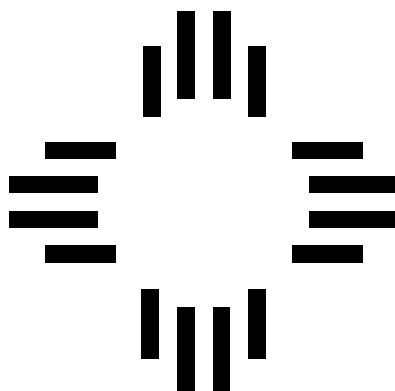


New Mexico Register

Volume XIII, Issue Number 10
May 31, 2002



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

The Commission of Public Records
Administrative Law Division
2002

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New Mexico Register

Volume XIII, Number 10

May 31, 2002

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO COMMISSION ON HIGHER EDUCATION

Notice of Rule Making

The New Mexico Commission on Higher Education is scheduled to approve an amendment to Vietnam Veterans' Scholarships, 5.7.16 NMAC (7/15/98), at its meetings in June 2002 at the Workforce Training Center of Albuquerque TVI, located at 5600 Eagle Rock Ave. in Albuquerque, as follows: committee meetings on June 12 and 13, 2002 from 8am to 5pm (tentative), and a full commission meeting on June 14, 2002 from 8am to 4pm (tentative).

New Mexico Commission on Higher Education
1068 Cerrillos Road
Santa Fe, NM 87505
505-827-7383

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has postponed its regular meeting, previously noticed for Tuesday, June 4, 2002. The meeting has been rescheduled for June 18, 2002 at 9:00 A.M. The meeting will be held at the New Mexico State Records Center and Archives, which is an accessible facility at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Kathy Mattison at 476-7902 by June 10, 2002. Public documents including the agenda and minutes can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

Notice of Rulemaking

Repeal

- 1 NMAC 3.2.93.379, ERRDS, Public Employee Labor Relations Board
- 1 NMAC 3.2.93.630, ERRDS, Human Services Department

New

- 1.18.630 NMAC, ERRDS, Human Services Department

Amendments

- 1.15.2 NMAC, GRRDS, Administrative
- 1.15.3 NMAC, GRRDS, General Administrative Records (For Use by Local Government and Educational Institutions)
- 1.18.350 NMAC, ERRDS, General Services Department
- 1.18.665 NMAC, ERRDS, Department of Health
- 1.18.790 NMAC, ERRDS, Department of Public Safety
- 1.18.805 NMAC, ERRDS, Highway and Transportation

Renumbered

From

- 1 NMAC 3.2.91.117
- 1 NMAC 3.2.91.119
- 1 NMAC 3.2.92.218.09
- 1 NMAC 3.2.92.218
- 1 NMAC 3.2.92.230
- 1 NMAC 3.2.92.244
- 1 NMAC 3.2.93.305
- 1 NMAC 3.2.93.308
- 1 NMAC 3.2.93.337
- 1 NMAC 3.2.93.341
- 1 NMAC 3.2.93.342
- 1 NMAC 3.2.93.343
- 1 NMAC 3.2.93.352
- 1 NMAC 3.2.93.360
- 1 NMAC 3.2.93.378
- 1 NMAC 3.2.93.418
- 1 NMAC 3.2.93.419
- 1 NMAC 3.2.93.516
- 1 NMAC 3.2.93.521
- 1 NMAC 3.2.93.670
- 1 NMAC 3.2.93.690
- 1 NMAC 3.2.93.705
- 1 NMAC 3.2.93.760
- 1 NMAC 3.2.93.765
- 1 NMAC 3.2.93.780
- 1 NMAC 3.2.93.794
- 1 NMAC 3.2.93.926
- 1 NMAC 3.2.93.927
- 1 NMAC 3.2.93.953
- 1 NMAC 3.2.93.969
- 1 NMAC 3.2.95.70
- 1 NMAC 3.2.95.71

To

- 1.16.117 NMAC, LRRDS, Legislative School Study Committee
- 1.16.119 NMAC, LRRDS, Legislative Maintenance
- 1.17.219 NMAC, JRRDS, Board Governing the Recording of Judicial Proceedings
- 1.17.220 NMAC, JRRDS, Administrative Office of the Courts
- 1.17.230 NMAC, JRRDS, New Mexico Districts Courts
- 1.17.244 NMAC, JRRDS, Bernalillo County Metropolitan Court
- 1.18.305 NMAC, ERRDS, Office of the Attorney General
- 1.18.308 NMAC, ERRDS, Office of the State Auditor
- 1.18.337 NMAC, ERRDS, State Investment Council
- 1.18.341 NMAC, ERRDS, Finance and Administration Department
- 1.18.342 NMAC, ERRDS, Public School Insurance Authority
- 1.18.343 NMAC, ERRDS, Retiree Health Care Authority
- 1.18.352 NMAC, ERRDS, Educational Retirement Board
- 1.18.360 NMAC, ERRDS, Lieutenant Governor's Office
- 1.18.378 NMAC, ERRDS, State Personnel Board
- 1.18.418 NMAC, ERRDS, Department of Tourism
- 1.18.419 NMAC, ERRDS, Economic Development Department
- 1.18.516 NMAC, ERRDS, Department of Game and Fish
- 1.18.521 NMAC, ERRDS, Energy Minerals and Natural Resources Department
- 1.18.670 NMAC, ERRDS, Veterans Services Commission
- 1.18.690 NMAC, ERRDS, Children, Youth and Families Department
- 1.18.705 NMAC, ERRDS, Department of Military Affairs
- 1.18.760 NMAC, ERRDS, Adult Parole Board
- 1.18.765 NMAC, ERRDS, Juvenile Parole Board
- 1.18.780 NMAC, ERRDS, Crime Victims Reparation Commission
- 1.18.794 NMAC, ERRDS, Mounted Patrol
- 1.18.926 NMAC, ERRDS, School for the Visually Handicapped
- 1.18.927 NMAC, ERRDS, School for the Deaf
- 1.18.953 NMAC, ERRDS, New Mexico State University
- 1.18.969 NMAC, ERRDS, University of New Mexico Hospital
- 1.20.2 NMAC, EDRRDS, New Mexico Public Schools
- 1.20.3 NMAC, EDRRDS, New Mexico Colleges and Universities

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION)
OF PROPOSED AMENDMENTS TO)
THE COMMISSION'S MOTOR)
TRANSPORTATION RULES.)

Docket No. 99-345-TR-M

SECOND SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN

that the New Mexico Public Regulation Commission ("Commission") proposes to adopt various amendments to the Commission's Motor Transportation Rules. This matter comes before the Commission on its own Motion after consideration of the comments previously submitted in this proceeding, and further deliberation regarding the Commission's Motor Transportation Rules. Being fully advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Public Regulation Commission Act authorizes the Commission to "adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties." NMSA 1978, Section 8-8-4(B)(10). The Motor Carrier Act vests with the Commission the duty to "prescribe rules, regulations and procedures for the administration of the Motor Carrier Act." NMSA 1978, Section 65-2-83(D).

2. Consistent with its rule-making authority, the Commission began this rulemaking proceeding by issuing a Notice of Proposed Rulemaking ("NOPR") on August 17, 1999. The NOPR proposed revisions to the Commission's Motor Transportation Rules that would: eliminate duplicative material existing in statutory law; propose new duties and responsibilities regarding the safety of a motor carrier's vehicles and drivers; increase the minimum public liability insurance requirements; and, create new application and reporting requirements. The NOPR also established a deadline for the filing of written comments and scheduled public comment hearings.

3. On May 4, 2000, the Staff of the Transportation Division ("Staff") filed a Motion to Reopen Comment Period. Staff requested the Commission to permit a supplemental comment period and hearing to adopt additional proposed amendments to the Motor Transportation Rules. In its Supplemental Notice of Proposed Rulemaking, the Commission granted Staff's Motion.

Additional substantive changes to the Motor Transportation Rules were proposed as set out in the Supplemental NOPR.

4. After holding further hearings and considering additional proposed revisions, the Commission issued a Notice of Continuation of Rulemaking Hearing on April 18, 2001. In that Notice, the Commission proposed to adopt the additional changes to the Motor Transportation Rules that were summarized in the Notice and contained in the draft rules attached thereto. The Notice invited additional comments and response comments, and scheduled a public comment hearing.

5. The Motor Transportation Rules proposed by this Second Supplemental NOPR have been revised and reformatted to an extent that requires these rules to be re-noticed and further public comment to be permitted. The rules proposed herein are designed to be as current and consistent as possible with all applicable requirements of State and federal law, and to streamline review and hearing procedures concerning authorizations sought from the Commission. These proposed rules also incorporate the changes described in the earlier Notices issued in this matter. Through these rules, we propose to repeal all resolutions pertaining to Transportation Division proceedings and the following Transportation Division rules: State Corporation Commission ("SCC") 70-8, Revoking Rule XV of the Regulations Regulating Aircraft Common Carriers and Adopting Replacement of Equipment List; SCC 72-16, The Law Regulating Aircraft Common Carriers Within the State of N.M. Together with Rules and Regulations; SCC 72-6, Order No. 2229, Docket No. 346; SCC Rule 79-1, Rules Governing Tariff Filing Requirements; SCC 85-1, In the Matter of the Adoption of Regulations Regarding the Transportation of Hazardous Materials; SCC 77-4, N.M. Ambulance Tariff No. 3-B; SCC Rule 95-04-TR, Parental Responsibility Act Rule; and SCC Motor Transportation Rules 201 through 276.

6. The Commission will take written comments on the rules proposed in this Second Supplemental NOPR from any interested person. Interested persons shall file their written comments no later than June 14, 2002. Any person wishing to respond to comments may do so by submitting written response comments no later than July 1, 2002. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. A copy of the proposed rule in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to Exhibit 1 shall be submitted in hard copy, and the

Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

7. Comments on the proposed amendments to the Motor Transportation Rules shall be sent to, and additional copies of the proposed rules can be obtained from:

Bettie Cordova
ATTN: Proposed Motor
Transportation Rules
New Mexico Public Regulation
Commission

P.O. Box 1269
Santa Fe, NM 87504-1269
Telephone: (505) 827-4526
Copies of the proposed rule may also be downloaded from the Commission's Web Site, www.nmprc.state.nm.us under "Transportation Division," then "Proposed Motor Transportation Rules."

8. The Commission will review all timely submitted written comments and will hold public hearings to take oral comment regarding the proposed rules. The schedule and locations for these public hearings is as follows:

(i) Wednesday,
May 29, 2002, at 10:00 a.m., at the Roswell Museum and Art Center, 11th & Main St. (Civic Center Plaza), Roswell, New Mexico;

(ii) Wednesday,
June 12, 2002, at 10:00 a.m., at the Civic Center, 200 West Arrington, Farmington, New Mexico; and

(iii) Wednesday,
July 10, 2002, at 10:00 a.m., at Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico.

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

10. Any person with a disability requiring special assistance in order to participate in a hearing should contact Bettie Cordova at (505) 827-4526 at least 48 hours prior to the commencement of the hearing.

11. Copies of this Notice should be sent to all persons on the Transportation Service List, to all motor carriers holding warrants, permits, or certificates (except for ambulance services, which are covered by a separate rule) issued by this Commission or its predecessor, to any other person requesting service, and

should be published in three newspapers of general circulation in the state and in the *New Mexico Register*.

IT IS THEREFORE ORDERED:

A. The Motor Transportation Rules attached as Exhibit 1 to this Second Supplemental Notice of Proposed Rulemaking are proposed for adoption as permanent rules as provided by this Notice.

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

C. Public hearings shall be held as provided in this Notice.

D. Staff of the Transportation Division shall mail a copy of this Notice, excluding Exhibit 1, to all persons on the Transportation Service List, to all motor carriers holding warrants, permits, or certificates (except for ambulance services) issued by this Commission or its predecessor, and to any other person requesting service. Staff shall cause this Notice to be published in three newspapers of general circulation in the state and in the *New Mexico Register*, shall provide the Notice by e-mail or facsimile transmission to those persons who have so requested, and shall post a copy of the proposed rules on the Commission's Web Site.

E. Staff shall provide copies of the proposed rules to all persons requesting copies.

F. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 7th day of May, 2002.

NEW MEXICO PUBLIC REGULATION COMMISSION

TONY SCHAEFER, CHAIRMAN

LYNDA M. LOVEJOY,
VICE CHAIRMAN

HERB H. HUGHES, COMMISSIONER

RORY McMINN, COMMISSIONER

JEROME D. BLOCK,
COMMISSIONER

**NEW MEXICO PUBLIC
SCHOOL CAPITAL
OUTLAY COUNCIL**

Public School Capital Outlay Unit
State Education Building
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

NOTICE OF PROPOSED RULEMAKING

The Public School Capital Outlay Council ("Council") is authorized to promulgate rules pursuant to Section 22-24-5.E New Mexico Statutes Annotated 1978. The Council is seeking public input and comment regarding the following proposed rules:

Proposed NMAC Number	Proposed Rule Name	Proposed Action
6.27.30 NMAC	Public School Capital Outlay Council: Adequacy Standards	Adopt New Rule
6.27.31 NMAC	Public School Capital Outlay Council: School Site and Outdoor Physical Education	Adopt New Rule
6.27.32 NMAC	Public School Capital Outlay Council: Academic Classroom Space and Physical Education	Adopt New Rule
6.27.33 NMAC	Public School Capital Outlay Council: Common Areas	Adopt New Rule

The Council will meet on June 4, 2002, at 10:00 a.m. in Room 317 of the State Capitol, Santa Fe, New Mexico. It is anticipated that the Council will direct staff to conduct a public hearing on June 17th, 2002 at 10:00 a.m. in room 317 of the State Capitol, for the purpose of seeking public comment regarding the proposed rules.

Copies of the proposed rules may be obtained from Lena Archuleta, Administrative Assistant, Public School Capital Outlay Unit, at 827-3963. The proposed rules will also be posted on the State Department of Education's website (<http://sde.state.nm.us/>). Written comments regarding the proposed rulemaking should be directed to Joey F. Martin at the address indicated on this notice or faxed to (505) 827-9931. Written comments will be accepted until 5 p.m. on Friday, July 12th, 2002; however, the submission of written comments at the earliest possible date is encouraged and the submission of e-mailed comments is preferred at the earliest possible date. E-mailed comments are to be submitted to larchuleta@sde.state.nm.us.

Final rules will be adopted by the Council at a public meeting for which notice is given in accordance with the Council's Open Meetings Policy. The agenda will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the Public School Capital Outlay Unit.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the Public School Capital Outlay Unit at 827-3963 as soon as possible.

**NEW MEXICO
STATE LAND OFFICE**

NOTICE OF RULE MAKING

Ray Powell, New Mexico Commissioner of Public Lands, and the New Mexico State Land Office (NMSLO) intend to promulgate a new rule, 19.2.16 NMAC, Rulemaking Procedures, which rule will supercede 19 NMAC 2. SLO 16 ("Relating to Promulgation, Amendment and Repeal of Rules") in its entirety. 19 NMAC 2. SLO 16 will be repealed concurrently with the adoption of the new rule.

The proposed rule governs the procedures for the adoption, amendment and repeal of rules by the Commissioner and the NMSLO. The proposed rule follows the same procedures in the current rule but will expand the public comment period

on NMSLO proposed rules from 20 to 30 days, will provide notice of public hearings on rules at least 30 days in advance of the hearing, will require publication and posting of public notices for rulemakings in the *New Mexico Register*, in at least one newspaper and on a website, and will allow the public to submit comments on proposed rules by electronic mail. The proposed rule also contains changes that will bring rulemaking procedures into compliance with the State Rules Act and the New Mexico Administrative Code.

