REQUIREMENTS:

A. Every MEWA shall make and thereafter maintain while so authorized a deposit in trust of not less than one hundred thousand dollars (\$100,000) for the benefit and protection of all of its participants or their beneficiaries as a condition to being authorized to transact business. The deposit shall consist of assets eligible therefore under NMSA 1978, Section 59A-10-3, and shall be deposited with or through the Superintendent or in a commercial depository located in the state of New Mexico approved by the Superintendent subject to rules issued by the Superintendent. For good cause, and in his sole discretion, the Superintendent may require a MEWA to make and maintain a general deposit in reasonable amount greater than required in this rule.

B. Any such deposit shall be released in the following instances only:

(1) Upon extinguishment of all liabilities of the MEWA for the security of which the deposit is held;

(2) Upon the MEWA ceasing to transact business in New Mexico, and all fixed or contingent liabilities for which the deposit was a security have been satisfied or terminated, or have been assumed by an insurer or another MEWA authorized to transact business in New Mexico; or

(3) Upon proper order of a court of competent jurisdiction, the reserve deposit may be released to the receiver, conservator, rehabilitator or liquidator of the MEWA for whose account the deposit is held.

C. No release of deposits shall be made except on application and written order of the Superintendent made upon proof satisfactory to him of the existence of one or more of such grounds. Before directing the release of any deposit the Superintendent may require such evidence as he or she deems satisfactory that the MEWA is entitled to the release and return of the deposit or a part thereof.

[13.19.4.12 NMAC - N, 05-01-02]

13.19.4.13 MINIMUM SOLVENCY REQUIREMENTS:

A. Every MEWA shall have a minimum net worth of the greater of one hundred thousand dollars (\$100,000) or an amount equal to the sum of three months health care or other benefit claims as reported on the most recent annual financial statement filed with the Superintendent. For good cause, and in his sole discretion, the Superintendent may require a MEWA to maintain a minimum net worth in an amount greater than required in this rule.

B. Every MEWA shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles and as deemed appropriate by the Superintendent.

[13.19.4.13 NMAC - N, 05-01-02]

13.19.4.14 ACCOUNTING STANDARDS AND REPORTING REQUIREMENTS:

A. In addition to the requirements of 13.19.3.12 NMAC, every MEWA shall annually on or before March 1, or within any reasonable extension of time which the Superintendent for good cause may have granted on or before such date, file with the Superintendent a full and true statement of its financial condition and of its transactions and affairs as of the December 31 next preceding. The statement shall be prepared in the form of the annual statement blank prescribed by the national association of insurance commissioners for use in the United States for life and health insurers in accordance with the annual statement instructions and the accounting practices and procedures manual published by the national association of insurance commissioners, or such other form and instructions as the Superintendent may prescribe, and supplemented by additional information reasonably required by the Superintendent.

B. The Superintendent

may, in his sole discretion, require any MEWA to file quarterly financial reports with the Superintendent in the form prescribed by the national association of insurance commissioners or such other form and instructions as deemed appropriate by the Superintendent.

C. The Superintendent or any person appointed by the Superintendent shall have the power to examine the affairs and conduct of any MEWA. Examinations of a MEWA shall be made at least once every three years in the same manner that applies to domestic and foreign insurers licensed to transact the business of insurance in this state. Expenses of examination shall be paid by each MEWA in the same manner and to the same extent as required by NMSA 1978, Chapter 59A, Article 4.

[13.19.4.14 NMAC - N, 05-01-02]

13.19.4.15 INVESTMENT REQUIREMENTS:

Every MEWA shall comply fully with the investment requirements of NMSA 1978, Section 59A-9-2.

[13.19.4.15 NMAC - N, 05-01-02]

13.19.4.16 STOP-LOSS COVERAGE REQUIREMENTS:

A. Every MEWA shall have at all times individual and aggregate excess stop-loss coverage from an insurer authorized to transact insurance in New Mexico. The MEWA must submit the commitment, binder or policy of stop-loss coverage to the Superintendent for approval.

B. Any written commitment, binder, or policy of stop-loss coverage shall be issued by an insurer authorized to transact insurance in New Mexico and must provide for not less than 90 days notice to the Superintendent and the MEWA of any cancellation or non-renewal of coverage.

