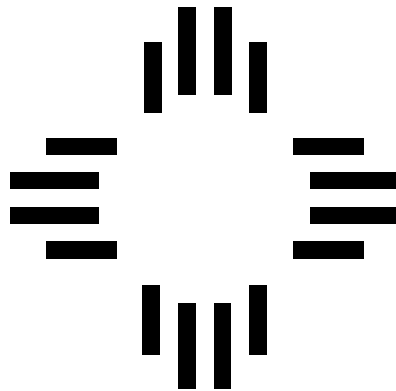


# **New Mexico Register**

**Volume XIII, Issue Number 21**  
**November 14, 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  
Santa Fe, New Mexico  
2002

COPYRIGHT © 2002  
BY  
THE STATE OF NEW MEXICO

---

ALL RIGHTS RESERVED

# New Mexico Register

Volume XIII, Number 21

November 14, 2002

## Table of Contents

### Notices of Rulemaking and Proposed Rules

<b>Construction Industries Commission</b>	
Notice of Regular Meeting . . . . .	855
<b>Education, Board of</b>	
Notice of Proposed Rulemaking . . . . .	855
<b>Energy, Minerals and Natural Resources Department</b>	
State Parks Division	
New Mexico State Parks Division Announces Postponement of Public Hearing on Proposed	
Amendments to State Park Rules . . . . .	856
<b>Engineers and Surveyors, Board of Licensure for Professional</b>	
Notice of Public Rule-making Hearing . . . . .	856
<b>Human Services Department</b>	
Income Support Division	
Notice of Public Hearing . . . . .	856
<b>Racing Commission</b>	
Notice of Rulemaking and Public Hearing . . . . .	857
<b>Regulation and Licensing Department</b>	
Construction Industries Division	
Notice of Public Hearing . . . . .	857
Notice of Public Hearing . . . . .	857
<b>Workers Compensation Administration</b>	
Response to Public Comment . . . . .	858

### Adopted Rules and Regulations

#### Effective Date and Validity of Rule Filings

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

#### A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

<b>Albuquerque/Bernalillo County Air Quality Control Board</b>	
* 20.11.5 NMAC A Visible Air Contaminants . . . . .	859
<b>Education, Board of</b>	
* 6.61.8 NMAC A Licensure in Early Childhood Education, Birth-Grade 3 . . . . .	859
<b>Environmental Improvement Board</b>	
20 NMAC 7.1 R Drinking Water . . . . .	862
* 20.7.10 NMAC N Drinking Water . . . . .	862
<b>Game and Fish, Department of</b>	
* 19.30.5 NMAC A Private Land Elk License Allocation . . . . .	866
* 19.31.10 NMAC A Hunting and Fishing - Manner and Method of Taking . . . . .	869
* 19.32.2 NMAC A Method, Season Dates, and Bag Limits . . . . .	870
* 19.33.6 NMAC A List of Threatened and Endangered Species . . . . .	871
<b>Personnel Board, State</b>	
* 1.7.4 NMAC R Pay . . . . .	872
* 1.7.4 NMAC N Pay . . . . .	872
* 1.7.1 NMAC A General Provisions . . . . .	876
* 1.7.2 NMAC A Classified Service Appointments . . . . .	879
* 1.7.3 NMAC A Classification . . . . .	880
* 1.7.5 NMAC A Recruitment, Assessment, Selection . . . . .	881
* 1.7.6 NMAC A General Working Conditions . . . . .	882

*	1.7.7 NMAC	A	Absence and Leave . . . . .	883
*	1.7.8 NMAC	A	Drug and Alcohol Abuse . . . . .	885
*	1.7.9 NMAC	A	Performance Appraisals . . . . .	887
*	1.7.10 NMAC	A	Furlough, Reduction in Force, Reemployment . . . . .	888
*	1.7.11 NMAC	A	Discipline . . . . .	890
*	1.7.12 NMAC	A	Adjudication . . . . .	891
<b>Racing Commission</b>				
*	15.2.2 NMAC	A	Horse Racing - Associations. . . . .	892
*	16.47.1 NMAC	A	Horse Racing Licensees - General Provisions. . . . .	893
<b>Regulation and Licensing Department</b>				
Construction Industries Division				
*	14.5.5 NMAC	A	Fees . . . . .	893
<b>Workers' Compensation Administration</b>				
*	11.4.7 NMAC	A / E	Payments for Health Care Services . . . . .	894

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

**The New Mexico Register**  
Published by  
The Commission of Public Records  
Administrative Law Division  
1205 Camino Carlos Rey  
Santa Fe, NM 87507

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

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00, except the first subscription from each New Mexico state agency may be ordered at \$85.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

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

# Notices of Rulemaking and Proposed Rules

## NEW MEXICO CONSTRUCTION INDUSTRIES COMMISSION

### CONSTRUCTION INDUSTRIES COMMISSION

Notice is hereby given that the Construction Industries Commission will hold a regular meeting on Friday, December 20, 2002 at 9:30 a.m., at the Main Conference Room, Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico. The Commission will consider pending agenda items and discuss such other business as may require formal action by the Commission. Anyone who requires special accommodations is requested to notify the Commission at 725 St. Michael's Drive, Santa Fe, New Mexico 87501 of such needs at least ten days prior to the meeting.

## NEW MEXICO BOARD OF EDUCATION

### NEW MEXICO STATE BOARD OF EDUCATION NOTICE OF PROPOSED RULEMAKING

The New Mexico State Board of Education ("Board") will convene on Wednesday, November 20, 2002, at 8:00 a.m. Committees will meet on Wednesday, November 20, 2002, and Thursday, November 21, 2002. The regular meeting of the Board will begin on Friday, November 22, 2002. The committee meetings and the regular meeting will be held in Mabry Hall, State Education Building, 300 Don Gaspar, Santa Fe, New Mexico. Information regarding any change in the location of the meetings, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The State Department of Public Board of Education may consider the following items of rulemaking at the meeting:

RULE NUMBER	PROPOSED ACTION	RULE NAME
6.19.1 NMAC	Amend rule	Public School Accountability: General Provisions*
6.19.2 NMAC	Amend rule	Public School Accountability: PUBLIC SCHOOL ACCOUNTABILITY SYSTEM FOR SCHOOLS RATED PROBATIONARY*
6.30.2 NMAC (Sections 10 and 11)	Amend rule	Standards for Excellence#
6.31.2 NMAC	Amend rule	Children with Disabilities/Gifted Children#
6.63.4 NMAC	Repeal rule	Licensure in Educational Diagnosis+
6.63.4 NMAC	Adopt new rule	Licensure in Educational Diagnosis+
6.63.6 NMAC	Adopt new rule	Licensure for School Counselors+
6 NMAC 4.2.3.12	Repeal rule	Licensure for School Counselors+
6.64.12 NMAC	Adopt new rule	Licensure in Modern and Classical Languages+
6 NMAC 4.2.3.18 (Proposed 6.62.2 NMAC)	Reformat rule/amend rule/delayed repeal	Licensure for Educational Administration, Grades K - 12+
6.62.3 NMAC (Proposed rule number)	Adopt new rule	Licensure for School District Administrators+
6.62.4 NMAC (Proposed rule number)	Adopt new rule	Licensure for School Site Administrators+
6 NMAC 4.2.3.11	Repeal rule	Licensure for School Psychologists, K-12+
6.63.5 NMAC (Proposed rule number)	Adopt new rule	Licensure for School Psychologists, K-12+

\* Accountability Committee. Information regarding proposed rule changes, public hearing, and submission of written comments has been disseminated and is also available on the State Department of Public Education's website. For further information, please contact Dr. Mel Morgan, at (505)827-6683 Assistant Superintendent for Accountability and Information Services.

# Instructional Services Committee. The draft rule has been previously noticed, public hearings have been held, and written comments have been invited through November 5, 2002. For further information, please contact Charles D. Noland, Legal Counsel, Special Education Unit, at (505) 827-6541.

+ Quality Educators Committee. The State Board of Education previously approved the reformatting and amendment of the rule relating to Licensure for School Psychologists, K-12. Due to the extensive nature of the amendments, the State Department of Public Education will request that the State Board of Education repeal 6 NMAC 4.2.3.11 and adopt the amendments as new rule 6.63.5 NMAC. Information regarding proposed rule changes, public hearing, and submission of written comments has been disseminated and is also available on the State Department of Public Education's website. For further information, please contact James Ball, Director, Professional Licensure Unit, at (505) 827-6587.

Written comments may be submitted to the individuals named above at the State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Unless otherwise noted, written comments will be accepted until 5 p.m. on November 15, 2002. However, the submission of written comments as soon as possible is encouraged.

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

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

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

**NEW MEXICO  
DEPARTMENT OF  
ENERGY, MINERALS AND  
NATURAL RESOURCES**

STATE PARKS DIVISION

**NEW MEXICO STATE PARKS  
DIVISION**

**ANNOUNCES  
POSTPONEMENT OF PUBLIC  
HEARING  
ON PROPOSED AMENDMENTS TO STATE  
PARK RULES**

Due to comments received on the proposed amendments to 19.5.1 through 19.5.5 NMAC requesting additional changes be considered for 19.5.4 NMAC, the Public Hearing originally scheduled for November 1, 2002 by the New Mexico State Parks Division of the Energy, Minerals and Natural Resources Department is hereby **postponed and re-scheduled for November 19, 2002 at 1:00 p.m.**

The New Mexico State Parks Division of the Energy, Minerals and Natural Resources Department will hold the public hearing in Porter Hall, located at 1220 South St. Francis Dr., Santa Fe, New Mexico. Entrance is located on the first floor north-east side of the Energy Minerals and Natural Resources Building (also known as the Piñon Building).

The hearing will be conducted in accordance with the Open Meeting Act, NMSA 1978, Section 10-15-1 et seq.; and the Energy, Minerals and Natural Resources Department Guidelines for Rulemaking (OFS 118). A copy of the new proposed regulations will be available upon written request to **DRAFT REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, NM 87504-1147, or downloading a copy at [www.nmparks.com](http://www.nmparks.com), or calling (505) 476-3355 to request a draft.

Individuals are invited to make oral comments on the proposed regulations at the hearing or by submitting written comment by 5:00 p.m. on **November 22, 2002** to **DRAFT REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, New Mexico 87504-1147; or [nmparks@state.nm.us](mailto:nmparks@state.nm.us). If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Doris Archuletta, at least two weeks prior to the hearing or as soon as possible through New Mexico voice relay at 1-800-659-1779 or TTD 1-800-659-8331. Public documents can be provided in various formats if needed.

Please check the State Parks website for updates. If you have questions, please contact Doris Archuletta at (505) 476-3355.

**NEW MEXICO BOARD OF  
LICENSURE FOR  
PROFESSIONAL  
ENGINEERS AND  
SURVEYORS**

NEW MEXICO BOARD OF LICENSURE

FOR PROFESSIONAL ENGINEERS & SURVEYORS

Notice of Public Rule-making Hearing

The Board of Licensure for Professional Engineers and Surveyors will hold a public rules hearing on December 13, 2002 at 11:00 a.m. at the Courtyard by Marriott, La Sierra Room, 3347 Cerrillos Road. The hearing will be conducted in accordance with the Uniform Licensing Act [section 61-1-1 et. seq. NMSA 1978]. The Board will be considering proposed changes to Title 16.39.3.9 Application-Engineering Intern and Professional Engineer, 16.39.3.10 Examinations—Engineering Intern and Professional Engineer; 16.39.3.11 Practice of Engineering; 16.39.5.8 Application-Surveyor Intern and Professional Surveyor; 16.39.5.9 Examinations—Surveyor Intern and Professional Surveyor; 16.39.5.10 Practice of Surveying. Copies of the proposed changes may be obtained by calling 827-7561, visiting the Board's website [www.state.nm.us/pepsboard](http://www.state.nm.us/pepsboard), or by writing to the Board at 1010 Marquez Place, Santa Fe, NM 87505. Comments on the rule may be provided by statement in person at the hearing, submitted in writing at the hearing, or submitted to the Board in writing prior to the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Board at 827-7561 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

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

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the NMW Cash Assistance Program. The hearing will be held at 9:00 am on Friday, December 13, 2002. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes to amend NMW cash assistance regulations at 8.102.410.17 NMAC to further clarify and define rules for those TANF cash assistance recipients who have met the 60-month time limit for

participation in the program. The proposed amendments include requirements for providing services to those who will be eligible to participate in the TANF funded cash assistance program beyond the 60-month time limit.

The Department proposes to amend the General Provisions regulations at 8.100.970.8.C NMAC to provide clarification and consistency for the fair hearing process with respect to the availability of TANF cash assistance when the benefit group has met the 60-month time limit. The amendments to this rule are based on the requirements for continuing cash assistance in the New Mexico Works Act.

The Department proposes to amend the General Provisions regulations at 8.100.970.9.B NMAC to provide for a 60-day standard for completing the fair hearing process. The proposed 60-day standard meets the Federal requirement for the Food Stamp Program and will be adopted for that program, as well as all cash assistance programs.

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

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

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

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

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

**NEW MEXICO RACING COMMISSION**

**NEW MEXICO RACING COMMISSION  
NOTICE OF RULEMAKING AND PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that a rule-making and public hearing will be held in the Commission Conference Room, 300 San Mateo N.E., Albuquerque, New Mexico, commencing in executive session at 3:00 o'clock p.m. on Tuesday, November 19, 2002. The public session will begin at 8:30 o'clock a.m. on Wednesday, November 20, 2002. The Commission will consider adoption of proposed new/amended rules for incorporation into the Rules Governing Horse Racing in New Mexico Nos. 15.2.1.9 NMAC (regarding positive tests), 15.2.5.8 NMAC (regarding entries and trial races), 15.2.7.12 NMAC (regarding twin trifecta pools and team wager pools), and other matters of general business.

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

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

\_\_\_\_\_  
Kim Ahlbom  
Deputy Agency Director

Dated: \_\_\_\_\_

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

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

Public Hearings to receive comments regarding the adoption of regulations changing the licensing classifications for general construction.

- \* **Santa Fe, NM** – December 16, 2002, 9:00 a.m. – 12:00 Noon  
At CID Conference Room, 725 St. Michael's Drive
- \* **Albuquerque, NM** –December 17, 2002, 9:00 a.m. – 12:00 Noon  
At CID Conference Room, 2nd Floor, 1650 University Blvd. NE
- \* **Las Cruces, NM** – December 18, 2002, 9:00 a.m. – 12:00 Noon  
At CID Conference Room, 505 S. Main, Suite 150

You are invited to attend and express your opinion on the adoption of the above-referenced draft regulation changes. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division, 725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 827-7030. FAX (505) 827-7045. All comments must be received no later than 5:00 p.m., December 13, 2002.

Copies of the draft regulation changes are available at all the Construction Industries Division Offices.

**If you require special accommodations, please notify the Division of such needs no later than December 6, 2002.**

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

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

Public Meetings to receive comments regarding the adoption of :

1. Repeal and Replace Modular Standards - NMAC 14.12.3
2. Repeal of Regulation regarding Certification Incentive Plan: NMAC Section 14.1.5.8 C

\* **Santa Fe, NM** – December 20, 2002, 8:30 a.m. – 8:30 a.m.-9:30 a.m.

At the Regulation and Licensing Department, Main Conference Room, 725 St. Michael's Drive,

You are invited to attend and express your opinion of the adoption of the above referenced draft standards. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division, 725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 827-7030. FAX (505) 827-7045. All comments must be received no later than 5:00 p.m., December 13, 2002.

Copies of the draft standards are available at the Construction Industries Division Offices at the above address.

**If you require special accommodations, please notify the Division of such needs no later than December 6, 2002.**

---

## **NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION**

### **RESPONSE TO PUBLIC COMMENT**

The Director of the Workers' Compensation Administration conducted a public hearing on Sept. 4th 2002. Several commentators made comments concerning the emergency rule revision of the Rules governing Payments for Health Care Services at that time. In addition three commentators submitted written comments that the director has also considered.

The comments at the public hearing centered around three issues. Several commentators pointed out that references were being made to the current physicians terminology (CPT) that were not current. These references have been corrected.

One commentator expressed concern about new CPT codes and their treatment in the Director's order. The lack of data upon which a fee schedule for new codes can be calculated requires that most of those new codes will initially be treated as "by report" items. This situation will be corrected as soon as sufficient data concerning those procedures and their costs is available.

The other comments addressed the perceived need for public review in comments before the Director's order was adopted. This suggestion has been adopted, and new language has been inserted to provide for notice and a thirty-day public comment

period to advise the Director before his annual fee schedule order is finalized.

Two written comments urged to the emergency rule be repealed and that medical fee schedule promulgation continue to be done by direct rule changes. The suggestion was not adopted. The process of direct rules change has proven to be insufficiently responsive to the needs of the medical community, requiring a delay of approximately a calendar quarter after a new CPT is issued before the fee schedule rule can be changed. This causes significant hardship on medical providers and the consequent diminution of the availability of medical services for injured workers, and is in conflict with the broad purposes of the Act.

---

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

---



## Adopted Rules and Regulations

### ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.5 NMAC, Sections 3, 4, and 5. The Albuquerque / Bernalillo Air Quality Control Board adopted these amendments during its October 9th, 2002 regular meeting. 20.11.5 NMAC was renumbered to conform to requirements of Subsection F of 1.24.10.8 NMAC.

**20.11.5.[5]3 STATUTORY AUTHORITY:** This Part is adopted pursuant to the authority provided in the New Mexico Air Quality Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; and the Joint Air Quality Board Ordinances, Bernalillo County Ordinance 94-5 Section 4, Revised Ordinances of Albuquerque ROA 1994 Section 9-5-1-4.

[11/1/95; 20.11.5.3 NMAC – Rn, 20 NMAC 11.05.1.3, 10/1/02; 20.11.5.3 NMAC - Rn, 20.11.5.5 NMAC, 1/1/03]

**20.11.5.[3]4 DURATION:** Permanent.

[11/1/95; 20.11.5.4 NMAC – Rn, 20 NMAC 11.05.1.4 & A, 10/1/02; 20.11.5.4 NMAC - Rn, 20.11.5.3 NMAC, 1/1/03]

**20.11.5.[4]5 EFFECTIVE DATE:** November 1, 1995, unless a later date is cited at the end of a section.

[11/28/89, 11/1/95; 20.11.5.5 NMAC - Rn, 20 NMAC 11.05.1.5, 10/1/02; 20.11.5.5 NMAC - Rn, 20.11.5.4 NMAC, 1/1/03]

### NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.61.8 NMAC. The amendments to Section 7 correct a typographical error in subsection A and add a new subsection I. Section 10 (REFERENCED

MATERIALS: Competencies for Early Childhood Education) is replaced in its entirety; the previous text is therefore not published.

**6.61.8.7 DEFINITIONS:**

A. "adaptive living skills" means the development in several skill areas such as 1) living skills: eating, dressing, and toileting; 2) independence/safety skills: crossing the street properly and avoiding dangerous situations such as ~~host~~ hot stoves and hot water; and 3) environmental adaptation skills: adapting behavior as a function of the limitations or demands

of the particular environment, such as being quiet in a library or hospital and walking, not running, inside school hallways. Adaptive behavior means the effectiveness or degree with which the child meets the standards of personal independence and social responsibility expected of comparable age and cultural groups.

B. "alternative means of communication" means other forms of communication, particularly non-vocal; such as the use of sign language with and without speech; communication boards; or other technological aides such as computers and speech output devices.

C. "anti bias" means actively confronting, transcending, and eliminating personal and institutional barriers based on race, sex, or ability.

D. "at risk" means the following as it applies to children birth through age two years: A biological or medical risk is the presence of early medical conditions which are known to produce developmental delays in some children. An environmental risk is the presence of physical, social, and/or economic factors in the environment which pose a substantial threat to development as indicated by a discrepancy between chronological age, after correction for prematurity, and developmental age in two or more areas of development as documented by the evaluation process. A determination of environmental risk shall be made by an interagency team and shall not be based upon behavior related to cultural or language differences.

E. "individual education program" means a plan that describes the delivery of services to a child with a disability, age three through twenty-one. The Plan serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to decide jointly what the child's needs are, what services will be provided to meet those needs, what the anticipated outcomes may be, and how the child's progress towards meeting the projected outcomes will be evaluated.

F. "individualized family service plan" means a plan that describes the delivery of services to a child with a developmental delay or at risk for a developmental delay, birth through two years of age, and the child's family. Components of the plan include a statement describing the child's level of functioning in developmental areas; major outcomes including criteria, procedures, and timelines to determine the degree of progress and revision of the plan; specific services needed to achieve outcomes, other services needed by the child

and family, name of service coordinator, a transition plan, and an optional statement of family concerns, priorities and resources.

G. "integrated curriculum" means an approach to curriculum that recognizes that content areas in instruction are naturally interrelated, as they are in real life experiences. In the resulting integrated curriculum, learning is regarded as a process rather than a collection of facts. Learning about math, science, social studies, health, and other content areas are all connected through meaningful activities.

H. "intervention strategies" means various techniques utilized in teaching a child a particular skill such as physical and/or verbal prompts and cues, visual aides, modeling, imitation, repetition, task analysis, environmental or stimulus prompts and cues. These strategies are attempts to facilitate learning when the presentation of information or the arrangement of an environment is insufficient in assisting the developmental learning process. The proper design of intervention strategies requires careful observation, individualization and data keeping. The goal of this approach is to systematically fade the particular technique utilized as the child demonstrates abilities to practice, initiate, and generalize the skill.

I. "variations across cultures/cultural diversity" means the curriculum, environment, and learning materials are reflective of distinct groups that may differ from one another physically, socially, and culturally.

[11-14-98; 6.61.8.7 NMAC - Rn, 6 NMAC 4.2.3.17.7, 03-31-01; A, 11-14-02]

### **6.61.8.10 REFERENCED MATERIAL: COMPETENCIES FOR EARLY CHILDHOOD EDUCATION**

A. Child Growth, Development and Learning: Foundations for all learning are established during early childhood. Biological-physical, social, cultural, emotional, cognitive, and language domains are inherently intertwined in growth and development. Early childhood professionals must understand this process of development and the adult's role in supporting each child's growth, development, and learning.

(1) Incorporate understanding of developmental stages, processes, and theories of growth, development, and learning into developmentally appropriate practice.

(2) Demonstrate knowledge of the interaction between maturation and environmental factors that influence physical, social, emotional, cognitive, and cultural domains in the healthy development of

each child.

(3) Demonstrate knowledge of the significance of individual differences in development and learning. Demonstrate knowledge of how certain differences may be associated with rate of development and developmental patterns associated with developmental delays and/or specific disabilities.

(4) Demonstrate knowledge of the similarities between children who are developing typically and those with special needs.

(5) Provide a variety of activities that facilitate development of the whole child in the following areas: physical/motor, social/emotional, language/cognitive, and adaptive/living skills.

(6) Apply knowledge of cultural and linguistic diversity and the significance of socio-cultural and political contexts for development and learning and recognize that children are best understood in the contexts of family, culture and society.

(7) Demonstrate knowledge of the many functions that language serves in the cognitive, social, and emotional aspects of development in the formative years.

(8) Demonstrate knowledge of the developmental sequence of language and literacy, including the influence of culture and home factors.

(9) Demonstrate knowledge of how children acquire and use verbal, non-verbal, and alternative means of communication.

(10) Demonstrate knowledge of the relationship among emotions, behaviors, and communication skills to assist children in identifying and expressing their feelings in appropriate ways.

(11) Use appropriate guidance to support the development of self-regulatory capacities in young children.

B. Health, Safety and Nutrition: Early childhood professionals promote physical and mental health and appropriate nutrition and provide an emotionally and physically safe environment for young children in partnership with their families. Sound health, safety, and nutritional practices provide the foundation for development and learning. Good nutrition is appropriate and important to the total development of young children and their families. Meals and snacks encourage good nutrition and eating habits. A safe environment prevents and reduces injuries for young children who are only beginning to recognize dangerous situations.

(1) Recognize and respond to each child's physical health, intellectual and emotional well being, and nutritional and safety needs.

(2) Appropriately plan, maintain,

and facilitate the use of the indoor and outdoor learning environments to promote each child's physical and emotional well-being.

(3) Use appropriate health appraisal and management procedures and makes referrals when necessary.

(4) Recognize signs of emotional distress, child abuse, and neglect in young children and use procedures appropriate to the situation, such as initiating discussions with families, referring to appropriate professionals, and, in cases of suspected abuse or neglect, reporting to designated authorities.

(5) Establish an environment that provides opportunities and reinforcement for children's practice of healthy behaviors that promote appropriate nutrition and physical and psychological well being.

(6) Provide a consistent daily schedule for rest/sleep, as developmentally appropriate.

(7) Implement health care and educational activities for children and families based on health and nutritional information that is responsive to diverse cultures.

(8) Assist young children and their families, as individually appropriate, in developing decision-making and interpersonal skills that enable them to make healthy choices and establish health-promoting behaviors.

C. Family and Community Collaboration: Early childhood professionals are committed to family-centered practices. They maintain an open, friendly, and cooperative relationship with each child's family, encouraging family involvement, and supporting the child's relationship with his or her family. The diverse cultures and languages representative of families in New Mexico's communities are honored.

(1) Seek and maintain a collaborative relationship with parents, guardians, families, community agencies, and other professionals to meet the needs each child.

(2) Create and maintain a safe and welcoming environment for families and community members.

(3) Establish frequent contact with parents and guardians through a variety of communication strategies, including communication in the home language of each child to provide ongoing, relevant information to families about child growth, development, and learning.

(4) Demonstrate knowledge of and respect for variations across cultures, in terms of family strengths, expectations, values, and child-rearing practices.

(5) Demonstrate understanding of the complexity and dynamics of family systems.

(6) Demonstrate understanding of the effects of family stress on the behavior

of children and other family members.

(7) Demonstrate the ability to incorporate the families' desires/goals for their children into classroom and/or intervention strategies.