A public hearing will be held on the proposed rule on July 1, 2002, at Morgan Hall in the Edward J. Lopez State Land Office Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico, beginning at 9:00 a.m. Written comments on the proposed rule, including any comments submitted by e-mail, must be received by 5:00 p.m. on July 1, 2002, in order to be consid-

ered by the Commissioner.

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

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

Disabled individuals who wish to participate in the hearings and who require special equipment or assistance should contact the New Mexico State Land Office at the above noted telephone and fax numbers or address no later than June 17, 2002.

NEW MEXICO YOUTH CONSERVATION CORPS COMMISSION

A hearing of the New Mexico Youth Conservation Corps Commission will be held at 10:00 a.m. on July 15, 2002 at the Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Office of the Secretary Conference Room, Santa Fe, for the purpose of discussing revisions made to the YCC rules and regulations to be submitted to the State Records and Archives Center. Some rules content has been revised.

If you are an individual with a disability who is need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Wendy Kent at 476-3496, at least 48 hours prior to the meeting. Public documents, including the agenda and the minutes, can be provided in various accessible forms as needed.

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO BOARD OF DENTAL HEALTH CARE

16 NMAC 5.15 Dentists, Anesthesia Administration, filed 09-17-96, is hereby repealed and replaced by 16.5.15 NMAC, effective 05-31-02.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DEN- TISTS, DENTAL HYGIENISTS, ETC.) PART 15 DENTISTS, ANES- THESIA ADMINISTRATION

16.5.15.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care
[16.5.15.1 NMAC - Rp 16 NMAC 5.15.1,
5-31-02]

16.5.15.2 SCOPE: The provisions of Part 15 of Chapter 5 apply to all dentists who hold or who are applying for certification to administer anesthesia or analgesia.
[16.5.15.2 NMAC- Rp 16 NMAC 5.15.2, 5-31-02]

**16.5.15.3 S T A T U T O R Y
AUTHORITY:** Part 15 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, NMSA 1978, 61-5A-22 (1996 Repl. Pam.).
[16.5.15.3 NMAC - Rp 16 NMAC 5.15.3,
5-31-02]

16.5.15.4 D U R A T I O N :
Permanent
[16.5.15.4 NMAC - Rp 16 NMAC 5.15.4,
5-31-02]

16.5.15.5 EFFECTIVE DATE:
May 31, 2002 unless a different date is cited at the end of a Section
[16.5.15.5 NMAC - Rp 16 NMAC 5.15.5,
5-31-02]

16.5.15.6 OBJECTIVE:
A. To establish guidelines and procedures for the regulation of dentists who administer nitrous oxide inhalation analgesia, conscious sedation, deep sedation, or general anesthesia in an office located in New Mexico.

B. These guidelines are not meant to regulate the existing precedent where New Mexico licensed dentists may have hospital privileges to provide anesthesia/sedation to dental patients in the operat-

ing room or emergency room based on their training, education and policy of the hospital.

[16.5.15.6 NMAC - Rp 16 NMAC 5.15.6,
5-31-02]

16.5.15.7 DEFINITIONS:

A. "Conscious Sedation" means a minimally depressed level of consciousness that retains the patients ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than conscious sedation.

B. "Deep Sedation" means a induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic or non- pharmacologic method or combination thereof.

C. "General Anesthesia" means a induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

D. "Monitor" means to watch or check on.

E. "Nitrous Oxide Inhalation Analgesia" means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

F. " P r e s c r i b e d Administration" means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist's authorization.

G. "Combination inhalation-enteral sedation (combined conscious sedation)" - conscious sedation using inhalation and enteral agents. Nitrous

oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation of general anesthesia.

[16.5.15.7 NMAC - Rp 16 NMAC 5.15.7,
5-31-02]

16.5.15.8 REQUIREMENT TO BE REGISTERED OR CERTIFIED:

Dentists who administer nitrous oxide inhalation analgesia in New Mexico are required to be registered with the Board. Dentists who administer conscious sedation, deep sedation, or general anesthesia in New Mexico are required to obtain an anesthesia permit from the Board. Any dentist who fails to comply with these rules may be subject to disciplinary action by the Board. Anesthesia permits valid on the effective date of this rule continue to be valid until the expiration date indicated on the permit.
[16.5.15.8 NMAC - Rp 16 NMAC 5.15.8,
5-31-02]

16.5.15.9 ANESTHESIA COM- MITTEE:

A. Appointment: All members of the Anesthesia Committee serve at the pleasure of the Board. The Board Chair will appoint members to serve on the Anesthesia Committee for 5 year terms beginning on July 1. Individuals for consideration may be nominated by the New Mexico Dental Association, any local dental society, or the Anesthesia Committee.

B. Terms: Each member shall be appointed to serve a term of five years, however, the appointments shall be staggered so that no more than forty percent of the members will expire in any given year.

C. Reimbursement: The Anesthesia Committee examiners shall be paid one hundred dollars, in addition to mileage and per diem for exams outside of the community where they practice dentistry, upon the completion of each office anesthesia examination and evaluation.

D. C o m m i t t e e Composition: The Anesthesia Committee shall consist of licensed dentists, including at least 1 Board Certified Oral and Maxillofacial Surgeon, 1 general dentist, a non-voting ex-officio Board member, 1 dentist not engaged in the use of sedation techniques, and when possible, representatives of other interested dental specialties. Each anesthesia committee member should be currently practicing some form of sedation and be currently qualified as an examiner, except the non-sedating dentist.

E. Duties: Establish policies and procedures for the evaluation of

applications, inspections of facilities, and examination of applicants; Make recommendations to the Board in regard to each application; Report to the Board, as needed, at regularly scheduled Board meetings the status of activities of the Anesthesia Committee; Inform the Board of any licensee who fails to cooperate with the requirements for application, registration or renewal of permits; Inspect facilities upon request of the Board; and Upon request, assist the Board in the investigation of complaints concerning the administration of anesthesia or analgesia.

[16.5.15.9 NMAC - Rp 16 NMAC 5.15.9, 5-31-02]

16.5.15.10 ADMINISTRATION OF NITROUS OXIDE ANALGESIA:

A. Registration Required: Each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the Board. A registration form will be provided upon initial application or upon request, and contain information to verify the dentist, facility, and staff meet the requirements specified in paragraph A of this rule. When the registration has been approved by the Secretary-Treasurer of the Board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

B. Requirements for Registration: Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(1) Completed a course of training while a student in an accredited school of dentistry or through postgraduate training that meets the requirements of the October 2000 ADA Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry.

(2) Have adequate equipment which includes fail-safe features and a 25% minimum oxygen flow and an effective scavenging system;

(3) Each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification;

(4) All use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist; and

(5) The patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate.

(6) Current permit holders would be grandfathered by New Mexico laws in

effect at the time of original issue of their permit.

[16.5.15.10 NMAC - Rp 16 NMAC 5.15.10, 5-31-02]

16.5.15.11 ADMINISTRATION OF CONSCIOUS AND DEEP SEDATION:

The following three categories of anesthesia shall not be administered in a dental facility unless the licensed dentist has obtained a permit from the Board. The Conscious Sedation II and Deep Sedation/General Anesthesia permits are issued to the dentist for a specific practice location, unless the anesthesia provider holds an Anesthesia Permit at Large. Administration without a permit is grounds for disciplinary action against the licensee.

A. Conscious Sedation I Permit allows a licensed dentist to use only oral or rectal medications or combined inhalation-enteral conscious sedation to obtain conscious sedation on an outpatient basis for dental patients.

B. Conscious Sedation II Permit allows a licensed dentist to use par-enteral injection to obtain conscious sedation on an outpatient basis for dental patients.

C. Deep Sedation/General Anesthesia Permit allows a licensed dentist to use deep sedation or general anesthesia on an outpatient basis for dental patients.

D. Permit Levels: The level of permits in order of increasing complexity are conscious sedation I, conscious sedation II, and deep sedation/general anesthesia. When a permit is issued for one level, all levels of lesser complexity are considered within the scope of that permit. [16.5.15.11 NMAC - Rp 16 NMAC 5.15.11, 5-31-02]

16.5.15.12 PERMIT REQUIREMENTS:

A. Conscious Sedation I:
(1) To administer enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) the dentist must satisfy one of the following criteria:

(a) Must have completed training to the level of competency in enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) consistent with the that prescribed in Part I and Part III of the October 2000 ADA Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry.

(b) Completion of an ADA accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage enteral and/or combination inhalation-enteral conscious sedation (combined

conscious sedation) consistent with that prescribed in Part II of the October 2000 ADA Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry.

(c) Current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation, staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto in accordance with the October 2000 ADA Guidelines for the use of Conscious Sedation, Deep sedation and General Anesthesia for Dentists;

(3) The dentist and auxiliary clinical personnel have current basic life support certification; and

(4) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed in accordance with the October 2000 ADA Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists.

(5) The following rules shall apply to the administration of enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) in the dental office.

(a) Administration of enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) by another duly qualified dentist or physician requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS). The operating dentists shall ensure that the dentist or physician anesthetist is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the staff of an accredited New Mexico hospital in the community in which the anesthesia occurs. The operating dentist shall be responsible for notifying the Anesthesia Committee of the New Mexico Board of Dental Health Care of all anesthetists used.

(b) When a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, administration of enteral and/or combination inhalation -enteral conscious sedation (combined conscious sedation) by a CRNA shall require the operating dentist to have completed training in enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) commensurate with these rules. The operating dentist shall hold a current Conscious Sedation I permit. The operating dentist shall ensure that the CRNA is duly licensed in New Mexico to provide anesthesia and be a

member in good standing of the anesthesiology staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the Anesthesia Committee of the New Mexico Board of Dental Health Care of all anesthetists used.

(c) A dentist administering enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) must document current successful completion of a Basic Life Support (BLS) course.

(d) A dental facility utilizing dentist, physician or CRNA anesthetists shall be registered with the Board as a Conscious Sedation I Facility.

(e) The operating dentist must ensure that the anesthesia permit holder/provider provides for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of enteral and/or combined conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

B. Conscious Sedation II:

(1) To administer parenteral conscious sedation the dentist must satisfy one of the following criteria:

(a) Completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirements described in Part III of the October 2000 ADA Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry.

(b) Completion of an ADA accredited post-doctoral training program (e.g. general practice residency), which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation.

(c) Current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation in accordance with the October 2000 ADA Guidelines for the use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists;

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto;

(4) The dentist and auxiliary clinical personnel have current basic life support certification;

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was

performed in accordance with the October 2000 ADA Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the Anesthesia Committee.

(7) The following rules shall apply to the administration of parenteral conscious sedation in the dental office.

(a) Administration of parenteral Conscious Sedation by another duly qualified dentist or physician requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS). The operating dentist shall ensure that the dentist or physician anesthetist is certified in Advanced Cardiac Life Support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the Anesthesia Committee of the New Mexico Board of Dental Health Care of all anesthetists used.

(b) When a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, administration of parenteral conscious sedation by a CRNA shall require the operating dentist to have completed training in parenteral conscious sedation commensurate with these rules. The operating dentist shall hold a current Conscious Sedation II permit. The operating dentist shall ensure that the CRNA is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the anesthesiology staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the Anesthesia Committee of the New Mexico Board of Dental Health Care of all anesthetists used.

(c) A dentist administering parenteral conscious sedation must document current successful completion of:

(i) A Basic Life Support (BLS) course

(ii) Advanced Cardiac Life Support (ACLS) or an appropriate equivalent as approved by the Anesthesia Committee.

(d) A dental facility utilizing dentist, physician or CRNA anesthetists shall be registered with the Board as a Conscious Sedation II Facility and the facility and staff shall be evaluated as such.

(e) The operating dentist must ensure that the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists, if any, and

appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

C. Deep Sedation/General Anesthesia:

(1) To administer deep sedation/general anesthesia, the dentist must satisfy one of the following criteria:

(a) Completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in Part II of the October 2000 ADA Guidelines for Teaching and Comprehensive Control of Anxiety and Pain in Dentistry.

(b) Completion of an ADA accredited post-doctoral training program (e.g. oral and maxillofacial surgery), which affords comprehensive and appropriate training necessary to administer and manage deep sedation/general anesthesia, commensurate with these rules.

(c) Current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of deep sedation or general anesthesia in accordance with the October 2000 ADA Guidelines for the use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto;

(4) The dentist and auxiliary clinical personnel have current basic life support certification;

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed in accordance with the October 2000 ADA Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the Anesthesia Committee.

(7) The following rules shall apply to the administration of deep sedation/general anesthesia in the dental office.

(a) Administration of deep sedation/general anesthesia by another duly qualified dentist or physician requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS). The operating dentist shall ensure that the acting anesthetist is certified in Advanced Cardiac Life Support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New

Mexico hospital. The operating dentist shall be responsible for notifying the Anesthesia Committee of the New Mexico Board of Dental Health Care of all anesthetists used.

(b) When a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, administration of deep sedation/general anesthesia by a CRNA shall require the operating dentist to have completed training in deep sedation/general anesthesia commensurate with these rules. The operating dentist shall hold a current Deep Sedation/General Anesthesia permit. The operating dentist shall ensure that the CRNA is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the anesthesiology staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the Anesthesia Committee of the New Mexico Board of Dental Health Care of all anesthetists used.

(c) A dentist administering deep sedation/general anesthesia must document current, successful completion of an Advanced Cardiac Life Support (ACLS) course, or an equivalent as approved by the Anesthesia Committee.

(d) A dental facility utilizing dentist, physician or CRNA anesthetists shall be registered with the Board as a Deep Sedation/General Anesthesia Facility and the facility and staff shall be evaluated as such.

(e) The operating dentist must ensure that the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of deep sedation and general anesthesia, including immediate access to pharmacologic antagonists and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. Advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available. Appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

D Anesthesia Permit at Large: This permit allows the holder to provide anesthesia services to patients in dental offices on an out-patient basis. The holder of the "Anesthesia Permit at Large" assumes all responsibility for the administration of the sedation or anesthesia in the dental office.

(1) To hold an "Anesthesia Permit at Large" a dentist must meet the requirements of Subsection C of 16.5.12 NMAC

Deep Sedation/General Anesthesia.

(2) The holder of a "Permit at Large" may be evaluated and inspected by the Anesthesia Committee as deemed necessary to assure safety to the public.

(3) The holder of such a permit agrees to have available at all times all monitors, emergency equipment, and other necessary drugs and materials when administering conscious sedation, deep sedation, and general anesthesia.

(4) The permit holder will inform the Board of all dental facilities where anesthesia services are to be provided and follow all other procedures as outlined in Subsection C of 16.5.12 NMAC Deep Sedation/General Anesthesia.

[16.5.15.12 NMAC - Rp 16 NMAC 5.15.12, 5-31-02]

16.5.15.13 REPORTING

ADVERSE INCIDENTS: Each licensed dentist must submit a written report to the Board within a period of thirty days of any significant morbidity or mortality or other incident which results in temporary or permanent physical or mental injury of a patient during, or as a result of, nitrous oxide inhalation analgesia, conscious sedation administered via oral, rectal, or parenteral routes, deep sedation, or general anesthesia. The report is required regardless of the need for hospitalization after the incident and shall include the following:

A. Description of the dental procedure;

B. Description of the pre-operative physical condition of the patient;

C. List of drugs and dosage administered and route of administration;

D. Description in detail of techniques utilized in administering the drugs utilized;

E. The names of auxiliary personnel in attendance; and

F. Description of the adverse occurrence to include the following: detailed description of symptoms, of any incident; treatment initiated on the patient; response of the patient to the treatment; description of the patient's condition on termination of treatment; and, copies of the patient record, medical history and operative report.

[16.5.15.13 NMAC - Rp 16 NMAC 5.15.13, 5-31-02]

16.5.15.14 FAILURE TO

REPORT: Failure to comply with the reporting requirements of Section 13 of this Part shall be grounds for disciplinary action against the licensee. In accordance with the provisions of the Uniform Licensing Act, the Board may take any actions enumerated

in Part 16 of these rules, as well as revoke the anesthesia permit.