[13.19.4.16 NMAC - N, 05-01-02]

13.19.4.17 CONTRIBUTION REQUIREMENTS:

Every MEWA shall set premiums in accordance with sound actuarial methods and as deemed appropriate by the Superintendent. All contracts evidencing benefits provided and all premium rates proposed, including any and all amendments, endorsements, riders, certificates or other modifications to contracts or premiums, shall conform to the filing and approval requirements contained in NMSA 1978, Sections 59A-18-12, 59A-18-13, and 59A-18-13.1. In addition, all contracts and premium rates filed with the Superintendent shall be subject to the review process contained in NMSA 1978, Section 59A-18-14.

[13.19.4.17 NMAC - N, 05-01-02]

13.19.4.18 EQUITABLE

ASSESSMENT: Every MEWA shall submit, as part of its application for a certificate of registration and in a form satisfactory to the Superintendent, a copy of the contract or agreement that sets forth in detail the methods by which employers who participate or intend to participate in a MEWA will be required to replace any funding shortfall in a MEWA's New Mexico operations. Such contract or agreement shall provide, without exception, for the payment of one hundred percent of any claims determined by the Superintendent to be encompassed within the terms of the summary plan. In the event the MEWA operates in states other than New Mexico, the MEWA shall specify the precise methodology by which New Mexico claims will be reimbursed fully.

[13.19.4.18 NMAC - N, 05-01-02]

13.19.4.19 ELIGIBILITY: Every MEWA shall provide that all participating employees or association members shall be eligible for participation in the plan.

[13.19.4.19 NMAC - N, 05-01-02]

13.19.4.20 COMPLIANCE WITH PATIENT PROTECTION ACT AND OTHER APPLICABLE LAW:

A. Every MEWA shall comply fully with the New Mexico Patient Protection Act, NMSA 1978, Chapter 59A, Article 57.

B. All contracts or policies issued by a MEWA shall conform to all of the provisions of the Health Insurance Portability Act, NMSA 1978, Chapter 59A, Article 23E and, where applicable, to the provisions of NMSA 1978, Chapter 59, Article 18-1 and NMSA 1978, Chapter 59A, Article 46.

C. All contracts or policies issued by a MEWA shall conform to all of the provisions of the Health Insurance Contract Act, NMSA 1978, Chapter 59A, Article 22.

D. The provisions of the Insurers Conservation, Rehabilitation, and Liquidation Law NMSA 1978, Chapter 59A, Article 41 shall apply to all MEWAs.

[13.19.4.20 NMAC - N, 05-01-02]

13.19.4.21 PENALTIES: The Superintendent may revoke, suspend or refuse to continue the certificate of registration of any MEWA that fails to comply with this rule and may impose such other applicable administrative penalties as may be authorized by the Insurance Code.

[13.19.4.21 NMAC - N, 05-01-02]

13.19.4.22 COMPLIANCE FOR EXISTING MEWAS: All MEWAs subject to this rule on its effective date shall comply with the provisions of this rule no later

than ninety (90) days following its effective date.

[13.19.4.22 NMAC – N, 05-01-02]

**HISTORY OF 13.19.4 NMAC:
[RESERVED]**

**NEW MEXICO PUBLIC
SCHOOL CAPITAL
OUTLAY COUNCIL**

This is an amendment to correct a typographical error in Paragraph D of 6.27.43.9 NMAC.

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] G 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; A, 4/30/02]

**NEW MEXICO RETIREE
HEALTHCARE
AUTHORITY**

This is an amendment to 2.81.7.8 NMAC and 2.81.7.10 NMAC. 2 NMAC 81.7 was also renumbered and reformatted to 2.81.7 NMAC to comply with current NMAC requirements.

2.81.7.8 RETIREES/ELIGIBILITY FOR COVERAGE: To be eligible for coverage an eligible retiree must satisfy the ~~[age and]~~ service requirement[s] pursuant to 2.81.7.10 NMAC in the employment of a participating employer which has timely petitioned to become and has been admitted as a participating employer under the Act.

[6-15-98; 2.81.7.8 NMAC - Rn & A, 2 NMAC 81.7.8, 4/30/02]

2.81.7.10 RETIREES/TIME IN SERVICE OF INDEPENDENT PUBLIC EMPLOYER AND RETIREMENT SYSTEM PUBLIC EMPLOYER:

A. Normal Retirement:

The ~~[age and]~~ service requirement[s] ~~[for being eligible]~~ for coverage for those persons having served a participating employer affiliated with a public pension plan, but having been individually excluded from the public pension plan, or having served an independent public employer which has opted to become a participating employer ~~[are~~

~~(1) age sixty five years or older and five or more years of credited service; or~~

