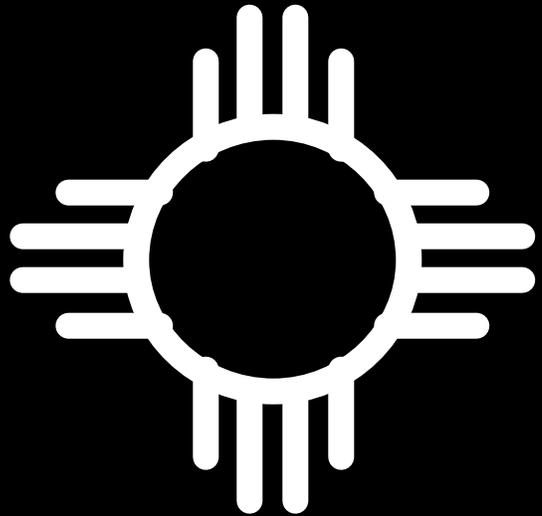


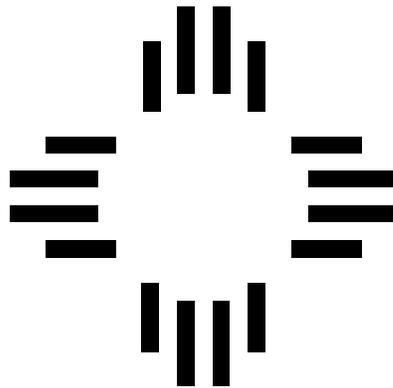
**NEW
MEXICO
REGISTER**



Volume XIV
Issue Number 15
August 15, 2003

New Mexico Register

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August 15, 2003



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

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Administrative Law Division
Santa Fe, New Mexico
2003

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New Mexico Register

Volume XIV, Number 15

August 15, 2003

Table of Contents

Notices of Rulemaking and Proposed Rules

Cultural Affairs, Department of Arts Division	
Notice of Hearing on Proposed Rules Governing the New Mexico Arts Division	507
Environment Department	
Notice of Public Hearing	507
Human Services Department Medical Assistance Division	
Notice of Public Hearing - Pregnancy Termination Procedures	508
Personnel Board, State	
State Personnel Board Public Rules Hearing	509
Public Records, Commission of	
Notice of Regular Meeting and Notice of Rulemaking	509
Water Quality Control Commission	
Notice of Public Hearing to Consider Proposed Amendments to Amend 20.6.2 NMAC - Water Quality Regulations	509
Workers' Compensation Administration	
Notice of Public Hearing	510

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." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Children, Youth and Families Department Prevention and Intervention Division	
8.8.3 NMAC A / E Governing Criminal Records Checks and Employment History Verification	511
Education, Board of	
6.61.10 NMAC N Teachers of Students With Blindness/Visual Impairment B-12	511
6.19.2 NMAC A Public School Accountability System for Schools Rated Probationary	514
6.30.2 NMAC A Standards for Excellence	514
6.31.2 NMAC A Children With Disabilities/Gifted Children	516
6.60.4 NMAC A Licensure Reciprocity	517
6.61.4 NMAC A Licensure in Secondary Education, Grades 7-12	517
6.61.5 NMAC A Licensure for Grades Kindergarten Through 12	518
6.61.8 NMAC A Licensure in Early Childhood Education, Birth - Grade 3	518
6.61.9 NMAC A Substandard Licensure	519
6.63.3 NMAC A Licensure for Related Service Personnel Not Covered in Other Ancillary Regulations	519
6.66.3 NMAC A Certified (Licensed) School Administrator Contract	520
6.62.2 NMAC Rn & A Licensure for Educational Administration, Grades K-12	521
Energy, Minerals and Natural Resources Department Oil Conservation Division	
19.15.1 NMAC A Oil and Gas - General Provisions and Definitions	524
Environmental Improvement Board	
20.2.72 NMAC A Construction Permits	524
Game and Fish, Department of	
19.30.9 NMAC A / E Game and Fish Licenses/Permits	526
Health, Department of Public Health Division Office of Epidemiology	
7 NMAC 4.3 R Control of Disease and Conditions of Public Health Significance	526

7.4.3 NMAC	N	Control of Disease and Conditions of Public Health Significance.	526
Organic Commodity Commission			
21.15.1 NMAC	A	Organic Agriculture Generally	530
Personnel Board, State			
1.7.9 NMAC	A/E	Performance Appraisal	535
Secretary of State			
1.10.22 NMAC	N	Provisional Voting Security	536

Other Material Related to Administrative Law

Public Records, Commission of			
Historical Records Advisory Board			
		Notice of Regular Meeting	539

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

NOTICE OF HEARING ON PROPOSED RULES GOVERNING THE NEW MEXICO ARTS DIVISION

Notice is hereby given that pursuant to the New Mexico Arts Commission and Division Act Section 18-5-7(F) NMSA 1978, the New Mexico Arts Division proposes to adopt regulations to update the New Mexico Arts Commission bylaws and regulations governing the New Mexico Arts Division and its funding application procedures, requirements, and programs. The proposed regulations update the New Mexico Arts Commission bylaws and defines who is eligible to receive funding from the Division and describes the New Mexico Arts' procedures for receiving and considering applications for funding, and terms, conditions, and requirements for funding assistance. The Art in Public Places program of New Mexico Arts proposes to adopt regulations governing the Art in Public Places program, its art selection process to acquire public artworks, the public art selection committees and the development of the prospectus. The proposed regulations will be discussed, and comments taken at a public hearing to be held on September 10, beginning at 9:00 a.m. to 12:00 noon. New Mexico Arts Commission updates and funding application procedures will be heard from 9:00 am until 11:00 am. The Art in Public Places Program information will be held directly following from 11:00 am to 12:00 noon. The hearing will be held at the Historic Preservation conference room located on the third floor of La Villa Rivera Bldg. 228 East Palace Avenue, Santa Fe, NM 87501. Copies of the proposed regulations may be obtained before the meeting at the New Mexico Arts Division, 4th Floor, 228 E. Palace Ave., Santa Fe, NM 87501 or by contacting Virginia Castellano at 505/827-6490 or by e-mail vcastell@oca.state.nm.us. The notice of the public hearing will be posted on our website www.nmarts.org under "Breaking News" beginning August 25th, 2003. Interested persons may submit written comments to the New Mexico Arts Division at P.O. Box 1450, Santa Fe, NM 87504-1450 or e-mail comments regarding the funding programs to vcastell@oca.state.nm.us and for Art in Public Places to kminette@oca.state.nm.us to be received by 1:00 p.m. September 10, 2003. Written comments shall suggest specific reasons for any suggested amendments

or comments and include any proposed amendatory language. If any interested person has a disability and requires some accommodation in attending the public hearing or have the rules communicated to them, please submit a written request identifying the disability and the type of accommodation needed to Virginia Castellano before September 2, 2003. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