(8) Develop partnerships with family members to promote early literacy in the home.

(9) Involve families and community members in contributing to the learning environment.

(10) Establish partnerships with community members in promoting literacy.

(11) Demonstrate ability to communicate to families the program's policies, procedures, and those procedural safeguards that are mandated by state and federal regulations.

D. Developmentally Appropriate Content: Early childhood professionals demonstrate knowledge of child development and learning, as well as content knowledge, both in terms of academic disciplines and interdisciplinary integration. Their approach to curriculum content emerges from multiple sources, such as play and exploration, and is appropriate for the ages and developmental levels of the children with whom they work. Content includes, but is not limited to, the arts, literacy, mathematics, physical education, health, social studies, science, and technology. Children's initial experiences with these content areas form the foundation for later understanding and success.

(1) Demonstrate knowledge of relevant content for young children and developmentally appropriate ways of integrating content into teaching and learning experiences for children from birth through age eight.

(2) Demonstrate the integration of knowledge of how young children develop and learn with knowledge of the concepts, inquiry tools, and structure of content areas appropriate for different developmental levels.

(3) Demonstrate knowledge of what is important in each content area, why it is of value, and how it links with earlier and later understandings within and across areas.

(4) Demonstrate knowledge of the reading and writing components of literacy at each developmental level.

(5) Develop, implement, and evaluate an integrated curriculum that focuses on children's development and interests, using their language, home experiences and cultural values.

(6) Adapt content to meet the needs of each child, including the development of Individualized Family Service Plans (IFSP) and/or Individualized Education Plans (IEP) for children with special needs through the team process with

families and other team members.

(7) Provides and uses anti-bias materials/literature and experiences in all content areas of the curriculum.

**E. Learning Environment and Curriculum Implementation:** Teaching and learning with young children is a complex process embedded in relationships. These teaching and learning relationships provide the scaffold for jointly constructing meanings about self, others, and the world. Early childhood professionals use their child development knowledge, their knowledge of developmentally appropriate practices, and their content knowledge to design, implement, and evaluate experiences that promote optimal development and learning for all children from birth through age eight. In addition, their use of observations is grounded in a thorough understanding of children's families, cultures, and communities. Early childhood professionals encourage young children's problem solving, critical thinking, and academic and social competence within a supportive and challenging learning environment. These challenging teaching and learning experiences build children's confidence in themselves as competent learners.

(1) Demonstrate knowledge of varying program models and learning environments that meet the individual needs of all young children, including those with special needs.

(2) Create environments that encourage active involvement, initiative, responsibility, and a growing sense of autonomy through the selection and use of materials and equipment that are suitable to individual learning, developmental levels, special needs, and the language and cultures in New Mexico.

(3) Demonstrate knowledge and skill in the use of developmentally appropriate guidance techniques and strategies that provide opportunities to assist children in developing positive thoughts and feelings about themselves and others through cooperative interaction with peers and adults.

(4) Create and manage learning environments that provide individual and cooperative opportunities for children to construct their own knowledge through various strategies that include decision-making, problem-solving, and inquiry experiences.

(5) Demonstrate understanding that each child's creative expression is unique and can be encouraged through diverse ways, including creative play.

(6) Plan blocks of interrupted time for children to persist at self-chosen activities, both indoors and out.

(7) Demonstrate understanding of the influence of the physical setting, sched-

ule, routines, and transitions on children and use these experiences to promote children's development and learning.

(8) Use and explain the rationale for developmentally appropriate methods that include play, small group projects, open-ended questioning, group discussion, problem solving, cooperative learning, and inquiry experiences to help young children develop intellectual curiosity, solve problems, and make decisions.

(9) Create and manage a literacy-rich environment that is responsive to each child's unique path of development.

(10) Use a variety of language strategies during adult-child and child-child interactions and facilitate dialogue of expressive language and thought.

(11) Demonstrate a variety of developmentally appropriate instructional strategies that facilitate the development of literacy skills.

(12) Demonstrate knowledge of developmentally appropriate uses of technology, including assistive technology.

(13) Demonstrate the ability to work collaboratively with educational assistants, volunteers, and others to individualize the curriculum and to meet program goals.

(14) Demonstrate effective written and oral communication skills when working with children, families, and early care, education, and family support professionals.

**F. Assessment of Children and Evaluation of Programs:** Early childhood professionals must develop knowledge of diverse assessment approaches, including observational skills. They use appropriate on-going documentation and report information to families and professionals. Appropriate early childhood assessment is responsive to cultural and linguistic differences. It includes information from multiple sources, e.g., observations, checklists, interviews, and both formal and informal standardized measures in diverse settings for making educational decisions about children. The assessment data gathered from multiple sources that has a major impact on children should be made by a team of family members, teachers, and other professionals. In addition, early childhood professionals engage in systematic, on-going evaluation of their programs.

(1) Demonstrate knowledge of assessment and evaluation practices that are valid and appropriate.

(2) Demonstrate knowledge of maintaining appropriate records of children's development and behavior that safeguard confidentiality and privacy.

(3) Demonstrate knowledge of the educator's role as a participating member of the assessment process as described

and mandated by state and federal regulations for Individual Family Service Plans (IFSP) and Individual Education Plans (IEP).

(4) Demonstrate understanding of the influences of environmental factors, cultural/linguistic differences, and diverse ways of learning on assessment outcomes.

(5) Involve the family and, as appropriate, other team members in assessing the child's development, strengths, and needs in order to set goals for the child.

(6) Share assessment results as appropriate with families in clear, supportive ways.

(7) Involve all stakeholders in program evaluations.

(8) Demonstrate knowledge of a variety of techniques and procedures to evaluate and modify program goals for young children and their families.

(9) Develop and use formative and summative program evaluation to ensure comprehensive quality of the total environment for children, families, and the community.

(10) Use both self and collaborative evaluations as part of on going program evaluations.

**G. Professionalism:** Professionalism is built upon individual integrity, responsibility, and ethical practices that demonstrate a profound respect for all children and their families. Early childhood professionals embrace a multicultural perspective that is responsive to individuals in culturally diverse communities in New Mexico. Professionals make decisions based upon knowledge of early childhood theories and practices that recognize diversity of ability, developmental level, and family characteristics. Early childhood professionals advocate for excellence in early childhood programs and participate in one-going professional development to enhance their knowledge and skills.

(1) Consistently adheres to professional codes of ethics and conduct.

(2) Demonstrate knowledge of federal, state, and local regulations regarding programs and services for children birth through eight years of age.

(3) Demonstrate understanding of conditions of children, families, and professionals; current issues and trends; legal issues; and legislation and other public policies affecting children, families, and programs for young children and the early childhood profession.

(4) Articulate a personal philosophy of appropriate early care and education that responds to practices that support inclusion and cultural and linguistic diversity through actions and attitudes.

(5) Demonstrate critical reflection

of one's own professional and educational practices from community, state, national, and global perspectives.

(6) Demonstrate understanding of the early childhood profession, its multiple, historical, philosophical and social foundations, and how these foundations influence current thought and practice.

(7) Demonstrate a commitment to advocacy for excellence in programs and services for young children and their families.

(8) Demonstrate knowledge of other professions that provide related services for young children and their families.

(9) Participate in professional organizations and in on-going professional development to enhance knowledge and skills in working with young children and adults.

(10) Demonstrate knowledge of basic principles of administration, organization, and operation of early childhood programs, including supervision of staff and volunteers.

[11-14-98; 6.61.8.10 NMAC - Rn, 6 NMAC 4.2.3.17.10, 03-31-01; A, 11-14-02]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20 NMAC 7.1, Drinking Water, filed on 12/1/94 is hereby repealed, effective December 4, 2002. 20 NMAC 7.1 is replaced by 20.7.10 NMAC, Drinking Water effective December 4, 2002.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES PART 10 DRINKING WATER

**20.7.10.1 ISSUING AGENCY:**  
Environmental Improvement Board.  
[20.7.10.1 NMAC -- Rp 20 NMAC 7.1.I.1,  
12/04/2002]

**20.7.10.2 SCOPE:** All persons  
who own or operate a public water system.  
[20.7.10.2 NMAC -- Rp 20 NMAC 7.1.I.2,  
12/04/2002]

**20.7.10.3 STATUTORY  
AUTHORITY:** NMSA 1978, Sections 74-

1-8 and 74-1-13.1.  
[20.7.10.3 NMAC -- Rp 20 NMAC 7.1.I.3,  
12/04/2002]

**20.7.10.4 DURATION:**  
Permanent.

[20.7.10.4 NMAC -- Rp 20 NMAC 7.1.I.4,  
12/04/2002]

**20.7.10.5 EFFECTIVE DATE:**  
December 4, 2002

[20.7.10.5 NMAC -- Rp 20 NMAC 7.1.I.5,  
12/04/2002]

**20.7.10.6 OBJECTIVE:** The  
objective of Part 10 of Chapter 7 is to estab-  
lish regulations for public water systems.

[20.7.10.6 NMAC -- Rp 20 NMAC 7.1.I.6,  
12/04/2002]

**20.7.10.7 DEFINITIONS:** As  
used in this Part:

**A.** "CFR" means the Code  
of Federal Regulations.

**B.** "Community water sys-  
tem" means a public water system which  
serves at least fifteen service connections  
used by year-round residents or regularly  
serves at least twenty-five year-round resi-  
dents.

**C.** "Contaminant" means  
any physical, chemical, biological or radio-  
logical substance or matter in water that  
may adversely affect human health or the  
aesthetic quality of the water.

**D.** "Cross-connection"  
means a physical connection or arrange-  
ment between otherwise separate piping  
systems whereby water may flow between  
the two systems.

**E.** "Department" means  
the New Mexico Environment Department.

**F.** "Disinfectant" means  
any oxidant or equivalent agent added to  
water in any part of the treatment or distri-  
bution process intended to kill or inactivate  
pathogenic organisms, including but not  
limited to chlorine, chlorine dioxide, chlo-  
ramines and ozone.

**G.** "Disinfection" means a  
process that kills or inactivates pathogenic  
organisms in water.

**H.** "Maximum contami-  
nant level" or "MCL" means the maximum  
permissible level of a contaminant in water  
which is delivered to any user of a public  
water system.

**I.** "Modification" means  
the replacing, changing, installing, adding  
to, or construction of a component of an  
existing public water system to increase or  
decrease the system's capacity to draw or  
supply water or to improve its performance  
or service life. Neither routine maintenance  
nor the replacement of electrical or mechan-

ical equipment is a modification for purpos-  
es of this Part.

**J.** "Non-community water  
system" means a public water system that is  
not a community water system. A non-  
community water system is either a "tran-  
sient non-community water system" or a  
"non-transient non-community water sys-  
tem."

**K.** "Non-transient non-  
community water system" means a public  
water system that is not a community water  
system and that regularly serves at least  
twenty-five of the same persons over six  
months per year.

**L.** "Person" means an  
individual, corporation, company, associa-  
tion, partnership, municipality, or state, fed-  
eral or tribal agency.

**M.** "Non-public water sys-  
tem" means a system for the provision of  
water for human consumption for domestic  
purposes, if such system does not have at  
least fifteen service connections and does  
not regularly serve an average of twenty-  
five individuals at least sixty days out of the  
year.

**N.** "Public water system"  
means a system for the provision to the pub-  
lic of water for human consumption through  
pipes or other constructed conveyances, if  
the system has at least fifteen service con-  
nections or regularly serves an average of  
twenty-five individuals daily at least sixty  
days out of the year. Such term includes:  
any collection device, including but not lim-  
ited to wells, spring boxes, infiltration gal-  
leries or intake structures, and any treat-  
ment, storage, and distribution facilities  
under control of the operator of such sys-  
tem; and any collection device or pretreat-  
ment storage facilities not under such con-  
trol which are used primarily in connection  
with such system. A public water system is  
either a "community water system" or a  
"non-community water system."

**O.** "Public water system  
project" or "project" means the construction  
of a new public water system, modification  
to an existing public water system, or con-  
version of a non-public water system to a  
public water system.

**P.** "Sanitary survey"  
means an onsite review of the water source,  
facilities, equipment, operation and mainte-  
nance of a public water system for the pur-  
pose of evaluating the adequacy of such  
source, facilities, equipment, operation and  
maintenance for producing and distributing  
safe drinking water.

**Q.** "Secretary" means the  
secretary of the Environment Department,  
or an authorized representative.

**R.** "Service connection"  
means a pipe, hose, appurtenance, con-

structed conveyance or any other temporary or permanent connection between a public water system and a user.

**S.** "State Act" means the Environment Improvement Act, NMSA 1978, Section 74-1-1 *et seq.*

**T.** "Supplier of water" means any person who owns or operates a public water system.

**U.** "Transient non-community water system" means a non-community water system that does not regularly serve at least twenty-five of the same persons over six months per year.

**V.** "USEPA" means the United States environmental protection agency.

[20.7.10.7 NMAC -- Rp 20 NMAC 7.1.I.103, 12/04/2002]

**20.7.10.8 - 20.7.10.99** [RESERVED]

**20.7.10.100 ADOPTION OF 40 CFR PART 141:**

**A.** Except as otherwise provided in this Section, the regulations of the USEPA set forth at 40 CFR Part 141 through September 13, 2002 are hereby incorporated by reference into this Part.

**B.** The terms "contaminant," "disinfectant," "disinfection" and "public water system" have the meanings set forth in Section 20.7.10.7 of this Part, in lieu of the meanings set forth in 40 CFR section 141.2.

**C.** The term "State" means the New Mexico Environment Department when used in 40 CFR Part 141, in lieu of the meaning set forth in 40 CFR section 141.2.

**D.** The term "service connection" has the meaning set forth in Subsection R of 20.7.10.7 NMAC, in addition to the meaning set forth in 40 CFR section 141.2.

[20.7.10.100 NMAC -- N, 12/04/2002]

**20.7.10.101 ADOPTION OF 40 CFR PART 143:**

**A.** Except as otherwise provided, the regulations of the USEPA set forth at 40 CFR Part 143 through September 13, 2002 are hereby incorporated by reference into this Part.

**B.** The terms "public water system" and "contaminant" have the meanings set forth in Section 20.7.10.7 of this Part, in lieu of the meanings set forth in 40 CFR section 143.2.

**C.** The term "State" means the New Mexico Environment Department when used in 40 CFR Part 143, in lieu of the meaning set forth in 40 CFR section 143.2. [20.7.10.101 NMAC -- N, 12/04/2002]

**20.7.10.102 REFERENCES:** The

following materials are hereby incorporated by reference to in this Part:

**A.** Standards for Disinfecting Water Mains, 1999, American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**B.** Standards for Disinfection of Wells, 1997, American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**C.** Standards for Disinfection of Water-Storage Facilities, 1992, American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**D.** Standards for Disinfection of Water Treatment Plants, 1997, American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**E.** Manual for the Certification of Laboratories Analyzing Drinking Water for Microbiological Parameters, October 1999, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de Los Marquez, Santa Fe, Suite 4, New Mexico 87501.

**F.** Laboratory Certification Manual for Chemistry and Radiochemistry Parameter, Drinking Water Analysis, September 2000, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de Los Marquez, Santa Fe, Suite 4, New Mexico 87501.

**G.** Recommended Standards for Water Works, 1997, Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, P.O. Box 7126, Albany, New York 12224.

**H.** Drinking Water Treatment Chemicals - Health Effects, 2002, American National Standards Institute, NSF/ANSI 60-2002, 25 West 43rd Street, New York, NY 10036.

**I.** Drinking Water System Components - Health Effects, 2002, American National Standards Institute, NSF/ANSI 61-2002, 25 West 43rd Street, New York, NY 10036.

[20.7.10.102 NMAC -- N, 12/04/2002]

**20.7.10.103 AVAILABILITY OF REGULATIONS AND MATERIALS INCORPORATED BY REFERENCE:**

Regulations and materials incorporated by reference into this Part are available for inspection at the New Mexico Environment Department Drinking Water Bureau, 525 Camino de Los Marquez, Suite 4, Santa Fe, New Mexico 87501.

[20.7.10.103 NMAC -- Rp 20 NMAC 7.1.XIII.1306, 12/04/2002]

**20.7.10.104 - 20.7.10.199** [RESERVED]

**20.7.10.200 PUBLIC WATER SYSTEM PROJECTS:**

**A.** Except as provided in subsection B of this Section, no person shall undertake a public water system project without first obtaining written approval from the department.

**B.** The following public water system projects do not require approval from the department:

(1) a modification that involves the replacement or construction of less than 1,000 feet of distribution piping and appurtenances during any sixty calendar day period; or

(2) a modification that involves the replacement or construction of only distribution facilities for which the public water system employs a water utility staff that includes, either by contract or direct employment, a professional engineer registered in New Mexico who is responsible for the project.

[20.7.10.200 NMAC -- Rp 20 NMAC 7.1.V.501 and 502, 12/04/2002]

**20.7.10.201 APPLICATIONS FOR PUBLIC WATER SYSTEM PROJECT APPROVAL:**

**A.** Any person proposing to undertake a public water system project that requires the review and approval of the department shall complete, sign and submit an application to the department as described in this section.

**B.** The applicant shall submit an application to the department no less than thirty days prior to advertising the public water system project for bid or, if the project is not advertised for bid, not less than thirty days prior to entering into a construction contract, except that the department may permit an applicant to advertise for bids, enter into a construction contract, or commence construction of a public water system project prior to the submission of a written application if, in the judgment of the department, exigent circumstances warrant a waiver of the thirty-day notice requirement. Permission to advertise for bids, enter into a construction contract or proceed with construction without first submitting an application shall expire if the applicant does not submit a written application to the department that meets the requirements of this Section within fifteen days of the date of permission.

**C.** The application shall be made on forms furnished by the department and shall include:

(1) two sets of complete plans and specifications for the project. The plans and specifications must be prepared under the direct supervision of and sealed by a professional engineer registered in New Mexico;

(2) an engineering design summary which shall include engineering information that sets forth the basis of the project design;

(3) a plan to disinfect the system and sample for the presence of bacterial contamination following completion of the project and prior to providing water to the public. The criteria used by the department to review the adequacy of the plan shall include the Standards for Disinfecting Water Mains, 1999, American Water Works Association; Standards for Disinfection of Wells, 1997, American Water Works Association; Standards for Disinfection of Water-Storage Facilities, 1992, American Water Works Association; and Standards for Disinfection of Water Treatment Plants, 1997, American Water Works Association;

(4) an inventory of existing and planned sources of actual and potential contamination located within one thousand (1,000) feet of a water source proposed to be utilized by the public water system; and

(5) all other relevant information as needed by the department to determine compliance with this Part.

**D.** The department shall require an applicant proposing to undertake a public water system project to submit, in addition to the materials set forth in subsection C of this Section:

(1) for projects involving the construction of a new public water system, documents demonstrating that the public water system has sufficient technical, managerial and financial capacity, such as ownership accountability, staffing and organization, revenue sufficiency, credit worthiness and fiscal management; and

(2) for projects involving the construction of a new water source, analytical results of nitrate sampling conducted during exploratory drilling or aquifer testing and prior to commencement of construction.

**E.** The department shall either approve an application, approve an application subject to conditions or deny an application, and shall notify the applicant by mail of such determination within thirty days after filing of a complete application pursuant to this Section. The department shall not condition or in any manner require as part of an approval that the applicant use a specific process or type of equipment.

**F.** The department may deny an application for a public water system project, in whole or in part, if the department determines that:

(1) any MCL set forth at 40 CFR sections 141.11-141.16 and 141.61-141.65 will not be met after completion of the project;

(2) the design of the project is inconsistent with generally acceptable stan-

dards for construction of public water systems and their components including, but not limited to, the Recommended Standards for Water Works, 1997, Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers;

(3) the design of the project will not meet project goals;

(4) the public water system does not demonstrate sufficient technical, managerial or financial capacity; or

(5) an existing or planned source of actual or potential contamination may adversely impact a water source proposed to be utilized by the system. To make this determination, the department may require the applicant to submit analyses relating to hydrogeological, soil or ground water conditions at the site, and/or information regarding proposed technology or installation methods that may be employed to prevent or mitigate the impact of the contaminant source on the water source.

**G.** The department's approval of an application does not imply a guarantee of any type for the constructed project nor does it relieve the applicant from the responsibility for the overall integrity of the project, the adequacy of the project's design, or from the responsibility of complying with any of the provisions of this Part or other applicable state and federal laws or regulations.

**H.** The department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or any other contract documents.

**I.** The applicant shall notify the department in writing when work on the public water system project is initiated. The department may inspect the project during construction and at completion to ensure compliance with the approved plans and specifications.

**J.** If a public water system project receives approval from the department but does not commence construction within one year after the date of department approval, the supplier of water must submit a new application to the department.

**K.** A construction field change not provided for in a project's approved plans and specifications and that constitutes a material change to the originally approved project design must be approved by the department before the field change is initiated. In the event that this requirement may result in construction delays, the department may grant verbal approval. If the department grants verbal approval, the applicant must submit a copy of the completed field change order to the department within thirty days after verbal

approval is granted.

**L.** The supplier of water shall submit record or as-built plans and certification of project completion to the department within ninety days after completion of the project.

[20.7.10.201 NMAC -- Rp 20 NMAC 7.1.I.109 and 20 NMAC 7.1.V.502, 12/04/2002]

**20.7.10.202 - 20.7.10.299** [RESERVED]

**20.7.10.300 COMPLIANCE ; EMERGENCY POWERS:**

**A.** No public water system shall supply drinking water to the public unless the system is operated and maintained in compliance with this Part.

**B.** Powers of the secretary.

(1) The secretary may take any action necessary to protect the health of persons who are or may be served by a public water system, including but not limited to issuing orders, assessing penalties or commencing a civil action for appropriate relief:

(a) if the public water system fails to meet any requirement of this Part;

(b) upon receiving information that a contaminant, whether or not listed in 40 CFR sections 141.11-141.16 and 141.61-141.66, is present in or likely to enter the public water system, that the presence of such contaminant may present an imminent and substantial endangerment to the health of persons served by the system, and that appropriate local authorities have not acted to protect the health of such persons; or

(c) in response to a civil emergency involving public drinking water. The secretary's response shall be coordinated, when appropriate, with other state emergency response and relief efforts.

(2) If the secretary determines that treatment of water is necessary for a public water system to meet the maximum contaminant levels set forth at 40 CFR sections 141.11-141.16 and 141.61-141.66, such treatment shall be continuously maintained until the public water system can demonstrate to the secretary that such treatment is no longer necessary.

[20.7.10.300 NMAC -- Rp 20 NMAC 7.1.II.201, 12/04/2002]

**20.7.10.301 - 20.7.10.399** [RESERVED]

**20.7.10.400 GENERAL OPERATING REQUIREMENTS:**

**A.** Protection of public water systems during routine maintenance or replacement of electrical or mechanical equipment. A public water system shall prevent contamination of the water in the system while undergoing routine maintenance or replacement of electrical or

mechanical equipment.

**B.** Security and protection of a public water system. Any part or component of a public water system such as spring junction boxes, well houses, storage reservoirs, collection devices and treatment facilities shall be constructed, operated and maintained to prevent unauthorized entry to, and contamination of, the water supply.

**C.** Protection of a public water system well. A ground water supply well serving a public water system shall have a sanitary seal installed at the wellhead to protect against entry of storm water and other non-potable fluids or foreign materials and against access by insects, rodents, birds or other vermin. Well vents shall be screened with a fine corrosion-resistant screen (24 mesh or smaller). All cracks, joints or other openings at the wellhead and all penetrations to the casing at or near the ground surface shall be tightly sealed with an impermeable material.

**D.** Finished water storage facilities. A finished water storage facility shall be protected from flooding or infiltration of raw or non-potable water and from entry by birds, insects, rodents or other vermin. Overflow pipes and vents shall be screened with a corrosion-resistant material or be fitted with an acceptable flap valve, and access hatches or openings shall be fitted with a watertight cover or appropriate seal or gasket.

**E.** Notice to the department. If the safety precautions or preventive measures required to be employed under this Section fail to protect the public water system from unauthorized entry or contamination, or if the water supply is endangered for any reason, the supplier of water shall immediately notify the department and take appropriate action to protect the supply.

**F.** Disinfection following the completion of a public water system project requiring department approval. Any part or component of a public water system that has undergone construction or modification requiring department approval shall be flushed, disinfected and sampled for the presence of bacterial contaminants upon completion of the project and prior to providing water to the public. Disinfection and sampling shall be conducted in accordance with a plan submitted to and approved by the department pursuant to Paragraph 3 of Subsection C of 20.7.10.201 NMAC.

**G.** Disinfection following construction, modification or repair not requiring department approval. Any part or component of a public water system that has undergone repair, construction or modification not requiring department approval shall be flushed, disinfected and sampled in

accordance with the Standards for Disinfecting Water Mains, 1999, American Water Works Association; Standards for Disinfection of Wells, 1997, American Water Works Association; Standards for Disinfection of Water-Storage Facilities, 1992, American Water Works Association; and Standards for Disinfection of Water Treatment Plants, 1997, American Water Works Association.

**H.** Disinfection of seasonally operated facilities. A public water system that operates on a seasonal basis shall be flushed and disinfected following the non-use period and shall conduct special sampling to demonstrate the absence of bacterial contaminants in the system prior to providing drinking water to the public. During the public water system's non-use period, the public water system shall be maintained to prevent unauthorized entry to, and contamination of, the water supply.

**I.** Maintenance and disinfection of storage structures. All materials used to re-coat or repair the interior of water storage structures must be suitable for potable water contact. After the interior of a storage structure has undergone maintenance or re-coating, the storage structure must be flushed and disinfected pursuant to subsection G of this Section.

**J.** Prohibition of iodine as a disinfectant. No public water system shall use iodine as a disinfectant.

**K.** Direct and indirect additives. A component, material, treatment chemical or other substance that may come into contact with drinking water must meet the most recent applicable safety standards from, or be certified by, the American National Standards Institute/National Sanitation Foundation prior to use or application (NSF/ANSI 60 and 61).