~~(2) age sixty four years and eight or more years of credited service; or~~

~~(3) age sixty three years and eleven or more years of credited service; or~~

~~(4) age sixty two years and fourteen or more years of credited service; or~~

~~(5) age sixty one years and seventeen or more years of credited service; or~~

~~(6) age sixty years and twenty or more years of credited service; or~~

~~(7) any age and twenty five or more years of credited service; provided, however, for public safety retirees with a twenty year option for retirement, the age and service requirements are~~

~~(a) age sixty five years or older and five or more years of credited service~~

~~(b) age sixty four years and eight or more years of credited service~~

~~(c) age sixty three years and eleven or more years of credited service~~

~~(d) age sixty two years and fourteen or more years of credited service~~

~~(e) age sixty one years and seventeen or more years of credited service; or~~

~~(f) any age and twenty or more years of credited service.] is five or more years of creditable service. Periods of employment with, or retirement from, a non-participating employer shall not affect an employee's eligibility, so long as the employee has met the minimum requirement for years of creditable service with a participating employer and is eligible to receive a pension from the participating employer's pension system.~~

B. Duty Disability:

Without regard to age or length of service, an applicant for coverage based on duty disability shall be granted coverage if the incident resulting in the disability arose from and in the course of performance of duties by the applicant for the participating employer and if the applicant is unable, after the incident, to perform the job which the applicant was performing prior to the time of the incident resulting in the disability. In the event there is a determination that the applicant is unable to perform the job being performed by the applicant at the time of the incident leading to the duty disability, the applicant will be granted temporary duty disability for a period up to one year. Prior to the end of the temporary period of duty disability, there shall be a second inquiry to determine whether or not the applicant can perform any gainful employment. In the event, on the initial inquiry it is determined that the applicant can perform the job that was being performed at the time of the incident resulting in the disability or in the second inquiry it is determined that the applicant is capable of performing any gainful employment, the applicant shall be denied coverages provided by the Act.

C. Non-Duty Disability:

A person shall be entitled to coverages under the Act provided that person has five or more years of credited service with a participating employer. The applicant must show that the applicant is not capable of any gainful employment. In the event the applicant fails to show that the applicant has five or more years of credited service in employment with a participating employer or fails to show that he is incapable of holding any gainful employment, the applicant shall not be entitled to coverages under the Act.

D. Survivor's benefit:

survivor pension beneficiary means a person entitled to a survivor's benefit either pursuant to the retirement program of a participating Independent public employer or if the person meets the tests that would be applicable pursuant to 10-11-1 et seq. NMSA 1978.

E. Administrative

Determination: The executive director of the retiree health care authority shall review and grant or deny the opportunity for cover-

age under the Act on a form approved by the executive director. The executive director shall provide notice of the determination by regular mail and notify the applicant of the right of appeal.

F. Appeal: The applicant may appeal an adverse decision of the executive director. The appeal shall be filed with the office of executive director thirty days following the day on which the executive director's determination is deposited in the mail.

G. Board Determination Final: The board, at a time mutually convenient for the applicant, executive director and board shall review the appeal. A formal hearing shall not be held unless the board determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. The applicant may request a hearing, but such requests shall be deemed denied unless specifically granted. Hearings, when held, should be as informal as practicable under the circumstances, but the board has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the executive director or board required to adhere to formal rules of evidence or procedure. The decision of the board shall be final and not subject to appeal.

H. Retirees Not Eligible For Coverage: Persons who retire from an employer which does not become or does not remain a participating employer shall not be eligible for retiree, spouse or dependent coverage unless they have been employed by a participating employer under the Act and have satisfied prior to or after July 1, 1990, the age and service requirements of 2.81.7.10 NMAC while employed by a participating employer under the Act. The time during which employees have exempted themselves from the employer-provided retirement system shall not be considered time in service. [6-15-98; 2.81.7.10 NMAC - Rn & A, 2 NMAC 81.7.10, 4/30/02]

NEW MEXICO RETIREE HEALTHCARE AUTHORITY

This is an amendment to 2.81.12.12. NMAC. This regulation was also renumbered and reformatted to comply with current NMAC requirements.

2.81.12.12 VACANCY ON THE BOARD BY CLASSIFIED STATE EMPLOYEE MEMBER:

A. In the event the classified state employee board member of the

NMRHCA board ~~[retires from his or her job]~~ ceases to be a classified state employee for any reason, is removed from the board, resigns from the board, or dies, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation or death.