[16.5.15.14 NMAC - Rp 16 NMAC 5.15.14, 5-31-02]

16.5.15.15 PERMIT APPLICATION PROCEDURE:

A. Applications may be obtained from the Board office. The completed application, accompanied by the required permit fee as defined in Part 5, is forwarded to the Anesthesia Committee for evaluation.

B. Temporary Permits. The Anesthesia Committee evaluates the application and identifies any additional information required. If the application appears to be in order, the Anesthesia Committee may recommend the Board issue a temporary permit. Temporary permits allow time to complete processing of the application, administer the examination and inspect the facility.

(1) The temporary permit shall not be valid for more than 12 months;

(2) The permit application fee includes the cost of the temporary permit and the initial permit; and

(3) A temporary permit shall be revoked by the Board on the following grounds: the applicant fails the Anesthesia Committee's examination; the applicant is found to be practicing outside the recognized standard of care in regard to administration of anesthesia; or the applicant fails to cooperate with the timely scheduling of the examination and facility inspection.

C. Examination/Evaluation: The Anesthesia Committee will schedule the examination and facility inspection, when required, with the applicant. The Anesthesia Committee uses the American Association of Oral and Maxillofacial Surgeons Office Anesthesia Evaluation Manual as a guide for the examinations. Incomplete applications will be returned by the Anesthesia Committee to the Board office with a clear indication of the deficient areas.

D. Final Approval. After final evaluation of the application and examination results, the Anesthesia Committee recommends final action on the application to the Board. The Board makes the final determination on approval of the permit. If an application is denied for failure to meet the requirements of Section 10 of this Part, the areas of non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.15 NMAC - Rp 16 NMAC 5.15.15, 5-31-02]

16.5.15.16 PERMIT EXPIRATION AND RENEWAL:

A. Expiration: Anesthesia permits are issued for six years from the last day of the month in which the initial permit was issued.

B. Renewal: Renewal applications will be sent to each dentist prior to the expiration date of the anesthesia permit. The completed application, along with the required fee must be returned to the Board office prior to permit expiration. The permit renewal application will be forwarded to the Anesthesia Committee, which will schedule a re-examination for holders of Conscious Sedation II and General Anesthesia permits.

C. New facility evaluation: A dentist who holds a Conscious Sedation II or General Anesthesia permit and who relocates his practice requires a new permit based on re-examination. The permit fee will be charged and the new permit will be issued in accordance with paragraph 16.1.

D. Re-examination/evaluation: The Board may require a re-examination or a re-evaluation of the credentials, facilities, equipment, personnel, and procedures of a permit holder to determine if the dentist is currently qualified to administer anesthesia. The Board or its agents shall notify the dentist to be re-examined or re-evaluated 180 days in advance of permit expiration. The notification will indicate the content and format of the examination/evaluation

E. Permit Expiration: Failure of a dentist to renew his license and permit, or to schedule a required office re-evaluation within thirty days of receipt of the notification, or failure on the part of the licensee to successfully complete the examination/evaluation, will cause the permit to expire.

[16.5.15.16 NMAC - Rp 16 NMAC 5.15.16, 5-31-02]

HISTORY OF 16.5.15 NMAC:

Pre NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

Article XIV, Administration Of Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General Anesthesia, filed 09-04-86;

BODHC Rule 13, Administration Of Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General Anesthesia, filed 02-09-89;

BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07-31-95.

History of Repealed Material: 85-1, Repealer, filed 10-29-85.

BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07-31-95, **repealed** effective 05-31-2002.

Other History:

BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07-31-95; **renumbered, reformatted and replaced** by 16 NMAC 5.15, Dentists, Analgesia Administration, filed 09-17-96;

16 NMAC 5.15, Dentists, Analgesia Administration, filed 09-17-96, **replaced** by 16.5.15 NMAC, Dentists, Analgesia Administration, effective 05-31-2002.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.5.8 NMAC:

16.5.5.8 FEES:

A. All fees are non-refundable.

B. Application for licensure by examination fee is ~~[\$400]~~\$500, which includes the licensing period.

C. Application for licensure by credential fee is ~~[\$650]~~\$750, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.

E. Triennial Renewal Fee for all dental licensees is ~~[\$300]~~\$450.

F. Repealed
G. Temporary License Fees:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$200;

(3) twelve month license, application fee of \$100, license fee of \$300.

H. Anesthesia Permit Fees:

(1) Nitrous Oxide permit fee is \$25.

(2) Conscious Sedation I permit fee is \$25.

(3) Conscious Sedation II permit fee is \$300.

(4) Deep Sedation and General Anesthesia permit fee is \$300.

I. Late fee for renewal applications received but not complete, or not received or postmarked by June 30 is \$100.

J. Reinstatement Fee is \$400.

K. Administrative and Duplication Fees.

(1) Duplicate license fee is \$25;

(2) Multiple copies of the Statute

or Rules are \$10 each;

(3) Copy fees are \$0.50 per page, with a minimum charge of \$5.00;

(5) List of current dental licensees is \$250. An annual list of current licensees is available to the professional association upon request at no cost; and

(6) Mailing labels of current dental licensees is \$300.

L. Impaired Fee: In addition to the license renewal fee, each dentist subject to renewal will be assessed an amount not to exceed \$40 per triennial renewal period.

[10-21-70, 3-14-73, 4-11-81, 3-7-88, 4-12-92, 3-16-94, 5-31-95, 9-30-96, 12-15-97, 5-28-99, 8-16-99; 16.5.5.8 NMAC - Rn & A, 16 NMAC 5.5.8, 06-14-01; A, 5-31-02]

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.60.3 NMAC, Sections 5 and 8.

6.60.3.5 EFFECTIVE DATE: July 1, 2000, unless a later date is cited in the history note at the end of a section.

[07-01-00; 6.60.3.5 NMAC - Rn, 6 NMAC 4.2.2.1.5 & A, 06-14-01; A, 06-01-02]

6.60.3.8 REQUIREMENTS FOR ALTERNATIVE LICENSURE: To receive a level 1, three-year alternative license, an applicant must meet the following requirements:

A. Degree Requirements - An applicant for alternative licensure must meet the provisions of Subsection A, Paragraphs (1), (2), and (3) of 6.60.3.8 NMAC.

(1) Must possess a bachelor of arts or science degree from a regionally accredited college or university including completion of a minimum of thirty semester hours of graduate or undergraduate credit in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the State Board; or

(2) Must possess a master of arts or science degree from a regionally accredited college or university including completion of a minimum of twelve graduate credit hours in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the State Board; or

(3) Must possess a doctor of philosophy or doctor of education degree from a regionally accredited college or university. The degree shall appertain and corre-

spond to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the State Board.

B. Professional Teacher Education Requirements - An applicant for alternative licensure must meet the provisions of Subsection B, Paragraphs (1) and (2) of 6.60.3.8 NMAC[-] and

(1) ~~[Must complete a minimum of twelve]~~ For those persons seeking either early childhood B-3, elementary K-8, or special education K-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a State Board-approved alternative licensure program containing no less than twelve (12) nor more than twenty-one (21) semester hours of credit.

(a) The credits must include six (6) semester hours of reading courses; and

~~(b)~~ (b) The credits must include the State Board's competencies for entry level teachers that correspond to the license being sought; and

~~(c)~~ (c) The credits must be in a program approved by the State Board; and

~~(d)~~ (d) The program must include a student teaching or field-based component~~[-or-]~~

(2) For those persons seeking either middle level 5-9, or secondary 7-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a State Board-approved alternative licensure program containing no less than twelve (12) nor more than eighteen (18) semester hours of credit.

(a) The credits must include three (3) semester hours of reading courses; and

(b) The credits must include the State Board's competencies for entry level teachers that correspond to the license being sought; and

(c) The credits must be in a program approved by the State Board; and

(d) The program must include a student teaching or field-based component. Or in lieu of complying with B(1) or B(2) above.

~~(2)~~ (3) Must successfully demonstrate the State Board's approved competencies for entry level teachers that correspond to the license being sought. ~~[An applicant for alternative licensure shall, prior to assuming teaching duties, demonstrate the necessary teaching competencies by submitting to a portfolio assessment through a process approved by the State Board of Education.]~~ Other than an individual who is employed under authority of a substandard license issued pursuant to 6.61.9 NMAC, an applicant for alternative

licensure who elects to proceed by way of a portfolio assessment pursuant to 6.2.4 NMAC, shall demonstrate the necessary teaching competencies at that portfolio assessment prior to assuming teaching duties. Such applicants shall also complete the reading courses set forth at Subsection B of 6.60.3.8 NMAC above prior to being granted a portfolio review. Pursuant to 6.2.4 NMAC, under no circumstance shall an individual be granted a portfolio review unless that person has passed all sections of the current State Board-required New Mexico teacher test.

C. Must pass all of the New Mexico Teacher Assessments, including any applicable content knowledge assessment required by 6.60.5 NMAC, prior to receiving alternative licensure. [07-01-00; 6.60.3.8 NMAC - Rn, 6 NMAC 4.2.2.1.8, 06-14-01; A, 06-01-02]

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.60.4 NMAC, Sections 8 and 13.

6.60.4.8 REQUIREMENTS:

A. Persons seeking a reciprocal level one license for elementary k-8, early childhood b-3, secondary 7-12, middle level 5-9, special education k-12, or grade k-12 shall meet the following requirements:

(1) Hold a bachelor's degree from a regionally accredited or state board of education ("SBE") approved college or university; and, either,

(2) Hold and provide a copy of a valid teaching license issued by a state education agency that is comparable to the license they are seeking; or

(3) Have completed a teacher preparation program accepted by the SBE; and either

(4) Have passed the applicable New Mexico teacher assessments ("NMTA") or ~~a comparable out of state teacher test or tests as determined by the SBE; and~~ other teacher competency test(s) satisfying requirements for teacher licensure in another state; or

(5) Have, on a form acceptable to the professional licensure unit ("PLU") of the SDE, provided evidence of having satisfactorily taught under their out of state license; and

~~(5)~~ (6) Submit to and satisfactorily clear a fingerprint-based background check pursuant to section 22-10-3.3, NMSA 1978.

B. Persons seeking a level two license for elementary k-8, early child-

hood b-3, secondary 7-12, middle level 5-9, special education k-12, or grade k-12 shall meet the following requirements:

(1) Hold a bachelor's degree from a regionally accredited or state approved college or university; and either

(2) Hold a valid certificate issued by the national board for professional teaching standards; or

(3) Hold and provide a copy of a valid teaching license issued by a state education agency that is comparable to the license they are seeking; and

(4) Have completed a teacher preparation program accepted by the SBE; and either

(5) Have, on a form ~~[provided by the professional licensure unit ("PLU") of the SDE]~~ acceptable to the PLU, provided evidence of having satisfactorily taught under their out of state license for at least ~~[three]~~ five complete school years ~~[during the previous five years]~~ at any time preceding their application for licensure; ~~and~~ or

~~(7)~~ (6) Have passed the applicable NMTA or ~~a comparable out of state teacher test or tests~~ other teacher competency test(s) satisfying requirements for teacher licensure in another state; and

~~(6)~~ (7) Submit to and satisfactorily clear a fingerprint-based background check pursuant to section 22-10-3.3, NMSA 1978 ~~[-and]~~.

C. Persons seeking reciprocal administrative licensure shall meet the requirements for a level two teaching license set forth in subsection B of 6.6.60.4 NMAC above, and shall meet the following additional requirements

(1) Hold a master's degree from a regionally accredited or state approved college or university; and either,

(2) Hold a valid administrator's license issued by a state education agency; or

(3) Have completed an education administrator preparation program accepted by the SBE.

D. Persons holding a valid administrative license from another state who are seeking one or more of the level two teaching licenses listed in subsection B of section 8 of 6.60.4 NMAC above, shall be exempt from satisfying the requirements of paragraph 5 of subsection B of 6.60.4 NMAC above, provided that they present evidence to the PLU of having satisfactorily served under their out of state administrative license during the three consecutive, complete school years preceding their application for licensure.

[6.60.4.8 NMAC - Rp 6 NMAC 4.2.2.3.8,

07-01-01; A, 06-01-02]

6.60.4.13 FOREIGN COUNTRY LICENSURE RECIPROCITY:

A. The SBE may issue a three-year, nonrenewable level 1 license to a person holding teacher or administrative licensure or credentials from a foreign country without the requirement that he/she take and pass all portions of the SBE's current teacher test, provided that:

(1) The license(s) the person is seeking is/are comparable to the foreign license(s) or credentials he/she holds;

(2) The person pays the appropriate fee for the license(s) being sought;

(3) The person submits to a fingerprint based background check or produces a comparable background check report not more than 1 year old;

(4) The person is lawfully in this country and may lawfully be employed in this country by reason of a federal work visa; and,

(5) The person is a participant in a formal foreign teacher exchange or visitation program that has been solemnized by a memorandum of understanding or other agreement signed by the state superintendent of public instruction and an appropriate representative of the participating foreign country or foreign educational agency.

B. A person issued a license under this section shall not be issued a level 2 license unless he/she takes and passes all portions of the SBE's current teacher test.

C. A person issued a license under this section shall be employed under a standard contract issued pursuant to Section 22-10-11.

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.61.2 NMAC, Sections 3 and 8

6.61.2.3 STATUTORY AUTHORITY: Sections 22-2-1, ~~[NMSA 1978 and]~~ 22-2-2 and 22-2-8.7, NMSA 1978.

[11-14-98; 6.61.2.3 NMAC – Rn, 6 NMAC 4.2.3.2.3, 10-31-00; A, 06-01-02]

6.61.2.8 REQUIREMENTS:

A. Persons seeking licensure in elementary education pursuant to the provisions of this regulation shall meet the requirements of Subsections A and B of 6.61.2.8 NMAC.

(1) Bachelor's degree from a

regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) Credits from a regionally accredited college or university which include thirty to thirty-six (30-36) semester hours of professional education in an elementary education program approved by the State Board, including completion of the State Board of Education's approved functional areas and related competencies in professional education; and

(3) a mandatory student teaching component; and

(4) twenty-four to thirty-six (24-36) semester hours in one teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas). Individuals must also complete the State Board of Education's approved functional areas and related competencies in the teaching field; and

(5) In addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.2.8 NMAC, six (6) hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

[(5)] (6) [Passage] Pass all portions of the New Mexico Teacher Assessments or any successor teacher examination adopted by the SBE; or

B. Possess a valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type.

[11-14-98; 6.61.2.8 NMAC – Rn, 6 NMAC 4.2.3.2.8 & A, 10-31-00; A, 06-01-02]

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.61.3 NMAC, Sections 3 and 8.

6.61.3.3 STATUTORY AUTHORITY: Sections 22-2-1, ~~[NMSA~~

~~1978 and]~~ 22-2-2 and 22-2-8.7, NMSA 1978.

[09-30-96; 6.61.3.3 NMAC – Rn, 6 NMAC 4.2.3.3.3, 10-31-01; A, 06-01-02]

6.61.3.8 REQUIREMENTS:

A. Persons seeking a teaching license pursuant to the provisions of this regulation shall meet the following requirements of Subsection A, Paragraph (1) of 6.61.3.8 NMAC, or Subsection B of 6.61.3.8 NMAC, or Subsection C of 6.61.3.8 NMAC.