**L.** Cross-connections. Cross-connections to a public water system or within a public water system shall be prohibited, unless the public water system is protected by a device or method acceptable to the department to prevent the back flow of water.

[20.7.10.400 NMAC -- Rp 20 NMAC 7.1.II.208, 12/04/2002]

**20.7.10.401 - 20.7.10.499 [RESERVED]**

**20.7.10.500 S A M P L I N G REQUIREMENTS:**

**A.** A supplier of water shall begin routine sampling in accordance with 40 CFR Part 141 within ninety days after commencing operation of a public water system.

**B.** The secretary may order a supplier of water, when necessary, to conduct more frequent sampling than is

required under 40 CFR Part 141.

**C.** The secretary may order a public water system that uses two or more water sources to collect special purpose samples directly from the water sources, in addition to routine samples from sampling points as required under 40 CFR Part 141.

[20.7.10.500 NMAC -- Rp 20 NMAC 7.1.III.301, 12/04/2002]

**20.7.10.501 LABORATORIES:**

**A.** The department may certify or decertify laboratories to conduct microbiological, chemical and radiological analyses in accordance with most recent editions of the department's "Manual for the Certification of Laboratories Analyzing Drinking Water for Microbiological Parameters" and "Laboratory Certification Manual for Chemistry and Radiochemistry Parameter, Drinking Water Analysis." Certification issued by the department under this Section shall be valid for no longer than three years.

**B.** The department may accept any sample for purposes of determining compliance with this Part if such sample has been analyzed by a laboratory certified by the USEPA or the department. [20.7.10.501 NMAC -- Rp 20 NMAC 7.1.III.309, 12/04/2002]

**20.7.10.502 VALIDATION OF ANALYTICAL DATA OR CONDITIONS:**

The department may take any action it deems necessary to validate the results of a sample taken pursuant to this Part. Data that the department determines to be invalid shall not be used to determine compliance with this Part.

[20.7.10.502 NMAC -- Rp 20 NMAC 7.1.III.311, 12/04/2002]

**20.7.10.503 DEPARTMENT MONITORING AND SAMPLING:**

Nothing in this Part shall be construed to preclude the department from taking samples or from using the results from such samples to determine compliance with this Part or in an enforcement proceeding for violation of this Part.

[20.7.10.503 NMAC -- Rp 20 NMAC 7.1.III.312, 12/04/2002]

**20.7.10.504 INSPECTIONS, INVESTIGATIONS AND SANITARY SURVEYS:**

**A.** The secretary may, upon the presentation of proper credentials and after receiving consent from the supplier of water, enter at reasonable times upon or through the premises of any public water system to conduct a sanitary survey, inspection or investigation and during such sur-

vey, inspection or investigation:

(1) have access to and copy, at reasonable times, any records required to be kept pursuant to this Part;

(2) inspect or review any monitoring equipment or methods required under this Part; and

(3) sample or otherwise test the water supplied by such system.

**B.** If permission to enter a public water system to conduct a sanitary survey, inspection or investigation in accordance with subsection A of this Section is denied, the secretary may apply to a court of competent jurisdiction for an order allowing for such entry.

**C.** To aid the secretary in conducting sanitary surveys, inspections or investigations pursuant to this Part, the supplier of water or his duly authorized representative shall, prior to the commencement of such inspection or investigation, be given the opportunity to accompany the inspector upon or through the premises of the public water system.

[20.7.10.504 NMAC -- Rp 20 NMAC 7.1.I.108, 12/04/2002]

**20.7.10.505 - 20.7.10.599 [RESERVED]**

**20.7.10.600 PUBLIC NOTIFICATION:**

**A.** Non-transient non-community water systems that exceed the MCL for arsenic or radionuclides set forth at 40 CFR sections 141.11, 141.62, 141.15-141.16 and 141.66 or exceed one-half the MCL for fluoride set forth at 40 CFR section 141.62 shall comply with the public notification requirements set forth at 40 CFR section 141.32 and at 40 CFR Subpart Q.

**B.** A supplier of water shall notify persons served by the public water system to boil water used for drinking or culinary purposes if routine coliform samples indicate the presence of bacterial contamination which would not otherwise trigger the public notice requirements set forth at 40 CFR section 141.32 and at 40 CFR Subpart Q but which, in the judgment of the department, poses a threat to public health and safety. If the supplier of water fails to provide notice on its own, or at the direction of the department, the department may directly notify the persons served by the system.

**C.** If the safety of a water supply is endangered for any reason, the supplier of water shall notify persons served by the public water system of appropriate action to protect themselves against any waterborne hazards. If the supplier of water fails to take such action on its own, or at the direction of the department, the department

may directly notify the persons served by the system.

[20.7.10.600 NMAC -- Rp 20 NMAC 7.1.IV.402, 12/04/2002]

**20.7.10.601 - 20.7.10.699 [RESERVED]**

**20.7.10.700 SEVERABILITY:** The provisions of this Part shall be severable, and if any section, subsection, paragraph, subparagraph, sentence, clause, subclause or item of this Part, or the applicability thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, and the application thereof, but shall be confined in its operation to the section, subsection, paragraph, subparagraph, sentence, clause, subclause or item thereof, or to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

[20.7.10.700 NMAC -- Rp 20 NMAC 7.1.XIII.1301, 12/04/2002]

**20.7.10.701 SAVING CLAUSE:** Repeal of 20 NMAC 7.10 shall not affect any administrative or judicial enforcement action pending on the effective date of this Part.

[20.7.10.701 NMAC -- Rp 20 NMAC 7.1.XIII.1305, 12/04/2002]

**20.7.10.702 CONSTRUCTION:** This Part shall be liberally construed to effectuate the purpose of the State Act.

[20.7.10.702 NMAC -- Rp 20 NMAC 7.1.XIII.1303, 12/04/2002]

**20.7.10.703 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this Part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[20.7.10.703 NMAC -- Rp 20 NMAC .1.XIII.1302, 12/04/2002]

**20.7.10.704 EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL STANDARDS:** If any federal standard or regulation incorporated by reference in this Part is stayed, invalidated or otherwise rendered unenforceable, in whole or in part, by action of a federal court or USEPA, such incorporated federal standard or regulation shall be enforceable by the department only to the extent it is enforceable by USEPA.

[20.7.10.704 NMAC -- N, 12/04/2002]

**HISTORY OF 20.7.10 NMAC:**

**Pre-NMAC History:** The material in this

part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives:

EIB 77-1, Regulations Governing Water Supplies, filed 12-12-77;

WSR 1, Regulations Governing Water Supplies, filed 3-11-85;

EIB/WSR 1, Regulations Governing Water Supplies, filed 7-16-86;

EIB/WSR 2, Regulations Governing Water Supplies, filed 9-12-88;

EIB/WSR 3, Water Supply Regulations, filed 4-16-91.

**History of Repealed Material:**

20 NMAC 7.1, Wastewater and Water Supply Facilities - Drinking Water, 1-1-95.

**Other History:**

EIB/WSR 3, Water Supply Regulations, filed 4-16-91 was renumbered, amended, and replaced by 20 NMAC 7.1, Wastewater And Water Supply Facilities - Drinking Water, filed 12-01-94.

20 NMAC 7.1, Wastewater And Water Supply Facilities - Drinking Water, filed 12-01-94, **replaced** by 20.7.10 NMAC, Wastewater And Water Supply Facilities - Drinking Water, effective 12/04/2002.

---

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.30.5 NMAC, Sections 7, 8, 9 and 10.

**19.30.5.7 DEFINITIONS:**

**A. "Elk Population"** will mean the estimated elk population within a game management unit.

**B. "Herd Objective"** will mean the desire to increase, decrease or maintain an existing elk population at levels relative to previous year estimates.

**C. "Occupied Elk Habitat"** will mean that habitat regularly occupied by elk during the year.

**D. "Relative Elk Densities"** will mean the quotient when the estimated number of elk is divided by the number of acres of occupied elk habitat in each game management unit.

**E. "Past Harvest Data"** will mean past data derived from hunter harvest surveys from each game management unit.

**F. "Population Trend"** will mean the relative change (increase, stable, decrease) in elk populations from previous years.

**G. "Occupied Deeded**



**Acres**" will mean those acres occupied by elk and owned by a landowner.

**H. "Ranch Weighted Acres"** will mean the product of occupied deeded acres multiplied by relative elk densities.

**I. "Total Ranch Weighted Acres"** will mean the total deeded weighted acres within the game management unit.

**J. "Percent Occupied Weighted Acres"** will mean the quotient of a ranch weighted acres divided by total weighted acres.

**K. "Private Land [Authorizations] Authorization Certificate"** will mean the authorization to purchase an elk license.

**L. "Percent Public Land"** will mean the percent of weighted occupied elk habitat within state or public domains.

**M. "Public Land Elk Harvest"** will mean the estimated number of elk to be harvested on public lands.

**N. "Public Land Hunter Success"** will mean the hunter success on public lands within each unit, as determined by hunter harvest surveys.

**O. "Percent Private Land"** will mean the percent of weighted occupied elk habitat within private domains.

**P. "Private Land Elk Harvest"** will mean the estimated number of elk to be harvested on private lands.

**Q. "Private Land Hunter Success"** will mean the hunter success on private lands within each unit as determined by hunter harvest surveys.

**R. "Hunter Harvest Survey"** will mean the annual elk hunter harvest survey results provided by the department.

**S. "Public Land"** will mean those lands held by state or public land use agencies.

**T. "Ranch"** will mean deeded lands within designated exterior boundaries.

**U. "Ranch-only Authorization Certificate"** will mean a type of private land authorization which allows a person to purchase a license to hunt those deeded lands within the designated ranch exterior boundaries.

**V. "Unit-wide Authorization Certificate"** will mean a type of private land authorization which allows a person to purchase a license to hunt legally accessible public lands and "unit-wide ranches" within the unit.

**W. "Unit-wide Ranch"** will mean a ranch whose owner has selected the unit-wide hunting option on their

hunting agreement with the department.

**X. "Relative Ranch Factor"** will mean a measure of a ranches' contribution to the elk herd(s) based on an evaluation of ranches' available elk forage, water, minerals, salt, cover, amount and time elk are present on the ranch and habitat benefits and detriments to other game species.

[4-1-95, A, 4-15-97, A, 9-15-99; 19.30.5.7 NMAC - Rn & A, 19 NMAC 30.5.7, 01-15-01; A, 11-14-02]

#### **19.30.5.8 SYSTEM PROCEDURE:**

**A. Establishing the Number of Elk Licenses:** The director, will establish the number of elk licenses within game management units through use of the elk allocation system as described herein.

**B. Criteria for Establishing the Numbers:** The criteria for establishing numbers of elk licenses within each unit will be elk distribution, herd objectives, estimated elk populations, estimated elk occupied habitat, relative elk densities, past harvest data, and estimated population trends.

**C. Setting of Authorization Numbers:** District wildlife officers and/or game managers will evaluate landowners' requests for private land [authorizations] authorization certificates in accordance with the above procedures. The game managers will use the established formula to set the number of [authorizations] authorization certificates for each ranch.

**D. Public Land Elk Licenses will be set for each unit as follows:**

(1) Number of elk to be harvested multiplied by the percent public land equals public land elk harvest.

(2) Public land elk harvest divided by public land hunter success equals public elk licenses.

**E. Private Land Elk Authorizations will be set for each unit as follows:**

(1) Number of elk to be harvested multiplied by percent private land equals private elk harvest.

(2) Private land elk harvest divided by private land hunter success equals private land elk authorizations.

**F. Elk licenses per Ranch will be set as follows:**

(1) Occupied ranch deeded acres multiplied by relative elk densities or relative ranch factor equals ranch weighted acres.

(2) Ranch weighted acres divided by total ranch weighted acres equals percent occupied weighted acres.

(3) Percent occupied weighted acres multiplied by private land authorizations equals licenses per ranch.

**G. Setting Ranch-only Authorizations for Units 47, 54, 55A, 56A, 57 and 58:** In big game management units 47, 54, 55A, 56A, 57 and 58, the department will set the appropriate numbers and bag limits for ranch-only [authorization(s)] authorization certificates needed to achieve the desired and proper harvest within the exterior boundaries of designated ranches.

**H. Setting Ranch-only Authorizations for Ranches of 10,000 Acres:** In all big game management units (except 46, 47, 54, 55, 56A, 57, 58 and all unlimited elk units) the department will have the option of exempting large ranches from the formula in subsection F. In those cases, the department will set the appropriate numbers and bag limits of each ranch-only [authorization(s)] authorization certificates needed to achieve the desired and proper harvest within the exterior boundaries of designated ranches. The estimated harvest for these ranches per unit will be subtracted from the unit's private land elk harvest. The number of [authorizations] authorization certificates allocated to these ranches shall be negotiated and allocated to each ranch as appropriate to achieve that unit's herd objective. The criteria for participation in this sub-section are:

(1) Deeded land must be a minimum of 10,000 contiguous acres,

(2) Participant must engage into a written contract with the department for a period of up to five years, and

(3) In collaboration with department staff, participants shall submit a management plan outlining the landowner's elk management and harvest desires, estimated herd population and structure, a current evaluation of game habitat, proposed actions to be taken to address nuisance elk issues on the ranch and within the unit, and a commitment to harvest elk on their properties to strive to attain that unit's herd objective and as such, landowner shall submit to the department the harvest on the ranch on or before April 1 annually.

**I. [Reserved]**

**J. Public and private land permits for Sub-Unit 5A:** Public elk permits issued in Sub-Unit 5A are valid only on public land within Sub-Unit 5A. Private land elk [permits] authorization certificates issued in Sub-Unit 5A are valid only on the private land for which they were issued and on other private land within Sub-Unit 5A when the [permit] authorization certificate holder has written permission from the landowner, or person in control of the land, to [trespass on] access that private

property.

**K. Private land permits for Units 4, 46, and all Unlimited elk Units:** Private land ~~[permits]~~ authorization certificates issued in units 4, 46, and all unlimited elk units are valid only on the private property for which they were issued and on other private land within the unit for which they are issued when the permit holder has written permission from the landowner, or person in control of the land, to ~~[trespass on]~~ access that private property. A Unit 4 Cooperative Pilot Project shall be created for the purpose of redistributing authorization certificates to a community – based cooperative (Cooperative) group as established in a Memorandum of Understanding between the Department and the Cooperative. The Cooperative will oversee the redistribution of the reissued authorization certificates to landowners who are current active participants of the Elk Landowner Signup System.

**L. Landowner UNIT-WIDE Option:** All private-land authorizations issued will be ranch only. However, in applicable units each participating landowner or agent has the option to sign an agreement with the New Mexico department of game and fish designating the ranch as UNIT-WIDE. Under the UNIT-WIDE option, elk licenses obtained with landowner ~~[authorizations]~~ authorization certificates will be valid for use on all unit-wide ranches and public lands throughout the unit during corresponding public hunt periods with their sporting arms and bag-limit restrictions. UNIT-WIDE ranches will grant free and equal access, including vehicular access but excluding camping, for the sole purpose of hunting elk to any legally licensed person and their companions. The UNIT-WIDE option is applicable to all ranches not otherwise excluded in this regulation.

**M. Setting authorizations for non-qualifying ranches:** In all big game management units (except units with unlimited elk hunting), those ranches that fail to qualify for ~~[authorizations]~~ authorization certificates pursuant to procedures described in Subsection F of 19.30.5.8 NMAC shall be issued one either-sex elk authorization certificate (except Unit 4) valid only on the participant's deeded acreage (except where safety is of concern or hunting is otherwise prohibited). These authorization certificates are non-appealable. In Unit 4, non-qualifying ranches will be issued one mature bull or antlerless (MB-A) authorization certificate. Unit 4 non-qualifying authorization certificates will be valid on the private property for which they were issued and on other private land within Unit 4 when the permit holder has written permission from the landowner, or person in

control of the land, to access that private property. The estimated harvest on these ~~[landholding]~~ landholdings per unit will be subtracted from the unit's private land elk harvest. The number of landholdings receiving an authorization certificate pursuant to this paragraph shall not be limited. These authorization certificates are non-appealable.

[4-1-95; A, 4-15-97, A, 8-30-97, A, 9-15-99; 19.30.5.8 NMAC - Rn & A, 19 NMAC 30.5.8, 01-15-01; A, 02-28-01; A, 05-15-01; A, 11-14-02]

#### **19.30.5.9 APPEAL REGARDING ALLOCATED ~~[AUTHORIZATIONS]~~ AUTHORIZATION CERTIFICATES:**

**A. Landowners' Right to Appeal Calculation:** ~~[If the landowner disagrees with the allocation of authorizations,]~~ If a landowner who qualifies under procedures of Subsection F of 19.30.5.8 NMAC disagrees with the allocation of authorization certificates during the first cycle year of the Big Game regulation 19.31.8 NMAC, he may appeal the officer's findings by first filing a written appeal, with supporting documentation, to the appropriate Area Chief. Landowners receiving a two-year agreement may not appeal allocations during the second cycle year of the Big Game regulation 19.31.8 NMAC. New landowners who have signed up during the second cycle year of the Big Game regulation may appeal for the current year. Non-qualifying authorization certificates are non-appealable.

(1) Supporting documentation must include, but not limited to, current and legal documentation of total acreage, a map of the property boundaries, and estimation of elk numbers on the property, season and length of elk use.

(2) Receipt of an appeal at the Area ~~[Chief]~~ Office must be postmarked by May 15 of each license year. Receipt of the appeal begins the following process:

**B. Area Level Investigation:** The Area Chief will investigate the appeal and will notify the landowner in writing, of their findings within fifteen (15) working days after receipt of proper documentation. Copies of the Area Chief's findings will be forwarded to the Chief of Wildlife. The landowner may appeal, in writing, within ten (10) working days after notification to the Chief of Wildlife.

**C. Santa Fe Office Investigation:** Within five (5) working days after receipt of documentation from the landowner the Chief of Wildlife will investigate the appeal and notify the landowner in writing, as to his findings.

**D. Appeal to State Game**

**Commission:** Within ten (10) working days after receipt of documentation from the Chief of Wildlife, the landowner may appeal, in writing to the State Game Commission.

**E. Hearing by the State Game Commission:** If the State Game Commission agrees to hear the appeal, it will be held at a regularly scheduled meeting. The landowner may present witnesses and supporting documentation during the hearing.

(1) The department may also furnish witnesses and supporting documentation.

(2) The State Game Commissions' decision will be final.

[4-1-95; A, 4-15-97; 19.30.5.9 NMAC - Rn & A, 19 NMAC 30.5.9, 01-15-01; A, 11-14-02]

#### **19.30.5.10 [CONTRACTS] AGREEMENTS AND NEGOTIATIONS:**

**A.** Deadlines for new landowner sign-ups and changes to existing data will be 1 February.

**B.** New landowners applying for private land ~~[authorizations must submit a]~~ authorization certificates must submit the current Landowner Signup System Application for Elk Authorization Certificates, warranty deed, the most recent tax receipt, and a map of the exterior boundaries of the property, specifying township, range and section (if applicable).

**C.** All contracts and negotiations will be completed and returned postmarked by 15 April.

**D.** It shall be unlawful to breach the terms and tenants of any contract issued pursuant to this rule.

**E.** The Landowner, Manager or Lessee shall inform the Department of Game and Fish of any changes in ownership, acreage and/or address changes. Failure to do so is a violation under 19.31.2.8 NMAC. Any breaches of the terms of the agreement shall require review and action by the Department of Game and Fish prior to the signing of next year's agreement and may result in the loss of some or all authorization certificates allocated to the ranch as specified in 19.31.2.8 NMAC.

**F.** Beginning with the 2003-04 season, a two-year agreement will be entered into with landowners who are allocated authorization certificates or receive non-qualifying authorization certificates in order to coincide with the two-year cycle of the Big Game regulation (19.31.8 NMAC), except in Unit 4 while provisions of the Unit 4 Cooperative Pilot Project are in effect. Landowners who apply as new

signups during the 2nd year of the cycle that are allocated authorization certificates or receive a non-qualifying authorization certificate, will be granted a one-year agreement. If necessary, an amendment to the agreement will be made to reflect changes made to the Big Game regulation 19.31.8 NMAC, or changes to existing ranch acreage as reported by the landowner. See 19.30.5.9A for appeal procedures. [4-1-95; 19.30.5.10 NMAC - Rn & A, 19 NMAC 30.5.1, 01-15-01; A, 02-28-01; A, 11-14-02]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.10 NMAC, Sections 7, and 15.

### 19.31.10.7 DEFINITIONS:

**A. "Big game species"** shall mean deer, [~~turkey~~] bear, cougar, elk, antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, Persian ibex, Siberian ibex and Bison.

**B. "Modern firearms"** shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

**C. "Muzzle-loader firearms"** shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

**D. "Bow"** shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

**E. "Arrows"** shall mean only those arrows having broadheads with steel cutting edges.

**F. "Trotline"** shall be synonymous with "set line" or "throw line" or "jug", and shall mean a fishing line that is used without rod or reel and that need not be held in the hand or closely attended.

**G. "Angling"** shall mean taking or attempting to take fish by hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.

**H. "Spear fishing"** shall mean taking or attempting to take game fish with spears, jigs, and arrows with barbs that are discharged under the surface of the water.

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

**J. "Chumming"** is defined as a means of attracting fish by placing organic materials, non-injurious to aquatic life, into the water.

**K. "Protected species"** shall mean any of the following animals:

(1) All animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) All animals defined as furbearing animals under Section 17-5-2 New Mexico Statutes Annotated 1978 Compilation;

(3) All animals listed as endangered species or subspecies as stated in regulation(s) set by the State Game Commission.

**L. "Retention" or "retain"** shall mean the holding of in captivity.

**M. "Established Road"** is defined as follows:

(1) A road, built and/or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) A two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

**N. "Non-toxic shot"** shall mean shot approved for use by the U. S. Fish and Wildlife Service.

**O. "Director"** shall mean the Director of the New Mexico Department of Game and Fish.

**P. "Baiting"** shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take protected game mammals or game birds.

**Q. "Nets"** shall mean cast nets, dip nets, and seines which shall not be longer than 20 feet and shall not have a mesh larger than three-eighths of an inch. [4-1-95; 1-15-97; 6-25-90; 1-29-99; 19.31.1.7 NMAC - Rn, 19 NMAC 31.1.7, 4-14-2000; 19.31.10.7 NMAC - Rn, 19.31.1.7 NMAC, 9-29-00; A, 4-1-03]

### 19.31.10.15 HUNTING:

**A. Hours:** Game species or turkey may be hunted or taken during

open seasons only, and only during the period from one-half hour before sunrise to sunset.

**B. Bag Limit:** It is unlawful for any person to hunt for or take more than one of any big game species during a current license year unless otherwise provided by regulation.

#### C. Tagging:

(1) Any license that permits the taking of any big game animal or turkey shall be issued with a tag bearing the name of the species.

(2) It shall be unlawful to possess more than one tag per big game species except as permitted by regulation.

(3) It shall be unlawful for any licensee not to properly tag the animal as prescribed below:

(a) IMMEDIATELY after killing any big game species or turkey, the licensee killing the game shall notch the proper day and month of kill from the species tag.

(b) The tag shall be attached to the carcass of big game animals and turkey and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass left in a camp or vehicle.

(4) A species tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.

**D. Seizure:** Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of big game species or turkey that are improperly tagged.

#### E. RESERVED.

#### F. Sealing of Bighorn Sheep

(1) A seal shall be affixed to a horn of every bighorn sheep head taken in New Mexico, imported into New Mexico, or found in the field in New Mexico subsequent to August 17, 1973. Bighorn sheep heads found in the field within New Mexico shall remain the property of the State until disposed of by permit from the Director. The seal shall authorize possession and transportation of the head within New Mexico.

(2) Such sealing shall be done within ten (10) days after the bighorn sheep head is taken, imported, or found in the field and before the bighorn sheep head is exported from New Mexico. Bighorn sheep heads

not so declared shall be seized. Only legally taken and possessed bighorn sheep heads shall be sealed.

(3) Bighorn sheep heads legally sealed in another state are exempted.

**G. Proof of Sex of Game Animals and turkey.**

(1) It shall be unlawful for any one to transport or possess the carcass of any game animal or turkey without proof of sex until the carcass reaches the place where it will be consumed or placed in cold storage.

(2) The antlers of any deer or elk and the horns of any antelope, bighorn sheep, Barbary sheep, oryx or ibex taken shall remain attached to the skull. The scalp and both ears of females or immature males of those species shall accompany the carcass in a like manner.

(3) The external genitalia of any bear or cougar taken shall remain attached to the hide and be readily visible until the hide has been inspected and tagged by a Department representative.

(4) The beard and a small patch of feathers surrounding the beard shall not be removed from any turkey taken when the bag limit is limited to a bearded turkey.

(5) The head or a leg of each pheasant taken must remain attached to the bird.

(6) One fully feathered wing must remain attached to all migratory game birds.

**H. Use of Dogs in Hunting:**

(1) Dogs may be used only to hunt bear and cougar during open seasons for those species.

(2) When dogs are used in pursuit of bear or cougar, the licensed hunter intending to harvest the bear must be present continuously once any dog is released.

(3) It shall be unlawful to use dogs to hunt any other big game species or turkey.

**I. Use of Baits or Scents:**

It shall be unlawful for anyone to take or attempt to take any protected species by use of baits or scents as defined in Subsection P of 19.31.10.7 NMAC. Scent masking agents on one's person are allowed.

**J. Live Animals:** It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any protected species.

**K. Use of Calling Devices:** It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any protected species (except furbearers).

**L. Killing Out-of-Season:** It shall be unlawful to kill any protected species out-of-season.

[6-25-90; 11-18-92; 9-9-93; 4-1-95; A, 10-

14-95; A, 1-29-99; 19.31.1.15 NMAC - Rn & A, 19 NMAC 31.1.15, 4-14-2000; 19.31.10.15 NMAC - Rn, 19.31.1.15 NMAC & A, 9-29-00; A, 4-1-03]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.32.2 NMAC, Sections, 7, 10 and 11.