NEW MEXICO ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT DEPARTMENT NOTICE OF PUBLIC HEARING

The New Mexico Environment Department (Department) will hold a public hearing on Wednesday, September 17, 2003, beginning at 9:00 a.m. in Room 317 of the New Mexico State Capitol Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

The public hearing will be held to consider the Department's proposed amendments to Part 17 of the Petroleum Storage Tank Regulations, 20.5.17 NMAC, Corrective Action Fund Administration. Any interested persons or parties are encouraged to participate or attend.

The Ground Water Protection Act (GWPA) charges the Environment Department (the Department) with the adoption of regulations on a number of topics pertaining to the administration of the Corrective Action Fund, and these regulations are contained in Part 17. The Department's Petroleum Storage Tank Bureau proposes to amend Part 17 at this time to conform its provisions to the amendments to Parts 4 through 16 that have been approved by the Environmental Improvement Board (the Board) and that take effect August 15, 2003.

The regulations just adopted by the Board provide in detail for the regulation of above ground tanks (ASTs) as well as underground tanks (USTs), as required by legislative amendments to the Hazardous Waste Act and GWPA in 2001. Parts 4 through 16 as amended include technical tank standards and corrective action requirements for ASTs, and include some changes to regulatory requirements for USTs. While Part 17 was amended in 2002

to provide AST owners and operators access to the Corrective Action Fund for releases from their tanks, the detailed regulations adopted by the Board this year require additional amendments to Part 17 to complete the regulation development process.

The proponent of the proposed amendments is the Department's Petroleum Storage Tank Bureau. The Bureau proposes to amend Part 17 in a number of respects, including the following: repealing the \$200 fee for post-1990 removals of ASTs, excluding monitored natural attenuation (MNA) plans from competitive bid requirements, eliminating the time limits for the interim soil or free product removal that can be accomplished without competitive bid, making changes to the provisions on competitive bid to reflect the new approach to qualifying firms in Part 16, clarifying the requirements for time-and-materials contracts, and repealing a section that the 2001 amendments to GWPA moved from the rulemaking authority of the Department to that of the Board

All interested persons will be provided with a reasonable opportunity to submit data, views or arguments orally or in writing and examine witnesses testifying at the hearing. Any interested person may also provide a general written statement concerning the regulation amendment at or before the hearing by filing the statement with Hearing Clerk Carolyn Vigil, Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502 (ph: (505) 827-2002). Any person may provide a general oral statement or non-technical testimony concerning the proposed regulations at the hearing.

Any person who intends to provide a technical written statement or technical oral testimony concerning the proposed change to the regulations shall file a statement of intent to present technical testimony on or before August 5, 2003 with Hearing Clerk Carolyn Vigil. The statement of intent to present technical testimony shall:

1. Identify the person filing the statement, the witness, and the person for whom the witness will testify;
2. State whether the person filing the statement supports or opposes the regulations;
3. Identify each fact and/or expert witness, qualifications of each witness, including name, address, affiliations, and educational and work background;

4. Summarize, or include a copy of, the direct testimony of each technical witness, stating any opinions to be offered by the witness, an explanation of the basis for such opinions, and the anticipated duration of the testimony of the witness;

5. Identify all exhibits anticipated to be offered;

6. List or make available all technical materials relied upon by each witness in making a statement of technical fact or opinion contained in his or her direct testimony; and

7. Include the text of any recommended modifications to the proposed regulatory changes.

Interested persons may review hard copies of the proposed amendments during regular business hours at the Petroleum Storage Tank Bureau located at 2044 Galisteo Street, Suite A, in Santa Fe, New Mexico; at the Albuquerque District Office located at 4131 Montgomery Boulevard NE; or at the Environment Department's web site at www.nmenv.state.nm.us. You may also contact Rosina Lopez at (505) 984-1787 to obtain hard copies of the proposed amendments.

If you are an individual with a disability and you require assistance or an auxiliary aide, i.e. sign language interpreter, to participate in any aspect of this hearing, please contact Cliff Hawley. Mr. Hawley's telephone number is (505) 827-2844, and his address is New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. (TDD or TDY users: please access this number via the New Mexico Relay Network. Albuquerque TDD uses (505) 275-7333; outside of Albuquerque: 1-800-959-1779.)

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:30 a.m., on September 15, 2003, at the State Capitol, Room 307 (corner of Paseo de Peralta and Don Gaspar), Santa Fe, New Mexico. The subject of the hearing will be Pregnancy Termination Procedures.

The Human Services Department (HSD), Medical Assistance Division (MAD) proposes to:

A. Eligible Providers:

Expand eligible providers to include mental health providers that are eligible to render counseling to pregnant women considering pregnancy termination services. Eligible mental health providers are described under the Mental Health Professional Services, section MAD-717.

B. Covered Services and Service Limitations:

(1) Reinstate coverage for medically necessary pregnancy termination procedures when the treating physician certifies that in his/her best medical judgment the procedure is necessary because the pregnancy aggravates a pre-existing condition, makes treatment of a condition impossible, interferes with or hampers a diagnosis, or has a profound negative impact upon the physical or mental health of an individual.

(2) Expand coverage to include oral medications approved by the FDA that are administered by a physician for pregnancy termination in a manner that is consistent with product labeling. Oral medications will be covered for individuals meeting the coverage for termination procedures as defined in Section MAD-766.31.

C. **Psychological Services:** Reinstate coverage of Mental Health Services furnished by an eligible Medicaid provider related to pregnancy termination. To be covered, services must be furnished in a neutral, unbiased manner, without undue influence on the recipient.