(1) Bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics, or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) Thirty - thirty-six (30-36) semester hours of professional education in a middle level education program approved by the SBE, including completion of the SBE's New Mexico Middle Level Teacher Competencies and a mandatory student teaching experience; and

(3) Twenty-four (24) semester hours in at least one (1) teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas), twelve (12) semester hours of which must be in upper division courses as defined by the college or university. Individuals must also complete the SBE's approved competencies in the teaching field; and

(4) In addition to the requirements specified in Subsection A, Paragraphs (1), (3) and (5) of 6.61.3.8 NMAC, three (3) hours of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

[(4)] (5) Passage of [the Core Battery of the National Teachers Examination (NTE);] all portions of the current SBE-approved teacher test; or

B. A valid and standard New Mexico license in early childhood education, elementary education, secondary education, K-12 education, or special edu-

cation; and three (3) years of documented, successful teaching or administrative experience during the five-year period immediately preceding the date of application for middle level education licensure; and twelve (12) semester hours of course work in middle level education to include representation in any combination of the New Mexico Middle Level Teacher Competencies Subsection A, Paragraphs (1) to (3) of 6.61.3.10 NMAC and Subsection B, Paragraphs (1) to (3) of 6.61.3.10 NMAC or

C. A valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type. [09-30-96; 6.61.3.8 NMAC - Rn, 6 NMAC 4.2.3.3.8, 10-31-01; A, 06-01-02]

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.61.4 NMAC, Sections 3 and 8.

6.61.4.3 STATUTORY

AUTHORITY: Sections 22-2-1, [~~NMSA 1978 and~~ 22-2-2 and 22-2-8.7, NMSA 1978.

[11-14-98; 6.61.4.3 NMAC - Rn, 6 NMAC 4.2.3.4.3, 10-31-00; A, 06-01-02]

6.61.4.8 REQUIREMENTS:

A. Persons seeking licensure in secondary education pursuant to the provisions of this regulation shall meet the requirements of Paragraphs (1) through (5) of Subsection A or Subsection B of 6.61.4.8 NMAC.

(1) Bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hour in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) Credits from a regionally accredited college or university which include twenty-four to thirty (24-30) semester hours of professional education in a secondary education program approved by the State Board including completion of the

State Board of Education's approved functional areas and related competencies in professional education; and including:

(3) A mandatory student teaching component; and

(4) Twenty-four to thirty-six (24-36) semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas), twelve (12) hours of which must be in upper division courses as defined by the college or university. Individuals must also complete the State Board of Education's approved functional areas and related competencies in the teaching field; and

(5) In addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.4.8 NMAC, three (3) hours of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

~~[(5)] (6) [Passage of the New Mexico Teacher Assessments] Passage of all portions of the current SBE-approved teacher test; or~~

B. A valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type. [11-14-98; 6.61.4.8 NMAC - Rn, 6 NMAC 4.2.3.4.8 & A, 10-31-00; A, 06-01-02]

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.61.6 NMAC, Sections 3 and 8.

6.61.6.3 STATUTORY

AUTHORITY: Sections 22-2-1, [~~NMSA 1978 and~~ 22-2-2 and 22-2-8.7, NMSA 1978.

[11-14-98; 6.61.6.3 NMAC - Rn, 6 NMAC 4.2.3.6.3, 10-31-00; A, 06-01-02]

6.61.6.8 REQUIREMENTS:

A. Persons seeking licensure in special education pursuant to the provisions of this regulation shall meet the requirements of Subsections A or B of 6.61.6.8 NMAC.

(1) Bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history

and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) Credits from a regionally accredited college or university which include: thirty (30) semester hours of professional education in a special education program approved by the State Board, including completion of the State Board approved functional areas and related competencies; and including

(3) A mandatory student teaching component and at the option of the college or university, a practicum component; and

(4) Twenty-four (24) semester hours in one of the following teaching fields: mathematics, science(s), language arts, reading, and social studies (or other content related areas); and

(5) In addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.6.8 NMAC, six (6) hours of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

~~[(5)] (6) [Passage of the New Mexico Teacher Assessments] Passage of all portions of the current SBE-approved teacher test; or~~

B. A valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type. [11-14-98; 6.61.6.8 NMAC - Rn, 6 NMAC

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.61.8 NMAC, Sections 3 and 8.

6.61.8.3 STATUTORY

AUTHORITY: Sections 22-2-1, [~~NMSA 1978 and~~ 22-2-2 and 22-2-8.7, NMSA 1978.

[11-14-98; 6.61.8.3 NMAC - Rn, 6 NMAC 4.2.3.17.3, 03-31-01; A, 06-01-02]

6.61.8.8 REQUIREMENTS:

All persons who perform instructional services in early childhood education (i.e., birth through grade 3) in public schools or in those special state-supported schools within state agencies, must hold valid standard licensure in early childhood development issued by the SBE.

A. Persons seeking licensure in early childhood education pursuant to the provisions of this regulation shall meet the following requirements:

(1) Possess a bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) Twelve (12) semester hours in English;

(b) Twelve (12) semester hours in history including American history and western civilization;

(c) Six (6) semester hours in mathematics;

(d) Six (6) semester hours in government, economics, or sociology;

(e) Twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) Six (6) semester hours in fine arts; and

(2) Earn credits from a regionally accredited college or university which include: Thirty-six to forty-two (36-42) semester hours of professional education in an early childhood education program approved by the SBE, including completion of the SBE's approved Early Childhood Education Competencies; and

(3) Earn eighteen to thirty (18-30) semester hours of practicum and supervised field experiences beginning in the first eighteen (18) semester hours of instruction in professional early childhood education to include a mandatory student teaching component in early childhood education for one of the following age ranges: B-3, 3-5, or 5-8 with children who are developing either typically or atypically; and

(a) one-hundred fifty (150) contact hours of practicum and/or supervised field experience at a developmental stage (s) other than the stage selected for student teaching set forth in Paragraph (3) above; or

(b) evidence of three years of documented, verified, satisfactory work experiences with at least two of the age ranges set forth in paragraph (3) of Subsection A of 6.61.8.8 NMAC above at a center accredited by the National Academy of Early Childhood Programs, a postsecondary laboratory early care and education setting, or an early childhood program accredited by the SBE; and

(4) In addition to the requirements specified in Subsection A, Paragraphs (1), (3) and (5) of 6.61.8.8 NMAC, six (6) hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

[~~(4)~~] (5) Pass the Core Battery

~~of the National Teachers Examination (NTE)] all portions of the New Mexico Teacher Assessment or any successor teacher examination adopted by the SBE; or~~

B. Possess valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type.

[11-14-98; 6.61.8.8 NMAC - Rn, 6 NMAC 4.2.3.17.8 & A, 03-31-01; A, 06-01-02]

NEW MEXICO STATE BOARD OF EDUCATION

This is an amendment to 6.61.5 NMAC, Sections 3, 5 and 8. This rule was also renumbered from 6 NMAC 4.2.3.5 to comply with current NMAC requirements.

6.61.5.3 STATUTORY AUTHORITY: Sections 22-2-1, [~~NMSA 1978 and~~] 22-2-2 and 22-2-8.7, NMSA 1978.

[11-14-98; 6.61.5.3 NMAC - Rn, 6 NMAC 4.2.3.5.3 & A, 06-01-02]

6.61.5.5 EFFECTIVE DATE: November 14, 1998, unless a later date is cited at the end of a section.

[11-14-98; 6.61.5.5 NMAC - Rn, 6 NMAC 4.2.3.5.5 & A, 06-01-02]

6.61.5.8 REQUIREMENTS:

A. Persons seeking K-12 licensure pursuant to the provisions of this regulation shall meet the requirements of Subsection A of 6.61.5.8 NMAC or Subsection B of 6.61.5.8 NMAC.

(1) Bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:

(a) twelve semester hours in English;

(b) twelve semester hours in history including American history and western civilization;

(c) six semester hours in mathematics;

(d) six semester hours in government, economics or sociology;

(e) twelve semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six semester hours in fine arts; and

(2) Credits from a regionally accredited college or university which include twenty-four to thirty-six semester hours of professional education in an education program approved by the state board, including completion of the state board of education's approved functional areas and

related competencies in professional education for grades K-12; and including

(a) a mandatory student teaching component; and

(b) twenty-four to thirty-six semester hours in at least one teaching field such as mathematics, science(s), language arts, reading, and social studies (or other content related areas), twelve hours of which must be in upper division courses as defined by the college or university. Individuals must also complete the state board of education's approved functional areas and related competencies in the teaching field; and

(3) In addition to the requirements specified in Subsection A, Paragraphs (1), (2) and (4) of 6.61.5.8 NMAC, three (3) hours of reading in subject matter content for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(4) [~~Passage of the core battery of the national teacher examination (NTE)] Passage of all portions of the New Mexico teacher assessments or any successor teacher examination adopted by the SBE; or~~

B. A valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.5.8 NMAC - Rn, 6 NMAC 4.2.3.5.8 & A, 06-01-02]

NEW MEXICO DEPARTMENT OF HEALTH HEALTH IMPROVEMENT DIVISION

This is an amendment to 7.7.2.33 NMAC.

7.7.2.33 CLINICAL SERVICES:

A. Policies and Procedures. Hospitals which have surgery, anesthesia, dental, maternity, and other services which may be optional services shall have effective written policies and procedures, in addition to those set forth under these regulations, relating to the staffing and functions of each services in order to protect the health and safety of the patients.

B. Surgery.

(1) Policies.

(a) Surgical privileges shall be delineated for each of the medical staff performing surgery in accordance with the individual's competencies and a copy shall be available to operating room supervisor.

(b) The surgical service shall have a written policy to ensure patient safe-

ty if a member of the surgical team becomes non-functional.

(c) The surgical service shall have the ability to retrieve information needed for infection surveillance, identification of personnel who assisted at operative procedures, and the compiling of needed data.

(d) There shall be adequate provision for immediate post-operative care. A patient may be directly discharged from post-anesthetic recovery status, upon direction by an anesthesiologist, another qualified physician or a certified registered nurse anesthetist.

(e) A procedure for the identification, investigation, and elimination of nosocomial infection associated with surgical services. There shall be a written procedure for investigating unusual levels of infection.

(f) Rules and policies relating to the operating rooms shall be available and posted in appropriate locations inside and outside the operating rooms.

(g) The hospital shall have policies which clearly identify the patient, the site, and/or side of the procedure.

(h) Prior to commencing surgery the person responsible for administering anesthesia, or the surgeon must verify the patient's identity, the site and/or side of the body to be operated on, and ascertain that a record of the following appears in the patient's medical record: an interval medical history and physical examination performed and recorded according to hospital policy, appropriate screening tests, based on the needs of the patient, accomplished and recorded according to hospital policy, a properly executed informed consent, in writing for the contemplated surgical procedure, except in emergencies.

(2) **Supervision.** The operating rooms shall be supervised by a professional registered nurse who is qualified by training and experience to supervise the operating rooms.

(3) **Environment.** If explosive gases are used, the services shall have appropriate policies, in writing, for safe use of these gases.

C. Anesthesia.

(1) Policies.

(a) The anesthesia service shall have effective written policies and procedures to protect the health and safety of all patients.

(b) If explosive gases are used, the service shall have appropriate policies, in writing, for safe use of these gases.

(2) Anesthesia use requirements.

(a) Every surgical patient shall have a pre-anesthetic assessment, intra-operative monitoring, and post-anesthesia assessment prior to discharge from a post-

anesthesia level of care, according to hospital policy.

(b) In hospitals where there is no organized anesthesia service, the surgical service shall assume the responsibility for establishing general policies and supervising the administration of anesthetics.

(c) Anesthesia shall be administered only by a licensed practitioner permitted by the state to administer anesthetics.

(d) If a general or regional anesthetic is used and an MD or DO is not a member of the operating team, an MD or DO shall be immediately available on the hospital premises.

D. Dental Service. All dental services shall meet the following requirements:

(1) Dentists performing surgical procedures at the hospital shall be members of the medical staff.

(2) Surgical procedures performed by dentists shall be under the overall supervision of an M.D. or D.O., unless the dentist is a licensed oral surgeon.

(3) There shall be policies for referral of patients in need of dental services. These policies will be readily available to all emergency care staff.

E. Maternity.

(1) **Definitions:** In this subsection:

(a) **"Neonatal"** means pertaining to the first twenty-seven (27) days following birth.

(b) **"Oxytocics"** means any of several drugs that stimulate the smooth muscle of the uterus to contract and that are used to initiate labor at term.

(c) **"Perinatal"** means pertaining to the mother, fetus or infant, in anticipation of and during delivery, and in the first post partum week.

(d) **"Perinatal care center"** means an organized hospital-based health care service which includes a high-risk maternity service and a neonatal intensive care unit capable of providing case management for the most serious types of maternal, fetal and neonatal illness and abnormalities.

(2) **Reporting numbers of beds and bassinets.** The number of beds and bassinets for maternity patients and newborn infants, shall be designated by the hospital and reported to the Licensing Authority.

(3) **Maternity admission requirements.** The hospital shall have written policies regarding standards of practice for maternity and non-maternity patients who may be admitted to the maternity unit.

(4) **High risk infants.** Each maternity service shall have adequate facilities, personnel, equipment and support services for the care of high-risk infants,

including premature infants, or a written plan for prompt transfer of these infants to a recognized intensive infant care or perinatal care center.

(5) Institutional transfer of infants.

(a) Written policies and procedures for inter-hospital transfer of perinatal and neonatal patients shall be established by hospitals which are involved in the transfer of these patients.

(b) A perinatal care center or high-risk maternity service and the sending hospital shall jointly develop policies and procedures for the transport of high-risk maternity patients.

(c) Policies, personnel and equipment for the transfer of infants from one hospital to another shall be available to each hospital's maternity service. The proper execution of transfer is a joint responsibility of the sending and receiving hospitals.

(6) Personnel.

(a) The labor, delivery, postpartum and nursery areas of maternity units shall have available the continuous services and supervision of a professional registered nurse for whom there shall be documentation of qualifications to care for women and infants during labor, delivery and in the postpartum period.

(b) When a maternity unit requires additional staff on an emergency basis, the needed personnel may be transferred from another service if they meet the infection control criteria.

(c) The service shall have written policies that state which emergency procedures may be initiated by the professional registered nurse in the maternity service.

(7) Infection control.

(a) The infection surveillance and control program in the maternity service shall be integrated with that of the entire hospital.

(b) Surgery on non-maternity patients may not be performed in the delivery suite, except in emergencies.

(c) Hospitals unable to effectively isolate and care for infants shall have an approved written plan for transferring the infants to hospitals where the necessary isolation and care can be provided.

(8) Labor and delivery.

(a) The hospital shall have written policies and procedures that specify who is responsible for, and what is to be documented for, the care of the patient in labor and delivery, including alternative birthing rooms.

(b) Equipment that is needed for normal delivery and the management of complications and emergencies occurring with either the mother or infant shall be provided and maintained in the labor and deliv-

ery unit. The items needed shall be determined by the medical staff and the nursing staff.

(c) The facility shall have policies for the performing of newborn genetic screening.

(d) Written standing orders shall exist allowing nurses qualified by documented training and experience to discontinue the oxytocic drip should circumstances warrant discontinuance.

(e) The hospital shall be responsible for proper identification of newborns in its care.

(9) **Postpartum care.** The hospital shall have written policies and procedures for nursing assessments of the postpartum patient during the entire postpartum course.

(10) **Newborn nursery and the care of newborns.**

(a) Oxygen, medical air and suction shall be readily available to every nursery.

(b) Hospitals that may require special formula preparation shall develop appropriate written policies and procedures.

(c) Newborn infants shall be screened for hearing sensitivity prior to being discharged.

(d) In the event that a newborn infant is brought to the hospital after birth and has not received a hearing sensitivity screening, the attending physician, nurse, audiologist or authorized staff shall arrange for a hearing sensitivity screening to be performed by a program approved by Children's Medical Services of the Department of Health.

(e) The hospital shall have effective written policies and procedures to assure that newborn infants, who are brought to the hospital for emergency services, receive a hearing sensitivity screening.

(f) Documentation of the hearing sensitivity screening shall be entered into the infant's medical record as subject to Subsection G of 7.7.2.29 NMAC.