**19.32.2.7 DEFINITIONS:**

**A. "Land Set,"** as used herein, shall mean any trap or snare set on land.

**B. "Water Set"** shall mean any trap set fully or partially in water.

**C. "Conibear-Type Traps"** shall mean traps designed to kill animals instantly.

**D. "Agent"** shall mean any New Mexico resident who is registered, by the trapper, with the Department of Game and Fish. No fur dealer may act as an agent. There shall be no more than one agent per trapper.

**E. "Lamination"** shall mean additional surface area added to the outside or inside of the jaw of a steel trap. [4-1-95; 19.32.2.7 NMAC - Rn, 19 NMAC 32.1.7 9-29-2000; A, 4-1-2003]

**19.32.2.10 MANNER AND METHOD OF TAKING FURBEARERS:**

**A.** Legal methods of taking shall include dogs, firearms, bows and arrows, or traps and snares as further restricted below.

**B.** The following restrictions on traps and snares shall apply to the setting of any trap or snare that could reasonably be expected to catch a protected furbearer.

(1) Identification of the trap user shall be such that each trap or snare used in the taking of wild animals must be either permanently marked with a user-identification number that is issued by the Department of Game and Fish, or be permanently marked with the name and address of the trapper using the trap or snare.

(2) No steel trap with an outside spread larger than ~~6 1/2 inches~~ 7 inches if laminated and tooth-jawed traps shall be used in making a land set, except Conibear-type traps set on land for beaver. All leg-hold traps shall be off-set.

(3) No land set shall be placed within 1/4 mile of an occupied dwelling without prior, written permission of the

occupant of the dwelling, except for a land set placed by a landowner on his own land.

(4) No land set shall be placed within 1/4 mile of an established public campground, roadside rest area, picnic area, or boat-launching area.

(5) No land set shall be placed within 25 yards of any Forest Service or Bureau of Land Management system trail designated on agency maps provided for the general public or within 25 yards of the shoulder of any public road that is graded and annually maintained with public funds.

(6) No land set shall be placed within 50 yards of any man-made livestock or wildlife watering, except on private land with written permission from the landowner.

(7) No steel trap with an outside jaw spread larger than 12 inches shall be used in making a water set.

(8) It shall be illegal to place, set or maintain any steel trap or snare within 25 feet of bait that is at all visible from any angle and that consist of the flesh, hide, fur, viscera, or feathers of any animal; provided, however, that a cubby set shall be legal when set where the bait cannot be seen except from a height of 3 feet or less above ground level and at a maximum distance of 25 feet. Both the trap or snare and bait must be inside the natural or man-made cubby. Bones that are entirely free of flesh, hide, fur or feathers may be used as visible bait. The restriction on visible bait shall not apply to a trap flag that is suspended at least 3 feet above the ground and that is made from materials other than parts of mammals, birds, fish, reptiles, or amphibians.

[4-1-95; 19.32.2.10 NMAC - Rn, 19 NMAC 32.1.10 9-29-2000; A, 4-1-2003]

**19.32.2.11 TRAP INSPECTION AND FURBEARER REMOVAL:**

**A.** A licensed trapper, or his/her agent, must make a visual inspection of each trap every 24 hours. If wildlife is held captive in the trap, the trapper or agent must remove the wildlife. A release device or catchpole shall be carried to release pets and maybe used to release non-target or undesirable animals. All traps must be personally checked by the trapper every 48 hours and all wildlife removed. Each trapper will be allowed one (1) agent who must possess written permission from the trapper. The permission must include the trapper's full name, address, trapper's license number, trap identification number(s), if appropriate, and general location or route of traps.

**B.** It shall be illegal to import any furbearer into the state. It shall be illegal to retain alive in captivity any furbearer except raccoons held under a valid New Mexico Department of Game and Fish

live animal permit. Upon written application, the Director may issue a permit for retention of raccoon, or other activity permitted under Title 19.31.2 NMAC. [4-1-95; A, 2-28-98, A, 9-30-98; 19.32.2.11 NMAC - Rn, 19 NMAC 32.1.11 9-29-2000; A, 4-1-2003]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.33.6 NMAC, Section 8.

**19.33.6.8 THREATENED AND  
ENDANGERED SPECIES OF NEW  
MEXICO:**

**A. MAMMALS**

**(1) Endangered:**

- (a) Arizona shrew, *Sorex arizonae*  
(b) Mexican long-nosed bat, *Leptonycteris nivalis*  
(c) (Penasco) least chipmunk, [~~*Eutamias*~~] *Tamias minimus atris-triatus*  
(d) (Arizona) montane vole, *Microtus montanus arizonensis*  
(e) gray wolf, *Canis lupus*  
(f) (desert) bighorn sheep, *Ovis canadensis mexicana*

**(2) Threatened:**

- (a) least shrew, *Cryptotis parva*  
(b) southern long-nosed bat, *Leptonycteris curasoae*  
(c) spotted bat, *Euderma maculatum*  
(d) [~~southern yellow bat, *Nycterus* sp.~~] western yellow bat *Lasiurus xanthius*  
(e) white-sided jackrabbit, *Lepus callotis*  
(f) (Organ Mountains) Colorado chipmunk, [~~*Eutamias*~~] *quadrivittatus australis*  
(g) southern pocket gopher, *Thomomys umbrinus*  
(h) meadow jumping mouse, *Zapus hudsonius*  
(i) American marten, *Martes americana*

**(3)** Listing excepts individuals and populations of the desert bighorn sheep in the Peloncillo Mountains in Hidalgo County and all stock in captivity.

**B. BIRDS**

**(1) Endangered:**

- (a) brown pelican, *Pelecanus occidentalis*  
(b) aplomado falcon, *Falco femoralis*  
(c) white-tailed ptarmigan, *Lagopus leucurus*  
(d) whooping crane, *Grus americana*  
(e) piping plover, *Charadrius*

*melodus*

- (f) least tern, *Sterna antillarum*  
(g) common ground-dove, *Columbina passerina*  
(h) buff-collared nightjar, *Caprimulgus ridgwayi*  
(i) elegant trogon, *Trogon elegans*  
(j) northern beardless-tyrannulet, *Camptostoma imberbe*  
(k) (southwestern) willow fly-catcher, *Empidonax traillii extimus*  
(l) thick-billed kingbird, *Tyrannus crassirostris*

**(2) Threatened:**

- (a) neotropic cormorant, *Phalacrocorax brasilianus*  
(b) bald eagle, *Haliaeetus leucocephalus*  
(c) common black-hawk, *Buteogallus anthracinus*  
(d) peregrine falcon, *Falco peregrinus*  
(e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*  
(f) whiskered screech-owl, *Otus trichopsis*  
(g) boreal owl, *Aegolius funereus*  
(h) broad-billed hummingbird, *Cynanthus latirostris*  
(i) white-eared hummingbird, *Hylocharis leucotis*  
(j) violet-crowned hummingbird, *Amazilia violiceps*  
(k) lucifer hummingbird, *Calothorax lucifer*  
(l) Costa's hummingbird, *Calypte costae*  
(m) Gila woodpecker, *Melanerpes uropygialis*  
(n) Bell's vireo, *Vireo bellii*  
(o) gray vireo, *vireo vicinior*  
(p) Abert's towhee, *Pipilo aberti*  
(q) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammoregus*  
(r) Baird's sparrow, *Ammodramus bairdii*  
(s) yellow-eyed junco, *Junco phaeonotus*  
(t) varied bunting, *Passerina versicolor*

**C. REPTILES**

**(1) Endangered:**

- (a) Gila monster, *Heloderma suspectum*  
(b) gray-checked whiptail, *Cnemidophorus dixonii*  
(c) Mexican garter snake, *Thamnophis eques*  
(d) plainbelly water snake, *Nerodia erythrogaster*  
(e) (New Mexico) ridgenose rattlesnake, *Crotalus willardi obscurus*  
(f) gray-banded kingsnake, *Lampropeltis alterna*

**(2) Threatened:**

- (a) western river cooter, *Pseudemys gorzugi*  
(b) sand dune lizard, *Sceloporus arenicolus*  
(c) bunch grass lizard, *Sceloporus scalaris*  
(d) giant spotted whiptail, *Cnemidophorus burti*  
(e) mountain skink, *Eumeces [callicephalus] tetragrammus*  
(f) green rat snake, *Senticolis triaspis*  
(g) narrowhead garter snake, *Thamnophis rufipunctatus*  
(h) western ribbon snake, *Thamnophis proximus*  
(i) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

**D. AMPHIBIANS**

**(1) Endangered:**

- (a) lowland leopard frog, *Rana yavapaiensis*  
(b) western boreal toad, *Bufo boreas*  
(c) Great Plains narrowmouth toad, *Gastrophryne olivacea*

**(2) Threatened:**

- (a) Jemez Mountains salamander, *Plethodon neomexicanus*  
(b) Sacramento mountain salamander, *Aneides hardii*  
(c) Colorado River toad, *Bufo alvarius*

**E. FISHES**

**(1) Endangered:**

- (a) Gila chub, *Gila intermedia*  
(b) Chihuahua chub, *Gila nigrescens*  
(c) roundtail chub, *Gila robusta*  
(d) Rio Grande silvery minnow, *Hybognathus amarus*  
(e) Arkansas River shiner, *Notropis girardi*  
(f) southern redbelly dace, *Phoxinus erythrogaster*  
(g) Colorado pikeminnow, *Ptychocheilus lucius*  
(h) (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*  
(i) blue sucker, *Cycleptus elongatus*  
(j) Pecos gambusia, *Gambusia nobilis*

**(2) Threatened:**

- (a) Gila trout, *Oncorhynchus gilae*  
(b) Mexican tetra, *Astyanax mexicanus*  
(c) Arkansas River speckled chub, *Macrhybopsis tetranema*  
(d) spikedace, *Meda fulgida*  
(e) (Pecos) bluntnose shiner, *Notropis simus pecosensis*  
(f) suckermouth minnow,

*Phenacobius mirabilis*(g) loach minnow, *Tiaroga cobitis*(h) gray redhorse, *Scartomyzon**congestum*(i) Pecos pupfish, *Cyprinodon**pecosensis*

(j) White Sands pupfish,

*Cyprinodon tularosa*(k) Gila topminnow, *Poeciliopsis**occidentalis*(l) greenthroat darter, *Etheostoma**lepidum*(m) bigscale logperch, *Percina**macrolepada*

(3) **Listing exceptions:** Gila trout-excludes the population in McKnight Creek, Grant County; Arkansas River shiner- excludes the population in the Pecos River drainage; bigscale logperch- excludes the population in the Canadian River drainage.

**F. CRUSTACEANS****(1) Endangered:**

(a) Noel's amphipod,

*Gammarus desperatus*

(b) Socorro isopod,

*Thermosphaeroma thermophilum***G. MOLLUSKS****(1) Endangered:**(a) paper pondshell, *Utterbackia**imbecillis*(b) Texas hornshell, *Popenaias**popeii*

(c) Socorro springsnail,

*Pyrgulopsis neomexicana*

(d) Roswell springsnail,

*Pyrgulopsis roswellensis*

(e) Chupadera springsnail,

*Pyrgulopsis chupaderae*(f) Pecos assiminea, *Assiminea**pecos*

(g) wrinkled marshsnail,

*Stagnicola caperata*

(h) shortneck snaggletooth,

*Gastrocopta dalliana dalliana*

(i) Florida mountainsnail,

*Oreohelix florida*

(j) Alamosa springsnail,

*Pseudotryonia alamosae*(k) Koster's springsnail, *Juturnia**kosteri***(2) Threatened:**

(a) swamp fingernailclam,

*Musculium partumeium*

(b) lake fingernailclam,

*Musculium lacustre*

(c) long fingernailclam,

*Musculium transversum*

(d) Lilljeborg's peaclam,

*Pisidium lilljeborgi*

(e) Sangre de Cristo peaclam,

*Pisidium sanguinichristi*(f) Gila springsnail, *Pyrgulopsis**gilae*(g) Pecos springsnail, *Pyrgulopsis**pecosensis*

(h) New Mexico hot springsnail,

*Pyrgulopsis thermalis*~~[(i)] [Alamosa springsnail,~~~~*Tryonia alamosae*~~~~[(j)] [Koster's springsnail,~~~~*Tryonia kosteri*~~~~[(k)] (i) star gyro, *Gyraulus crista*~~~~[(l)] (j) ovate vertigo, *Vertigo*~~*ovata*~~[(m)] (k) Hacheta Grande wood-~~~~*landsnail, *Ashmunella hebardii**~~~~[(n)] (l) Cooke's Peak woodland-~~~~*snail, *Ashmunella macromphala**~~~~[(o)] (m) Mineral Creek moun-~~~~*tainsnail, *Oreohelix pilsbryi**~~~~[(p)] (n) Doña Ana talussnail,~~~~*Sonorella todseni*~~

[1-11-91, 11-15-95, 12-31-96, 8-15-98;

19.33.1.8 NMAC - Rn &amp; A, 19 NMAC

33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn,

19.33.1.8 NMAC &amp; A, 11/30/00; A,

11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

1.7.4 NMAC, Pay, filed 6/14/01, is being repealed in its entirety and being replaced with the new part 1.7.4 NMAC.

## NEW MEXICO STATE PERSONNEL BOARD

### TITLE 1 GENERAL GOV- ERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 4 PAY

#### 1.7.4.1 ISSUING AGENCY:

State Personnel Board.

[1.7.4.1 NMAC - Rp, 1.7.4.1 NMAC, 11/14/02]

#### 1.7.4.2 SCOPE:

All state agencies in the classified service.

[1.7.4.2 NMAC - Rp, 1.7.4.2 NMAC, 11/14/02]

#### 1.7.4.3 STATUTORY AUTHORITY:

NMSA 1978, Section 10-7-12 NMSA 1978, Sections 10-9-13(B); and 29 U.S.C. Sections 201 to 262.

[1.7.4.3 NMAC - Rp, 1.7.4.3 NMAC, 11/14/02]

#### 1.7.4.4 DURATION:

Permanent.

[1.7.4.4 NMAC - Rp, 1.7.4.4 NMAC, 11/14/02]

#### 1.7.4.5 EFFECTIVE DATE:

11/14/02 unless a later date is cited at the end of a section.

[1.7.4.5 NMAC - Rp, 1.7.4.5 NMAC, 11/14/02]

#### 1.7.4.6 OBJECTIVE:

The objective of Part 4 of Chapter 7 is: to provide a uniform system of pay administration for employees that is externally competitive and internally equitable.

[1.7.4.6 NMAC - Rp, 1.7.4.6 NMAC, 11/14/02]

#### 1.7.4.7 DEFINITIONS:

**A. "Alternative Pay Band"** means the range of pay rates, from the minimum to the maximum for a Technical Occupation Group Role based on the current market rate for benchmark jobs in the relevant labor market(s).

**B. "Appropriate Placement"** means a value, established or anticipated, of an individual employee's contribution relative to the value of the full scope of duties and responsibilities of the job as represented by the midpoint pay of a Pay Band or Pay Opportunity.

**C. "Comparison Market"** means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

**D. "Contributor Proficiency Zones"** means subdivisions of the Pay Band that designate the employee's contribution in their job role. These proficiency zones are characterized as Associate, Independent and Principal zones.

**E. "In Pay Band Adjustment"** means movement within a Pay Band for demonstrated performance, skill or competency development, and/or internal alignment, which allows agency management flexibility to provide salary growth within a Pay Band.

**F. "In Pay Opportunity Adjustment"** means movement within a Pay Opportunity for a Field of Work within a Manager Category for demonstrated performance, skill or competency development, and/or internal alignment, which allows agency management flexibility to provide salary growth within a Pay Opportunity.

**G. "Internal Alignment"** means an adjustment that addresses pay issues involving the proximity of one employee's salary to the salaries of others in the same agency and Technical Occupation Group Role or Manager Category who have comparable levels of training, education and experience, duties and responsibilities,

performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

**H.** "Manager Category Span of Pay" means a range of pay from the minimum rate for a Manager Category up to the maximum rate of pay for a Manager Category regardless of Pay Opportunities within the Manager Category.

**I.** "Pay Opportunity Alignment" means the range of pay rates, from the minimum to the maximum for a Field of Work within a Manager Category based on the current market rate for benchmark jobs in the relevant labor market(s).

**J.** "Pay Plan" means a document developed by the Director and reviewed annually by the Board, that provides guidance to agencies on the application of the Rules and serves as a tool for effective compensation management. The Pay Plan describes the Board's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

**K.** "Total Compensation" means all forms of cash compensation and the dollar value of the employer-sponsored benefit package.

**L.** "Workweek" means a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The Director may approve alternative workweeks. [1.7.4.7 NMAC – Rp, 1.7.4.7 NMAC, 11/14/02]

#### 1.7.4.8 PAY PLAN:

**A.** The Director, pursuant to the direction of the Board, shall establish, maintain and, in conjunction with state agencies, administer a pay plan for all positions throughout the classified service, which shall include the pertinent factors that should be considered by Managers for determining and justifying appropriate placement within a Pay Band or Pay Opportunity.

**B.** Agencies shall develop and file a compensation policy that is in compliance with *1.7.4 NMAC*. Subsequent revisions to the compensation policy shall be filed with the Office prior to adoption of the policy. Agency compensation policies will be reviewed by the Board on an annual basis.

**C.** The Board shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each Technical Occupation Group Role and Manager Category.

**D.** The Director shall conduct an annual survey of Total Compensation. The comparison market shall be comprised of private and public

entities within the state of New Mexico, regional state government employers, and Central, Western and Southwestern state government employers. The Board or Director may authorize additional comparison markets when deemed necessary and appropriate.

**E.** Prior to the end of each calendar year, the Director shall submit a compensation report that includes the results of the annual survey of Total Compensation and options for maintaining and enhancing the pay plan, to the Board. The Board shall adopt and submit recommendations to the Governor and the Legislative Finance Committee based upon the report.

[1.7.4.8 NMAC – Rp, 1.7.4.8 NMAC, 11/14/02]

#### 1.7.4.9 ASSIGNMENT OF PAY BANDS AND MANAGER CATEGORY SPANS OF PAY:

The Director shall appoint a pool of job evaluation committee members trained in the method of job evaluation, adopted in *Subsection C of 1.7.4.8 NMAC* which shall evaluate jobs to determine the relative value of each Technical Occupation Group Role and Manager Category in the classified service. A committee shall meet when necessary to evaluate new or revised descriptions for a Technical Occupation Group Role and/or Manager Category or to consider agency appeals for re-evaluation in accordance with *Subsection B of 1.7.4.9 NMAC*. Job Evaluation Committee members shall serve at the discretion of the Director.

**A.** The Committee shall submit the results of the job evaluation(s) as recommendations to the Director. The Director shall submit the results to the Board for adoption and Pay Band or Manager Category Span of Pay assignment.

**B.** Agencies may request a re-evaluation of a Technical Occupation Group Role or Manager Category which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months unless otherwise approved by the Director.

**C.** The Committee shall submit the results of job re-evaluation(s) as recommendations to the Director. The Director shall submit the results to the Board for adoption and Pay Band or Manager Category Span of Pay assignment. [1.7.4.9 NMAC – Rp, 1.7.4.8.F NMAC, 11/14/02]

#### 1.7.4.10 ALIGNMENT OF PAY OPPORTUNITIES:

**A.** The Director aligns a Pay Opportunity for a Field of Work based on comparison to market surveys and other

relevant salary information.

#### **B. Pay Opportunity Realignment:**

**(1)** The Director may realign a Pay Opportunity for a Field of Work within a Manager Category Span of Pay when he deems it appropriate. Pay Opportunity realignment will be utilized to address compensation related to recruitment and retention issues. All jobs in a Pay Opportunity have the same range of pay: minimum, maximum and midpoint pay.

**(2)** Agencies requesting Pay Opportunity realignment for a Field of Work within a Manager Category Span of Pay must meet criteria established in the Pay Plan.

**(3)** The Director may realign Pay Opportunities based on comparison market survey or additional market survey information, to address critical recruitment/retention issues.

**(4)** Pay Opportunity realignments shall be reviewed annually by the Director to determine their appropriateness. The salary of affected employees shall be governed by *Subsection I. of 1.7.4.13 NMAC*. [1.7.4.10 NMAC – N, 11/14/02]

#### 1.7.4.11 ASSIGNMENT OF ALTERNATIVE PAY BANDS:

**A.** The Director shall recommend to the Board the assignment of an Alternative Pay Band(s) to Technical Occupation Group Role(s).

**(1)** Alternative Pay Band(s) will be utilized to address compensation related to recruitment and retention issues.

**(2)** All jobs in an Alternative Pay Band have the same range of pay: minimum, maximum and midpoint pay.

**B.** Agencies requesting Alternative Pay Bands to Technical Occupation Group Role(s) must meet criteria established in the Pay Plan.

**C.** The Board shall assign Alternative Pay Bands based on the Director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.

**D.** The assignments to Alternative Pay Bands shall be reviewed annually to determine their appropriateness. The Director shall recommend to the Board the continuation or removal of the Alternative Pay Band assignments. The salary of affected employees shall be governed by *Subsection I. of 1.7.4.13 NMAC*. [1.7.4.11 NMAC – Rp, 1.7.4.9 NMAC, 11/14/02]

#### 1.7.4.12 SALARY SCHEDULES:

**A.** Based on the pay plan,

the Director shall develop and maintain salary schedules for the classified service that shall consist of Pay Bands and Pay Opportunities.

**B.** No employee in the classified service shall be paid a salary less than the minimum nor greater than the maximum of their designated Pay Band or Pay Opportunity unless otherwise authorized by the Director, or provided for in these Rules, or the employee has been transferred into the classified service by statute, executive order, or order of a court of competent jurisdiction. Prior to the end of each calendar year, the Director shall submit a report to the Board outlining those employees paid a salary less than the minimum or greater than the maximum of their designated Pay Band or Pay Opportunity.

**C.** The Director, pursuant to the direction of the Board, shall adjust the salary schedules to address the external competitiveness of the service and/or other concerns. Such salary schedule adjustments may result in employees temporarily falling below the minimum or above the maximum of their Pay Band or Pay Opportunity upon implementation. The pay of employees who would be above the maximum of the Pay Band or Pay Opportunity shall not be reduced. Employees whose Pay Band or Pay Opportunity is adjusted upward or downward shall retain their current salary.

**D.** An employee's placement in the Pay Band or Pay Opportunity will be identified by a compa-ratio value. [1.7.4.12 NMAC – Rp, 1.7.4.10 NMAC, 11/14/02]

#### 1.7.4.13 ADMINISTRATION OF THE SALARY SCHEDULES:

##### A. Entrance Salary:

(1) Upon entrance to a Technical Occupation Group Role, a newly-appointed employee's salary, subject to budget availability, should reflect Appropriate Placement within the Pay Band. Any entrance salary in the Principal Contributor Zone must receive approval from the Director or Authorized Agent prior to appointment.

(2) Upon entrance to a Manager Category, a newly-appointed employee's salary, subject to budget availability, should reflect Appropriate Placement within the Pay Opportunity. Any entrance salary which exceeds a compa-ratio of 100.0% must receive approval from the Director or Authorized Agent prior to appointment.

##### B. Pay for Performance Increase:

(1) Subject to specific statutory authorization for each state fiscal year and subject to agency budget availability,

employees who fulfill established performance criteria shall be eligible for a salary increase within their assigned Pay Band or Pay Opportunity.

(2) Employees with a salary at or above the maximum of the position's Pay Band or Pay Opportunity shall not be eligible for an increase unless authorized by statute.

(3) Employees in a Technical Occupation Group Role or Manager Category with a higher Pay Band or Pay Opportunity than that assigned to the position shall not be eligible for a Pay for Performance increase unless the employee's Technical Occupation Group Role or Manager Category is adjusted to the position before the end of that state fiscal year. Thereafter, the employee shall be eligible for a Pay for Performance increase during the first full pay period following the adjustment provided that the employee's salary does not equal or exceed the maximum value of the new Pay Band or Pay Opportunity.

**C. Salary Upon In Pay Band or In Pay Opportunity Adjustment:** Upon In Pay Band Adjustment or In Pay Opportunity Adjustment, subject to budget availability and reflective of Appropriate Placement, agencies may increase an employee's salary up to ten percent (10%) during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than ten percent (10%) and the employee's base salary does not exceed the maximum of the assigned Pay Band or Pay Opportunity. An employee's salary being adjusted in accordance with *Subsection I of 1.7.4.13 NMAC* may be increased, subject to budget availability and Board approval, greater than ten percent (10%) to bring the employee's salary to the minimum of the Pay Band or Pay Opportunity.

**D. Salary Upon Promotion:** Upon promotion, an employee's salary, subject to budget availability, should reflect Appropriate Placement within the Pay Band or Pay Opportunity. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the Director or Authorized Agent. A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the Pay Band or Pay Opportunity or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the Pay Band or Pay Opportunity does not require the approval of the Director or Authorized Agent. The salary of a promoted

employee shall be in accordance with *Subsection B of 1.7.4.12 NMAC*.

##### E. Salary Upon

**Demotion:** Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new Pay Band or Pay Opportunity or the decrease is being made in accordance with *Paragraph (2) of Subsection F of 1.7.4.13 NMAC*.

##### F. Pay Allowance for Performing First Line Supervisor Duties:

(1) An agency shall grant a pay allowance to an employee in a Technical Occupation Group who accepts and consistently performs additional duties which are characteristic of a First Line Supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the Technical Occupation Group Role and shall be between 0% and 20% above the employee's base pay rate.

(2) When the First Line Supervisor duties are no longer being performed, the agency shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) Agencies shall require that a form, established by the Director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

(4) The Director shall submit to the Board a quarterly report on pay allowance.