D. **Informed Consent:** Reinstate the requirement for a voluntary informed consent. Voluntary, informed consent by the recipient must be given to the provider prior to the procedure to terminate pregnancy, except in certain circumstances;

(1) In instance where a medical emergency exists. A "medical emergency" exists in a situation where the attending physician certifies that, based on the facts of the case presented, in his/her best clinical judgment, the life or health of the recipient is endangered by the pregnancy so as to require an immediate pregnancy termination procedure;

(2) In instances where the recipient is unconscious, incapacitated, or otherwise incapable of giving consent. In such circumstances, the consent shall be obtained as prescribed by New Mexico law; or

(3) In instances where the pregnancy results from rape or incest or the continuation of the pregnancy endangers the life of the recipient.

Consent is valid for thirty (30) days from the date of signature, unless withdrawn by the recipient prior to the procedure.

E. **Required acknowledgements:** MAD will require that in signing the consent, the recipient must acknowledge that she has received, at least, the fol-

lowing information:

(1) Alternatives to pregnancy termination;

(2) Medical procedure(s) to be used;

(3) Possibility of physical and/or mental side effects from the performance of the procedure;

(4) Right to receive abortion counseling services from an independent Medicaid provider; and

(5) Right to withdraw consent up until the time the procedure is going to be performed.

F. **Record Retention:** A dated and signed copy of the consent, with counseling referral information, if requested, be given to the recipient. The provider must keep the original signed consent with the recipient's medical records.

G. **Consent for minors:** **In instances not involving life endangerment, rape or incest:** Emancipated or legally married minors may give informed consent. Informed consent for an un-emancipated minor or a minor not legally married must be dated and signed by a parent, legal guardian, or other adult acting "in loco parentis" to the minor. If a minor states that consent from a parent, guardian, or other adult acting "in loco parentis" is not available for personal reasons, the treating physician shall certify that fact and;

(1) Certify that in his/her best clinical judgment, the minor is mature enough and well enough informed to make the decision in her best interest in consultation with her treating physician; or

(2) Refer the minor to an independent Medicaid counselor who shall meet with the minor and confirm in writing to the treating physician that the minor is well enough informed to make the decision and believes that performance of the procedure is in her best interest. Such confirmation must be received within seventy-two (72) hours of the initial referral by the treating physician or the requirement is waived. The treating physician and recipient must document the good faith effort to obtain such counseling and confirmation.

Interested persons may submit written comments no later than 5:00 p.m. September 15, 2003, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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 any HSD public hearing, program or services, please contact the NM

Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/mad.html. or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rule Hearing in Santa Fe, New Mexico on Thursday, October 9, 2003. The meeting will be held in the Old Senate Chambers Room # 238 in the Bataan Memorial Building, on Don Gaspar, beginning at 9:00 a.m. The purpose of the Rule Hearing is to consider amending Authorized Agent status and corresponding references; amending the definition of Relation by blood or marriage within the third degree; amending salary upon transfer; and amending performance appraisal.

A final agenda for the board meeting will be available at the board office on September 26, 2003. Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., September 17, 2003 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87503.

Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.state.nm.us/spo/.

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 in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director is a summary or other type of accessible format is needed.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, August 26, 2003, at 9:00 A.M. The meeting will be held at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Kathy Mattison at 476-7926 by August 22, 2003. Public documents including the agenda and minutes can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

- Amend**
- 1.18.308 NMAC E R R D S
Office of the State Auditor
 - 1.18.569 NMAC E R R D S
Organic Commodity Commission
 - 1.18.630 NMAC E R R D S
Human Services Department
 - 1.18.765 NMAC E R R D S
Juvenile Parole Board

- Repeal**
- 1.18.333 NMAC E R R D S
Taxation and Revenue Department

- Replace**
- 1.18.333 NMAC E R R D S
Taxation and Revenue Department

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO AMEND 20.6.2 NMAC – WATER QUALITY REGULATIONS

The New Mexico Water Quality Commission will hold a public hearing, to consider proposed amendments to Sections 20.6.2.7 and 20.6.2.3103 NMAC, beginning on September 22, 2003 at 9:00 a.m. in room

317 at the State Capitol Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe New Mexico. The amendments are to the toxic pollutant criteria and water quality standards of the Water Quality Control Commission Regulations. The proposed amendments will add 2,6 DNT, HMX, RDX, TNT, manganese, MTBE and perchlorate to the Commission’s toxic pollutant listing, and will change the existing groundwater standard for Uranium from 5 mg/L to 0.007 mg/L. The New Mexico Environment Department is the proponent of the proposed amendments.

The proposed amendments to the toxic pollutant criteria and water quality standards may be viewed on the Department’s web site at <http://www.nmenv.state.nm.us/gwb/gwqb-home.html> or during regular business hours by contacting Geraldine Madrid-Chavez, Commission Secretary, 1190 St. Francis Drive, Room N-2054, Santa Fe, New Mexico (505) 827-2425.

The hearing will be conducted in accordance with NMSA 1978, section 74-6-6, the Guidelines for Water Quality Control Commission Regulation Hearings, and other specific statutory procedures that may apply. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings is available on the Department’s web site or may be obtained from the commission secretary at the address and phone number above.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the hearing.

Persons desiring to present technical testimony at the hearing must file with the Commission a written notice. The written notice shall:

- identify the person for whom technical testimony will be presented;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness;
- state the anticipated duration of the testimony of each witness;
- include the text of any recommended modifications to the proposed amendment; and

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

The deadline for filing written notices shall be September 8, 2003, at 5:00 p.m. Written notices must be filed in the Commission's office and should reference 20.6.2 NMAC and the date of the hearing.

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

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. translator or sign-language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by September 8, 2003, at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2844. (TDD or TTY users please access the number via the New Mexico Relay Network, Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779 (voice); TTY users: 1-800-659-8331) Copies of the proposed amendment will be available in alternative forms, e.g. audiotape, if requested by September 15, 2003.

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

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Notice is hereby given that on Monday, August 18, 2003, commencing at 1:30 p.m., the New Mexico Workers' Compensation Administration will conduct a public hearing on the proposed Uninsured Employer Fund rules adopting specific rules to govern claims eligibility, claims submission, claims administration, penalty collection from uninsured employers, and assessments. The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, NM. Videoconferencing will also be available in the WCA Field Offices. Please contact Renee Blechner at (505) 841-6083 by August 8, 2003, to reserve videoconferencing.