(g) Parents or the legally authorized person may waive the requirements for the newborn hearing sensitivity screening in writing if they object to the screening on the grounds that it conflicts with their religious beliefs. The waiver for the hearing screening shall be after the parents or legally authorized person have been provided with both written and oral explanations by the infant's physician so that they may make an informed decision. The document of waiver shall be placed in the newborn infant's medical record.

(h) Parent(s) who have lawful custody of the infant screened for hearing sensitivity shall be notified of the test results.

~~((e))~~(i) Hospitals that permit minor siblings to visit the maternity unit shall have written policies and procedures detailing this practice.

(11) Discharge of infants.

(a) An infant may be discharged only to a parent who has lawful custody of the infant or to an individual who is legally authorized to receive the infant. If the infant is discharged to a legally authorized individual, that individual shall provide identification and, if applicable, the identification of the agency the individual represents.

(b) The hospital shall record the identity of the parent or legally authorized individual who received the infant in the infant's medical record.

[7.7.2.33 NMAC - Rp, 7 NMAC 7.2.33, 06-01-00; A, 05-31-02]

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

This is an amendment to 10.10.2 NMAC, Sections 8, 9, 10, 11, 12, 13 and 14.

10.10.2.8 ELIGIBLE APPLICANTS: Eligible applicants are limited to state agencies, ~~and~~ local units of government ~~and non-profits~~. Indian pueblos/tribes are only eligible if they perform law enforcement functions as determined by the U.S. Secretary of the Interior (refer to list below). State institutions of higher learning are considered to be "state agencies" for eligibility purposes.

A.	Jicarilla Apache Tribal Police Department
B.	Laguna Tribal Police Department
C.	Sandia Tribal Police Department
D.	Picuris Tribal Police Department
E.	Pojoaque Tribal Police Department
F.	San Juan Tribal Police Department
G.	Santa Clara Tribal Police Department
H.	Taos Pueblo Tribal Police Department
I.	Tesuque Tribal Police Department
J.	Ramah Navajo Division of Public Safety
K.	Acoma Tribal Police Department
L.	Isleta Tribal Police Department
M.	Santa Ana Tribal Police Department
N.	Zuni Tribal Police Department

[10.10.2.8 NMAC - Rp 10 NMAC 10.2.8,

3-15-00; A, 05-31-02]

10.10.2.9 DISTRIBUTION OF FORMULA FUNDS: Variable Pass-Through: State shall distribute to its local units of government ~~and non-profits~~, in the aggregate, the portion of the state's formula grant funds equal to the local government share of total state and criminal justice expenditures for the previous fiscal year (Sec. 506. (b) (1) of the Act). A minimum of ~~[42.23%]~~ 49.29% must be passed through to local units of government ~~and non-profits~~; and, no more than ~~[57.77%]~~ 50.71% can be used by state agencies. States may exceed the minimum pass-through by providing funds not used at the state level to local units of government. In distributing funds among urban, rural, and suburban units of local government, the State shall give priority to those jurisdictions with the greatest need (Sec. 506. (b) (2) of the Act). The State is required to set aside 5% of the total award for criminal history records improvement. The U.S. Department of Justice has authorized states that have signed a waiver, to utilize criminal history records improvement set aside funds for anti-terrorism plan and programs. The amount contained in the set-aside is not counted against the local pass-through minimum. Spending will be consistent with the criminal history records improvement plan approved by BJA.

[10.10.2.9 NMAC - Rp 10 NMAC 10.2.9, 3-15-00; A, 05-31-02]

10.10.2.10 AUTHORIZED PROJECTS/PROGRAM AREAS

A. Authorized programs for ~~[2000]~~ 2002 funding are listed below. For additional information on priorities and areas of emphasis, see the ~~[2000]~~ 2002 New Mexico Drug and Violent Crime Control Strategy. Descriptions for each program can be found in Attachment E, of the application package. Approved Program Abstracts:

(1) ~~[Multi Jurisdictional Task Forces (02, 07a, 24)]~~ Law Enforcement (02, 07a, 08, 21, 22, 24)

(2) ~~[Career Criminal Prosecution (08, 21)]~~ Treatment for Offenders (11, 12, 13, 15a, 20)

(3) ~~[Treatment for Offenders ((13)) -> Criminal Justice Information Systems/Homeland Security/Anti-Terrorism (7b, 09, 15b, 26)]~~

(4) ~~[Criminal Justice Information Systems (7a, 15a,b)]~~ Domestic Violence (14, 18, 27)

(5) ~~[Domestic Violence (18)]~~ Evaluation and Research (19)

(6) ~~[Youth and Gang Violence (24, 08, 02, 13)]~~ Developing and imple-

menting anti-terrorism plans and training programs

(7) ~~[Innovative (16, 07a)]~~
Purchasing equipment for local law enforcement anti-terrorism projects

(8) Improving community crime prevention and security

(9) Creating multi-jurisdictional task forces in response to organized crime

(10) Facilitating interagency and intelligence coordination

(11) Integrating criminal justice information systems

B. Applicants may request copies of the ~~[2000]~~ 2002 New Mexico Drug and Violent Crime Control Strategy by writing the Department of Public Safety, Grants Management Bureau, Post Office Box 1628, Santa Fe, New Mexico 87504 or by calling (505) 827-3338.
[10.10.2.10 NMAC - Rp 10 NMAC 10.2.10, 3-15-00; A, 05-31-02]

10.10.2.11 APPLICATION REQUIREMENTS:

All applicants for funding under the DCSI Formula Grant Program must adhere to the following procedures.

A. Each applicant shall forward **an original and five (5) copies** of the application to the Grants Management Bureau, Department of Public Safety, 4491 Cerrillos Road, P.O. Box 1628, Santa Fe, New Mexico 87504-1628, phone number 827-3338.

B. The application should be single-spaced and single-sided on 8 1/2 x 11" paper. Print styles and sizes should be conducive to easy reading, i.e., no italics unless used for highlighting. The entire application packet should not exceed forty (40) pages.

C. Application Deadline: All applications must be received at the Department of Public Safety no later than 5:00 P.M., ~~[Friday, April 28, 2000. Application workshops will be held in Santa Fe, N.M., Corrections Training Academy, 10:00 a.m., March 15, 2000; Ruidoso, N.M., Ramada Inn, 10:00 a.m., March 16, 2000; Albuquerque, N.M., Albuquerque Police Training Academy, 10:00 a.m., March 17, 2000;] June 28, 2002.~~ It is the responsibility of the applicant to ensure that the application is received by the Grants Management Bureau, Department of Public Safety. Any applications not received by the Grants Management Bureau will not be considered once the deadline has expired.

D. Single Purpose Area Rule: Only applications proposing to carry out a project in one single program area will be accepted for funding consideration. Refer to Program Purpose Area Addendum, Attachment E. Applicants may, however,

incorporate design elements of other program purpose areas in their project.

E. Proposed Project Term: The term of the project proposed in the application may exceed 12 months; however, funding beyond the initial award for 12 months is not guaranteed. Availability of limited funds restricts the State in granting award amounts on a year-to-year basis. The State recognizes that continued funding of successful projects is paramount to the success of the overall program. Projects should be designed to be consistent with the multi-year state strategy.

F. Certification Requirements: Drug Free Workplace Requirement: This applies to State Agencies **ONLY**. Title V, Section 5153, of the Anti-Drug Abuse Act of 1988 provides that all State agencies receiving Federal funds shall certify and submit proof to the granting agency that it will provide a drug-free workplace.

G. Debarment, Suspension, Ineligibility, and Voluntary Exclusion: All applicants for funds will be required to complete a certification stating that the applicant has not been suspended, debarred, or is otherwise ineligible to participate in this federal program.

H. Disclosure of Lobbying Activities Requirement: Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan or a Federal commitment to insure or grant a loan, to disclose lobbying. The term "recipient" as used in this context does not apply to Indian tribes, organizations, or agencies.

I. Disclosure of Federal Participation Requirement: Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment) enacted in October 1988, requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to state and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program. This applies only to subgrantees who receive \$500,000 or more in the aggregate during a single funding year.

J. General Financial Requirements: Grants funded under the for-

mula grant program are governed by the provisions of 28 CFR Part 66, Common Rule, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government and the Office of Management and Budget (OMB) Circulars applicable to financial assistance. These circulars along with additional information and guidance contained in "OJP_Financial Guide for Grants" (current edition), are available from OJP and from the Grants Management Bureau. This guideline manual provides information on cost allowability, methods of payment, audits, accounting systems and financial records.

K. Audit Requirement: Agencies applying for federal funds must assure that they will comply with the appropriate audit requirement. Subgrantees receiving \$300,000 or more a year shall have an audit made in accordance with OMB Circular A-133, as amended.

L. Confidential Funds Requirement: State agencies and local units of government may apply for and receive grants to conduct law enforcement undercover operations. Each agency must certify that it will develop policies and procedures to protect the confidentiality of the operations. Agencies must also certify that they will comply with the Office of Justice Programs Manual OJP Financial Guide current edition.

M. Civil Rights Requirement: No person in any State shall on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or part with funds made available under this title. Sec. 809 (C) (1) of the Act. All recipients of federal funds must certify that they are an Equal Opportunity Employer.

N. Period of Project Support:

(1) 48-Month Limitation: Projects funded under this program may be funded for a maximum of four years (48 months) in the aggregate, including any period occurring before the effective date of the Anti-Drug Abuse Act. The limitation on funding applies to all projects which have received 48 months in the aggregate of formula and/or discretionary grant funding under the Omnibus Crime Control and Safe Streets Act as amended. This includes the Justice Assistance and the State and Local Law Enforcement Assistance programs or combinations of these programs. Sec 504 (f) of the Act. The 48-month grant period need not comprise of consecutive funding years as long as the project is substantially

the same.

(2) Exception: The limitation on funding applies to all projects except Multi-Jurisdictional Drug Task Forces (Purpose Area 02, 07a), Multi-Jurisdictional Gang Task Forces (Purpose Area 24).

[10.10.2.11 NMAC - Rp 10 NMAC 10.2.11, 3-15-00; A, 05-31-02]

10.10.2.13 MATCH REQUIREMENTS: FY ~~2000~~ 2002 DCSI funds may be used to pay up to 75 percent of the cost of a project. All subgrantees must provide a match of at least 25 percent of the **total project cost**. Agencies which are able to "over match" are encouraged to do so and to document these expenditures.

A. Hard (Cash) Match Requirements: The non-Federal share of expenditures shall be paid in cash (Section 504 (e) of the Act). Funds required to pay the non-Federal portion of the cost of each program and project for which the grant is made shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of the grant funds (Section 503 (a) (3) of the Act). Hard (cash) match may be applied from the following sources **only**:

(1) Funds from state and local units of government that have been specifically appropriated or designated as matching funds for certain programs or projects;

(2) Funds available through the Equitable Sharing (Federal Asset Sharing) Program;

(3) Funds contributed from private sources; and

(4) Program income funds as a result of any method used to generate program income, i.e., seized assets, forfeitures, client fees, etc.

(5) Indian Pueblos/Tribes which perform law enforcement functions (as determined by the Secretary of the Interior) are not required to pay any match, (Section 504 (a) (2) of the Act). Joint projects which include Indian Pueblos/Tribes must prorate the Pueblo's or Tribe's portion of grant funds and apply the same percentage to the match in order to reduce the required match amount proportionately.

B. Use of proceeds Received under the Equitable Sharing Program (Federal Asset Sharing) as Match: State and local units of government may use cash they received under the Equitable Sharing Program to cover the non-Federal portion of costs of any OJP project or program.

C. Use of Proceeds from Asset Forfeitures as Match: A state or local unit of government may use forfeiture funds as match if state and local statutes allow for the collection and retention of such funds.

D. Use of Confidential

Funds as Match: A state or local unit of government may use confidential funds as match as long as they can be tracked as a one-time expenditure during the life of the grant-funded project based on "Chain of Custody" documents.

[10.10.2.13 NMAC - Rp 10 NMAC 10.2.13, 3-15-00; A, 05-31-02]

10.10.2.14 APPLICATION FORMAT AND RATING CRITERIA

A. Application Format:

(1) **Letter of Transmittal** - A letter from the agency director briefly stating the purpose of the application. This letter may take any form, but it should not exceed one page in length.

(2) **Application Cover Sheet** - This standard form must accompany the application packet. (Refer to Attachment A, for a copy of this form.)

(3) **Table of Contents** - A list of page locations for the Executive Summary, the various sections of the Application Narrative, and items in the Appendix. The Table of Contents should list the contents of the application in the order that they appear.

(4) **Executive Summary** - A brief description of the project, and a brief but thorough description of the problem or issue to which it is designed to respond.

Executive Summaries should not exceed one page in length.

(5) **Application Narrative** - Refer to Attachment F for a detailed description of the format for the narrative. The narrative should provide a detailed description of how the proposed project meets each of the project rating criteria.

(6) **Appendix** - The location for attachments, forms, letters, graphs, and other pertinent information. The Appendix should include, at a minimum, the following items:

(a) Letters of Support, Letters of Commitment, Joint Powers Agreements (JPA), Memorandums of Understanding (MOU), etc. Letters of Support must be addressed to the DPS Cabinet Secretary and included in the application; but they should not be mailed to him directly. Letters of Commitment should be addressed to the head of the agency applying for the funds. JPAs and MOUs must be signed by all agencies participating in joint applications.

(b) A completed Budget Summary and a Budget Justification Sheet (refer to Attachment B, for a copy of this form). New Mexico Department of Finance & Administration Expenditure Line Items must be used (refer to Attachment D).

(c) Certified Assurances (refer to Attachment C, for a copy of this form).

(d) Any other items which you believe are pertinent to the application process and which only address information

requested in this Rule.

B. Rating Criteria (Total Value - 100 Points)

(1) Applicable Program Purpose Areas (refer to Attachment E):

(a) ~~[Multi-Jurisdictional Task Forces]~~ Law Enforcement

(b) ~~[Career Criminal Prosecutions]~~ Treatment for Offenders

(c) ~~[Treatment for Offenders]~~ Criminal Justice Information Systems/Homeland Security/Anti-Terrorism

(d) ~~[Criminal Justice Records Improvement]~~ Domestic Violence

(e) ~~[Domestic Violence]~~ Evaluation and Research

(f) ~~[Youth and Gang Violence]~~ Developing and implementing anti-terrorism plans and training programs

(g) ~~[Innovative]~~ Purchasing equipment for local law enforcement anti-terrorism projects

(h) Improving community crime prevention and security

(i) Creating multi-jurisdictional task forces in response to organized crime

(j) Facilitating interagency and intelligence coordination

(k) Integrating criminal justice information systems

C. Problem Statement and Project Impact (50 Points):

(1) Clearly define the nature and extent of drug-related and/or violent crimes in your area and their impact on the State of New Mexico.

(2) Refer to the ~~2000~~ 2002 New Mexico Drug and Violent Crime Strategy and correlate the priority issues with the identified crime problem(s) in your area.

(3) Provide ~~relevant~~ Uniform Crime Reporting data and other statistical data from ~~[January 1, 1999 through December 31, 1999 intended]~~ January 1, 2001 through December 31, 2001 to demonstrate the need and serve as a baseline for measuring progress, impact, and results. The assessment should identify the jurisdiction, and data sources ~~[and resources]~~.

(4) **Project Design and Performance (45 Points)**

(a) Describe project development and implementation plans.

(b) Describe how the project will comply with the applicable Program Purpose Area (refer to Attachment E).

(c) Describe in detail your project's proposed major accomplishments ~~[which]~~ and what you expect to ~~[occur]~~ accomplish during the upcoming funding year.

D. Project Cost (5 Points)

(1) Provide a detailed Budget

Justification Narrative (Attachment B1) on proposed expenditures and revenue sources for the Federal grant funds being requested and the match funds which will be provided. Use the New Mexico Department of Finance and Administration (DFA) **Line Item Codes** (Attachment D).