##### G. Salary Upon

**Suspension:** The salary of an employee who has been suspended in accordance with *1.7.11 NMAC* may be temporarily reduced by up to fifteen percent (15%) for a period not to exceed 160 consecutive work hours.

##### H. Salary Upon Transfer:

(1) The salary of employees who are transferring in accordance with the provisions of *Subsection QQ of 1.7.1.7 NMAC* shall remain the same.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

**I. Salary Upon Pay Band or Pay Opportunity Change:** When a change of Pay Band or Pay Opportunity is authorized in accordance with the provisions of *1.7.4.9 NMAC, 1.7.4.10 NMAC, 1.7.4.11 NMAC and/or 1.7.4.12 NMAC* the salaries of affected employees shall be determined in accordance with *Subsection*



**C of 1.7.4.12 NMAC.** Employees whose Pay Band or Pay Opportunity is adjusted upward or downward shall retain their current salary in the new Pay Band or Pay Opportunity. Employees' salaries may be addressed through In Pay Band or In Pay Opportunity Adjustment unless otherwise allowed by statute.

**J. Salary Upon Reduction:** The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with **Paragraph (2) of Subsection F of 1.7.4.13 NMAC.** An employee's salary should reflect Appropriate Placement within the Pay Band or Pay Opportunity. The Director or Authorized Agent may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

**K. Salary Upon Return To Work Or Reemployment:** The salary of former employees who are returned to work or re-employed in accordance with the provisions of **1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC** shall not exceed the hourly pay rate held at the time of separation.

**L. Salary Upon Temporary Promotion:** Pay for a temporary promotion under **Subsection E of 1.7.5.12 NMAC,** will be administered in accordance with **Subsection D of 1.7.4.13 NMAC.** The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

**M. Temporary Salary Increase:** An agency may, with the approval of the Director or Authorized Agent, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a Technical Occupation Group Role assigned to a higher Pay Band or of a Manager Category assigned to a higher Manager Category Span of Pay, or of a Manager Category if employee holds a position assigned to a Technical Occupation Group. The Director may approve temporary salary increases above the maximum of the employee's current Technical Occupation Group Role/Manager Category, Pay Band or Pay Opportunity, provided that the increase does not exceed the maximum of the higher Pay Band or Pay Opportunity assigned to the additional duties of the Technical Occupation Group /Manager Category characteristics or fifteen (15%). The agency shall discontinue the temporary

salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

**N. Shift Pay:** Employees shall be paid, in addition to their regular pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m. Agencies shall notify the Director of any change in this rate.

[1.7.4.13 NMAC – Rp, 1.7.4.11 NMAC, 11/14/02]

#### 1.7.4.14 PAY DIFFERENTIALS:

**A. Temporary Recruitment Differential:** The Director or Authorized Agent may authorize, in writing, a pay differential of up to fifteen percent (15%) of the position's Pay Band or Pay Opportunity midpoint to an employee who fills a position which has been documented as critical to the effective operation of the agency and has been demonstrated and documented to be a severe recruitment problem for the agency.

(1) A differential authorized under this provision shall be tied to the position and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary. Agencies shall demonstrate to the Office, at least biennially, the circumstances which justified the differential to determine the necessity for its continuance.

(2) A differential of more than fifteen percent (15%) of midpoint or a total salary (base pay plus differential amount) that exceeds the maximum of the Pay Band or Pay Opportunity may be authorized if approved by the Director.

**B. Temporary Retention Differential:** The Director or Authorized Agent may authorize, in writing, a pay differential of up to twenty percent (20%) of the position's Pay Band or Pay Opportunity midpoint upon receipt of documentation indicating that the employee is in a position which has been designated as essential to the effective operation of the agency and the employee's departure would disrupt the agency's ability to fulfill its mission or the employee is in a position which has a documented history of severe retention difficulties.

(1) The agency must provide a detailed plan that outlines how they intend to resolve the problems associated with the retention difficulties.

(2) A differential authorized under this provision shall not exceed one calendar year under any circumstances and shall not result in a total (base pay plus differential amount) salary which exceeds the maxi-

mum of the Pay Band or Pay Opportunity without the approval of the Director.

(3) Payment of this differential shall be separate from the employee's base salary.

(4) The retention differential shall be tied to the position, may not be in conjunction with a Temporary Recruitment Differential, and may not transfer with the employee should the employee leave that position.

**C. Out-of-State Differential:** The Director or Authorized Agent may authorize an out-of-state differential to an employee up to the maximum of the Pay Band or Pay Opportunity if the agency is able to substantiate that the employee's current salary is insufficient to adequately pay an employee while working or residing out of state. Payment of this differential should be separate from the employee's base salary. A total salary (base pay plus differential amount) that exceeds the maximum of the Pay Band or Pay Opportunity may be authorized if approved by the Director.

[1.7.4.14 NMAC – Rp, 1.7.4.12 NMAC, 11/14/02]

#### 1.7.4.15 OVERTIME:

**A.** Time worked in excess of 40 hours during the designated workweek shall be compensated in accordance with the provisions of *the Fair Labor Standards Act [29 U.S.C. Sections 201 to 262]* for *Fair Labor Standards Act* covered, non-exempt employees.

**B.** Agencies shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.

**C.** Agencies shall evaluate each employee's duties to determine their overtime status as set forth under the *Fair Labor Standards Act.*

**D.** Agencies shall document and inform employees of their overtime status, and maintain the decisions on file.

**E.** Employees have the right to appeal their overtime status according to the provisions of **1.7.6.13 NMAC.**

**F.** Agencies shall notify employees in writing of their appeal decision and inform them that they have 30 calendar days in which to file an appeal of that decision with the Director, at the employee's option.

**G.** Agencies shall notify employees that their appeal to the Director must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documenta-

tion describing the work currently being performed by the employee and any other relevant information, verified by the Agency.

**H.** Agencies shall determine the need for employees to work overtime, and prevent unauthorized overtime work.

**I.** Paid holiday leave and administrative leave for voting taken in accordance with the provisions of **Subsection C of 1.7.7.14 NMAC** shall also count as time worked in the consideration of overtime for *Fair Labor Standards Act* covered, non-exempt employees.

**J.** Agencies shall maintain a record on each employee containing information required by the provisions of the *Fair Labor Standards Act*.

**K.** Agencies shall pay *Fair Labor Standards Act* covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute and shall be paid for accrued compensatory time upon separation.

**L.** Employees not covered or exempt from the overtime provisions of the *Fair Labor Standards Act* may be compensated for overtime in accordance with agency policy.

[1.7.4.15 NMAC – Rp, 1.7.4.13 NMAC, 11/14/02]

#### 1.7.4.16 CALL-BACK PAY:

**A.** Employees who are directed to return to work after completing their normal shift and before their next shift:

(1) shall be paid in accordance with the provisions of **1.7.4.15 NMAC**, if the time worked results in overtime; or:

(2) shall be paid their hourly rates, if the time worked does not result in overtime.

**B.** Agencies may establish a minimum number of hours to be paid when employees are called back in accordance with their agency policy.

[1.7.4.16 NMAC – Rp, 1.7.4.14 NMAC, 11/14/02]

#### 1.7.4.17 ON-CALL PAY:

**A.** In accordance with the provisions of the *Fair Labor Standards Act*, agencies shall develop a policy to compensate employees directed to remain on-call after their normal work shift.

**B.** Agencies shall file their on-call compensation policy with the Office. Subsequent revisions to the on-call policy shall be filed with the Office prior to implementation.

[1.7.4.17 NMAC – Rp, 1.7.4.15 NMAC,

11/14/02]

#### 1.7.4.18 HOLIDAY PAY:

**A.** When an authorized holiday falls on an employee's regularly scheduled work day and the employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

**B.** Full-time employees, whose normal work schedule does not include the day observed as a holiday, shall be entitled to time off equal to the employee's normal workday.

**C.** Employees required to work on the day a holiday is observed, shall be compensated at two and one-half times their hourly rate of pay for all hours actually worked on the holiday. Such compensation shall be in the form of straight time cash payment for all hours actually worked and additional premium compensation, at the agency's discretion, of either compensatory time off or cash payment at one and one-half times the usual hourly rate of pay for all hours actually worked.

**D.** Part-time employees whose normal work schedule does not include the day a holiday is observed shall not be compensated for the holiday.

**E.** Employees who have been charged leave without pay or absence without leave on the workday prior to or directly following a holiday shall not be paid for the holiday.

[1.7.4.18 NMAC – Rp, 1.7.4.16 NMAC, 11/14/02]

#### 1.7.4.19 GOVERNMENT COST SAVINGS INCENTIVE AWARDS:

Agencies may provide cash awards to employees with the approval of the Board in accordance with the provisions of *NMSA 1978, Section 10-7-12*. The Director and the Secretary of the Department of Finance and Administration shall issue guidelines for submitting proposed awards to the Board.

[1.7.4.19 NMAC – Rp, 1 NMAC 7.4.17, 11/14/02]

#### HISTORY OF 1.7.4 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:

SPB Rule 4, Applications and Tests, filed 05-22-80;

SPB Rule 4, Applications and Tests, filed 06-03-81;

SPB Rule 4, Applications and Tests, filed 09-02-81;

SPB Rule 4, Applications and Tests, filed

07-01-82

SPB Rule 4, Applications and Tests, filed 10-21-82;

SPB Rule 4, Applications and Tests, filed 08-15-85;

SPB Rule 4, Applications and Tests, filed 10-17-86;

SPB Rule 4, Applications and Tests, filed 07-30-87

SPB-8, Pay, filed 04-04-90;

SPB-8, Pay, filed 09-04-90;

SPB-8, Pay, filed 10-17-90;

SPB-8, Pay, filed 10-19-90;

SPB-8, Pay, filed 12-13-90;

SPB-8, Pay, filed 07-15-91;

SPB-8, Pay, filed 10-11-91;

SPB-8, Pay, filed 12-24-91;

SPB-8, Pay, filed 06-09-92;

SPB-8, Pay, filed 09-10-92;

SPB 6, Pay, filed 12-15-92;

SPB 6, Pay, filed 02-10-94;

SPB 6, Pay, filed 12-01-94;

SPB 6, Pay, filed 09-01-95.

#### History of Repealed Material:

1 NMAC 7.4, Pay, filed 06-13-97.

1.7.4 NMAC, Pay, filed 06-14-01

1.7.4 NMAC, Pay filed 07-07-01

#### Other History:

1 NMAC 7.5, Pay, filed 01-12-96 **replaced** SPB 6, filed 09-01-95;

1 NMAC 7.5, Pay, filed 05-02-96;

1 NMAC 7.4, Pay, filed 06-13-97 **replaced**

1 NMAC 7.5, filed 05-02-96;

1 NMAC 7.4, Pay, filed 06-13-97 **replaced**

by 1.7.4 NMAC, Pay, effective 07/07/01.

1.7.4 NMAC, Pay, filed 06-14-01 **replaced** by 1.7.4 NMAC, Pay, effective 11/14/02.

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.1 NMAC, Sections 3, 7, 8, 11, 12 and 15.

#### 1.7.1.3 STATUTORY

**AUTHORITY:** NMSA 1978, Section 10-9-10(A) [~~Repl. Pamp. 1995~~]; Section 7:

NMSA 1978, Section 10-9-3 [~~Repl. Pamp. 1995~~]; Section 12: NMSA 1978, Section

10-9-12 (A) [~~Repl. Pamp. 1995~~]; Section

13: 42 U.S.C Section 101 et seq.; Section

14: NMSA 1978, Section 14-2-1 [~~Repl. Pamp. 1995~~] and 42 U.S.C Section 101 et

seq; Chapter 173, laws of 1997.  
[1.7.1.3 NMAC – Rp, 1 NMAC 7.1.3, 07/07/01; A, 11/14/02]

#### 1.7.1.7 DEFINITIONS:

**A.** "Agency" means any state department, bureau, division, branch or administrative group which is under the same employer.

**B.** "Agency Utilization"

means agency-specific applications of a position that may determine where the position is classified in a Technical Occupation Group (TOG) or a Manager Category (MC). Factors such as organizational structure, as well as agency-specific requirements, duties, and impact/liability issues affect the actual function, impact, and accountability of the TOG or MC at the agency level.

**C.** "Anniversary Date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different Technical Occupation Group, Technical Occupation Group Role, or Manager Category in the same Pay Band or Pay Opportunity. The Director shall resolve disputes over how an anniversary date is derived.

**D.** "Applicant" means any person, who has applied for a position in the classified service.

~~**E.** "Assessment" means test as defined in Subsection 1.7.1.7 NMAC.~~

**E. [F.]** "Authorized Agent" means a certified representative to whom the Director has delegated specific approval and oversight authority for their specific agency and shares responsibility and accountability with the State Personnel Office for the overall integrity of the personnel system.

~~**F. [G.]** "Board" means the personnel board.~~

~~**G. [H.]** "Break in employment" means any period of separation of at least one workday of not being on the agency's payroll.~~

**H. [I.]** "Candidate" means any person who is on the employment list for a position.

**I. [J.]** "Classified service" means all positions in the executive branch of state government which are not exempt by law.

**J. [K.]** "Compa-ratio" means pay expressed as a percentage of the midpoint of a Pay Band or Pay Opportunity.

**K. [L.]** "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's Pay Band or Pay Opportunity or from a classified position in one Pay Band ~~or Pay Opportunity~~ to a classified position in a lower Pay Band ~~or Pay Opportunity~~ with a reduction in pay, or from a classified position in one Manager Category to a classified position in a lower Manager Category with a reduction in pay, or from a Manager Category to a Technical Occupation Group and/or removal of supervisory responsibilities and pay for disciplinary reasons.

**L. [M.]** "Director" means the

state personnel director.

~~**M. [N.]** "Dismissal" means the involuntary separation from employment for disciplinary reasons.~~

~~**N. [O.]** "Diversity in the workplace" means an acknowledgment of all people equally, regardless of their differences. Agencies' management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.~~

**O. [P.]** "Employee" means a person in a position in the classified service. [NOTE: For purposes of brevity and consistency, this definition differs from *NMSA 1978, Section 10-9-3(I)* ~~(Repl. Pamp. 1995)~~ but in no way confers a greater right on certain persons than contemplated by *Section 10-9-3(I)*].

**P. [Q.]** "Employer" means any authority having power to fill positions in an agency.

**Q. [R.]** "Employment list" means the list of names, certified by the Director, from which a candidate may be selected for appointment.

**R. [S.]** "Established requirements" means a position's individual Job Related Qualification Standards established by the Agency and the Office in accordance with the specific requirements and/or needs of the position and are subject to review by the Director.

**S. [T.]** "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

**T.** "Exempt service" means all positions in the executive branch of state government exempt from the classified service by law.

**U.** "Field of Work" means the nature of work performed and the skills and competencies required for success. It is used to describe occupation groups for Manager Categories and for determination of Pay Opportunities.

**V.** "Filed" means received by the Office or Authorized Agent.

~~**W. [MM]** "First Line Supervisor" means an employee in a Technical Occupation Group who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are~~

substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

~~**X. [W]** "Involuntary separation" means involuntary removal of an employee from the classified service without prejudice as provided for in 1.7.10.13 NMAC.~~

~~**Y. [X]** "Job Size" means the levels of responsibility in relation to Roles within the same Technical Occupation Group, differences in know-how and accountability in the Manager Categories and ~~or~~ agency utilization of the Technical Occupation Group Role or Manager Category. The job size continuum corresponds to the distinctions in relative worth made by the Hay Guide Chart Factor System. It also represents a continuum of career growth within a given occupation.~~

~~**Z. [Y]** "Manager" means an employee in a manager category that manages internal staff and/or external staff, and who plans, organizes, integrates, coordinates, and controls the activities of others. A Manager also is held accountable for the performance of people, services, systems, programs and resources and can change their direction, objectives and assignments.~~

~~**AA. [Z]** "Manager Category" means the five Manager Categories, which encompass the full range of management jobs in the classified service.~~

~~**BB. [AA]** "Midpoint" means the salary midway between the minimum and maximum pay rates of a Pay Band or Pay Opportunity that represents the competitive market rate for jobs of the same relative worth in the relevant labor market(s). Midpoint represents a compa-ratio value of 1.00 or 100%.~~

~~**CC. [BB]** "Minimum qualifications" means statutory requirements as required by law which shall be used to reject applicants.~~

~~**DD. [CC]** "Office" means the state personnel office.~~

~~**EE. [DD]** "Pay Band" means the range of pay rates, from minimum to maximum for a Technical Occupation Group Role.~~

~~**FF. [EE]** "Pay Opportunity" means ~~at~~ the range of pay rates established for a field of work within a Manager Category.~~

~~**GG. [FF]** "Probationer" means an employee in the classified service who has not completed the one-year probationary period.~~

~~**HH. [GG]** "Promotion" means the change of an employee from a classified position in ~~the~~ one Pay Band ~~or the Pay Opportunity~~ to a classified position ~~with~~ in a higher Pay Band or ~~Pay Opportunity~~~~

from a classified position in one Manager Category to a classified position in a higher Manager Category or from a Technical Occupation Group to a Manager Category.

~~II.-(III.)~~ "Reduction" means a voluntary change without prejudice, within an employee's Pay Band or Pay Opportunity, or from a classified position in one Pay Band ~~[or Pay Opportunity]~~ to a classified position in a lower Pay Band or ~~[Pay Opportunity,]~~ from a classified position in one Manager Category to a classified position in a lower Manager Category or from a Manager Category to a Technical Occupation Group, or voluntary removal of supervisory responsibilities and pay.

~~JJ.-(II.)~~ "Relation by blood or marriage within the third degree" includes spouse, parent, mother-in-law, father-in-law, step-parent, children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

~~KK.-(JJ.)~~ "Resignation" means the voluntary separation of an employee from the classified service.

~~LL.-(KK.)~~ "Rules" means the Rules and Regulations of the Personnel Board.

~~MM.-(LL.)~~ "Status" means all of the rights and privileges of an appointment.

~~MM.]~~ ~~["Supervisor" means an employee who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.]~~

NN. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days or a temporary reduction in pay for a period not to exceed 160 consecutive work hours.

OO. "Technical Occupation Group" means (based on the Standard Occupation Classification system devised at the direction of Congress by the Federal Bureau of Labor Statistics to describe and sort, by occupation, all work performed in the United States) that each Technical Occupation Group represents the continuum of non-managerial jobs within an occupation, from the most basic to the most

advanced. It does not mean any given agency will have the full range of the Technical Occupation Group for any given job.

PP. "Technical Occupation Group Role" means a representation of the continuum of job levels within a Technical Occupation Group that an agency utilizes to carry out a part of its mission and contains relative complexity (Know-How, Problem Solving, and Accountability) factors which are measured by the Hay system to determine job size and relative worth.

~~QQ.]~~ ~~["Test" means quantitative and competitive assessment of the qualifications, knowledge, skills, fitness and abilities of an applicant.]~~

~~OO.-(RR.)~~ "Transfer" means the movement of an employee from one position to another in the same Pay Band or Pay Opportunity without a break in employment.

~~RR.-(SS.)~~ "Without prejudice" means a declaration that no rights or privileges of the employee concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.

~~SS.-(TT.)~~ "Writing or written" means in the written form and/or an alternative format, where deemed appropriate, and when requested.

[1.7.1.7 NMAC – Rp, 1 NMAC 7.1.7, 07/07/01; A, 11/14/02]

### 1.7.1.8 A P P R O V A L AUTHORITY:

A. Pursuant to the provision of *NMSA 1978, Section 10-9-12(A)* ~~[(Repl. Pam. 1995)]~~ the Director shall supervise all administrative and technical personnel activities of the state.

(1) The Director, pursuant to direction from the Board, will establish ~~[and maintain audit guidelines]~~ the annual quality assurance review program, and will ensure that a copy of the ~~[audit guidelines]~~ program is provided to each agency. The Board will review the ~~[audit guidelines]~~ quality assurance review program on an annual basis.

(2) The Director shall ensure that all agencies are ~~[audited]~~ reviewed at least biennially, as outlined in the quality assurance review program, which will enable the Director the ability to supervise all administrative and technical personnel activities of the state and ~~[to]~~ ensure compliance with the Rules ~~[and]~~. The Director shall submit the findings to the Board.

~~B. (3)~~ If it is established ~~[through the audit]~~ that an agency has violated the Rules or their agency's policies which require Office approval, and they are given adequate opportunity to correct violations

and fail to do so, the Director may suspend the agency's right to approve such actions as provided in the Rules and all such actions will require Director approval until the Director rescinds the suspension.

~~C.-(B.)~~ The Director may delegate specific authority(ies) to Authorized Agents as provided for in these Rules. Such Authorized Agents shall derive their authority from the Director through written instruction which shall specify the responsibility(ies) and accountability(ies) which are being delegated.

~~D.-(C.)~~ The Director, with the approval of the Board, shall establish criteria governing the requirements which must be met to achieve and maintain authorized agent status.

~~E.-(D.)~~ The Director may modify or withdraw authorized agent status. Such decisions are subject to the Board's review.

[1.7.1.8 NMAC – Rp, 1 NMAC 7.1.8, 07/07/01; A, 11/14/02]

### 1.7.1.11 COMPUTATION OF TIME:

~~[A.]~~ ~~[In computing any period of time prescribed or allowed by these Rules, except for 1.7.11.11 NMAC, the day from which this period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday, or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than eleven (11) days, a Saturday, Sunday, or legal holiday is excluded from the computation.]~~

~~A.-(B.)~~ ~~[When a notice or paper is served by mail or courier service, the employee receiving service shall have three additional calendar days in which to file a response except as provided by 1.7.11.9 NMAC.]~~ In computing any period of time prescribed or allowed by these Rules, the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

~~B.~~ Whenever an employee is permitted or required by these Rules to respond or do some other act within a prescribed period after service of a notice or paper upon the employee and the notice or paper is served by mail or courier service, 3 calendar days shall be added to the pre-

scribed period.

[1.7.1.11 NMAC – Rp, 1 NMAC 7.1.11, 07/07/01; A, 11/14/02]

#### 1.7.1.12 EMPLOYMENT RECORDS:

A. The Director and agencies shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to their own file. ~~[Such documents, including but not limited to]~~ Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit written rebuttal to any material placed in their employment history. Agencies shall transfer the record of an employee's employment history upon inter-agency transfer.

B. Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a ~~[lawful subpoena]~~ lawful court order.

C. For the purpose of inspection of public records under Subsection B of 1.7.1.12 NMAC, the following material shall be regarded as confidential: records and documentation pertaining to physical or mental examinations and medical treatment of persons, including those confined to any institution; records and documentation maintained for purposes of the *Americans with Disabilities Act* [42 U.S.C. Section 101 et seq.]; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be reemployed; college transcripts; military discharge, if other than honorable; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; and laboratory reports or test results generated according to the provisions of 1.7.8 NMAC.

[1.7.1.12 NMAC – Rp, 1 NMAC 7.1.12, 07/07/01; A, 11/14/02]

#### 1.7.1.15 TRAINING AND DEVELOPMENT:

A. The Director shall establish, pursuant to direction from the Board, and maintain Training and Development guidelines and will ensure that a copy of the guidelines ~~[are]~~ is provid-

ed to each agency. The Board will review the Training and Development guidelines on an annual basis.

B. A new employee in a Manager Category must complete a Board-approved core course of study within nine months of appointment. Current managers, as of the effective date of this Rule, must complete the approved course of study within eighteen months. All Manager Category position employees must attend refresher training every four years.

C. Agencies must submit a plan to enhance and promote the development of managers' competencies annually. The plan must include implementation steps, content, and anticipated resources for two years. The plan shall include content to enhance manager awareness and address Diversity in the workplace, ~~[which includes]~~ such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.

D. Agencies must submit for the Director's approval the plan and content of supervisory training for ~~[supervisors]~~ First Line Supervisors, regardless of the Technical Occupation Group(s) they supervise. First Line Supervisors must attend an agency-sponsored orientation and training for their role, including opportunities to enhance ~~[supervisor]~~ First Line Supervisor awareness and address Diversity in the workplace, ~~[which includes]~~ such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government. Current ~~[supervisors]~~ First Line Supervisors must attend such training within one year of the effective date of this Rule. Agencies may require employees in a Manager Category to also attend supervisory training.

E. Agencies must submit a plan to enhance and promote the development of supervisory behavioral competencies as defined by the agency and described in the Performance Appraisal Document (PAD). The plan must include implementation steps, content, and anticipated resources for two years. The plan shall include content to enhance ~~[supervisor]~~ First Line Supervisor awareness and address Diversity in the workplace, ~~[which includes]~~ such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.

F. First Line Supervisors must attend agency-sponsored refresher training every four years in such position. Agencies may require employees in a

Manager Category to also attend agency-sponsored supervisory refresher training.

G. Agencies must provide to each new employee a general overview of state government employment, including specific agency expectations and policies, within one month of appointment. An expanded orientation to employment in state government shall be provided to each new employee within three months of appointment. Implementation, content, and resources shall be contained in the agency plan submitted to the Director.

H. Agencies may request, from the Director, exception to Subsections C through G of 1.7.1.15 NMAC. The request, which may among other things be for budget limitations, will include an addendum to their plan that identifies the cause for the request, steps necessary to comply with the Rule, and a timeline for the necessary steps to be completed. All approved requests will be reviewed annually by the Board.

I. Agencies shall collect Director-required information outlined in Subsection A of 1.7.1.15 NMAC and costs related to ~~[Management]~~ Manager Category Training and Development, and report it to the Office annually.

J. Agencies shall collect Director-required information outlined in Subsection A of 1.7.1.15 NMAC and costs related to Technical Occupation Group Training and Development, and report it to the Office annually.

[1.7.1.15 NMAC – N, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.2 NMAC, Sections 3, 8, 10, 13 and 14.

**1.7.2.3 STATUTORY AUTHORITY:** NMSA 1978, Section 10-9-10(A) [~~(Repl. Pamp. 1995)~~]; NMSA 1978, Sections 10-9-13(E), (J) [~~(Repl. Pamp. 1995)~~]; and NMSA 1978, Section 10-9-18(A) [~~(Repl. Pamp. 1995)~~].