The effective date of the rule will be September 15, 2003. Comments made in writing and at the public hearing will be taken into consideration.

Written comments pertaining to these proposals will be accepted until the close of business on Friday, August 22, 2003.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, (505) 841-6000, for copies of the proposed rule. Copies will be available on July 25, 2003. If you intend to request a copy by mail, please inquire at the WCA Clerk's Office about the postage cost and envelope size needed to accommodate your request. Plan on including a post-paid, self-addressed envelope with your request.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact Renee Blechner at (505) 841-6085. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331. Public documents pertaining to this rule making can be provided in various accessible forms. Please contact Renee Blechner if a summary or any other type of accessible form is needed.

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PREVENTION AND INTERVENTION DIVISION

This is an emergency amendment to 8.8.3 NMAC, Section 15.

8.8.3.15 SUBSTANTIATED ABUSE AND NEGLECT REFERRALS: An applicant for whom a child abuse and neglect screen through the protective services division indicates a substantiated referral for adult or child abuse and/or neglect is denied CRC, subject to the following subsections:

A. CRC may be granted by the licensing authority to an applicant with a substantiated referral to the protective services division for which the incident or incidents leading to the substantiated referral occurred prior to January 1, 1998, if all of the following conditions apply:

(1) the applicant has had only one (1) substantiated referral to the protective services division for abuse and/or neglect;

(2) the substantiated referral was not for sexual abuse, serious physical abuse or severe neglect;

(3) the licensing authority has received no information from any source indicating that the applicant has failed to cooperate with the protective services division relating to the substantiated referral;

(4) the applicant has had no convictions for any criminal offense within the past three (3) years, and the applicant would not otherwise be disqualified under the criminal records check portion of the background check; and

(5) the licensing authority discovers no information from any source indicating that the applicant continues to be a threat of abuse and/or neglect to either children or adults in the applicant's care. If deemed necessary, the licensing authority may review the information in the protective services division investigative file and may consider any additional information received from any past or present employee of the protective services division who was involved in the investigation of the substantiated referral.

B. CRC may be granted by the licensing authority to an applicant with a substantiated referral to the protective services division for which the incident or incidents leading to the substantiated referral occurred on or after January 1, 1998, or to an applicant with more than one (1) substantiated referral to the protective services division for abuse and/or neglect occurring

at any time, if all of the following conditions apply:

(1) a minimum of three (3) years have passed since the incident or incidents leading to any of the substantiated referrals have occurred;

(2) no substantiated referral was for sexual abuse, serious physical abuse or severe neglect;

(3) the licensing authority has received no information from any source indicating that the applicant has failed to cooperate with the protective services division relating to the substantiated referral;

(4) the applicant has had no convictions for any criminal offense within the past three (3) years, and the applicant would not otherwise be disqualified under the criminal records check portion of the background check;

(5) the applicant provides the licensing authority with a written statement and any other relevant evidence addressing the steps that the applicant has taken to correct the causes of the substantiated referral or referrals and the steps that the applicant has taken to insure that there are no additional substantiated referrals in the future;

(6) a review of the information in the protective services division investigative files for all of the substantiated referrals indicates that the applicant does not continue to be a threat of abuse and/or neglect to children or adults in the applicant's care. If any of the substantiated referrals occurred on or after January 1, 1998, a review of the information in the FACTS database will be used for this determination as to those cases. If any of the substantiated referrals occurred prior to January 1, 1998, or if the information in the FACTS database is incomplete or appears to be unreliable, a review of the information in the protective services division investigative file may be initiated to make the determination.

(7) In making the determination as to whether the applicant continues to be a threat of abuse and/or neglect to children or adults in the applicant's care under Paragraph (6) above, the licensing authority may take into account the following information:

(a) the total number of substantiated referrals;

(b) the time elapsed since the last substantiated referral to the protective services division;

(c) the applicant's statement submitted pursuant to Paragraph (5) above;

(d) the harm caused to the child or adult who was in the applicant's care; and

(e) any information received from any past or present employee of the protective services division who was involved in

the investigation of the substantiated referrals or referrals.

[8.8.3.15 NMAC - N, 07/22/03]

NEW MEXICO BOARD OF EDUCATION

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 61 SCHOOL PERSON- NEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRU- CTORS PART 10 TEACHERS OF STUDENTS WITH BLINDNESS/VISU- AL IMPAIRMENT B-12

6.61.10.1 ISSUING AGENCY: State Board of Education
[6.61.10.1 NMAC - N, 08-15-03]

6.61.10.2 SCOPE: Chapter 61, Part 10 governs licensure of teachers of students with blindness and visual impairment, birth through grade 12, for those persons seeking such licensure.
[6.61.10.2 NMAC - N, 08-15-03]

6.61.10.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and 22-2-8.7, NMSA 1978.
[6.61.10.3 NMAC - N, 08-15-03]

6.61.10.4 DURATION: Permanent
[6.61.10.4 NMAC - N, 08-15-03]

6.61.10.5 EFFECTIVE DATE: August 15, 2003, unless a later date is cited in the history note at the end of a section.
[6.61.10.5 NMAC - N, 08-15-03]

6.61.10.6 OBJECTIVE: This regulation governs licensure requirements in teaching of students with blindness and visual impairment, birth through grade 12, for persons seeking such licensure.
[6.61.10.6 NMAC - N, 08-15-03]

6.61.10.7 DEFINITIONS:
A. "Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

B. "Aural literacy skills" means listening skills that must be developed for students who have an impaired visual system. These skills provide a solid foundation for learning, reading, mobility clues, social conversation, and interpreta-

tion of a variety of auditory signals received from the environment. These skills begin to develop in infancy and need to be sequentially and deliberately expanded during the school years. Listening becomes particularly important in secondary and post-secondary schools, when Braille or print reading assignments become long and laborious.

C. "Braille" means a system of reading and writing that uses dot codes that are embossed on paper, developed by Louis Braille around 1829.

D. "Braillewriter" means a machine used to produce embossed Braille symbols.

E. "Career education" means a curriculum designed to teach individuals the skills and knowledge necessary in the world of work. This instruction may include field trips into the community to explore work opportunities and job requirements that would be gained by others with normal vision through incidental learning.