B. In the event the classified state employee member of the NMRHCA board ceases to be employed as a classified state employee, and is not reemployed as a classified state employee within thirty (30) days, that member shall be considered to have resigned from the board.

C. ~~[At the time of the adoption of the resolution, the RHCA board chairperson shall fill the vacancy by appointing the first available alternate who received the most votes in the last election.]~~ In the event the classified state employee board member of the NMRHCA board ceases to be a classified state employee or resigns from the board, that member shall, within 15 days of the board's adoption of the resolution of vacancy, designate an active classified state employee to complete the balance of the member's term as classified state employee member by identifying such person in a letter to the chairperson of the board, who shall, by letter to the person so designated, appoint such person as successor classified state employee member.

D. In the event the classified state employee board member of the NMRHCA board is removed from the board or dies, an active classified state employee shall be designated as successor classified state employee board member by vote of the remaining members of the board within 15 days of the board's adoption of the resolution of vacancy.

[4-28-99; 2.81.12.12 NMAC - Rn & A, 2 NMAC 81.12.12, 4/30/02]

NEW MEXICO SECRETARY OF STATE

This is an amendment to 1.10.12 NMAC, Section 6, 7, 8, 9, 13, 15 and 16.

1.10.12.6 OBJECTIVE: The Absent Voter Act (Sections 1-6-1 through ~~[1-6-25]~~ 1-6-18 NMSA 1978) hereinafter referred to as the Act was enacted by Laws 1969, Chapter 240, Section 127. Pursuant to the New Mexico Constitution, Art. IV, Section 23, the Act was amended by Laws 1999, Chapter 267 and Laws 2001, Chapter 58 ~~[took effect on June 16, 1999 pursuant to the New Mexico Constitution, Article IV,~~

~~Section 23].~~ The purpose of the Act is to allow voters to vote 40 days prior to an election on paper ballots or voting systems in person at the office of their county clerk or to vote 20 days prior to an election ~~[in person at the office of their county clerk or]~~ at an alternate location established by the county clerk on paper ballots or a voting machine. The Absent Voter Precinct Act (Sections 1-6-19 through 1-6-25 NMSA 1978 was enacted by Laws 1969, Chapter 54, Section 1). The objective of this rule is to establish rules and regulations protecting the integrity, security and secrecy of the absentee ballot.

[1.10.12.6 NMAC - N, 3-31-2000; A, 4-30-02]

1.10.12.7 DEFINITIONS:

A. "Absentee ballot" means a method of voting by ballot, accomplished by a voter who is absent from his polling place on election day.

~~[A-]~~ **B. "Absentee ballot register"** means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter; and the date and time of receipt of the ballot.

~~[B-]~~ **C. "Absentee voting daily report"** means a form prescribed and approved by the office of the secretary of state consisting of the voting machine serial number, beginning public counter number, ending public counter number, beginning protective counter number, ending protective counter number, closing seal number and total number of voters. It shall contain a signature line for the county clerk or authorized deputy and a line for the date.

~~[C-]~~ **D. "Alternate location"** means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot twenty (20) days prior to an election.

~~[D-]~~ **E. "Application"** means an absentee ballot application, prescribed, printed and furnished by the secretary of state to a county clerk.

~~[E-]~~ **F. "Ballot"** means a paper ballot card used on an optical scan vote tabulating machine or direct recording electronic voting system.

~~[F-]~~ **G. "Challenger"** means a voter of a precinct in that county to which he is appointed as challenger.

~~[G-]~~ **H. "County canvassing board"** means the board of county commissioners in each county (Section 1-13.1 NMSA 1978).

~~[H-]~~ **I. "Direct recording**

electronic voting system” means one that records votes by means of a ballot display provided with electro-optical devices that can be actuated by the voter; that processes the data by means of a computer program, and that records ballot images in internal memory devices. It produces a tabulation of the voting data as a hard copy or stored in a removable memory device.

~~[J]~~ **J.** “**Election**” means any special statewide election, general election, primary election or special elections to fill vacancies in the office of United States representative and regular or special school district elections.

~~[K]~~ **K.** “**Electronic vote tabulating (EVT) marksense voting system**” or “**optical scan vote tabulating system**” means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

~~[L]~~ **L.** “**High-speed central count marksense ballot tabulator**” means a self-contained optical scan ballot tabulator, that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high-speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

~~[M]~~ **M.** “**Immediate family**” means a spouse, children, parents, brothers and sisters.