[1.7.2.3 NMAC - Rp, 1 NMAC 7.2.3, 07/07/01; A, 11/14/02]

#### 1.7.2.8 PROBATION:

A. A probationary period of one year is required of all employees unless otherwise provided for by these Rules.

B. The probationary period includes all continuous employment ~~[and includes employment in term status when the employee is converted to a career appointment without a break in employ-~~

~~ment~~ in the classified service except temporary service.

C. Any full-time continuous leave, except for military leave, taken during the probationary period exceeding 30 calendar days shall extend the probationary period by the number of days of leave that exceeds 30 calendar days.

D. A probationer may have their appointment expired for non-disciplinary reasons with a minimum of 24 hours written notice without right of appeal to the Board. Such employees shall be advised in writing of the reason(s) for the expiration of appointment.

[1.7.2.8 NMAC - Rp, 1 NMAC 7.2.8, 07/07/01; A, 11/14/02]

#### 1.7.2.10 TERM STATUS:

Employees in term status who complete the one year probationary period required by 1.7.2.8 NMAC shall have all of the rights and privileges of employees in career status except that term appointments may be expired due to reduction or loss of funding or when the special project or program ends with at least 14 calendar days written notice to the employee without right of appeal to the Board.

[1.7.2.10 NMAC - Rp, 1 NMAC 7.2.10, 07/07/01; A, 11/14/02]

#### 1.7.2.13 EXPIRATION OF APPOINTMENT:

The expiration of a term, probationary, emergency or temporary appointment shall not be considered to be a layoff within the meaning of 1.7.10.9 NMAC or a dismissal within the meaning of Subsection ~~[A]~~ M of 1.7.1.7 NMAC.

[1.7.2.13 NMAC - Rp, 1 NMAC 7.2.13, 07/07/01; A, 11/14/02]

#### 1.7.2.14 ACKNOWLEDGMENT OF CONDITIONS OF APPOINTMENT:

Agencies shall require that a form be signed by all employees at the time of appointment acknowledging ~~[their understanding of]~~ the terms and conditions of the appointment.

[1.7.2.14 NMAC - Rp, 1 NMAC 7.2.14, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.3 NMAC, Sections 3, 6, 7, 8 and 9.

#### 1.7.3.3 STATUTORY AUTHORITY:

MSA 1978, Section 10-9-13(A) [(Repl. Pamph. 1995)].

[1.7.3.3 NMAC - Rp, 1 NMAC 7.3.3, 07/07/01; A, 11/14/02]

#### 1.7.3.6 OBJECTIVE:

The

objective of Part 3 of Chapter 7 is: to provide for a uniform and flexible system for the classification of state positions that supports the mission of state agencies, is adaptable to change, ~~[insures]~~ ensures that all positions are assigned to ~~[the]~~ their appropriate classification, and sets forth a process for implementing classification studies.

[1.7.3.6 NMAC - Rp, 1 NMAC 7.3.6, 07/07/01; A, 11/14/02]

#### 1.7.3.7 DEFINITIONS:

A. "Classification Plan" means a document developed by the Director and reviewed annually by the Board, that provides guidance to agencies on the application of the Rules and serves as a tool for effective classification management. The Classification Plan describes the Board's classification philosophy and ~~[it]~~ is the foundation for ensuring consistent application of the philosophy.

B. "Competency" means any motivation, attitude, behavior, or other personal characteristic that is essential to job performance, predicts success in performing the job, and ~~[that]~~ differentiates performance. A competency is HOW a person performs their job successfully. Competencies are sets of behavior that top performers exhibit much more consistently than average or poor performers.

C. "Family Group" means a group of jobs tied together by either responsibilities, distinguishing characteristics, knowledge, skills, abilities or competencies.

D. "Manager Category Group - Family Group Description" means a written statement of responsibilities, distinguishing characteristics, and competencies required to perform the work of the Manager Category.

E. "Technical Occupation Group - Family Group Description" means a written statement of responsibilities, distinguishing characteristics, knowledge, skills, abilities, and competencies characteristic of each Role in an occupation group and required to perform the work of the occupation group Roles.

F. "Working Title" means a position title established by an agency which represents the job duties and, as appropriate, the professional background and relevant statutory requirements applicable to the job.

[1.7.3.7 NMAC - Rp, 1 NMAC 7.3.7, 07/07/01; A, 11/14/02]

#### 1.7.3.8 CLASSIFICATION PLAN:

A. The Director, pursuant to direction from the Board, shall establish, maintain and, in conjunction with state

agencies, administer a classification plan for all positions throughout the classified service.

B. Technical Occupation Groups and Manager Categories shall reflect quantifiably distinct jobs, shall be classified separately from one another and shall encompass broad Family Groups which meet the needs of all agencies, while keeping the number to a minimum.

C. The Board will review, approve and adopt all new Technical Occupation Group - Family Group Descriptions and Manager Category - Family Group Descriptions.

D. The Director may authorize the deletion of unused Family Group Descriptions and revisions to Family Group Descriptions if the revision does not necessitate a study.

E. The Director shall provide affected parties an opportunity to comment on the creation, revision, and deletion of Family Group Descriptions prior to implementation.

#### F. Competencies:

(1) Competencies required for the State of New Mexico's classified service will be tied to all positions.

(2) Competencies are representative of the behaviors needed to meet performance expectations and goals.

(3) Agencies shall develop policies governing their use of competencies; such policies shall be submitted to the Director for approval and reviewed by the Board.

#### G. Technical Occupation Group:

(1) Technical Occupation Groups shall contain a Basic Role, Operational Role, and an Advanced Role representative of the continuum of job levels within an occupation family.

(2) Every non-managerial position in an agency will fit into one of the three Roles within its designated occupation group.

(3) Supervision in a Technical Occupation Group will be a job duty associated with a Technical Occupation Group Role rather than a separate supervisory occupation group or role.

(4) First Line Supervisors in a Technical Occupation Group Role may be required to supervise employees in a different Technical Occupation Group.

#### H. Manager Category:

(1) All jobs represented in a specific Manager Category are sufficiently similar in job size.

(2) The Manager Categories are representative of distinct jobs and are not a career ladder.

[1.7.3.8 NMAC - Rp, 1 NMAC 7.3.8,

07/07/01; A, 11/14/02]

### 1.7.3.9 POSITION ASSIGNMENT:

A. The Director shall ensure that each position in the classified service is assigned to the ~~[Technical Occupation Group]~~ Technical Occupation Group Role ~~[and]~~ or the Manager Category that best represents the duties assigned by the employer according to job size and agency utilization and performed by the employee. The Authorized Agent may authorize the proper ~~[Technical Occupation Group]~~ Technical Occupation Group Role or the Manager Category of positions in that agency.

~~[(4)] [Designation of a job to the appropriate Technical Occupation Group Role is dependent on job size and agency utilization.]~~

~~[(2)] [Employees may move through a Technical Occupation Group as agency utilization allows.]~~

~~[(3)] [Designation of a job to the appropriate Manager Category is dependent on job size and agency utilization. Changes to a Manager Category will require a change in job size and agency utilization.]~~

B. When a filled position is assigned a Technical Occupation Group Role or Manager Category with a lower Pay Band or Pay Opportunity, in accordance with the provisions *Subsection A of 1.7.3.9 NMAC*, the employee may elect to take a reduction in accordance with *Subsection ~~[(H)] II of 1.7.1.7 NMAC~~*, or overfill the position in their current Technical Occupation Group Role or Manager Category.

C. A position assignment decision may be appealed to the Director through the agency's chain-of-command. Appeals to the Director must be in writing and include the agency's analysis of the reasons for the appeal. The Director's decision is final and binding. Prior to the end of each calendar year, the Director will report these decisions to the Board.

[1.7.3.9 NMAC - Rp, 1 NMAC 7.3.9, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.5 NMAC, Sections 3, 6, 9, 10, 11 and 12.

**1.7.5.3 STATUTORY AUTHORITY:** NMSA 1978, Sections 10-9-10(A), 10-9-12(A), 10-9-13 (C), 10-9-13(F), 10-9-13(I), 10-9-13.2, 10-9-18(B), 10-9-22, 10-9-23 ~~[(Repl. Pamp. 1995)]~~; NMSA 1978, Section 20-4-9 ~~[(Repl. Pamp.~~

~~1989)]~~; NMSA 1978, Sections 24-2B-1 to 24-2B-8 ~~[(Repl. Pamp. 1994)]~~; NMSA 1978, Sections 28-2-1 to 28-2-6, 28-10-12 ~~[(Repl. Pamp. 1991)]~~.

[1.7.5.3 NMAC - Rp, 1 NMAC 7.5.3, 07/07/01; A, 11/14/02]

**1.7.5.6 OBJECTIVE:** The objective of Part 5 of Chapter 7 is: to provide a system for the recruitment, ~~[assessment]~~ examination and selection of applicants for employment in the classified service.

[1.7.5.6 NMAC - Rp, 1 NMAC 7.5.6, 07/07/01; A, 11/14/02]

### 1.7.5.9 RECRUITMENT:

A. The Director shall establish a means to effectively advertise and recruit for vacant positions within the classified service.

B. Any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, age, or mental or physical disability unless based on a bona fide occupational requirement.

C. Agencies shall be sensitive to creating Diversity in the workplace, ~~[which includes]~~ such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.

D. Applications shall be filed in accordance with the Director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment.

[1.7.5.9 NMAC - Rp, 1 NMAC 7.5.9, 07/07/01; A, 11/14/02]

### 1.7.5.10 APPLICATIONS:

A. The Director shall establish application procedures which include, among other things, criteria that will ensure compliance with federal and/or state law. Information on gender, ethnicity, and age of applicants shall be utilized only for affirmative action and other non-discriminatory purposes.

B. An applicant's application shall be rejected if the applicant has been convicted of a felony or a misdemeanor and the provisions of the *Criminal Offender Employment Act [NMSA 1978, Sections 28-2-1 to 28-2-6 [(Repl. Pamp. 1994)]]* permit such rejection.

C. The Director shall reject an application and not accept any application from the applicant if the applicant:

(I) has made any false statement or produced any false document in support

of the application; or

(2) has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

D. In the event an application of an employee is rejected, under the provisions of *Subsection C of 1.7.5.10 NMAC*, the applicant's employing agency shall take appropriate action and notify the Director.

E. An applicant whose application has been rejected may appeal to the Board in accordance with the procedures established by the Director.

[1.7.5.10 NMAC - Rp, 1 NMAC 7.5.10, 07/07/01; A, 11/14/02]

### 1.7.5.11 [ASSESSMENT] EXAMINATION:

#### A. Security:

(1) The Director shall maintain the security of all ~~[tests]~~ examinations.

(2) ~~[Tests]~~ Examinations shall be developed by the Office in accordance with established professional techniques and relevant federal laws, regulations, and guidelines. ~~[Tests]~~ Examinations shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

(3) Agencies shall be sensitive to creating Diversity in the workplace, ~~[which includes]~~ such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.

(4) Except as provided in *Paragraph (5) of Subsection A of 1.7.5.11 NMAC* no agency shall administer any ~~[test]~~ examination to an applicant or employee without the ~~[test]~~ examination and the ~~[test]~~ examination administration having been approved by the Director unless otherwise authorized by statute.

(5) An agency may request a description or demonstration of the skill or ability needed to perform an essential job function in accordance with the *Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 Note 29C.F.R. Part 1630.14(a) Pre-employment inquiry)*.

#### B. Exemptions from ~~[Tests]~~ Examinations:

(1) The Director shall exempt from ~~[tests]~~ examinations those applicants who possess recognized licensure, registration, or certification by the State of New Mexico and who are applying for positions in the classified service that require such

licensure, registration, or certification.

(2) The Director shall exempt from ~~[tests]~~ examinations applicants who, in the course of their duties:

(a) develop, administer, or otherwise have access to such ~~[tests]~~ examinations; or

(b) formerly developed or administered such ~~[tests]~~ examinations within a period of one year from separating from the Office.

**C. Administration of ~~[Tests]~~ Examinations:** In accordance with the provisions of *NMSA 1978, Section 10-9-12(F)*, ~~[(Repl. Pamp. 1995)]~~ the Director shall supervise all ~~[tests]~~ examinations and establish procedures for their administration.

**D. Preference Points:**

(1) In accordance with the provisions of *NMSA 1978, Section 10-9-13.2* ~~[(Repl. Pamp. 1995)]~~ and *NMSA 1978, Section 20-4-9* ~~[(Repl. Pamp. 1989)]~~, veterans honorably discharged from the United States Armed Forces and applicants currently serving in the National Guard shall have five points added to their final passing numerical scores on ~~[tests]~~ examinations. Veterans honorably discharged from the United States Armed Forces with a service-connected disability shall have 10 points added to their final passing numerical scores on ~~[tests]~~ examinations. A veteran with or without a service-connected disability has his/her name placed on the employment list in accordance with numerical rating of other veterans and non-veterans.

(2) In accordance with the provisions of *NMSA 1978, Section 10-9-13* ~~[(Repl. Pamp. 1995)]~~, applicants who pass the ~~[test]~~ examination shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.

(3) Agencies shall be sensitive to creating Diversity in the workplace, ~~[which includes]~~ such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.  
[1.7.5.11 NMAC - Rp, 1 NMAC 7.5.11, 07/07/01; A, 11/14/02]

**1.7.5.12 SELECTION:**

**A.** In accordance with the purpose of the *Personnel Act NMSA, Section 10-9-2*, selection shall be based solely on qualification and ability. Selection for any appointment to positions in the classified service shall be justified in writing and made from employment lists.

**B.** Agencies shall develop policies governing their use of the employment lists; such policies shall be submitted to the Director for approval.

**C.** Agencies shall be sensitive to creating Diversity in the workplace, ~~[which includes]~~ such as an awareness of the benefits and competencies that persons with mental and/or physical disabilities can contribute to the efficient operation of state government.

**D.** Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico Department of Education, Division of Vocational Rehabilitation, the Commission for the Deaf and Hard of Hearing, or the Commission for the Blind, in accordance with the provisions of *NMSA 1978, Section 28-10-12* ~~[(Repl. Pamp. 1994)]~~.

(1) The Director shall certify the names of former employees who are currently receiving temporary total or permanent partial Workers' Compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of *1.7.10.12 NMAC*.

(2) The Director shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per *1.7.10.10 NMAC*.

**E. Temporary Promotions:** Employees may be temporarily promoted for a period not to exceed 12 months to a temporarily or effectively vacant position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

**F. Intra-Agency Transfers:** An agency may transfer an employee without the employee's consent to a position in the same Technical Occupation Group Role or Manager Category within the same geographic location, which is 35 miles from the boundaries of the community in which the employee is employed or if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

**G. Exempt to Career Appointments:** Employment in the exempt service shall not count towards the probationary period required by *Subsection A. of 1.7.2.8 NMAC*.

**H. Emergency Appointments:** Emergency appointments shall be made in accordance with *1.7.2.12 NMAC*.

**I. Reduction:** Employees may request a Technical Occupation Group, Technical Occupation Group Role, or

Manager Category reduction to a position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance.

**J. Physical Examinations:** Agencies may require physical examinations of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the agency.

**K. Human Immunodeficiency Virus-Related (AIDS) Test:** No agency shall require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. Agencies must adhere to the provisions of the *Human Immunodeficiency Virus Test Act NMSA 1978 Sections 24-2B-1 to 24-2B-8* ~~[(Repl. Pamp. 1994)]~~ *Cum. Supp. 1993*.

[1.7.5.12 NMAC - Rp, 1 NMAC 7.5.12, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.6 NMAC, Sections 3, 10, 11 and 12.

**1.7.6.3 STATUTORY AUTHORITY:** *NMSA 1978, Sections 10-9-1 to 10-9-25* ~~[(Repl. Pamp. 1995)]~~, *NMSA 1978, Section 10-9-10(A)* ~~[(Repl. Pamp. 1995)]~~, *NMSA 1978, Section 10-9-13(G)* ~~[(Repl. Pamp. 1995)]~~, *NMSA 1978, Section 10-9-21* ~~[(Repl. Pamp. 1995)]~~, *NMSA 1978, Section 12-5-2* ~~[(Repl. Pamp. 1988)]~~, *NMSA 1978, Sections 24-2B-1 to 24-2B-8* ~~[(Repl. Pamp. 1994)]~~, U.S.C. Sections 1501 to 1508.

[5-15-96; Rn, 1 NMAC 7.8, 7-1-97; 1.7.6.3 NMAC - Rn, 1 NMAC 7.6.3, 11/30/00; A, 11/14/02]

**1.7.6.10 PROHIBITED POLITICAL ACTIVITIES:** Employees are prohibited from:

**A.** using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;

**B.** directly or indirectly coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute any-



thing of value to a party, committee, organization, agency, or person for a political purpose;

C. threatening to deny promotions or pay increases to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising dinners and similar events, advising employees to take part in political activity, and matters of a similar nature;

D. engaging in a political activity while on duty; or

E. being an officer of a political organization.  
[4-27-62...5-15-96; Rn, 1 NMAC 7.8.14.5, 7-1-97; 1.7.6.10 NMAC - Rn & A, 1 NMAC 7.6.10, 11/30/00; A, 11/14/02]

#### 1.7.6.11 PUBLIC/POLITICAL OFFICE:

A. Employees covered by the provisions of the *Hatch Act* [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections.

B. Employees not covered by the provisions of the *Hatch Act* [5 U.S.C. Sections 1501 to 1508] may be candidates for any partisan political office if, upon filing or accepting the nomination and during the entire campaign, they are authorized full-time continuous leave without pay.

C. Employees may be candidates for nonpartisan political office, subject to the restriction set forth in ~~[1-NMAC 7.6.11]~~ **1.7.6.11 NMAC**, without taking a leave of absence.

D. Employees may hold only a nonpartisan county or municipal political office during employment in the classified service.

E. Being a local school board member or an elected member of any post-secondary educational institution shall not be construed as holding political office.

F. Employees running for or holding public office shall not use state equipment, facilities, property or time dedicated to employment duties to conduct campaign or public office related business. Violation of this Rule is punishable by disciplinary action pursuant to ~~[1-NMAC 7.6.11]~~ **1.7.11 NMAC** and/or the criminal penalties set forth in ~~[NMSA 1978 section 10-9-23]~~ *NMSA 1978 Section 10-9-23*.  
[7-1-80...5-15-96; 1.7.6.11 NMAC - Rn & A, 1 NMAC 7.6.12, 11/30/00; A 2-14-01; A, 11/14/02]

1.7.6.12 **[ RESCISSION ]**  
**RESCISSION OF RESIGNATION:** An employee may rescind a letter of resignation within three workdays of its submission and

the agency must honor the rescission if it is submitted within the prescribed time limit.  
[1-2-93 ... 5-15-96; Rn, 1 NMAC 7.8.16.2, 7-1-97; 1.7.6.12 NMAC - Rn, 1 NMAC 7.6.12, 11/30/00; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.7NMAC, Sections 3, 8, 9, 10, 12, 14, 16, 17 and 18.

**1.7.7.3 STATUTORY AUTHORITY:** NMSA 1978, Section 10-9-13(G) ~~[(Repl. Pam. 1995)]~~; Section 11: NMSA 1978, Section 10-7-10 ~~[(Repl. Pam. 1995)]~~; Section 13: 29 U.S.C. Sections 201 and 2601 **et seq.**; Section 15: NMSA 1978, Section 1-12-42 ~~[(Repl. Pam. 1995)]~~; Section 17: NMSA 1978, Sections 20-4-7, 20-5-14 and 20-7-5 ~~[(Repl. Pam. 1989)]~~ and 38 U.S.C. Section 2024.  
[1.7.7.3 NMAC - Rp, 1 NMAC 7.7.3, 07/07/01; A, 11/14/02]

#### 1.7.7.8 ANNUAL LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue annual leave at the rate of:

(1) 3.08 hours per pay period if less than three years of cumulative employment,

(2) 3.69 hours per pay period if three years or more but less than seven years of cumulative employment,

(3) 4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment,

(4) 5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or

(5) 6.15 hours per pay period if fifteen years or more of cumulative employment.

B. For purposes of **Subsection A of 1.7.7.8. NMAC**, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment in the classified service.

C. For purposes of **Subsection A of 1.7.7.8. NMAC**, employment in programs transferred into the classified service by legislation or executive order shall count as cumulative employment.

D. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue annual leave on a pro-rated basis.

E. A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December.

F. Annual leave shall not be used before it is accrued and must be authorized before it is taken in accordance with agency policy.

G. Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at their current hourly rate. Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate.

H. The estate of an employee who dies while in the classified service shall be paid for the employee's total accrued annual leave.

[1.7.7.8 NMAC - Rp, 1 NMAC 7.7.8, 07/07/01; A, 11/14/02]

#### 1.7.7.9 DONATION OF ANNUAL LEAVE:

A. Employees may donate annual leave to another employee in the same agency for a medical emergency with approval of the head of the agency.

B. An agency shall maintain the following documentation:

(1) the name, position title, and hourly rate of pay of the proposed leave recipient;

(2) a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and

(3) any other information which the employing agency may reasonably require.

C. Supporting documentation for the request to donate annual leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

D. The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of pay to hours of leave based on the recipient's hourly rate of pay.

E. The recipient of donated annual leave may not use such leave until first exhausting all accrued annual and sick leave, compensatory time and personal leave day.

F. Donated annual leave shall revert to the employees who donated

the leave on a prorated basis when the medical emergency ends or the employee separates from the ~~classified service~~ agency. [1.7.7.9 NMAC – Rp, 1 NMAC 7.7.9, 07/07/01; A, 11/14/02]

#### 1.7.7.10 SICK LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of 3.69 hours per pay period.

B. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue sick leave on a prorated basis.

C. Sick leave may not be used before it is accrued and must be authorized or denied according to agency policy.

D. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a relation by blood or marriage within the third degree, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

E. There is no limit to the amount of sick leave that may be accrued.

F. No payment shall be made for accrued sick leave at the time of separation from the classified service except as provided by law.

G. Former employees who were laid off and are returned to work in accordance with the provisions of **1.7.10.10 NMAC**, shall have restored the sick leave they had accrued as of the date of layoff.

H. An agency may authorize an employee to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree, or of a person residing in the employee's household.

~~H. [Agencies shall accept all accrued sick leave from persons who separate from the judicial or legislative branches of state government and are employed in the classified service within 14 calendar days of such separation.]~~

#### ~~J. Payment for Accumulated Sick Leave:~~

(I) In accordance with the provisions of *NMSA 1978, Section 10-7-10 [(Repl. Pamph. 1995)]*, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate of pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once

per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

(2) Immediately prior to retirement from the classified service, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate for up to 400 hours of sick leave.

[1.7.7.10 NMAC – Rp, 1 NMAC 7.7.10, 07/07/01; A, 11/14/02]

#### 1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in **1.7.7 NMAC** eligible employees are entitled to leave in accordance with the *Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.]*. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by *Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.]*, at least 1250 hours during the 12 month period immediately preceding the start of FMLA leave are eligible employees. In addition, employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this Rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth or placement of a child or at the time of a serious health condition for the employee, or family members, as defined in the FMLA. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, or donated leave for any part of unpaid FMLA leave.

D. Compensatory time shall not count towards the ~~twelve~~ 12 weeks entitled by FMLA.

~~E. [No part of FMLA leave shall be considered a break in employment, and shall not change an employee's anniversary date as established in Subsection B of 1.7.4.11 NMAC].~~

E. ~~F.~~ Employees shall not accrue annual and sick leave, nor be paid for "observed" holidays while on unpaid FMLA leave.

E. ~~G.~~ Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their

families shall be considered confidential in accordance with **1.7.1.12 NMAC**.

~~G. H.~~ Disputes over the administration of this Rule shall be forwarded to the Director for resolution.

[1.7.7.12 NMAC – Rp, 1 NMAC 7.7.12; A, 07/07/01, 11/14/02]

#### 1.7.7.14 ADMINISTRATIVE LEAVE:

A. An agency may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the Director or Authorized Agent except for administrative leave granted in accordance with the provisions of *Paragraph (2) of Subsection B of 1.7.8.19 NMAC* or *Paragraph (2) of Subsection D of 1.7.8.19 NMAC* or **1.7.11.12 NMAC**.

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency.

E. Employees shall be entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

[1.7.7.14 NMAC – Rp, 1 NMAC 7.7.14, 07/07/01; A, 11/14/02]

#### 1.7.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the National Guard ordered to active duty training shall be given up to 15 workdays of paid military leave per federal fiscal year. These 15 ~~work days~~ work days are in addition to other authorized

leave. This Rule does not apply to employees in temporary or emergency status.

**B.** The Governor may grant members of the National Guard paid military leave for active duty training, in addition to that already given by law. Such additional leave must not exceed 15 ~~work days~~ workdays per federal fiscal year.

**C.** Members of the State Defense Force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed 15 ~~work days~~ workdays per federal fiscal year.

**D.** Members of the Civil Air Patrol shall be granted military leave not to exceed 15 ~~work days~~ workdays per calendar year for search and rescue missions.

**E.** Employees on military leave with pay shall accrue annual and sick leave.

**F.** Employees who are members of a reserve component of the United States Armed Forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States Armed Forces in accordance with the provisions of **38 U.S.C. Section 2024**. This Rule does not apply to employees in temporary or emergency status. [1.7.7.16 NMAC – Rp, 1 NMAC 7.7.16, 07/07/01; A, 11/14/02]

#### 1.7.7.17 PERSONAL LEAVE DAY:

**A.** Employees in career status are entitled to ~~one~~ 1 personal leave day each calendar year. The personal leave day will be consistent with the employee's normal ~~work day~~ workday. Such leave must be requested and approved in advance.