F. "Compensatory skills" means any technique, habit, or activity that must be developed to overcome a severe visual impairment; e.g., daily living skills, social and emotional skills.

G. "Continuum of services" means a full range of educational placements arranged in a stairstep fashion, where one level of service leads directly to the next one.

H. "Daily living skills" means skills that enable a visually impaired student to live independently.

I. "Educational placement" means the location or type of classroom program (for example, resource room) arranged for a child's education; the setting in which a student receives educational services.

J. "Functional vision" means the presence of enough usable vision, giving the student the ability to use sight as a primary channel for learning. This term also means the total act of seeing and how the student uses sight to function educationally.

K. "Functionally blind" means a student whose primary channels for learning are tactual and auditory.

L. "Least restrictive environment" (LRE) means the environment, on the scale of a full continuum of services, where the student is given the maximum opportunity to learn.

M. "Mobility" means the ability to navigate from one's present fixed position to one's desired position in another part of the environment.

N. "Nemeth" means a system for reading and writing mathematical symbols based on the six-cell Braille cell and developed by Dr. Abraham Nemeth.

O. "Orientation" means

the process of using the remained senses in establishing one's position and relationship to all other significant objects in the environment.

P. "Residual vision" means the amount and degree of functional vision that one retains despite a visual handicap.

Q. "Social interaction skills" means that persons with normal vision most often learn social interaction skills social skills incidentally. The visual cues are not available for students with poor or no vision. These skills must be taught from infancy to adulthood in order for persons with visual impairment to gain the necessary skills.

R. "Tactual skills" means tactual awareness must be developed in infancy and need to be sequentially and deliberately expanded during the school years. These skills will become an effective method of literacy as well provide a method to gain information. This skill will have a major impact on concept development and future learning.

S. "Visual efficiency" means how well a person can use sight.

T. "Visual impairments" is overall term that refers to all levels of vision loss.

[6.61.10.7 NMAC - N, 08-15-03]

6.61.10.8 REQUIREMENTS:

A. Persons seeking licensure to teach students with blindness and visual impairment pursuant to the provisions of this regulation shall either hold special education licensure as provided in 6.61.6.8 NMAC or meet the requirements of Subsections A and B of 6.61.10.8 NMAC.

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

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

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

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

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

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

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

(2) Credits from a regionally accredited college or university which include twenty four to thirty-six (24-36) semester hours of professional education in a program of studies that prepares candi-

dates to teach blind and visually impaired students, including completion of the state board of education's approved functional areas and related competencies in professional education; and

(3) A mandatory student teaching or practicum component; and

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

(5) In addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.10.8 NMAC, six (6) hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

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

B. Possess a valid certificate issued by the Association of Educational Rehabilitation of Students with Visual Impairments for the appropriate grade level and type.

[6.61.10.8 NMAC - N, 08-15-03]

6.61.10.9 REFERENCED MATERIAL:

Competencies for entry level teachers of blind and visual impairment.

A. Philosophical, historical, and legal foundations of special education for students with visual impairment. The teacher demonstrates his/her understanding of the unique role of the teacher of students with blindness/visual impairment including those with multiple impairment, through the knowledge of philosophical, historical, and legal foundations of special education for students with visual impairment.

(1) Teacher understands federal entitlements (e.g., American Printing House for the Blind Quota Funds).

(2) Teacher understands historical foundations for education of children with visual impairments, including the array of service options.

(3) Teacher understands current educational definitions of students with visual disabilities, including identification criteria, labeling issues, and current incident and prevalence figures.

B. Characteristics of the learner with blindness/visual impairment including those with multiple impairment to be addressed by the teacher:

(1) Teacher demonstrates an

understanding of the unique learning needs of the child/student with blindness/visual impairment, including those with multiple impairment, through implementation showing knowledge of the unique characteristics of loss or impairment of vision;

(2) Teacher understands normal development of the human visual system;

(3) Teacher understands basic terminology related to the structure and function of human visual system;

(4) Teacher understands basic terminology related to diseases and disorders of the human visual system;

(5) Teacher understands development of secondary senses (hearing, touch, taste, smell) when the primary sense is impaired;

(6) Teacher understands the effects of a visual impairment on early development (motor system, cognition, social/emotional interactions, self-help, language);

(7) Teacher understands the effects of a visual impairment on social behaviors and independence;

(8) Teacher understands the effects of a visual impairment on language and communication;

(9) Teacher understands the effects of a visual impairment on the individual's family and the reciprocal impact on the individual's self-esteem;

(10) Teacher understands the psychosocial aspects of a visual impairment;

(11) Teacher understands effects of medications on the visual system;

(12) Teacher understands the impact of additional exceptionalities on students with visual impairments.

C. Implications of diagnosis, assessment and evaluation. The teacher effectively utilizes assessment techniques and procedures by understanding the implications of loss or impairment of vision.

(1) Teacher understands the impact of visual disorders on learning and experience.

(2) Teacher understands specialized terminology used in assessing individuals with visual impairments, both as it relates to the visual system and in areas of importance.

(3) Teacher understands ethical considerations and legal provisions, regulations, and guidelines (federal, state/provincial, and local) related to assessment of students with visual impairments (including the legal versus functional definitions of blindness and low vision.)

(4) Teacher understands specialized policies regarding referral and placement procedures for students with visual impairments.

(5) Teacher understands procedures used for screening, pre-referral, refer-

ral, and classifications of students with visual impairments, including vision screening methods, functional vision evaluation, and learning media assessment.

(6) Teacher understands alternative assessment techniques for students who are blind or have low vision.

(7) Teacher understands appropriate interpretation and application of scores obtained as a result of assessing individuals with visual impairments.

(8) Teacher understands relationships among assessment, IEP development, and placement as they affect vision-related services.

D. Instructional content and practice. The teacher demonstrates the skills required to plan for and teach students with blindness/visual impairment, including those with multiple impairment, by understanding current instructional content and practices.

(1) Teacher understands methods for the development of special auditory, tactual, and modified visual communication skills for students with visual impairments, including:

(a) Braille reading and writing;

(b) handwriting for students with low vision and signature writing for students who are blind;

(c) listening skills and compensatory auditory skills;

(d) typing and keyboarding skills;

(e) the use of unique technology for individuals with visual impairments;

(f) the use of alternatives to non-verbal communication.