(2) Complete the **Budget Summary** sheet (Attachment B) and make reference to it in the Budget Narrative.

[10.10.2.14 NMAC - Rp 10 NMAC 10.2.14, 3-15-00; A, 05-31-02]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.2.1.18 NMAC.

3.2.1.18 GROSS RECEIPTS; SERVICES.

A. **Receipts from performing a service in New Mexico.** Receipts derived from performing a service in New Mexico are subject to the gross receipts tax.

B. **Services performed both within and without New Mexico.** Receipts from services, other than research and development services and services subject to the Interstate Telecommunications Gross Receipts Tax Act, performed both within and without New Mexico are subject to the gross receipts tax on the portion of the services performed within New Mexico.

C. **Allocating receipts from selling services performed within and without New Mexico.**

(1) When a prime contractor performs services both within and without New Mexico, cost accounting records which reasonably allocate all costs to the location of the performance of the service shall be used to determine the amount of services performed in New Mexico. If adequate cost accounting records are not kept for the allocation of costs to specific locations, the receipts from performing such services shall be prorated based on the percentage of service actually performed within New Mexico. The percentage shall be calculated by dividing the time spent by the prime contractor in performing such services in New Mexico by the total contract time spent performing services everywhere. Other reasonable methods of prorating such services may be acceptable if approved by the department in advance of performing the services.

(2) Services subcontracted to third parties under a single contract by a

prime contractor and used or consumed by the prime contractor in the performance of the contract shall be prorated by the prime contractor on the same basis, i.e., based either on allocated costs using cost accounting records or on the percentage of the total service actually performed within New Mexico by the prime contractor or other reasonable method approved by the department.

(3) If a subcontract service is actually a service purchased for resale, and all conditions of Section 7-9-48 NMSA 1978 are met and the subcontracted service is actually sold intact to the prime contractor's customer, the prime contractor may issue a Type 5 nontaxable transaction certificate to the subcontractor and the receipts from such subcontracted service will be deductible from the subcontractor's gross receipts.

(4) The subcontractor must use the same method of prorating the performance of services within and without New Mexico as used by the prime contractor.

(5) This subsection shall not apply to a contractor who is performing construction services.

D. **Expenses incurred outside New Mexico and allocated to operations in New Mexico.**

(1) General administrative and overhead expenses incurred outside New Mexico and allocated to operations in this state for bookkeeping purposes, costs of travel outside New Mexico, which travel was an incidental expense of performing services in New Mexico, employee benefits, such as retirement, hospitalization insurance, life insurance and the like, paid to insurers or others doing business outside New Mexico for employees working in New Mexico and other expenses incurred outside New Mexico which are incidental to performing services in New Mexico, all constitute the taxpayer's expenses of performing services in New Mexico.

(2) No provision of the Gross Receipts and Compensating Tax Act allows a deduction for expenses incurred in performing services to determine gross receipts subject to tax. Therefore, the total amount of money or reasonable value of other consideration derived from performing services in New Mexico is subject to the gross receipts tax.

E. **Receipts from performing services outside New Mexico.**

(1) Receipts from performing services, except research and development services, outside New Mexico are not subject to the gross receipts tax under the provisions of Section 7-9-13.1 NMSA 1978.

(2) *Example 1:* P, a resident of New Mexico, is an expert forest fire fighter.

P's receipts from fighting forest fires outside New Mexico are not includable in P's gross receipts.

(3) *Example 2:* D is a data processing bureau located in Lone Tree, Iowa. X, a New Mexico accounting and bookkeeping firm, mails accounting data to D. D then processes this material into general ledgers, payroll journals and other journals and then returns this material by mail to X. The receipts of D are receipts from performing services entirely outside New Mexico and therefore are not subject to the gross receipts tax.

(4) *Example 3:* L, an Albuquerque attorney, is retained by a Colorado firm to negotiate and draw up oil and gas leases for lands in southern Colorado. To accomplish this objective, L goes to Pueblo, Colorado, and there negotiates and draws the leases. Receipts from the fee are not includable in L's gross receipts because the service was performed entirely outside the state of New Mexico.

F. **Sales of state licenses by nongovernmental entities.**

(1) Amounts retained by nongovernmental entities as compensation for services performed in selling state licenses are gross receipts.

(2) *Example:* G owns and operates a small grocery store in rural New Mexico which is located near a popular fishing area. As a convenience to the public, G sells New Mexico Game and Fish licenses. For its services in selling these licenses, G retains a small percentage of the total license fee. The amounts retained are gross receipts because they are receipts derived from services performed in New Mexico. G may not deduct the amounts retained pursuant to Section 7-9-66 NMSA 1978 which deals with commissions derived from the sale of tangible personal property not subject to the gross receipts tax. A New Mexico game and fish license is not tangible personal property pursuant to Subsection I of Section 7-9-3 NMSA 1978.

G. **Stockbrokers' commissions.** Gross receipts include commissions received by stockbrokers, located in New Mexico, for handling transactions for out-of-state as well as in-state residents.

H. **Attorneys' fees.** Regardless of the source of payment or the fact of court appointment, the fees of attorneys are subject to the gross receipts tax to the extent that their services are performed in this state.

I. **Directors' fees.**

(1) The receipts of a member of a board of directors from attending a directors' meeting in New Mexico are receipts derived from performing a service in New Mexico and are subject to the gross receipts

tax.

(2) *Example:* X is on the board of directors of a New Mexico corporation and a Texas corporation. X attends directors' meetings in Texas and New Mexico. For each directors' meeting that X attends, X is paid a fee of \$50.00. X is performing a service. The fee which X receives from performing this service in New Mexico is subject to the gross receipts tax. The fee which X receives from performing the service in Texas is not subject to the gross receipts tax. However, the burden is on X to segregate receipts which are not taxable from those which are taxable.

J. Anesthetists' fees.

(1) The receipts of a nonemployee anesthetist from anesthetic services performed for a surgeon are subject to the gross receipts tax.

(2) The receipts of an anesthetist from the performance of this service for a surgeon may be deducted from gross receipts if the surgeon resells the service to the patient and delivers a nontaxable transaction certificate to the anesthetist. The surgeon delivering the nontaxable transaction certificate must separately state the value of the service purchased in the charge for the service on its subsequent sale. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax.

(3) *Example:* A is an anesthetist who is employed by a hospital and also performs services for and receives compensation from a surgeon who is not associated with the hospital. The surgeon does not consider the anesthetist to be an employee and does not withhold income or other taxes from the anesthetist's compensation. Although the surgeon may exercise some control over the services performed by the anesthetist, the surgeon relies on the anesthetist's training and experience to accomplish the result desired. The receipts of the anesthetist from this service performed are subject to the gross receipts tax.

K. Athletic officials.

Receipts of a referee, umpire, scorer or other similar athletic official from umpiring, refereeing, scoring or officiating at a sporting event located in New Mexico, are receipts derived from performance of a service and are subject to the gross receipts tax. Such receipts will not be exempted from the gross receipts tax as "wages" unless the umpires, referees, scorers and other athletic officials demonstrate to the department that such receipts are derived from an employment relationship whereby they are employees within the meaning of Section 3.2.105.7 NMAC.

L. ~~[AUTOMOBILE]~~ Racing receipts.

(1) Unless the receipts are exempt under Section 7-9-40 NMSA 1978:

~~[(4)] (a) the receipts of ~~face car~~ vehicle or animal owners from winning purse money at ~~automobile~~ races held in New Mexico are receipts from performing services in New Mexico and are subject to the gross receipts tax if any charge is made for attending, observing or broadcasting the race.~~

~~[(2)] (b) receipts of ~~face car drivers~~ vehicle drivers, animal riders and drivers and other persons from receiving a percentage of the owner's purse are receipts from performing services in New Mexico and are subject to the gross receipts tax, unless the person receiving the percentage of purse money is an employee ~~[of the race car owner]~~, as that term is defined in Section 3.2.105.7 NMAC, of the owner.~~

~~[(3)] (2) Where there is an agreement between the driver, rider or other person and the owner for distribution of the winning purse, then only the ~~amounts received by the driver and the owner are subject to the gross receipts tax~~ amount received pursuant to the agreement is gross receipts of the driver, rider or other person receiving the distribution.~~

M. Advertising receipts of a newspaper or broadcaster.

(1) The receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from performing advertising services in New Mexico do not include the customary commission paid to or received by a nonemployee advertising agency or a nonemployee solicitation representative, when said advertising services are performed pursuant to an allocation or apportionment agreement entered into between them prior to the date of payment.

(2) Receipts of a New Mexico newspaper or a person engaged in the business of radio or television broadcasting from the sale of advertising services to an advertising agency for resale may be deducted from gross receipts if the advertising agency delivers a nontaxable transaction certificate to the newspaper or the person engaged in the business of radio or television broadcasting. The subsequent sale must be in the ordinary course of business and subject to the gross receipts tax, or the advertising agency will be subject to the compensating tax on the value of the advertising service at the time it was rendered. This version of Paragraph (2) of Subsection M of Section 3.2.1.18 NMAC applies to transactions occurring on or after July 1, 2000.

N. Advertising space in pamphlets. Receipts from selling advertising service to New Mexico merchants in a

pamphlet printed outside New Mexico and distributed wholly inside New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax.

O. Billboard advertising.

Receipts derived from contracts to place advertising on outdoor billboards located within the state of New Mexico are receipts from performing an advertising service in New Mexico. Such receipts are subject to the gross receipts tax, regardless of the location of the advertiser.

P. Day care centers.

(1) Receipts from providing day care are receipts from performing a service and are subject to the gross receipts tax.

(2) Receipts from providing day care for children in a situation where a commercial day care center provides day care for the children and the expenses of the care for some of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(3) Receipts from providing day care for children in a situation where a person provides day care for children in a residence and the care for all these children is paid for by the state of New Mexico are subject to the gross receipts tax.

(4) Receipts from providing day care for children in a situation where a person provides day care for children in the children's home and the care for all of these children is paid for by the state of New Mexico are subject to the gross receipts tax.

Q. Child care.

(1) Receipts derived by a corporation for providing child care facilities for its employees are subject to the gross receipts tax on the amount received from its employees.

(2) *Example:* The X Corporation operates a licensed child care facility to accommodate dependent children of its employees. In order to defray a portion of the cost of the facility, the corporation charges each employee two dollars (\$2.00) per child per week for the use of the facility. All receipts from the two-dollar charge per child per week are subject to the gross receipts tax.

R. Service charges; tips.

(1) Except for tips, receipts of hotels, motels, guest lodges, restaurants and other similar establishments from amounts determined by and added to the customer's bill by the establishment for employee services, whether or not such amounts are separately stated on the customer's bill, are gross receipts of the establishment.

(2) A tip is a gratuity offered to service personnel to acknowledge service given. An amount added to a bill by the customer as a tip is a tip. Because the tip is a

gratuity, it is not gross receipts.

(3) Amounts denominated as a "tip" but determined by and added to the customer's bill by the establishment may or may not be gross receipts. If the customer is required to pay the added amount and the establishment retains the amount for general business purposes, clearly it is not a gratuity. Amounts retained by the establishment are gross receipts, even if labeled as "tips". If the customer is not required to pay the added amount and any such amounts are distributed entirely to the service personnel, the amounts are tips and not gross receipts of the establishment.

(4) *Examples:*

(a) Restaurant R has a policy of charging parties of six or more a set percentage of the bill for food and drink served as a tip. If a customer insists on another arrangement, however, the set amount will be removed. R places all amounts collected from the set tip percentage into a pool which is distributed to the service staff at the end of each shift. The amounts designated as tips and collected and distributed by R to the service staff, are tips and not gross receipts. If R retains any amounts derived from the set tip percentage, the amounts retained are gross receipts.

(b) Hotel H rents rooms for banquets and other functions. In addition to the rental fee for the room, H also charges amounts for set-up and post-function cleaning. H retains these amounts for use in its business. These amounts are gross receipts. They are gross receipts even if H denominates them as "tips".

S. **Real estate brokers.**

(1) Receipts of a person engaged in the construction business from the sale of the completed construction project include amounts which the person has received and then paid to a real estate broker. The total receipts from the sale of the construction project are subject to the gross receipts tax.

(2) Receipts of a real estate broker from the performance of services for a person engaged in the construction business may not be deducted from gross receipts pursuant to Section 7-9-52 NMSA 1978.

T. **Entertainers.** The receipts of entertainers or performers of musical, theatrical or similar services are subject to the gross receipts tax when these services are performed in New Mexico.

U. **Managers or agents of entertainers.** Commissions received by managers or agents of entertainers for the managers' or agents' services in New Mexico are subject to the gross receipts tax.

V. **Water utilities; installation of water taps and pipes.** The receipts of a water utility from providing a "tap" to a water main and installing a pipe

from the water main to a meter which it provides are subject to the gross receipts tax. However, if the utility is owned or operated by a county, municipality or other political subdivision of the state of New Mexico, its receipts from providing a "tap" to a water main and installing a pipe from a water main to a meter which it also provides are exempted from the gross receipts tax.

W. **Utilities; installation charges.**

(1) The receipts of a utility from installation charges are subject to the gross receipts tax. However, if the utility is owned or operated by a county, municipality or other political subdivision of the state of New Mexico, its receipts from installation charges are exempt from the gross receipts tax.

(2) The receipts of a private water utility from providing a "tap" to a water main and installing a pipe from the water main to a meter which it provides are subject to the gross receipts tax.

(3) Receipts of a private electric utility from fees for changing, connecting or disconnecting electricity of customers, whether or not these services are required because of nonpayment of bills by a customer, are subject to the gross receipts tax.

X. **Construction on Indian reservations or pueblos.** The receipts of a non-Indian from construction services, as defined in Subsection C of Section 7-9-3 NMSA 1978 and regulations thereunder, performed on an Indian reservation or pueblo are subject to the gross receipts tax unless the imposition of the gross receipts tax is preempted by federal law.

Y. **Star route contractors.** Receipts of a person holding a contract for transportation of United States mail, as a "Star Route Contractor", from points within New Mexico to other points within New Mexico and to points outside of New Mexico, are subject to the gross receipts tax on that portion of the receipts from transportation from a point within New Mexico to a point within New Mexico. See Paragraph (2) of Subsection B of Section 3.2.55.10 NMAC for deducting receipts from the portion in interstate commerce.

Z. **Racetrack operators.** Receipts of operators of racetracks other than horse racetracks, from gate admission fees and entrance fees paid by drivers are subject to the gross receipts tax. Any portion of these fees paid out by the operator as prizes are not exempt or deductible since the payments are part of the operator's cost of doing business.

AA. **Data access charges.** Receipts from fees or charges made in con-

nection with property owned, leased or provided by the person providing the service are subject to the gross receipts tax when the information or data accessed is utilized in this state.

BB. **Specialty software package.** [Repealed]

CC. **Receipts from telephone or telegraph services.** Receipts derived from telephone or telegraph services originating or terminating in New Mexico and billed to an account or number in this state are receipts from performing services in New Mexico and are subject to the gross receipts tax unless exempt under Section 7-9-38.1 NMSA 1978.

DD. **Allied company underwriting automotive service contracts.** When a New Mexico automotive dealer pays an entity which is allied or affiliated with that dealer (allied company) to undertake all of the dealer's obligations under automotive service contracts as that term is defined in Subsection C of Section 3.2.1.16 NMAC on which the dealer is promisor, the undertaking of the allied company does not involve the sale of property in New Mexico or the lease of property employed in New Mexico. The undertaking principally involves an obligation of the allied company to indemnify the dealer by paying the dealer for furnishing parts and labor to fulfill the dealer's obligation to furnish the parts and labor. However, the undertaking also involves the performance of services by the allied company for the dealer since the allied company undertakes to handle the claims of automotive service contract purchasers and otherwise perform the dealer's task under the contract. Absent a showing of a different value by the allied company or the department, 7.5 percent of the contract amount paid by the dealer to the allied company will be treated as consideration received for services performed in New Mexico.