**B.** The personal leave day must be taken during consecutive hours.

**C.** The personal leave day must be taken by the end of the last pay period beginning in December or it will be lost.

**D.** Employees who do not take the personal leave day shall not be paid for it upon separation from the classified service. [1.7.7.17 NMAC – Rp, 1 NMAC 7.7.17, 07/07/01; A, 11/14/02]

#### 1.7.7.18 TRANSFER OF LEAVE:

**A.** Employees who transfer from one agency to another shall retain all accrued annual, personal and sick leave.

**B.** All accrued annual and sick leave shall be transferred when persons change status from a position in the exempt

service to a position in the classified service without a break in employment.

**C.** Agencies shall accept all accrued sick leave from persons who separate from the judicial or legislative branches of state government and are employed in the classified service without a break in employment of such separation. [1.7.7.18 NMAC – Rp, 1 NMAC 7.7.18, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.8 NMAC, Sections 3, 7, 10, 13, 14, 16 and 19.

### 1.7.8.3 S T A T U T O R Y AUTHORITY: NMSA 1978, Section 10-9-10(A) ~~{(Repl. Pamp. 1995)}~~.

[1.7.8.3 NMAC - Rp, 1 NMAC 7.8.3, 07/07/01; A, 11/14/02]

### 1.7.8.7 DEFINITIONS:

**A.** "Alcohol" means all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors.

**B.** "Aliquot" means a portion of a urine specimen used for testing.

**C.** "Chain of custody" refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. A chain of custody form approved by the Director shall be used for blood and urine samples. In any dispute regarding chain of custody, the identity and integrity of the sample at issue may be shown by a preponderance of the evidence.

**D.** "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite in a urine specimen by gas chromatography/mass spectrometry (GC/MS).

**E.** "Drug" means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; or any non-prescription substance containing those drugs.

**F.** "Initial test" means an immunoassay screen which meets the requirements of the Food and Drug Administration to eliminate negative specimens from further consideration.

**G.** "Medical Review Officer" means a licensed physician knowledgeable in the medical use of prescription drugs and alcohol and the pharmacology and toxicology of illicit drugs and alcohol.

**H.** "Non-prescription" refers to all substances other than a sub-

stance which has been prescribed for the particular candidate or employee who has ingested or otherwise used the substance by a doctor or other health professional licensed with authority to prescribe such substances by the State of New Mexico or other governmental entity of the United States.

**I.** "On duty" means any time during an employee's ~~normal~~ regular workday or other period during which the employee is required to work by the employer, including authorized lunch and other breaks, ~~and/or~~ and anytime while operating or riding in a state vehicle.

**J.** "Random selection basis" means a system for selecting employees or groups of employees for drug testing in a statistically random system based on a neutral criterion, such as employment or social security numbers, without individualized suspicion that a particular employee is using drugs.

**K.** "Reasonable suspicion" means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.

**L.** "Safety-sensitive position" is a position approved as such by the Board, including a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, peace officers, correctional officers, employees who are required to regularly carry a firearm, and employees who regularly transport other people as their principal job. [1.7.8.7 NMAC - Rp, 1 NMAC 7.8.7, 07/07/01; A, 11/14/02]

### 1.7.8.10 AWARENESS PROGRAM:

**A.** Each agency shall appoint a Drug Abuse Coordinator who shall be responsible for the agency's drug and alcohol abuse program.

**B.** The Drug Abuse Coordinator shall administer the drug and alcohol abuse awareness program to inform employees about:

(1) the dangers of drug and alcohol abuse;

(2) available counseling, rehabilitation, and employee assistance programs; and

(3) the sanctions that may be imposed upon employees as provided in **1.7.8.19 NMAC**.

**C.** The Drug Abuse Coordinator shall ensure that the agency has contracted ~~with~~ or made arrangements with a Medical Review Officer to perform the duties required by **1.7.8 NMAC**.

[1.7.8.10 NMAC - Rp, 1 NMAC 7.8.10,

07/07/01; A, 11/14/02]

**1.7.8.13 DRUG TESTS:**

**A.** The initial and confirmatory drug tests, shall be performed in accordance with DHHS/DOT Testing Guidelines and by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists in Forensic Urine Drug Testing. The laboratory shall have the capability, on the same premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

**B.** The following initial cutoff levels shall be used when screening specimens on the initial drug tests to determine whether they are negative for these five drugs or classes of drugs:

- (1) Marijuana metabolites.....  
50 (ng/ml)
- (2) Cocaine metabolites.....  
300 (ng/ml)
- (3) Opiate metabolites.....  
[~~300~~] 2,000 (ng/ml)
- (4) Phencyclidine.....  
25 (ng/ml)
- (5) Amphetamines.....  
1,000 (ng/ml)

(6) <sup>1</sup>25 mg/ml if immunoassay specific for free morphine.

**C.** All specimens identified as positive on the initial drug test shall be confirmed by the laboratory at the cutoff values listed below for each drug. All confirmations shall be by quantitative analysis:

- (1) Marijuana metabolites<sup>1</sup>.....  
15 (ng/ml)
- (2) Cocaine metabolites<sup>2</sup>.....  
150 (ng/ml)
- (3) **Opiates:**
- (a) Morphine.....  
[~~300~~] 2,000 (ng/ml)
- (b) Codeine.....  
[~~300~~] 2,000 (ng/ml)
- (4) Phencyclidine.....  
25 (ng/ml)
- (5) **Amphetamines:**
- (a) Amphetamine.....  
500 (ng/ml)
- (b) Methamphetamine.....  
500 (ng/ml)
- (6) <sup>1</sup>Delta - 9-tetrahydrocannabinol - 9-carboxylic acid
- (7) <sup>2</sup>Benzoylcegonine

**D.** The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

**E.** The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[1.7.8.13 NMAC - Rp, 1 NMAC 7.8.13, 07/07/01; A, 11/14/02]

**1.7.8.14 ALCOHOL TESTS:**

**A.** A test for alcohol shall be administered by breath or blood. A test for any indication of alcohol in the 30 to 180 calendar day period following an employee's request to be referred to alcohol rehabilitation in accordance with the provisions of **Paragraph (1) of Subsection B of 1.7.8.19 NMAC** may be performed by urinalysis.

**B.** A test for alcohol by blood shall be performed by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the College of American Pathologists.

**C.** A test result of a blood-alcohol content (BAC) level of .06 or more shall be deemed positive for alcohol. For employees who have been required to undergo alcohol rehabilitation in accordance with the provisions of **Paragraph (1) of Subsection [B] D of 1.7.8.19 NMAC**, any indication of alcohol at any level for the 30 to 180 calendar day period following an employee's request to be referred for rehabilitation shall be considered a positive test result.

[1.7.8.14 NMAC - Rp, 1 NMAC 7.8.14, 07/07/01; A, 11/14/02]

**1.7.8.16 EXPLANATION OF POSITIVE TEST RESULTS:**

**A.** Candidates for employment who test positive for drugs may, within [~~two~~] 2 [~~work days~~] **workdays** of being advised of the test results, submit a written request to the agency's Drug Abuse Coordinator for a review of the test results by the Medical Review Officer. The test results of all employees who test positive for drugs and/or alcohol shall be referred by the agency's Drug Abuse Coordinator to the Medical Review Officer.

(1) If the candidate does not request a review of the test results within two work days, the candidate waives review by the Medical Review Officer and any retesting of the sample and consents to rejection for selection.

(2) The Medical Review Officer shall examine any proffered or possible

explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The Medical Review Officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications and/or medical or dental treatment. The Medical Review Officer shall also review the results of any retest done according to the provisions of **1.7.8.17 NMAC**.

(a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the Medical Review Officer is authorized on behalf of the state to order a [~~re-analysis~~] **reanalysis** of the original sample and such retests are authorized to be performed only at an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists in Forensic Urine Drug Testing.

(b) Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the Medical Review Officer and the candidate or employee may be in person or by telephone.

(c) The Medical Review Officer shall advise the appropriate Drug Abuse Coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the Medical Review Officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the Drug Abuse Coordinator for the agency. Similarly, the Medical Review Officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol, but shall simply report such claims to the Drug Abuse Coordinator for the agency, all with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

**B.** Based upon the Medical Review Officer's report and such other inquiries or facts as the agency may consider, the agency shall determine whether the candidate's or employee's explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the candidate's or employee's explanations or challenges of the positive test results are unsatisfactory to the agency:

(a) a written explanation as to why the explanation is unsatisfactory, along with the test results, shall be provided to the candidate or employee within 10 calendar days of the agency's determination; and

(b) such records shall be kept confidential by the agency and shall be retained for one year.

(2) If the candidate's or employee's explanations or challenges of the positive test results are satisfactory to the agency:

(a) the agency shall notify the candidate or employee of the agency's determination within 10 calendar days of the determination; and

(b) such records shall be kept confidential by the agency and shall be retained for one year.

[1.7.8.16 NMAC - Rp, 1 NMAC 7.8.16, 07/07/01; A, 11/14/02]

### 1.7.8.19 REHABILITATION AND SANCTIONS:

#### A. Candidates for Employment:

(1) A candidate for employment in a safety-sensitive position who tests positive for drugs and who does not seek review by the Medical Review Officer or who is unable to satisfactorily explain the positive test results shall be rejected for selection.

(2) An employee for transfer or promotion to a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive test results shall be subject to disciplinary action including dismissal if the employee occupies a safety-sensitive position. If the employee is not in a safety-sensitive position, the employee shall be treated in accordance with the provisions of *Subsection D of 1.7.8.19. [4] NMAC*.

#### B. Voluntary Self-Identification by Employees:

(1) The Drug Abuse Coordinator shall refer those employees who request such a referral prior to selection for drug or alcohol testing to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The agency may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only.

(3) Employees in safety-sensitive positions who have requested referral shall be assigned to nonsafety-sensitive duties while in an employee assistance program, counseling, or a drug or alcohol rehabilita-

tion program.

(4) Employees are subject to drug and/or alcohol testing at the discretion of the Drug Abuse Coordinator at any time between 30 calendar days and 180 calendar days of requesting referral.

(a) Employees in safety-sensitive positions who test positive during this time period or fail to successfully complete such program are subject to disciplinary action including dismissal.

(b) Employees in non-safety-sensitive positions who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The agency may allow the employee to use [afforded] annual leave, sick leave, or leave without pay for additional counseling or rehabilitation by the agency after considering all factors relevant to the employee's condition and job performance history.

(5) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 calendar day to 180 calendar day period following the request for referral shall be considered a positive test result.

**C. Safety-Sensitive Positions:** Employees in safety-sensitive positions who have not requested referral to an employee assistance program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug or alcohol test shall be subject to disciplinary action including dismissal if they do not have a satisfactory explanation for the positive test results.

#### D. Nonsafety-Sensitive Positions:

(1) Employees in nonsafety-sensitive positions who test positive on a reasonable suspicion drug or alcohol test required by *Subsection D of 1.7.8.11 NMAC* and do not have a satisfactory explanation for the positive test results shall be referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Employees are subject to drug or alcohol testing at the discretion of the Drug Abuse Coordinator at any time between 30 calendar days and 180 calendar days of the first positive test. Any such employee who tests positive for drugs or alcohol between 30 calendar days and 180 calendar days of the first positive test or has a second positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal.

(2) The agency may grant an employee ~~on~~ administrative leave to participate in an employee assistance program,

counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only.

**E. Refusal to Cooperate in Testing Procedure:** Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine, blood, or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal.

#### F. Possession of Drugs or Alcohol:

(1) Employees who illegally sell, purchase, or transfer drugs or any substance in *Schedules I and II of the Controlled Substances Act NMSA 1978, Sections 30-31-1 to 30-31-41 (Repl. Pamp. 1994)*, while on duty shall be subject to disciplinary action including dismissal and reported to the local law enforcement agency.

(2) Employees who, while on duty, possess drugs or any substance in *Schedules I and II of the Controlled Substances Act NMSA 1978, Sections 30-31-1 to 30-31-41 (Repl. Pamp. 1994)* without a valid prescription or as otherwise authorized by law shall be subject to disciplinary action including dismissal and reported to the local law enforcement agency.

(3) Employees who consume alcohol while on duty shall be subject to disciplinary action including dismissal.

**G. Application of Other Sanctions:** Nothing in *1.7.8 NMAC* shall prevent or limit the imposition of other or additional sanctions that may be applicable under any of these Rules merely because an incident involves drug or alcohol abuse.

[1.7.8.19 NMAC - Rp, 1 NMAC 7.8.19, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.9 NMAC, Sections 3, 8, 9, 10 and 12.

**1.7.9.3 STATUTORY AUTHORITY:** NMSA 1978, Section 10-9-10(A) ~~[(Repl. Pamp. 1995)]~~ and NMSA 1978, Section 10-9-15 ~~[(Repl. Pamp. 1995)]~~.

[1.7.9.3 NMAC - Rp, 1 NMAC 7.9.3, 07/07/01; A, 11/14/02]

#### 1.7.9.8 FORM:

**A.** The performance and development of employees shall be documented on an appraisal form approved by the Director and shall become a part of ~~the employees'~~ each employee's employment

history and filed with the Office.

**B.** A performance and development plan shall be initiated within 45 calendar days of appointment, reassignment, promotion, demotion, reduction, transfer and/or the employee's appraisal date.

**C.** Appraisals may be performed whenever ~~at an immediate~~ supervisor wishes to make an employee's performance a matter of record, upon change of immediate supervisor, or whenever deemed appropriate.

[1.7.9.8 NMAC - Rp, 1 NMAC 7.9.8, 07/07/01; A, 11/14/02]

### 1.7.9.9 PERFORMANCE APPRAISAL:

**A.** Managers and Supervisors must successfully complete a Director-approved course of study on employee performance appraisal within 45 days of appointment as a supervisor.

**B.** The performance and development of a career employee shall be reviewed semi-annually and appraised by the immediate supervisor each year ~~on the employee's appraisal date~~ during the agency's focal point appraisal period.

**C.** The performance and development of a probationary employee shall be reviewed quarterly and appraised by the immediate supervisor before the end of the one-year probationary period. Performance and development of newly-appointed Managers and First Line Supervisors and newly-promoted employees shall be reviewed ~~quarterly~~ semi-annually for the first year of appointment and may be performed whenever an immediate supervisor wishes to make an employee's performance a matter of record.

**D.** The appraisal of employee performance shall include the immediate supervisor and self and additional evaluation(s) (peer, customer, subordinate, etc.) when deemed appropriate.

**E.** Managers and immediate ~~S~~ supervisors who fail to comply with the provisions of 1.7.9 NMAC shall be subject to disciplinary action including dismissal.

[1.7.9.9 NMAC - Rp, 1 NMAC 7.9.9, 07/07/01; A, 11/14/02]

### 1.7.9.10 FOCAL POINT APPRAISAL ~~(This section effective as of July 1, 2002)~~

**A.** Each agency shall develop an agency plan, which outlines how it will conduct employee performance appraisals in accordance with these rules and the ~~audit~~ quality assurance review guidelines established pursuant to Paragraph (1) of Subsection A of 1.7.1.8

NMAC. The plan and its guidelines shall support equity and fairness in its administration of performance appraisals and shall ensure that distribution of rating is based solely on employee's contribution relative to the requirements of their positions. The plan and its guidelines shall be approved by the Director prior to the agency awarding a pay increase, pursuant to Subsection B of 1.7.4.4H 13 NMAC, and will be reviewed by the Board annually. Agency specific provisions defining the process and guidelines shall ensure that distribution of ratings will not significantly favor one group of employees over another, and that its plan supports equity and fairness in its administration of performance appraisals.

**B.** Agencies shall select a specific focal point period of time, not to exceed ~~sixty~~ 60 consecutive days between July and November, inclusive, to conduct appraisals and rate all employees on their performance using a form approved by the Director.

**C.** Agencies shall have a five-tier appraisal rating system. Unless otherwise specified by agency policy, the ratings will be named: Greatly Exceeds Expectations; Exceeds Expectations; Meets Expectations; Needs Improvement; Unacceptable. If agency policy substitutes alternative names, the agency name for the top tier rating shall use the Office definition for Greatly Exceeds Expectations; the agency name for the second tier rating shall use the Office definition for Exceeds Expectations; the agency name for the third tier rating shall use the Office definition for Meets Expectations; the agency name for the fourth tier rating shall use the Office definition for Needs Improvement; the agency name for the fifth tier rating shall use the Office definition for Unacceptable.

[1.7.9.10 NMAC - N, 07/01/02; A, 11/14/02]

### 1.7.9.12 REPORT TO THE BOARD:

During the fourth quarter of each calendar year the Director shall report to the Board on the record of each agency in conducting performance appraisals of its employees in the classified service. Agencies shall cooperate with the Director, in accordance with the provisions of NMSA 1978, Section 10-9-15 ~~(Repl. Pamp. 1995)~~, and provide the Director with such information concerning its performance appraisals as the Director may require.

[1.7.9.12 NMAC - Rp, 1 NMAC 7.9.11, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.10 NMAC, Sections 3, 9, 10, 11, 12, 13 and 14.

**1.7.10.3 STATUTORY AUTHORITY:** NMSA 1978, 10-9-10(A) ~~(Repl. Pamp. 1995)~~; Section 10: NMSA 1978, Section 10-9-19 ~~(Repl. Pamp. 1995)~~; Section 11: NMSA 1978, Sections 28-15-1 to 28-15-3 ~~(Repl. Pamp. 1991)~~ and 38 U.S.C. Section 2021; Section 13: NMSA 1978, Section 52-1-25.1 ~~(Repl. Pamp. 1991)~~.

[1.7.10.3 NMAC - Rp, 1 NMAC 7.10.3, 07/07/01; A, 11/14/02]

### 1.7.10.9 REDUCTION IN FORCE:

**A.** An agency may lay off employees only for deletion of positions, shortage of work or funds, or other reasons that do not reflect discredit on the services of the employees.

**B.** An agency shall identify organizational units for purposes of a layoff and submit a written plan to the Board. Such organizational units may be recognized on the basis of geographic area, function, funding source, or other factors. The agency must define the Technical Occupation Group(s) or Manager Category(ies) affected within the organizational unit.

**C.** Upon Board approval of a layoff plan, the agency effecting the layoff shall initiate a right of first refusal within the agency. All employees affected by the layoff shall be provided the following rights:

(1) Employees to be affected by the reduction in force (RIF) shall be provided the right of first refusal to any position to be filled within the agency for which they meet the established requirements, at the same or a lower midpoint than the midpoint of the position the employee currently holds, unless there is an actual layoff candidate exercising RIF rights for that position;

(2) Affected employees shall compete only with other employees in the same agency affected by the reduction in force;

(3) The agency's list of eligible candidates for the open positions shall be comprised of those affected employees meeting the established requirements of the position;

(4) Employees shall have eleven calendar days from the date of an offer to accept the position unless otherwise agreed. Employees who do not accept an offer shall not lose the right of first refusal status to other positions; and

(5) The right of first refusal under **Subsection C of 1.7.10.9. NMAC** shall extend until the first effective date of layoff as defined in the plan.

**D.** The order of layoff due to reduction in force shall be by service date which is determined based upon the agency hire date, with additional service credit provided under the following formula.

(1) An employee's performance appraisal ~~[of record]~~ of official employment record pursuant to **1.7.1.12 NMAC** on the date of notice of a reduction in force shall determine entitlement to additional service credit. ~~[Such a performance appraisal must have been on file for at least 90 calendar days unless it is the regularly scheduled appraisal.]~~ If there is no performance appraisal on file, it shall be assumed that the employee's performance "meets expectations".

(a) An employee who has a rating of "greatly exceeds expectations", or its equivalent, shall have four years of service added to the employee's creditable service.

(b) An employee who has a rating of ~~["meets"]~~ "exceeds expectations," or its equivalent, shall have two years of service added to the employee's creditable service.

(c) An employee who has a rating of "meets expectations," or its equivalent, shall have one year of service added to the employee's creditable service.

(2) In the event of a tie, the Director shall determine an appropriate mechanism for breaking the tie.

**E.** No employee in career status shall be laid off while there are term, probationary, emergency or temporary status employees in the same Technical Occupation Group Role or Manager Category in the same organizational unit.

**F.** Employees in career status shall be given at least 14 calendar days written notice of layoff. Notice shall be served according to the provisions of **1.7.1.10 NMAC**.

[1.7.10.9 NMAC - Rp, 1 NMAC 7.10.9, 07/07/01; A, 11/14/02]

#### **1.7.10.10 RETURN FROM REDUCTION IN FORCE:**

**A.** Former employees who were in career status at the time of separation by a reduction in force shall have reemployment rights within the classified service, for a six-month period, under the following provisions:

(1) Former employees shall be returned to work in order of highest service date as determined by **Subsection D of 1.7.10.9 NMAC** to any position to be filled within the agency from which the employee was laid off. The position must contain the same or lower midpoint as that held at the

time of the former employee's separation, provided the former employee has made application for said position and meets the established requirements;

(2) Reemployment to positions and agencies, other than the agency from which the former employee was laid off, shall extend when any position is to be filled. The position must contain the same or lower midpoint as that held at the time of the former employee's separation, provided the former employee has made application for said position and meets the established requirements. If, when an agency intends to fill a position, there is more than one eligible former employee with rights to return to work under this Rule, the agency shall select the former employee who is best qualified in the agency's opinion;

(3) Offers of employment shall be made in writing and shall be delivered by a method that provides proof of service or attempted service;

(4) A former employee who is offered and accepts employment after layoff shall occupy the position within 14 calendar days of accepting the offer of employment or forfeit the right to employment; and

(5) Any former employee who refuses an offer of employment or fails to respond to an offer of employment within 14 calendar days shall be removed from the employment list for the position offered.

**B.** Former employees returned to work according to the provisions of **Subsection A of 1.7.10.10 NMAC** shall have that period of time they were laid off counted as time in the classified service, shall hold the status of the position in accordance with **1.7.2.9 NMAC, 1.7.2.10 NMAC** ~~and~~ **or 1.7.2.11 NMAC** and do not have to serve a new probationary period if reemployed into career status. ~~[Anniversary dates shall be determined in accordance with Subsection C of 1.7.1.7 NMAC.]~~

[1.7.10.10 NMAC - Rp, 1 NMAC 7.10.10, 07/07/01; A, 11/14/02]

#### **1.7.10.11 REEMPLOYMENT AFTER MILITARY SERVICE:**

Any employee who separates from the classified service to enter the United States Armed Forces, National Guard, or an organized reserve unit may be reemployed in accordance with the provisions of **38 U.S.C. Section 2021 and NMSA 1978, Sections 28-15-1 to 28-15-3** ~~[(Repl. Pamph. 1994)].~~

[1.7.10.11 NMAC - Rp, 1 NMAC 7.10.11, 07/07/01; A, 11/14/02]

#### **1.7.10.12 EARLY RETURN-TO-WORK/MODIFIED DUTY ASSIGNMENTS:**

**A.** Agencies shall imple-

ment a policy to enable employees who have been unable to work because of a compensable injury or illness under the Workers' Compensation Act to return to work in a modified duty assignment for up to ~~[six] 6~~ months and may be extended for a period of up to ~~[six] 6~~ additional months if substantial progress in the recovery of an injured or ill employee has been demonstrated and it has been anticipated the injured or ill employee will be able to return to full duty within the time frame of the considered extension.

**B.** The agency shall make a good faith effort to identify and offer modified duty/return to work opportunities to injured or ill employees in accordance with the provisions of **NMSA 1978, Section 52-1-25.1** ~~[(Repl. Pamph. 1994)]~~ and **NMSA 1978 52-3-49.1**. At the agency's discretion the employee may be assigned to his or her current Technical Occupation Group Role or Manager Category with modified duties or to a temporary assignment comprised of a combination of duties from a variety of positions.

**C.** Employees on modified duty assignment to a temporary position shall maintain their salary and status for the duration of such temporary assignment.

[1.7.10.12 NMAC - Rp, 1 NMAC 7.10.12, 07/07/01; A, 11/14/02]

#### **1.7.10.13 INVOLUNTARY OR VOLUNTARY SEPARATION:**

**A.** Employees who have suffered a job-related injury or illness which is compensable under the Workers' Compensation ~~[Law] Act~~ and are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, shall be involuntarily or voluntarily separated from the service without prejudice provided:

(1) the employee has been afforded modified duty in accordance with **1.7.10.12 NMAC**;

(2) the employee has reached Maximum Medical Improvement prior to the completion of up to 12 months of modified duty; or, the employee has not reached Maximum Medical Improvement upon the expiration of up to 12 months of modified duty;

(3) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented; and

(4) the employing agency has exhausted efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which ~~the employee meets the established~~

requirements and can perform the essential functions of the job either with or without reasonable accommodation.]

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

**B.** Employees who have suffered a non job-related injury or illness and are permanently unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, as a result of the physical or mental disability created by the non job-related injury or illness shall be involuntarily or voluntarily separated from the service without prejudice provided:

(1) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented; and

(2) the employing agency has exhausted efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position [~~within the agency~~] for which: [~~the employee meets the established requirements and can perform the essential functions of the job either with or without reasonable accommodation.~~]

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation; or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

**C.** Agencies may provide modified duty to employees for a period of up to [~~four~~] 4 months during the separation process if required to meet the provisions of this Rule.

**D.** Employees involuntarily or voluntarily separated in accordance with 1.7.10.13 NMAC shall be provided with at least 14 calendar days written notice. Such separation is not appealable to the Board.

**E.** The agency shall notify the Director and the Risk Management Division of the General Services Department of the proposed separation 30 calendar days in advance of the separation date and submit a copy of the separation notice along with documentation to support

efforts to modify pre-injury/pre-illness positions and to support efforts to find other suitable vacant positions.