~~[N]~~ **N.** “**Marksense ballot**” means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high-speed central count marksense vote tabulator.

~~[O]~~ **O.** “**Overvoted ballot**” means a ballot on which the voter has voted for more than the number of candidates to be elected for that office, or in both the affirmative and negative on a ballot question.

~~[P]~~ **P.** “**Precinct board**” means the absent voter precinct board: appointed election officials pursuant to Section 1-6-24 NMSA 1978).

~~[Q]~~ **Q.** “**Voter**” means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the State of New Mexico.

R. “**Voting response area**” means the place on an absentee ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.12.7 NMAC - N, 3-31-2000; A, 4-30-02]

1.10.12.8 APPLICATION:

A. An application for an absentee ballot may be obtained only by the voter from the clerk of the county in which the voter resides. A voter may request an application in person, by telephone or by mail and may request additional applications for members of his immediate family.

B. Completed applications shall be signed by the voter and returned to his county clerk. Applications returned to the county clerk by facsimile means shall not be accepted. The county clerk shall not accept any application without the original signature of the voter.

C. Candidates for political office, individuals, political campaigns, political committees, political parties, or labor unions shall not print, furnish or distribute the official application for an absentee ballot.

D. Candidates for political office, individuals, political campaigns, political committees, political parties, or labor unions who send mass produced requests for applications for an absentee ballot to voters as part of an organized voter turnout drive, shall clearly indicate, by means of boldface, minimum 12 point type, that the request for an application does not constitute the application itself and that the voter will not receive an absentee ballot unless the official application for an absentee ballot is obtained from, and returned to, the office of the applicant’s county clerk.

[1.10.12.8 NMAC - N, 3-31-2000; A, 4-30-02]

1.10.12.9 ABSENTEE VOTING:

A. A voter may vote absentee by:

(1) completing and subscribing an absentee ballot application, wherein the ballot is mailed to the residence or temporary residence of the voter. The voter shall mark the ballot, seal the envelope and sign as provided according to the instructions. The voter may mail or hand-deliver his ballot to the office of the county clerk, or designate another individual to deliver the ballot;

(2) completing and signing an absentee ballot application in the office of the county clerk. The voter shall mark the ballot, seal the envelope and sign as provided according to the instructions. The voter shall hand-deliver the ballot to the county clerk or designated deputy prior to leaving the office of the county clerk;

(3) completing and signing an absentee ballot application in the office of the county clerk [~~twenty (20)~~ forty (40)]

days prior to the election. The voter ~~[shall]~~ may cast his ballot on a paper ballot or direct recording electronic voting system or electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978; or

(4) completing and signing an absentee ballot application at an alternate location established by the county clerk and voting on a direct recording electronic voting system or electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978.

B. Upon receipt of the absentee ballot application from the voter, the county clerk or precinct board member shall review it for completeness. When it is determined that the application is complete and that the applicant has a valid certificate of registration on file in that county, the county clerk or precinct board member shall mark the application “accepted” with the date and time of receipt and enter the required information in the absentee ballot register. If the applicant is voting absentee in-person, the county clerk or precinct board member shall instruct the voter on how to proceed to vote. The county clerk or precinct board member shall ensure that the applicant votes before leaving the office of the county clerk or alternate location.

C. An absentee voter who requests assistance may be assisted only by a person of the voter’s own choice, provided that the voter is visually impaired, physically disabled, unable to read or write, or a member of a language minority who has an inability to read well enough to exercise the elective franchise.

D. For the purposes of absentee voting, electioneering is not permitted in the office of the county clerk or alternate location. Electioneering consists of any form of campaigning within one hundred (100) feet of the county clerk’s office or alternate location. Electioneering includes the display of signs and/or campaign literature, campaign buttons, t-shirts, hats, pins, or other such items.

[1.10.12.9 NMAC - N, 3-31-2000, A, 4-30-02]

1.10.12.13 VOTE TABULATION:

A. Any voter voting by electronic vote tabulating marksense voting system shall be instructed to mark and personally feed the ballot into the voting machine in order to record his or her vote.

B. Electronic vote tabulating marksense voting systems shall be programmed to insure that no overvoted, blank, or misread ballots are accepted or scanned by the voting system. All such ballots shall

be rejected by the tabulator and returned to the voter, if the voter is voting absentee in-person.