(2) Teacher understands methods to acquire disability-unique academic skills, including, but not exclusive to:

(a) the use of an abacus;

(b) the use of a talking calculator;

(c) tactile graphics (including maps, charts, tables, etc.);

(d) adapted science equipment

(3) Teacher understands methods for the development of basic concepts needed by young students who do not learn visually.

(4) Teacher understands methods for the development of visual efficiency, including instruction in the use of print adaptations, optical devices, and non-optical devices.

(5) Teacher understands methods to develop alternative reasoning and decision-making skills in students with visual impairments.

(6) Teacher understands methods to develop alternative organization and study skills for students with visual impairments.

(7) Teacher understands methods to prepare students with visual impairments for structured pre-cane orientation and

mobility assessment and instruction.

(8) Teacher understands methods to develop tactual perceptual skills for students who are or will be primarily tactual learners.

(9) Teacher understands methods to teach human sexuality to students who have visual impairments, using tactual models that are anatomically accurate.

(10) Teacher understands methods to develop adapted physical and recreation skills for individuals who have visual impairments.

(11) Teacher understands methods to develop social and daily living skills that are normally learned or reinforced by visual means.

(12) Teacher understands strategies for developing career awareness in and providing vocational counseling for students with visual impairments.

(13) Teacher understands strategies for promoting self-advocacy in individuals with visual impairments.

(14) Teacher understands functional life skills instruction relevant to independent, community, and personal living and employment for individuals with visual impairments including:

(a) methods for accessing printed public information;

(b) methods for accessing public transportation;

(c) methods for accessing community resources;

(d) methods for acquiring practical skills (e.g., keeping personal records, time management, personal banking, emergency procedures).

(15) Teacher understands sources of specialized materials for students with visual impairments.

(16) Teacher understands techniques for modifying instructional methods and materials for students with visual impairments, and assisting classroom teachers in implementing these modifications.

E. Planning and managing the teaching/learning environment.

(1) The teacher demonstrates the ability to plan and managing the teaching/learning environment.

(2) Teacher understands a variety of input and output enhancements to computer technology that address the specific access needs of students with visual impairments in a variety of environments

(3) Teacher understands model programs, including career-vocational and transition, which have been effective for students with visual impairments.

F. Managing student behavior and social skills. The teacher is able to manage student behavior and social interaction skills of students with loss or impairment of vision.

(1) Teacher understands teacher attitudes and behaviors that affect the behaviors of students with visual impairments.

(2) Teacher creates an atmosphere conducive to the promotion of positive student involvement and self-concept.

G. Communication and collaborative partnerships. The teacher promotes communication and collaborative partnerships.

(1) Teacher understands strategies for assisting parents and other professionals in planning appropriate transitions for students who have visual impairments.

(2) Teacher understands sources of unique services, networks, and organizations for students with visual impairments.

(3) Teacher understands roles of paraprofessionals who work directly with students who have visual impairments (e.g., sighted readers, transcribers, aides) or who provide special materials to them.

(4) Teacher understands the need for role models who have visual impairments, and who are successful.

H. Professionalism and ethical practices. The teacher demonstrates professionalism and ethical practices.

(1) Teacher understands the consumer and professional organizations, publications, and journals relevant to the field of visual impairment.

(2) Teacher adheres to the Code of Ethics for Teachers of Students with Visual Impairments.

[6.61.10.9 NMAC - N, 08-15-03]

History of 6.61.10 NMAC: [Reserved]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.19.2 NMAC (PUBLIC SCHOOL ACCOUNTABILITY SYSTEM FOR SCHOOLS RATED PROBATIONARY). Section 3 is amended to reflect statutory changes. Section 10 is amended to add new Subsections B and C, and the previous Subsections A through C are renumbered.

6.19.2.3 STATUTORY AUTHORITY: Subsections A and B of Section 22-2-1 NMSA 1978, [Subsections A and I of Section 22-1-6 NMSA 1978,] Subsection [W] V of Section 22-2-2 NMSA 1978, and Section 22-2-14 NMSA 1978. [6.19.2.3 NMAC - N, 03-29-02; A, 08-15-03]

6.19.2.10 CORRECTIVE ACTION INITIATED BY A LOCAL SCHOOL BOARD, SUPERINTEN-

DENT, OR THE GOVERNING BODY OF A CHARTER SCHOOL:

A. Efforts at local corrective action, that is, corrective action taken by a local school board, a superintendent or the governing body of a charter school that directly involves a corrective action school as defined in Section 7 of 6.19.1 NMAC, shall not result in additional corrective action by the state board or department under 6.19.1 NMAC or 6.19.2 NMAC, provided that:

~~[A-]~~(1) The local corrective action complies with 6.30.2 NMAC ("Standards for Excellence") and any other applicable rule of the state board that relates to obtaining departmental approval prior to closure or reorganization of a public school.

~~[B-]~~(2) The authority to suspend under this rule shall be continuous and remain with the state board through the state superintendent, and may be invoked at any time the state board determines that the local corrective action is not in compliance with Section 9 of 6.19.2 NMAC, any other provision of this rule, or any provision of 6.19.1 NMAC.

~~[C-]~~(3) Any local corrective action is subject to being disapproved by the state board acting through the state superintendent where it:

~~[(+)]~~(a) does not comply with the spirit or intent of this rule; or

~~[(+)]~~(b) is detrimental to students enrolled in the corrective action school; or

~~[(+)]~~(c) is unlikely even with best practices to take the school under consideration out of corrective action; or

~~[(+)]~~(d) would result in mismanagement, misuse or waste of public funds; or

~~[(+)]~~(e) is otherwise not in the best interests of students enrolled in the corrective action school.

B. A local school board served a notice of proposed suspension pursuant to Section 14 of 6.19.2 NMAC that has submitted a timely corrective action plan may, after participating in a show cause hearing held pursuant to Subsection A, Section 14 of 6.19.2 NMAC, be permitted by the state superintendent to continue to manage and operate the subject school(s) without the imposition of a suspension under this rule, provided that the local school board signs a document acceptable to the state superintendent that formalizes the arrangement and contains any conditions imposed by the state superintendent.