EE. **Custom software.**

(1) Except as otherwise provided in Subsection EE of Section 3.2.1.18 NMAC, receipts derived by a person from developing custom software are receipts from performing a service.

(2) When custom software is developed by a seller for a customer but the terms of the transaction restrict the customer's ability without the seller's consent to sell the software to another or to authorize another to use the software, the seller's receipts from the customer are receipts from the performance of a service. The seller's receipts from authorizing the customer's sublicensing of the software to another person are receipts from granting a license. The seller's receipts from authorizing the use by another person of the same software are

receipts from granting a license to use the software.

FF. Check cashing is a service. Receipts from charges made for cashing checks, money orders and similar instruments by a person other than the person upon whom the check, money order or similar instrument is drawn are receipts from providing a service, not from originating, making or assuming a loan. Such charges are not interest.

GG. Receipts of collection agencies.

(1) The fee charged by a collection agency for collecting the accounts of others is gross receipts subject to the gross receipts tax, regardless of whether the receipts of the client are subject to gross receipts tax and regardless of whether the agency is prohibited by law from adding its gross receipts tax amount to the amount collected from the debtor.

(2) *Example 1:* X is a cash basis taxpayer utilizing the services of Z collection agency for the collection of delinquent accounts receivable. From its New Mexico offices, Z collects from X's New Mexico debtors in the name of X, retains a percentage for its services and turns over the balance to X. The percentage retained by Z is its fee for performing services in New Mexico. The fee is subject to the gross receipts tax. It makes no difference that federal law prohibits Z from passing the cost of the tax to the debtor by adding it to the amount to be collected. X's gross receipts include the full amount collected by Z.

(3) Amounts received by collection agencies from collecting accounts sold to the collection agency are not gross receipts.

(4) *Example 2:* X, a cash basis taxpayer, sells its delinquent accounts receivable to Z, a collection agency, for a percentage of the face amount of the accounts. X's gross receipts include the full amount of the receivables, excluding any time-price differential. The amount subsequently collected by Z from those accounts, however, is not subject to gross receipts tax because the amount is not included within the definition of gross receipts. In this situation Z is buying and selling intangible property of a type not included within the definition of property in Subsection I of Section 7-9-3 NMSA 1978.

HH. Commissions of independent contractors when another pays gross receipts tax on the receipts from the underlying transaction.

(1) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to the tangible or intangible personal property of other per-

sons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the sale of the property. This situation involves two separate transactions. The first is the sale of the property by its owner to the customer and the second is the performance of a sales service by the independent contractor for the owner of the property. The receipts from the sale of the property are gross receipts of the person whose property was sold. Receipts, whether in the form of commissions or other remuneration, of the person performing a sales service in New Mexico are gross receipts of the person performing the sales service.

(2) *Example 1:* S is a national purveyor of tangible personal property. S has stores and employees in New Mexico. S also has catalogue stores in less populated parts of New Mexico. Catalogue stores maintain minimal inventories; their primary purpose is to make S's catalogues available to customers, to take orders of merchandise selected from the catalogues, to place the orders with S and to provide general customer service. The catalogue stores are operated by independent contractors and not by S. S pays the contractors commissions based on the orders placed. In charging its customers, S charges the amount shown in the catalogue and does not add any separate amount to cover the cost of the contractors' commissions. S pays gross receipts tax on its receipts from the sale of catalogue merchandise. The contractors contend that the cost of their selling services is included in the amount S charges for its merchandise and so their commissions are not gross receipts. The contention is erroneous. The contractors have receipts from performing a service in New Mexico; it is immaterial that S paid the amount of gross receipts tax S owed on S's receipts. See, however, the deduction at Subsection B of Section 7-9-66 NMSA 1978.

(3) *Example 2:* M is a nationwide, multi-level sales company with presence in New Mexico. M sells products to households mainly through a network of individual, independent contractors. The network of sellers is controlled by one or more sets of individuals, also independent contractors, who train and supervise the individuals selling the merchandise; these supervisory contractors may also sell merchandise. The sellers display, promote and take orders for M's products. Payment for orders are sent to M along with the orders. M ships the merchandise directly to the final customers. M has agreed to, and does, pay the gross receipts tax on the retail value of the merchandise sold, whether sold by M or one of the independent contractors. Based on the volume and value of merchandise sold, M

pays both the selling and supervisory independent contractors a commission. The commissions received by the independent contractors engaging in business in New Mexico with respect to merchandise sold in New Mexico are gross receipts subject to the gross receipts tax. The commissions are receipts from performing a service in New Mexico. The fact that M pays gross receipts tax on M's receipts from the sale of the property is immaterial in determining the liability of the independent contractors.

(4) Commissions and other consideration received by an independent contractor from performing a sales service in New Mexico with respect to a service to be performed by other persons are gross receipts whether or not the other person reports and pays gross receipts tax with respect to the receipts from the performance of the underlying service. This situation involves two transactions. The first is the performance of the underlying service by the other person for the customer and the second is the performance of the sales service by the independent contractor for the performer of the underlying service. The receipts from the performance of the underlying service for the customer are gross receipts of the person performing that service. Receipts, whether in the form of commissions or other remuneration, of the person performing the sales service are gross receipts of the person performing the sales service.

(5) *Example 3:* P is the publisher of a magazine published in New Mexico. P enters into arrangements with independent contractors to solicit ads to be placed in P's publication. P pays each contractor a percentage of the billings for the ads placed by the contractor as a commission. The independent contractors claim that they owe no gross receipts tax with respect to ads solicited in New Mexico because P has paid gross receipts tax on P's advertising revenues. The contractors are incorrect. There are two transactions in this situation, P's service of publishing advertisements and the contractors' service of soliciting ads for P. The fact that P paid the amount of gross receipts tax due on P's advertising revenues is immaterial regarding the contractors' gross receipts tax obligations on their receipts.

(6) If the receipts from the underlying sale of the tangible property are exempt or deductible, the commission received by an independent contractor from selling the tangible property of another may be subject to the deduction provided by Section 7-9-66 NMSA 1978.

II. Receipts from winning contest.

(1) *Receipts of a contestant from winning purse money in a rodeo or an ath-*

letic game, match or tournament held in New Mexico are gross receipts from performing services if any charge is made for attending, observing or broadcasting the event. Such receipts are subject to the gross receipts tax unless an exemption or deduction applies. Where the contestant is a team and there is an agreement among the team members governing distribution of the purse money, then only the amount received by each team member pursuant to the agreement is gross receipts of the team member.

(2) Subsection II of 3.2.1.18 NMAC does not apply to receipts exempt under Section 7-9-40 NMSA 1978 nor does it apply to activities that are primarily or solely gambling.

NEW MEXICO BOARD OF VETERINARY MEDICINE

PUBLIC NOTICE

The New Mexico State Board of Veterinary Medicine, pursuant to NMSA 1978 61-14-5.F, hereby repeals 16 NMAC 25.9 Minimum Standards effective June 7, 2002. To replace this Part, the Board hereby files a new version as 16.25.9 NMAC Minimum Standards, effective June 7, 2002.

NEW MEXICO BOARD OF VETERINARY MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS PART 9 MINIMUM STANDARDS

16.25.9.1 ISSUING AGENCY: New Mexico Board of Veterinary Medicine, 7301 Jefferson St. NE, Ste. C, Albuquerque, NM 87109, (505) 841-9112.
[16.25.9.1 NMAC - Rp 16.25.9.1 NMAC, 6-7-02]

16.25.9.2 SCOPE: Applies to all veterinary facilities operating in the State of New Mexico - i.e., all facilities at which the "practice of veterinary medicine" (as defined in the Veterinary Practice Act, section 61-14-2.B) regularly occurs.
[16.25.9.2 NMAC - Rp 16.25.9.2 NMAC, 6-7-02]

16.25.9.3 STATUTORY AUTHORITY: Veterinary Practice Act, NMSA 1978 Sections 61-14-5.F and J and 61-14-13.
[16.25.9.3 NMAC - Rp 16.25.9.3 NMAC, 6-7-02]

16.25.9.4 DURATION: Permanent.
[16.25.9.4 NMAC - Rp 16.25.9.4 NMAC, 6-7-02]

16.25.9.5 EFFECTIVE DATE: June 7, 2002 unless a different date is cited at the end of a section.
[16.25.9.5 NMAC - Rp 16.25.9.5 NMAC, 6-7-02]

16.25.9.6 OBJECTIVE: To govern minimum standards for the practice of veterinary medicine.
[16.25.9.6 NMAC - Rp 16.25.9.6 NMAC, 6-7-02]

16.25.9.7 DEFINITIONS:
A. "mobile veterinary practice" means providing a wide range of medical or surgical services in a movable trailer, pick-up, motor home, or other vehicle designed or modified to function as a veterinary practice facility.

B. "clean surgery" means the performance of a surgical operation for the treatment of a condition and under circumstances which, consistent with the standards of good veterinary medicine, do not warrant the use of aseptic surgical procedures.

C. "facility" means a building, kennel, mobile unit, vehicle, animal shelter, pet shop, or animal supply store where "the practice of veterinary medicine" as defined in the Veterinary Practice Act (to include regularly scheduled vaccination clinics or any other veterinary services) regularly occurs.

D. "small animal mobile facility" means a trailer or mobile unit established to function as a veterinary premises which concentrates in providing veterinary services to common domestic household pets.
[16.25.9.7 NMAC - Rp 16.25.9.7 NMAC, 6-7-02]

16.25.9.8 GENERAL STANDARDS:

A. The delivery of veterinary care shall be provided in a competent and humane manner.

B. Veterinary medicine shall be performed in a manner compatible with current veterinary medical practice.

C. The Board of Veterinary Medicine shall require periodic inspections of all veterinary facilities to monitor compliance with these standards.

(I) Standards depend upon the nature, scope, and limitations of the practice as defined by the practice manager and approved by the board. However, in no case

shall standards of cleanliness, hygiene, and sanitation be violated.

(2) Inspections shall be conducted by a Facilities Inspector, designated by the Board.

(3) Facilities are subject to inspection at any time during their normal hours of business.

[16.25.9.8 NMAC - Rp 16.25.9.8 NMAC, 6-7-02]

16.25.9.9 PREMISES - GENERAL REQUIREMENTS:

A. All premises where veterinary medicine (including its various branches) is being practiced, and all instruments, equipment, apparatus, and apparel used in connection with those practices, shall be kept clean and sanitary and shall conform to the standards specified for different types of facilities.

B. Emergency service either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance shall be provided at all times. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians.

C. Every veterinary facility shall maintain the following:

(1) A sanitary environment, to include the proper routine disposal of waste material, proper sterilization or sanitation of all equipment used in diagnosis or treatment, and adequate storage to provide a neat and orderly appearance.

(2) An adequate library of textbooks, journals or other current veterinary reference materials, readily available on the premises or available through electronic access.

(3) Proper storage and environmental control for all medicines and biologics, based on the manufacturer's recommendations.

(4) Properly maintained records.

(5) Legally accessible methods for the disposal of deceased animals and infectious waste.

[16.25.9.9 NMAC - Rp 16.25.9.9 NMAC, 6-7-02]

16.25.9.10 PREMISES - FIXED VETERINARY FACILITIES:

A. When premises are closed, an answering machine or answering service shall be used to notify the public when the veterinary premises will be reopened and where pre-arranged veterinary care is available.

B. All fixed premises shall conform to or possess the following:

(1) Exterior

(a) A legible sign.

(b) Facility clean and in good

repair.

(c) Grounds clean and maintained.

(2) Interior

(a) Indoor lighting for halls, wards, reception areas, examination, treatment, and surgery rooms that is adequate for these areas' intended purposes.

(b) A reception room and office, or a combination of the two.

(c) An examination room separate from other areas of the facility and of sufficient size to accommodate the appropriate hospital personnel.

(d) Table tops, counter tops, and floors of materials suitable for regular disinfection and cleaning.

(e) Facility license conspicuously displayed.

(f) Veterinarians' licenses and veterinary technicians' licenses conspicuously displayed.

C. A veterinary facility where animals are housed or retained for treatment shall additionally contain the following:

(1) Compartments of sufficient size and construction to maintain animals in a comfortable, safe, and sanitary manner.

(2) Exercise runs, or a means for providing exercise, of sufficient construction to maintain animals in a safe, clean, and sanitary manner.

(3) Effective separation of known or suspected contagious animals.

(4) Maintenance of temperature and ventilation so as to ensure the comfort of patients.

(5) An animal identification system.

(6) Fire precautions that meet the requirements of local and state fire prevention codes.

(7) If there are to be no personnel on the premises during any time an animal is left at the veterinary facility, prior written or verbal notice of this fact is to be given to the client.

D. Full-service veterinary facilities shall additionally conform to or possess the following:

(1) A surgery room separate and distinct from all other rooms and reserved for aseptic surgical procedures requiring aseptic preparation.

(2) The capability to render diagnostic radiological services, either in-house or through outside sources.

(3) The capability to provide clinical pathology and histopathology diagnostic laboratory services, either in-house or through outside sources.

[16.25.9.10 NMAC - N, 6-7-02]

16.25.9.11 PREMISES -

MOBILE VETERINARY FACILITIES:

A. Small Animals. A small animal mobile veterinary facility shall conform to or possess the following:

(1) Hot and cold water.

(2) A 110-volt power source for diagnostic equipment.

(3) A collection receptacle for proper disposal of waste material.

(4) Lighting adequate for the procedures to be performed.

(5) Table tops and counter tops which can be cleaned and disinfected.

(6) Floor coverings which can be cleaned and disinfected.

(7) Compartments to transport or hold animals, if applicable.

(8) Indoor lighting for halls, wards, reception areas, examination and surgery rooms that is adequate for these areas' intended purposes.

(9) An examination room separate from other areas of the facility (unless only one client is in the mobile unit at a time), which shall be of sufficient size to accommodate appropriate hospital personnel.

(10) Fire precautions that meet the requirements of local and state fire prevention codes.

(11) Temperature and ventilation controls adequate to ensure the comfort of patients.

(12) If surgical services are offered, a room separate and distinct from other rooms that reserved for aseptic surgical procedures.

(13) The capability to render diagnostic radiological services, either in the mobile veterinary unit or through other commercial facilities.

(14) The capability to provide clinical pathology and histopathology diagnostic laboratory services, either in the mobile veterinary unit or through outside services.

(15) Ability and equipment to provide immediate emergency care at a level commensurate with the specific veterinary medical services provided.

(16) Provide after-hours emergency service, either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians.

(17) In all types of mobile veterinary practice adherence to minimum standards of practice and the existence of a veterinarian-client-patient relationship.

(18) Proper instrumentation and sterilization maintained in the vehicle to accommodate those services which the veterinarian holds himself/herself out as capable of providing.

B. Large Animals. A large animal mobile veterinary facility shall conform to or possess the following:

(1) Maintenance in a clean and sanitary fashion.

(2) Items of equipment that are necessary for the veterinarian to perform physical examinations, surgical procedures, and medical treatments consistent with the standards of the profession and the type of veterinary services being rendered. Standard items equipping the unit should include, but not be limited to, the following:

(a) If sterile surgery is to be performed, sterile surgical instruments, suturing materials, syringes, and needles should be carried.

(b) Protective clothing, rubber or disposable boots, and a means to clean them between each visit to each premises as the disease warrants.

(c) Current and properly stored pharmaceuticals and biologics as per manufacturer's label.

(d) A means of cold sterilization.

(3) The capability to render diagnostic radiological services, either through the mobile veterinary unit or through other commercial facilities.