C. Any voter voting absentee by means of a direct recording electronic system shall be instructed on the use of the voting machine before the voter enters the machine. The voter shall be instructed to press the square to the right of the candidate name or question on which he desires to vote, and after all selections are made, the voter shall be instructed to press the vote button in the lower right hand corner of the voting machine to record each vote. The direct recording electronic voting system shall not be reactivated if the voter has pressed the cast vote button.

D. In counties where the absentee precinct board enters each absentee ballot on a direct recording electronic voting system, the absentee precinct board shall be instructed in the proper use of the voting machine by the county clerk, authorized deputy clerk or voting machine technician.

E. Absentee votes cast on any voting device in the office of the county clerk [~~twenty (20)~~ forty (40)] days prior to an election, shall not be combined and counted with hand-delivered or mailed absentee ballots. A separate voting machine or voting machine cartridge shall be used to tabulate these ballots.

F. Class A counties in possession of high-speed central count marksense ballot tabulators shall use such machines on election day in the tabulation of hand-delivered or mailed marksense absentee ballots.

G. High-speed central count marksense vote tabulators used to tabulate marksense absentee ballots shall be programmed to tabulate ballots by legislative district.

[1.10.12.13 NMAC - N, 3-31-2000; A, 4-30-02]

1.10.12.15 A B S E N T E E PRECINCT BOARDS:

A. On election day, prior to 7:00 a.m., the county clerk shall issue a receipt for all voting machines and ballot boxes to a special deputy county clerk. The receipt shall indicate the date and time the machine was removed from the office of the county clerk or alternate location, by whom, the serial number of the machine and the number of votes recorded on the machine. At 7:00 a.m. on election day a special deputy county clerk shall deliver the electronic voting machines, all ballot boxes and the absentee ballot register to the absentee precinct board. The special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge

specifying the serial number of the machine, the number of votes recorded on the machine, the number of ballot boxes delivered and shall return such receipt to the county clerk for filing.

B. Absent voter precincts shall coincide with the boundaries of state representative districts. In multi-county representative districts, the boundaries of the absent voter precinct shall coincide with the boundaries of that portion of the representative district lying within the county.

C. The county clerk shall issue red pencils to be used as writing instruments by the precinct board, except the presiding judge shall be issued an ink pen for the purpose of signing and filling out documents required by the Election Code. Precinct board members handling and/or counting ballots shall have no other writing or marking instruments.

D. [~~If a ballot is indistinctly or incorrectly marked, precinct board members may determine the intent of a voter only by unanimous decision of the precinct board.~~] If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, precinct board members shall count the ballot only if the voter has marked a cross (X) or a check (✓) within the voting response area. A ballot shall also be counted when the voter, attempting to complete the arrow, has marked an arrowhead on the tail portion of the arrow in the voting response area. In no case, shall the precinct board mark or remark the ballot. In the instance of machine malfunction, the precinct board shall hand tally ballots.

E. Precinct boards that enter absentee ballots on a direct recording electronic voting system [~~may determine the intent of the voter where ballots are incorrectly or indistinctly marked only by unanimous decision of the precinct board~~] shall count the ballot only if the voter has marked a cross (X) or a check (✓) within the voting response area . A ballot shall also be counted when the voter, attempting to complete the arrow, has marked an arrowhead on the tail portion of the arrow in the voting response area. In no case, shall the precinct board mark or remark the ballot.

F. Absentee ballots received by mail or hand delivered during the forty (40) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or alternate location during the twenty (20) day period shall be counted [~~and reported separately.~~] by legislative district.

G. Absentee ballots received by mail or hand delivered during the forty (40) day absentee voting period

shall not be counted on the same voting system used for in-person voting at the office of the county clerk or any voting system used at an alternate location.

[1.10.12.15 NMAC - N, 3-31-2000, A, 4-30-02]

1.10.12.16 CANVASSING:

A. The county canvassing board shall ensure that absentee ballots received by mail or hand delivered during the forty (40) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or alternate location during the twenty (20) day period shall be counted [~~and reported separately.~~] by legislative district.

B. The canvassing of absentee ballots shall not extend to correcting errors in election returns. The canvassing board may only detect errors and summon the precinct board. The canvassing board shall not have access to absentee ballots and shall not determine the validity of any absentee ballot cast.

C. The canvassing board shall not order hand tallying of any absentee ballots, unless so ordered by a court of law, and shall be bound by the results of an initial voting machine recheck, if such recheck has occurred.

[1.10.12.16 NMAC - N, 3-31-2000; A, 4-30-02]

End of Adopted Rules and Regulations Section

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SUBMITTAL DEADLINES AND PUBLICATION DATES

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