(1) After the show cause hearing, the decision of the state superintendent to permit or deny a local corrective action plan shall be final and not subject to review, appeal or reconsideration by either the state superintendent or the state board. This provision does not prohibit the parties from

amending their documents by mutual agreement, including the plan itself, should the local corrective action plan be approved.

(2) If a local corrective action plan is denied, the matter will proceed as set forth at Section 14 of 6.19.2 NMAC.

C. The state superintendent shall report any approved local corrective action plan to the state board at its next available meeting. Because of the state board's ongoing role as a potential appellate body should the school(s) that is the subject of a local corrective action plan be subject to involuntary suspension, the board shall neither discuss nor permit the discussion of the merits or correctness of any approved or denied local corrective action plan at any public meeting of the state board, unless the matter is before them on appeal pursuant to Subsection D, Section 14 of 6.19.2 NMAC. [6.19.2.10 NMAC - N, 03-29-02; 6.19.2.10 NMAC - N, 07-15-02; A, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

Explanatory paragraph: This is an amendment to 6.30.2 NMAC (STANDARDS FOR EXCELLENCE). The amendment clarifies the graduation requirements for students with disabilities in subparagraphs (b) and (e) of paragraph (9) of subsection J of 6.30.2.10 (Graduation requirements - receipt of diploma or certificate); clarifies the requirements for participation of students with disabilities in statewide and district-wide assessments of student achievement in subparagraph (b) of paragraph (1) of subsection K of 6.30.2.10 (Statewide student assessment system - students with disabilities); and expands the definition of special education in subsection D of 6.30.2.11 (Program requirements - special education). Numerous capitalized words throughout both sections have also been changed to lower case to conform with the state records center and archives' requirements.

6.30.2.10 PROCEDURAL REQUIREMENTS

J. Graduation requirements

(9) Receipt of diploma or certificate: Governing principles that will guide the development, program of study, and the granting of a diploma or certificate for students with disabilities receiving special education services are as follows:

(b) A student may be awarded a diploma (Section 22-2-8.4 NMSA 1978) using any of the following programs of study:

(i) A standard program of study is based upon meeting or surpassing all requirements for graduation based on New Mexico Standards for Excellence with or without reasonable modification of delivery and assessment methods. To earn a diploma on the standard pathway, a student must pass all sections of the current state graduation examination(s) administered pursuant to NMSA 1978, Sec. 22-2-8.4(D) under standard administration or with state-approved accommodations and meet all other standard graduation requirements.

(ii) A career readiness program of study is based upon meeting the state board of education's Career Readiness Standards with Benchmarks as defined in the IEP with or without reasonable modifications of delivery and assessment methods. To earn a diploma on the career readiness pathway, a student must take the current state graduation examination(s) administered pursuant to NMSA 1978, Sec. 22-2-8.4(D) and achieve a level of competency to be determined by the student's IEP team; earn the number of credits required for graduation through standard or alternative courses as determined by the IEP team; and achieve competency in all areas of the Career Readiness Standards with Benchmarks as determined by the IEP team.

(iii) An ability program of study is based upon meeting or surpassing IEP goals and objectives, with or without reasonable modifications of delivery and assessment methods, referencing skill attainment at a student's ability level, which may lead to meaningful employment. To earn a diploma on the ability pathway, a student must take either the current state graduation examination(s) administered pursuant to NMSA 1978, Sec. 22-2-8.4(D) or the state-approved alternate assessment, achieving a level of competency to be determined by the student's IEP team, and meet all other graduation requirements established by the IEP team.

(e) At the exit IEP meeting the IEP team will review the ~~[exit re-evaluation]~~ student's transition plan and confirm and document that all requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student must be a member of this team, and sign specifically to verify and accept completed graduation plans, goals and objectives, pursuant to subparagraphs (ii) and (iii) of subparagraph (b) of paragraph (9) of subsection J of 6.30.2.10 NMAC or plans for a certificate and follow-up program pursuant to subparagraph (c) of paragraph (9) of subsection J of 6.30.2.10 NMAC. The IEP team will also determine whether additional evaluations, reports or documents are necessary to support a smooth and effective transition to

post-secondary services for a student who will graduate on the career readiness or ability pathway. The school will arrange for such information to be provided at no cost to the students or parents. The students determined to receive the diploma through an alternate path shall be submitted to the local superintendent and the local school board by using the students' identification numbers. This information shall be treated as confidential in accordance with the Family Educational Rights and Privacy Act (FERPA).

K. Statewide accountability program. All public schools shall participate in the statewide accountability system which includes the following:

(1) The statewide student assessment system: All public school students, with the exceptions indicated below, shall participate in the New Mexico achievement assessment program which includes a reading assessment in grades 1 and 2, norm-referenced standardized testing in grades 3 through 9, writing assessment in grades 4 and 6, and the New Mexico high school competency examination (NMHSCE) in grade 10. ~~[Exemptions]~~ Exceptions:

~~(b) Special Education Exemption: Participation in the statewide testing program for students with disabilities who receive special education and related services shall be considered by the IEP team for participation in the NMHSCE. The IEP team shall make decisions regarding:~~

~~(i) Exemption from participation in the examination;~~

~~(ii) Modification in administration of the examination;~~

~~(iii) Waiver of the requirement to participate in the examination. The district must document student attainment of required competencies through an alternate assessment procedure.]~~

(b) Students with disabilities: Students with disabilities who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC and 34 CFR Sec. 300.347(a)(5), the individualized education programs (IEPs) for such students shall specify which assessments each student will participate in and what if any accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall explain why that assessment is not appropriate for that student and how the student will be assessed using current state-approved criteria, methods and instruments.