(4) The capability to provide clinical pathology and histopathology diagnostic laboratory services, either through the mobile veterinary unit or through outside services.

C. In all types of mobile veterinary practice, minimum standards of practice must be adhered to and a veterinarian-client-patient relationship must exist.

[16.25.9.11 NMAC - Rp 16.25.9.17 NMAC, 6-7-02]

16.25.9.12 PREMISES - EMERGENCY CLINICS:

A. Emergency clinics are facilities which advertise or otherwise purport to provide veterinary medical services when these services are not normally available through other facilities. Nothing contained in this rule is intended to prohibit any licensed facility from providing services of an emergency nature.

B. The minimum staffing requirements for an emergency facility shall include a licensed veterinarian on the premises at all times during the posted hours of operation.

C. Its advertisements shall clearly state:

(1) A licensed veterinarian is on the premises during the posted emergency hours.

(2) The hours the facility will provide emergency services.

(3) The address and telephone number of the facility.

D. In addition to the equipment for veterinary hospitals and clinics, all emergency facilities also shall have the equipment necessary to perform standard emergency medical procedures, including, but not limited to:

(1) The capability to render timely diagnostic radiological services on premises.

(2) The capacity to render timely laboratory services on premises.

(3) The ability to provide diagnostic cardiac monitoring.

E. Emergency clinics shall meet the same standards as "fixed veterinary premises."

[16.25.9.12 NMAC - Rp 16.25.9.16 NMAC, 6-7-02]

16.25.9.13 PREMISES – NON-FULL SERVICE FACILITIES:

A. Referral, specialty, and other facilities in which the services provided are limited in scope shall:

(1) Identify the name of the primary veterinarian on each patient's medical record.

(2) Possess all necessary instruments, equipment, and apparatus compatible with the services rendered.

B. Non-full service facilities shall meet the same standards as "fixed veterinary premises."

[16.25.9.13 NMAC - N, 6-7-02]

16.25.9.14 PREMISES – FOOD ANIMAL FACILITIES:

Veterinary premises where food animal medicine is practiced shall have a reception room and office or a combination of the two. The premises shall contain the following:

A. Facilities for cleaning and sterilizing instruments and equipment.

B. Telephone and/or answering services.

C. Record-keeping system.

D. Facilities for proper storage of pharmaceuticals and biologics.

E. Holding pens.

F. Capability for providing restraint.

G. Sanitizable area for clean surgery.

[16.25.9.14 NMAC - Rp 16.25.9.18 NMAC, 6-7-02]

16.25.9.15 RADIOLOGICAL SERVICES:

A. Full-service veterinary practices must have the capacity to render adequate diagnostic radiological services, either in the hospital or through a written agreement to provide these services through another facility.

B. All exposed radiographs shall be the property of the veterinary facility that originally ordered them to be prepared and shall be stored and maintained by that facility for a period of three years.

C. All exposed radiographs shall have a permanent, legible identification, either by film emulsion or by affixing a label that includes the following information:

(1) The hospital, clinic, or veterinarian name.

(2) The location, city, and state of the facility.

(3) Client identification.

(4) Patient identification.

(5) The date the radiograph was taken.

(6) Anatomical orientation, left or right, as indicated.

D. Radiographs shall be temporarily released (loaned) within a reasonable time period upon the request of another veterinarian who has the authorization of the owner/agent of the animal to which they pertain or directly to the owner/agent. Return of said radiographs to the originating veterinarian shall also be accomplished in a timely manner. Transfer of radiographs shall be documented in the medical record.

E. If radiographs are transferred permanently (for example, when a client is moving away), this transfer shall be documented in the medical record.

F. Radiographs originating at an emergency hospital shall become the property of the next attending veterinary facility upon receipt of said radiographs. Transfer of radiographs shall be documented in the medical record.

G. A radiology log shall be maintained and shall include the following information:

(1) The date the radiograph was taken.

(2) Client identification.

(3) Patient identification.

(4) Anatomical location or body part radiographed.

(5) The view or angle of the radiograph.

(6) The technique used for each exposure.

[16.25.9.15 NMAC - Rp 16.25.9.10 NMAC, 6-7-02]

16.25.9.16 LABORATORY SERVICES AND EQUIPMENT:

A. Clinical pathology and histopathology diagnostic laboratory services must be readily available within the veterinary facility or through outside sources.

B. Laboratory data is the

property of the veterinary facility that originally ordered it to be prepared.

C. A copy of laboratory data shall be released within a reasonable time period upon the request of another veterinarian who has the authorization of the owner or agent for the animal to which it pertains or directly to the owner or agent.

D. A laboratory must be equipped with a microscope and a centrifuge.

[16.25.9.16 NMAC - Rp 16.25.9.11 NMAC, 6-7-02]

16.25.9.17 PHARMACEUTICAL SERVICES:

A. No legend or controlled drug shall be prescribed, dispensed, or administered without the establishment of a veterinary-client-patient relationship.

B. All legend drugs shall be stored in a secured manner limiting public accessibility.

C. No expired drug or biologic shall be administered or dispensed.

D. All expired drugs or biologics shall be stored away from the working pharmacy while awaiting disposal.

E. All drugs and biologics shall be maintained, administered, dispensed, and prescribed in compliance with state and federal laws.

F. Unless otherwise requested by the owner, and noted in the medical record, all repackaged legend and dangerous drugs shall be dispensed in safety-closure containers.

G. All drugs shall be labeled with:

(1) Name, address, and phone number of the facility.

(2) Client's name.

(3) Patient's name.

(4) Date dispensed.

(5) Name and strength of drug.

(6) Directions for use.

(7) Quantity dispensed.

(8) Expiration date of drug.

(9) Name of prescribing veterinarian.

(10) The words "For veterinary use only" and "Keep out of reach of children."

[16.25.9.17 NMAC - Rp 16.25.9.12 NMAC, 6-7-02]

16.25.9.18 SURGICAL SERVICES:

A. Sterile surgery shall be defined as procedures in which aseptic technique is practiced in patient preparation, instrumentation, and surgical attire.

B. The surgeon is responsible for the surgical case until it is completed and there is adequate recovery from

anesthesia.

C. Surgery room.

(1) A room shall be designated for aseptic procedures only, in which no other uses are permitted.

(2) The surgery room shall be well lighted and have available an operational viewing device for reviewing radiographs.

(3) The floors, tabletops, and countertops of the surgery room shall be of a material suitable for regular disinfection and cleaning, and shall be cleaned and disinfected regularly.

(4) Storage in the surgery room is limited to surgically related items only.

(5) Nothing in this section shall preclude the performance of emergency aseptic surgical procedures in another room when the room designated for that purpose is already occupied.

D. Instruments and equipment.

(1) Instruments and equipment shall be:

(a) Adequate for the type of surgical service provided.

(b) Sterilized by a method acceptable for the type of surgery for which they shall be used.

(2) In any sterile surgical procedure, a separate sterile pack and glove shall be used for each animal.

(3) All instruments, packs, and equipment that have been sterilized shall have an indicator that reacts to and verifies sterilization within one year.

E. Surgical attire.

(1) Each member of the surgical team shall wear an appropriate sanitary cap and sanitary mask which covers his or her hair, mouth, nose, and any facial hair, except for eyebrows and eyelashes.

(2) All members of the surgical team who will be handling sterile instruments or touching the surgical site shall wear sterilized surgical gowns with long sleeves and sterilized gloves.

(3) Ancillary personnel in the surgery room shall wear clean clothing.

(4) Ancillary personnel in immediate proximity to the sterile field shall wear sanitary cap and mask.

(5) When performing "clean surgery," the instruments used to perform such surgery shall have been properly sterilized or disinfected, and the surgeon and ancillary personnel shall wear clean clothing as appropriate.

F. Anesthesia.

(1) General anesthesia is a condition caused by the administration of a drug or combination of drugs sufficient to produce a state of unconsciousness or dissociation and blocked response to a given pain or

alarming stimulus.

(2) A veterinarian shall use appropriate and humane methods of anesthesia, analgesia, and sedation to minimize pain and distress during any procedures and shall comply with the following standards:

(a) With the exception of feral or dangerous animals, every animal shall be given a physical examination within twelve (12) hours prior to the administration of an anesthetic.

(b) The animal under general anesthesia shall be under continuous observation until at least the swallowing reflex has returned and shall not be released to the client until the animal demonstrates a righting reflex. This shall not preclude direct transfer of an animal under anesthesia to a suitable facility for referred observation.

(c) Provide a method of respiratory monitoring that may include observation of the animal's chest movement or observing the rebreathing bag or respirometer.

(d) Provide a method of cardiac monitoring that may include the use of stethoscope or electrocardiographic monitor.

(e) Clean endotracheal tubes of assorted sizes shall be readily available.

(f) Oxygen equipment shall be available at all times.

(g) Anesthetic equipment will be maintained in proper working condition.

(h) Effective means shall be provided for exhausting waste gasses from hospital areas in which inhalation anesthesia is used.

G. A surgical log shall be maintained that includes the following information:

(1) Date of procedure.

(2) Client identification.

(3) Patient identification.

(4) Type or name of procedure.

(5) Pre-anesthetic or sedative used.

(6) Anesthetic or induction agent used.

(7) Anesthesia maintenance agent used.

(8) Duration of procedure.

[16.25.9.18 NMAC - Rp 16.25.9.13 NMAC, 6-7-02]

16.25.9.19 DENTAL SERVICES:

A. Dental operation or procedure is the application or use of any instrument or device to any portion of an animal's tooth, gum, or related tissue for the prevention, cure, or relief of any wound, fracture, injury, disease, or other condition of an animal's tooth, gum, or related tissue. Dental operations or procedures shall be performed only by licensed veterinarians, except for those preventive veterinary den-

tal procedures as specified below.

B. Preventive veterinary dental procedures including, but not limited to, the removal of calculus, soft deposits, plaque, stains; the smoothing, filing, polishing of tooth surfaces, or floating or dressing of equine teeth, shall be performed only by licensed veterinarians, or under the direct supervision of a licensed veterinarian.

C. Preventive veterinary dental procedures including, but not limited to, the removal of calculus by either manual or ultrasonic rescaling shall be done in a location specifically designated for such procedures or in a treatment area.

D. This rule does not prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, toothbrushes, or similar items to clean an animal's teeth.

[16.25.9.19 NMAC - Rp 16.25.9.14 NMAC, 6-7-02]

16.25.9.20 DIRECT SUPERVISION OF NON-VETERINARIANS:

Non-licensed individuals—excluding graduate veterinarians—are prohibited from practicing veterinary medicine, which includes chiropractic, physical therapy, acupuncture, acupressure, dentistry, embryo transfer, or any other related services on animals, as defined in the Veterinary Practice Act, 61-14-2.B.(1), except under the direct supervision of a licensed veterinarian.

A. No graduate veterinarian may practice veterinary medicine (as defined in the Veterinary Practice Act, 61-14-2.B.) in New Mexico without a current New Mexico license to practice veterinary medicine.

B. Direct supervision includes the following:

(1) The licensed veterinarian must have established a valid veterinarian-client-patient relationship.

(2) The treatment must be performed on the order of a licensed veterinarian.

(3) The licensed veterinarian must be on the premises and readily available.

(4) The licensed veterinarian must assume liability for the quality of any treatment performed.

(5) The fee for services rendered shall be paid to the licensed veterinarian or licensed facility.

[16.25.9.20 NMAC - Rp 16.25.9.15 NMAC, 6-7-02]

16.25.9.21 RECORD-KEEPING:

A. Every veterinarian involved in a veterinarian-client-patient relationship and performing any act requir-

ing a license to work on any animal or group of animals in his or her custody or in custody of an animal hospital, shall prepare a legible, written, individual (or group) animal and client record concerning the animal(s), which shall contain the following information:

(1) Name, address, and phone number of the animal's owner or agent.

(2) Name or identity of animal(s), including species, breed, age, sex, weight, and color, where appropriate.

(3) The medical record shall contain:

(a) A history of pertinent information as it pertains to the animal's medical status.

(b) Notation of the physical examination findings.

(c) Treatment or intended treatment plans, or both, including medications, medication strengths (when available in more than one strength) and amounts administered, dispensed, or prescribed and frequency of use as well as route of administration, including those medications used for sedation, induction, and maintenance of anesthesia.

(d) Data and interpretation(s) of diagnostic procedures including, but not limited to, radiographs, laboratory, ultrasound, and ECG.

(e) A diagnosis or tentative diagnosis.

(f) When pertinent, a prognosis.

(g) Progress notes and disposition of the case.

(h) Dates (beginning and ending) of custody of the animal with daily notations.

(i) In the case of vaccination clinics, a certificate, including the information required by subsections (A)(1) and (2) above may serve as the medical record.

(j) Name or initials of the veterinarian responsible for entries.

(k) Name or initials of all ancillary and authorized individuals responsible for entries.

(l) Records for surgical procedures that include a description of the procedure, surgical findings when pertinent, and response to or recovery from anesthesia.

(4) Group records are acceptable for herds, flocks, or litters of animals that lack individual identification by name or that include a number of individuals to which the same medical record applies. Records shall contain the requirements listed in (3) above.

B. Record Storage.

(1) All records shall be the property of the veterinary facility or practice that created such records and shall be kept for a

minimum of three years after the last animal's visit.

(2) Copies of records and radiographs or a summary of records will be made available within ten working days upon the client's request.

C. Controlled Substances.

(1) A separate log shall be maintained on each controlled substance and shall contain the following information:

(a) Date and time of administration or date of dispensation.

(b) Name of owner or agent.

(c) Name or identification of animal.

(d) Amount dispensed or administered.

(e) Balance remaining.

(f) Authorizing veterinarian and identification of authorized individual dispensing or administering said controlled substance.

(2) For each controlled substance, there shall be an annual inventory that includes:

(a) The date of inventory (May 1st of each year, unless prior written notice is submitted to the Board by the Licensee Manager to the appropriate agency).

(b) A physical count identifying the quantity of each controlled substance on hand, on the date of inventory.

(c) The "Balance Remaining" from the individual controlled substance log.

(d) The discrepancy between (b) and (c).

(e) The percent of annual use (d) represents.

(3) All New Mexico Pharmacy Board, New Mexico Controlled Substances Act, Federal Drug Enforcement Administration and Federal Food and Drug Administration requirements shall be complied with, including, but not limited to the following:

(a) Controlled substances must be kept securely locked in a closet, safe, or fixed cabinet.

(b) Access to the controlled substance storage area should be restricted to the absolute minimum number of employees.

(c) The recommendation that controlled substance stock be kept to a minimum. Should it be necessary to have a substantial quantity of controlled substances stored in the office or clinic, DEA encourages having security which exceeds the minimum requirements, such as a safe and alarm system.

(d) The reporting of lost or stolen controlled substances to the appropriate agency.

(e) The disposal of controlled

substances through a DEA-licensed disposer.

(f) The posting of both the DEA and NMCS licenses in the pharmacy area.

D. Computer Records.

(1) There shall be reasonable security of a facility's computer(s), with access limited to authorized individuals only.

(2) A daily and cumulative monthly back-up on a separate disk or magnetic tape shall be made.

[16.25.9.21 NMAC - Rp 16.25.9.19 NMAC, 6-7-02]

HISTORY OF 16.25.9 NMAC:

Pre-NMAC History:

BVE 88-7, Rules Governing Minimum Standards for the Practice of Veterinary Medicine, 10-14-88.

BVE 92-8, Rules Governing Minimum Standards for the Practice of Veterinary Medicine, 5-22-92.

BVE 93-8, Rules Governing Minimum Standards for the Practice of Veterinary Medicine, 6-3-93.

History of Repealed Material:

16 NMAC 25.9, Minimum Standards - Repealed, 9-1-00.

16.25.9 NMAC, Minimum Standards - Repealed, 6-7-02.

End of Adopted Rules and Regulations Section

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