[1.7.10.13 NMAC - Rp, 1 NMAC 7.10.13, 07/07/01; A, 11/14/02]

#### **1.7.10.14 REEMPLOYMENT OF JOB-RELATED INJURED OR ILL FORMER EMPLOYEES:**

**A.** A former employee who has separated from the service due to [~~an~~] job-related injury or illness and who has received or is due to receive benefits under the Workers' Compensation Act shall have reemployment rights in accordance with the provisions of NMSA 1978, Section 52-1-25.1 and NMSA 1978 Section 52-3-49 under the following provisions:

(1) Reemployment rights under 1.7.10.14 NMAC are extended only by the agency employing the former employee at the time of the job related injury or illness and are provided only for positions which contain the same or lower midpoint as that held at the time of separation.

(2) To initiate reemployment rights under this Rule, the former employee must notify the agency in writing, with a copy to the Office, of their desire to be reemployed. The notification shall include the positions and locations, which the former employee is willing to accept, and an appropriate application for employment.

(3) [~~Certification must be received~~] The agency must receive certification in writing from the treating health care provider that the former employee is fit to carry out the essential functions of the position with or without reasonable accommodation without significant risk of re-injury or relapse to illness.

(4) When the agency is to fill a vacant position which is a position and location indicated by the former employee, the agency shall offer the job to the former employee provided: [~~he or she meets the established requirements.~~]

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

(5) Former employees reemployed in accordance with the provisions of **Subsection A of 1.7.10.14 NMAC** will hold the status of the position in accordance with 1.7.2.9 NMAC, 1.7.2.10 NMAC [~~and~~] or 1.7.2.11 NMAC and do not have to serve a probationary period if they were in career status at the time of separation.

**B.** The Risk Management Division of the General Services Department and the Office shall be notified immediately of any injured or ill former employee who applies for a position and subsequently declines a job offer.

[1.7.10.14 NMAC - Rp, 1 NMAC 7.10.14, 07/07/01; A, 11/14/02]

### **NEW MEXICO STATE PERSONNEL BOARD**

This is an amendment to 1.7.11 NMAC, Sections 3, 9, 10, 11 and 13.

**1.7.11.3 STATUTORY AUTHORITY:** NMSA 1978, Section 10-9-13(H) [~~Repl. Pamp. 1995~~], NMSA 1978, Section 10-9-18(A) [~~Repl. Pamp. 1995~~], NMSA 1978, Section 10-9-22 [~~Repl. Pamp. 1995~~], and NMSA 1978, Sections 28-2-1 to 28-2-6 [~~Repl. Pamp. 1995~~]; Chapter 173, laws of 1997.

[1.7.11.3 NMAC - Rp, 1 NMAC 7.11.3, 07/07/01; A, 11/14/02]

**1.7.11.9 NOTICES AND COMPUTATION OF TIME:** [~~This rule repeats verbatim 1.7.1.10 NMAC and 1.7.1.11 NMAC for emphasis only. 1.7.11.9 NMAC does not intend to grant additional notice or response times for disciplinary actions.~~]

**A.** [~~Any notice prescribed required of an agency by these Rules except for 1.7.13 NMAC, shall be delivered by a method that provides proof of service or attempted service.~~] Notices prescribed by 1.7.11 NMAC shall be served in accordance with the provisions of 1.7.1.10 NMAC.

**B.** [~~In computing any period of time prescribed or allowed by this Rule, except for 1.7.11.11 NMAC, the day from which this period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a non work day for the employee, or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than eleven (11) days, a Saturday, Sunday, or legal holiday is excluded from the computation.~~] The computation of time prescribed or allowed by 1.7.11 NMAC shall be in accordance with the provisions of 1.7.1.11 NMAC.

[1.7.11.9 NMAC - Rp, 1 NMAC 7.11.9, 07/07/01; A, 11/14/02]

#### **1.7.11.10 JUST CAUSE:**

**A.** An employee who has completed the probationary period required by Subsection A of 1.7.2.8 NMAC may be suspended, demoted, or dismissed only for



just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the agency.

**B.** Just cause includes, but is not limited to: inefficiency; incompetency; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in 1.7.8 NMAC; failure to comply with any provisions of these Rules; falsifying official records and/or documents [~~NMSA 1978, Section 10-9-22 (Repl. Pamp. 1995);~~] such as employment applications, or conviction of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act NMSA 1978, Sections 28-2-1 to 28-2-6 [~~(Repl. Pamp. 1995)~~] apply.

[1.7.11.10 NMAC – Rp, 1 NMAC 7.11.10, 07/07/01; A, 11/14/02]

#### 1.7.11.11 PROBATIONERS AND EMPLOYEES IN EMERGENCY OR TEMPORARY STATUS:

Probationers and employees in emergency or temporary status may be suspended, demoted, or dismissed effective immediately with [~~a minimum of 24 hours~~] written notice and without right of appeal to the Board. [~~Such employees shall be advised in writing~~] The written notice shall advise the employee of the conduct, actions, or omissions which resulted in the suspension, demotion, or dismissal.

[1.7.11.11 NMAC – Rp, 1 NMAC 7.11.11, 07/07/01; A, 11/14/02]

#### 1.7.11.13 EMPLOYEES IN CAREER STATUS:

##### A. Notice of Contemplated Action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, the agency shall serve a notice of contemplated action on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has seven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by mail, the employee receiving service shall have [~~three~~] 3

additional calendar days in which to file a response.

##### B. Response to Notice of Contemplated Action:

(1) A representative of the employee's choosing may respond in writing to the notice of contemplated action on behalf of the employee.

(2) If there is a request for an oral response to the notice of contemplated action, the agency shall meet with the employee within seven calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

##### C. Notice of Final Action:

(1) If the employee does not respond to the notice of contemplated action the agency shall issue a notice of final action within 10 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final action no later than 10 calendar days from the date of receipt of the response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be at least 24 hours from the time of service of the notice of final action; and

(e) inform the employee that the disciplinary action may be appealed to the Board with a written statement of the grounds for the appeal delivered to the State Personnel Office in Santa Fe, New Mexico, and if it is, it must be received by the Director within 30 calendar days of the effective day and that the employee must submit a copy of the notice of final action

with the notice of appeal.

[1.7.11.13 NMAC – Rp, 1 NMAC 7.11.13, 07/07/01; A, 11/14/02]

## NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.12 NMAC, Sections 3, 7, 17 and 24.

**1.7.12.3 STATUTORY AUTHORITY:** NMSA 1978, Section 10-9-10(B) [~~(Repl. Pamp. 1995)~~], NMSA 1978, Section 10-9-13(E),(H) [~~(Repl. Pamp. 1995)~~], NMSA 1978, Section 10-9-18 [~~(Repl. Pamp. 1995)~~], NMSA 1978, Section 10-9-20 [~~(Repl. Pamp. 1995)~~], NMSA 1978, Section 10-15-1(H) [~~(Repl. Pamp. 1995)~~] and NMSA 1978, Section 52-5-2(B),(C) [~~(Repl. Pamp. 1991)~~].

[1.7.12.3 NMAC – Rp, 1 NMAC 7.12.3, 07/07/01; A, 11/14/02]

**1.7.12.7 DEFINITIONS:** For purposes of 1.7.12.24 NMAC.

**A.** "Complaint" means a sworn statement of the alleged facts underlying the claim that a judge has violated one or more of the canons of the code of judicial conduct as adopted by the supreme court, except canon 21-900 of that code; and;

**B.** "Judge" means a workers' compensation judge appointed in accordance with the provisions of NMSA 1978, Section 52-5-2(B) [~~(Repl. Pamp. 1991)~~].

[1.7.12.7 NMAC – Rp, 1 NMAC 7.12.7, 07/07/01; A, 11/14/02]

#### 1.7.12.17 HEARINGS:

**A.** The hearing shall be open to the public unless the parties agree that it shall be closed.

**B.** A party may appear at the hearing through a representative, provided such representative has made a written entry of appearance prior to the hearing date.

**C.** The hearing officer may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The agency is entitled to have a person, in addition to its representative, in the hearing room during the course of the hearing, even if the person will testify in the hearing.

**D.** The agency shall present its evidence first.

**E.** Oral evidence shall be taken only under oath or affirmation.

**F.** Each party shall have the right to:

(1) make opening and closing statements;

(2) call and examine witnesses and introduce exhibits;

(3) cross-examine witnesses;

(4) impeach any witness;

(5) rebut any relevant evidence;

and

(6) introduce evidence relevant to the choice of discipline if it was raised as an issue in the pre-hearing order.

**G.** The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the state of New Mexico. However, in order to support the Board's decisions, there must be a residuum of legally competent evidence to support a verdict in a court of law.

**H.** The hearing officer shall admit all evidence, including affidavits, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall exclude immaterial, irrelevant, or unduly cumulative testimony.

**I.** If scientific, technical or other specialized knowledge will assist the hearing officer to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise. In the case of evidence relating to polygraph examinations, the proponent must have followed all the provisions of Rule 11-707 NMRA.

**[H.] J.** The hearing officer may take administrative notice of those matters in which courts of this state may take judicial notice.

**[J.] K.** The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in the District Courts of the State of New Mexico.

**[K.] L.** The hearing officer shall admit evidence relevant only to those allegations against the appellant included in both the notice of contemplated action and the notice of final action or which are contested issues as set forth in the pre-hearing order.

**[L.] M.** The hearing shall be recorded by a sound-recording device under the supervision of the hearing officer. No other recording of the hearing, by whatever means, shall be permitted without the approval of the hearing officer.

**[M.] N.** The Board shall provide an interpreter to appellants whose hearing is so impaired that they can not understand voice communications. Appellants must provide proof of disability.

**[N.] O.** The hearing officer shall appoint an interpreter to appellants

who do not understand English well enough to understand the proceedings.

[1.7.12.17 NMAC – Rp, 1 NMAC 7.12.17, 07/07/01; A, 11/14/02]

#### **1.7.12.24 WORKERS' COMPENSATION JUDGES:**

**A.** The Board's duly appointed hearing officer shall hear all complaints filed in accordance with the provisions of *NMSA 1978, Section 52-5-2(C)* ~~[(Repl. Pamph. 1991)].~~

**B.** Whenever some action is required to be taken within a certain number of calendar days, the hearing officer may extend the time for a reasonable period.

**C.** Upon receipt of a complaint, the hearing officer shall serve a copy of the complaint on the judge by certified mail.

**D.** Within 14 calendar days after service of a complaint, the judge shall file an answer with the hearing officer. The facts alleged in the complaint may be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time.

**E.** Upon the filing of an answer or upon the expiration of the time for its filing, the hearing officer shall issue an order directing the parties to submit a stipulated pre-hearing order for the hearing officer's approval and signature, which shall contain at least: a statement of any contested facts and issues; stipulation of those matters not in dispute; the identity of all witnesses to be called and a brief summary of their testimony; a list of exhibits; and requests for subpoenas.

**F.** The hearing officer has the power to subpoena witnesses, compel their attendance, and require the production of any books, records, documents or other evidence the hearing officer may deem relevant or material.

#### **G. The Hearing:**

(1) The hearing officer shall receive evidence admissible under the rules of evidence, that govern proceedings in the courts of the State of New Mexico and oral evidence shall be taken only under oath or affirmation.

(2) The hearing officer shall make procedural rulings.

(3) The formal hearing shall be open unless the hearing officer, for compelling reasons, determines otherwise. Reasons for closing the hearing shall be stated in the record.

(4) A judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses.

(5) The hearing shall be recorded by a sound recording device under the supervision of the hearing officer.

**H.** The hearing officer may require post-hearing briefs and proposed findings.

**I.** The hearing officer shall, within a reasonable time, prepare and submit to the parties a report which shall contain a brief statement of the proceedings and the answer thereto, if any; a summary of the evidence; and findings with respect to the allegations.

**J.** Within 14 calendar days of receipt of the hearing officer's report, the parties may file objections to the hearing officer's report, setting forth all objections to the report and all reasons in opposition to the findings.

**K.** The Board shall consider the report of the hearing officer and the record made before the hearing officer and in connection therewith make its findings as to whether there was a violation of the Code of Judicial Conduct and transmit its findings to the director of the Workers' Compensation Administration.

[1.7.12.24 NMAC – Rp, 1 NMAC 7.12.24, 07/07/01; A, 11/14/02]

## **NEW MEXICO RACING COMMISSION**

Explanatory Paragraph: This is an amendment to 15.2.2.8 NMAC affecting Subsection N, which creates a new paragraph to designate minimum requirements for new barn construction at racetracks in the state of New Mexico.

#### **15.2.2.8 ASSOCIATIONS:**

##### **N. BARNES**

(1) An association shall provide barns containing a sufficient number of stalls to accommodate all horses approved to race and all other horses approved to be on the grounds. The association's stable area configuration and facilities must be approved by the Commission.

(2) An association shall ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.

(3) An association shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 by 10 feet.

(4) An association shall provide an adequate area for the placement of

manure removed from the stalls. All manure must be removed from the stable area daily. The association shall ensure that refuse from the stalls and other refuse is kept separate.

**(5) For new barn construction, an association shall comply with the Commission's minimum barn requirements:**

**(a) Two wash racks per twenty-four (24) stalls with drains a minimum of 8' x 10'.**

**(b) One cold water faucet within 48" of all stalls.**

**(c) Dimensions of stalls are 12' x 12', with a slanted to minimum of 10' roof at all points and 8' walls.**

**(d) One room 10' x 12' per eight (8) stalls.**

**(e) Twelve foot (12') shed rows.**

**(f) Twelve foot (12') ends.**

**(g) Building material must be 100% fire retardant and 26 gauge metal covered composite.**

**(h) Two 110 electrical outlets per four (4) stalls placed a minimum 6' height centered at 4'.**

**(i) Overhead lighting down shedrow so as to illuminate the stalls and shedrow.**

**NEW MEXICO RACING COMMISSION**

Explanatory Paragraph: This is an amendment to Subsection M of 16.47.1.8 NMAC amending the expiration dates for licenses issued by the Commission from December 31st to one year from the last day of the month issued for annual licenses and three years from the last day of the month issued for triennial licenses.

**16.47.1.8 GENERAL PROVISIONS**

**M. DURATION OF LICENSE:**

(1) All annual licenses issued by the Commission expire ~~[December 31 of the calendar year issued]~~ **one year from the last day of the month issued.** All triennial licenses expire ~~[December 31st of the third calendar year issued]~~ **three years from the last day of the month issued.**

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

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

This is an amendment to 14.5.5.8 NMAC:

**14.5.5.8 FEES:**

**A. CONTRACTOR'S LICENSE FEES**

(1) Each applicant for an initial contractor's license shall pay a non-refundable license application fee of \$30.00 (in addition to any other required fees).

(2) The basic fee for an initial license or for renewal of a license for the GA-98, GB-2, GB-98, GF-98, EE-98 or MM-98 classification shall be \$100.00 per year, or \$200.00 for two years, for EACH such classification. The basic fee for an initial license or for renewal of a license in any other classification shall be \$50.00 per year, or \$100.00 for two years.

(3) Each applicant for an initial license or for any additional classification shall pay a non-refundable application fee of \$30.00.

(4) If an applicant takes and fails an examination for the GB-2, GB-98, EE-98 or MM-98 classification, or if he fails the Business and Law examination for any classification, he may request a review of such examination and shall pay a non-refundable fee of \$25.00 for each such review.

(5) If an applicant takes and fails an examination twice in ANY classification, he may request a special review of such examination and shall pay a non-refundable fee of \$40.00 for each such review.

(6) The Division is authorized to increase the fees applicable to examinations required by the state pursuant to the Construction Industries Licensing Act, NMSA 1978, Section 60-13-1, et seq., by a multiplier of up to three (3) for each classification upon the approval of such fee increases by the commission.

**B. JOURNEYMAN AND BOILER OPERATOR FEES.**

(1) The Electrical Journeyman examination shall be \$25.00, with a renewal fee of \$25.00 per year for each classification held.

(2) The Mechanical Journeyman examination shall be \$25.00, with a renewal fee of \$25.00 per year for each classification held.

(3) The Boiler Operator examination shall be \$25.00, with a renewal fee of \$25.00 per year.

(4) The Division is authorized to increase the fees applicable to examinations required by the state pursuant to the

Construction Industries Licensing Act, NMSA 1978, Section 60-13-1, et seq., by a multiplier of up to three (3) for each classification upon the approval of such fee increases by the commission.

**C. BAD OR RETURNED CHECK FEES.**

(1) A charge of \$20.00 shall be made for any check which fails to clear the bank or is returned unpaid for any reason.

(2) A returned check shall cause any license issued or renewed or any test scheduled as a result of such payment, to be immediately suspended until proper payment in full is received.

(3) A penalty for late renewal may be assessed if a check fails to clear the bank or is returned for any reason.

**D. MISCELLANEOUS FEES.**

(1) The fee for the issuance of a Certificate of Qualification shall be \$6.00, inclusive of gross receipts tax.

(2) The fee for the replacement of a Certificate of Qualification shall be \$6.00, inclusive of gross receipts tax.

(3) The fee for the replacement of a contractor's license shall be \$6.00, inclusive of gross receipts tax.

(4) The fee for the replacement of a Certificate of Competence shall be \$6.00, inclusive of gross receipts tax.

(5) The fee for additional contractor's wallet cards (beyond the two initially issued) shall be \$6.00 for each such card, inclusive of gross receipts tax.

(6) The fee for photocopies of documents shall be \$.25 per page.

(7) The fee for certified copies of documents shall be \$.50 per page.

(8) The fee for modular approval shall be \$5.00 per floor plan or \$25.00, whichever is higher.

(9) The fee for review of plans for manufactured commercial units shall be \$50.00 for each unit.

(10) A fee of \$25.00 for re-inspection shall be paid when an inspection is requested and the structure either fails the inspection, the structure is not ready for the inspection and/or the inspector is required to return for an inspection for any other reason.

**E. BUILDING PERMIT FEES.**

(1) The fee for a building permit shall be:

(a) \$3.00 per \$1,000.00 valuation up to \$15,000.00, and

(b) \$1.00 per \$1,000.00 valuation over \$15,000.00.

(2) A fee of twenty (20) percent of the building permit fee shall be charged for review of the plans.

(3) If a PRELIMINARY plan

review is requested, a fee of fifty (50) percent of the combined building permit fee and review fee shall be charged for such preliminary review.

(4) Building Permit Fee Cost Breakdown:

- (a) Plan Review - 30%
- (b) Inspections - 70%
- (c) Commercial: Individual discipline plan reviews shall be assessed at five (5) percent of the building permit fee.

(d) General Construction Review and inspections - 5%

(e) Accessibility Review and inspections - 5%

(f) Electrical Review and inspections - 5%

(g) Mechanical/Plumbing Review and inspections - 5%

(5) If a PRE-BID plan review is requested, a fee of fifty (50) percent of the estimated building permit fee, based on the design profession's estimated cost of the project, shall be charged for such pre-bid review.

F. ELECTRICAL PERMIT FEES.

(1) Residential:  
(a) 100 amp service or less - \$ 25.00

(b) Over 100 amp through 200 amp - \$ 40.00

(c) Over 200 amp through 320 amp - \$ 55.00

(d) Over 320 amp through 400 amp - \$125.00

(e) Over 400 amp - \$200.00

(f) Plan Review - \$ 40.00/hr. or fraction thereof

(2) Commercial:  
(a) 100 amp service or less - \$ 25.00

(b) Over 100 amp through 200 amp - \$ 40.00

(c) Over 200 amp through 400 amp - \$125.00

(d) Over 400 amp through 600 amp - \$150.00

(e) Over 600 amp through 800 amp - \$200.00

(f) Over 800 amp through 1,000 amp - \$250.00

(g) Over 1,000 amp through 2,000 amp - \$350.00

(h) Over 2,000 amp - \$500.00

(3) Other:

(a) Temporary power pole - \$ 15.00

(b) Mobile home service - \$ 15.00

(c) Customer-Owned Distribution (does not include wiring of a structure)

(i) Minimum fee - \$ 25.00

(ii) Plus \$3.33 x num-

ber of poles = \$ or;

(iii) \$3.33 x per 100 feet of underground = \$

(iiii) Total Customer-Owned Distribution Fee - \$

(d) Service change only, no outlets - \$ 15.00

(e) Re-inspection fee - \$ 25.00

(f) Minimum inspection fee for any item not listed - \$ 15.00

(4) The fees listed above shall be used as a base from which the total fee will be determined. The permit fee will be the sum of the individual items multiplied by 1.5 or \$40.00/hr.

G. MECHANICAL PERMIT FEES.

(1) Administrative fee for any inspection - \$ 25.00

(2) Each plumbing fixture, including backflow protection therefore - \$ 2.00

(3) Each water distribution system - \$ 2.00

(4) Each building sewer - \$ 2.00

(5) Each water heater - \$ 2.00

(6) Each water conditioner - \$ 3.00

(7) Each evaporative cooler - \$ 3.00

(8) Each swimming pool - \$ 25.00

(9) Each vacuum breaker or backflow device which is not an integral part of a plumbing fixture or supply pipe thereto - \$ 2.00

(10) Each gas piping system - \$ 3.00

(11) Each gas appliance - \$ 2.00

(12) Each gas pipe outlet - \$ 2.00

(13) Re-inspection - \$ 25.00

(14) Ventilation system - \$ 3.00

(15) Refrigeration system - \$ 3.00

(16) Central furnace duct work - \$ 5.00

(17) Each domestic hot water solar heating system - \$ 5.00

(18) Each solar space heating system - \$ 10.00

(19) Final certificate of approval - \$ 5.00

(20) The fees listed above shall be used as a base from which the total fee will be determined. The permit fee will be the individual items multiplied by 1.5.

[14.5.5.8 NMAC - Rp, 14 NMAC 5.5.8, 12-1-00; A, 12-14-02]

## NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.7 NMAC, Sections 7 thru 12. Amendments delete ref-

erences to a specific edition of the American Medical Association's *Physicians Current Procedural Terminology* and the *Diagnostic and Statistical Manual of Mental Disorders* and point to the edition adopted in the Director's annual order adopting the fee schedule.

Section 11.4.7.9 NMAC (B)(1)(c) allows for public comments prior to the release of a finalized fee schedule.

This is an emergency rules amendment, effective 10/25/02.

**11.4.7.7 DEFINITIONS:** For the purposes of these rules, the following definitions apply to the provision of all services:

**A.** "ASA Relative Value Guide" means a document published by the American Society of Anesthesiologists which includes basic relative unit values for each procedure code listed in the [~~Anesthesia Section of CPT 4 1998~~] edition of the American Medical Association's Current Procedural Terminology adopted in the Director's annual order and unit values for anesthesia modifiers and qualifying circumstances. The [~~1998~~] edition of the ASA Relative Value Guide [~~Copyright 1997~~] adopted by the Director in his order, applies to these rules.

**N.** "Diagnostic Statistical Manual for Mental Disorders [~~DSM-IV~~] means a (DSM)" means the current edition of the manual which lists and describes the scientifically diagnosed mental disorders and is commonly referred to as [~~DSM-IV~~] DSM.

**KK.** "*Physicians' Current Procedural Terminology* [~~CPT 4 1998~~] ("CPT")" means a systematic listing and coding of procedures and services performed by HCPs of the American Medical Association, adopted in the Director's annual order. Each procedure or service is identified with a [~~five digit~~] numeric or alpha-numeric code (CPT code). This was developed and copyrighted by the American Medical Association.

**VV.** "Unlisted Service or Procedure" means a service performed by a HCP or care giver which is not listed in [~~CPT 4 1998~~] the edition of the American Medical Association Physicians' Current Procedural Terminology referenced in the Director's annual order or has not otherwise been designated by these rules.

## 11.4.7.8 GENERAL PROVISIONS

**J.** Diagnostic Coding shall be consistent with the International Classification of Diseases, 9th Edition,

Fourth Revision, Clinical Modification (ICD-9-CM) or Diagnostic and Statistical Manual of Mental Disorders [~~DSM-IV~~] guidelines as appropriate.

#### 11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

**B.** Maximum Allowable Payment Method

(1) Basic Provisions

(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the Director shall issue an order not less than once per annum setting the schedule of maximum allowable payments for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule shall be released to the public not less than 30 days prior to the date upon which it is adopted and public comments will be accepted during the 30 days immediately following release. After consideration of the public comments the Director shall issue a final order adopting a fee schedule, which shall state the date upon which it is effective. The final fee schedule order shall be available at the WCA Clerk's office not less than ten (10) prior to its effective date.

#### 11.4.7.10 BILLING PROVISIONS AND PROCEDURES

**B.** Billing forms have been adopted from the US Department of Health and Human Services' Health Care Financing Administration.

(5) Completion of Forms

(d) FORM HCFA 1500 (12-90) information required for completion is self-explanatory with the following exceptions:

(vii) Section 21. Enter ICD-9-CM or [~~DSM-IV~~] DSM code and descriptor for each diagnosis.

#### 11.4.7.11 PAYMENT PROVISIONS AND PROCEDURES

**C.** Payor's Explanation of Benefits (EOB) for Contested Bills

(4) Standard EOBs: The following EOBs are grouped in accordance with the Criteria for Contesting Health Care Services Bills.

(d) Inaccurate billing/billing errors:

(i) EOB-04 This code is invalid. It is not in [~~CPT-4, 1998~~] the edition of the American Medical Association's Current Procedural Terminology adopted in the Director's annual order or this rule. Please code properly and resubmit.

#### 11.4.7.12 ANESTHESIA

**B.** The "basic unit value" assigned to each procedure in the CPT code series 00100-01999 in the [~~1998~~] ASA Relative Value Guide adopted by the Director in his annual order shall be used when billing.

**D.** Physical Status modifiers may be used in billing, as appropriate, and shall adhere to the coding and unit value assignments in the [~~1998~~] ASA Relative Value Guide adopted by the Director in his annual order.

**E.** Q u a l i f y i n g Circumstances modifiers may be used in billing, as appropriate, and shall adhere to the coding and unit value assignments in the [~~1998~~] ASA Relative Value Guide adopted by the Director in his annual order.

---

### End of Adopted Rules and Regulations Section

---

## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2002

<b>Volume XIII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

### 2003

<b>Volume XIV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.