[10-31-96, 12-31-98; 6.30.2.10 NMAC -

Rn, 6 NMAC 3.2.9 & A, 11-14-00; A, 08-15-03]

6.30.2.11 P R O G R A M REQUIREMENTS

D. ~~[Special Education. Special education is designed to meet the unique needs of a child with a disability, at no cost to the parent, including classroom instruction, modified instruction in physical education, home instruction, and instruction in state supported educational programs, hospitals, institutions, and other settings. Special education includes speech language pathology, vocational education, and other related services to meet the unique needs of a child with a disability, at no cost to the parent. A child is not disabled unless she/he needs special education services. If a child does not need special education services, then there can be no related services, and, therefore, the child is not covered either under Individuals with Disabilities Act (IDEA) or its implementing regulations. Special education is also designed to meet the unique needs of gifted and talented students. These services must:]~~ Special education. Special education is specially designed instruction that is provided at no cost to the parents to meet the unique needs of a child with a disability as defined in the federal Individuals With Disabilities Education Act (IDEA) regulations at 34 CFR Part 300 and state special education regulations at 6.31.2 NMAC. Special education includes classroom instruction, modified instruction in physical education, instruction provided to public school students at home, and instruction in state-supported educational programs, hospitals, institutions, and other settings. Special education includes specially designed instruction in vocational education and travel training for students whose individualized educational programs (IEPs) require such services. As set forth in the state special education regulations at paragraph (15) of subsection C of 6.31.2.7 NMAC, special education may include speech-language pathology services or other related services consisting of specially designed instruction that is provided to enable a child with a disabling condition that is recognized under the IDEA to have access to the general curriculum and meet the educational standards of the public agency that apply to all children. Special education is also designed to meet the unique needs of gifted and talented students. These services must:

(1) be provided as [defined] required by IDEA, Part B, and the state special education regulations, 6.31.2 NMAC; [10-31-96; 6.30.2.11 NMAC - Rn, 6 NMAC 3.2.9 & A, 11-14-00; A, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

Explanatory paragraph: This is an amendment to 6.31.2 NMAC (CHILDREN WITH DISABILITIES/ GIFTED CHILDREN). The amendment inserts an expanded definition of special education in paragraph (15) of subsection C of 6.30.2.7 (Additional definitions) and renumbers the former paragraphs (15) and (16) accordingly; inserts new provisions regarding reimbursement of educational agencies for special education services covered by noneducational agencies or private insurance in paragraph (3) of subsection B of 6.30.2.9 and renumbers the former paragraph (3) accordingly; inserts references to the applicable regulatory hearing procedures for public agencies that are determined to be ineligible for federal IDEA funds in subsections D and E of 6.31.2.9; and removes the former authorization for public agencies to use the IDEA due process procedures to override parental refusals to consent to initial placements of their children in special education from paragraph (3) of subsection F of 6.31.2.13. Numerous capitalized words throughout all three amended sections have also been changed to lower case to conform with the state records center and archives' requirements.

6.31.2.7 DEFINITIONS:

C. Additional definitions The following terms shall have the following meanings for purposes of these rules:

(15) As authorized by 34 CFR Sec. 300.7(a)(2)(ii) and 300.26(a)(2)(i), "special education" in New Mexico may include speech-language pathology services or any other related service that meets the following standards:

(a) the service is provided to a child who has received appropriate prereferral interventions under subsection C of 6.31.2.10 NMAC before being properly evaluated under 34 CFR Secs. 300.530-300.536 and subsection D of 6.31.2.10 NMAC;

(b) the multidisciplinary team that makes the eligibility determination finds that: (i) the child has one or more IDEA-recognized disabilities but is not a child with a disability under 34 CFR Sec. 300.7(a)(2) because he or she does not need special education; and (ii) the child needs one or more related services to address the unique educational needs that result from his or her disability;

(c) the related service consists of specially designed instruction that is pro-

vided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(d) the service is provided at no cost to the parents under a properly developed individualized education program (IEP) that (i) includes measurable annual goals and benchmarks or short-term objectives for the service that relate to the child's ability to be involved in and progress in the general curriculum; and (ii) is reviewed and revised at least annually and at other times if indicated under 34 CFR Sec. 300.343(c).

(e) If all of the above standards are met, the service will be considered as special education rather than a related service.

~~(15)~~(16) A "state-supported educational program" means a publicly funded program that

(a) provides special education and related services to children with disabilities who come within the program's educational jurisdiction;

(b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and

(c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

~~(16)~~(17) "USC" means the United States Code, including future amendments. [As of August 2000 the state board rules referred to in paragraphs C(7) and C(8) above were in the process of being repromulgated under the NMAC numbers given there. The prior numbers were 6 NMAC 3.2 for the Standards for Excellence; 6 NMAC 4.2 and 4.3 for SBE rules governing school personnel preparation, licensure and performance; 6 NMAC 1.4 for the rule governing student rights and responsibilities; and 6 NMAC Chapter 9 for the rules governing student transportation.] [6.31.2.7 NMAC - Rp 6 NMAC 5.2.7, 8/14/2000; A, 8/15/2003]

6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES

B. Public agency funding and staffing

(3) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.142(b) and 300.142(e) through -(h), and any laws, regulations, executive orders, contractual

arrangements or other requirements governing the noneducational payor's obligations. Pursuant to Sec. 300.142(e), an educational agency may not use a child's benefits under a public insurance program if the use would decrease available lifetime benefits, result in additional costs to the family, or adversely affect the availability of public insurance or health benefits for the child. Pursuant to Sec. 300.142(f), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.

~~(4)~~(4) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.221. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable SBE licensure rules or written SDE policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA. A public agency that is unable to recruit and hire enough qualified personnel despite ongoing good-faith efforts may apply to the department case by case for authorization to fill positions with the most qualified individuals who are making satisfactory progress toward completing the applicable licensure requirements, pursuant to 34 CFR Sec. 300.136(g).

D. Notification of public agency in case of ineligibility. Pursuant to 34 CFR Sec. 300.196, if the department determines that a public agency is not eligible under Part B of the Act, the department shall notify the affected agency of that determination and provide the agency with reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d).

E. Withholding of funds for noncompliance. Pursuant to 34 CFR Sec. 300.197, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in Secs. 300.220-300.250, the department must reduce or may not provide any further Part B payments to the agency until the department is satisfied that the agency is complying with that requirement.

[6.31.2.9 NMAC - Rp 6 NMAC 5.2.8, 8/14/2000; A, 8/15/2003]

RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES**F. Parental consent**

(3) Pursuant to 34 CFR Sec. 300.505(b), If the parents of a child with a disability refuse consent for an initial evaluation or a reevaluation, [~~or the initial provision of special education and related services;~~] the public agency may use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC to determine if the child may be evaluated or reevaluated [~~or initially provided services~~] without parental consent. If the hearing officer upholds the public agency, the agency may evaluate or reevaluate [~~or initially provide special education and related services to~~] the child without the parent's consent subject to the parent's rights of appeal under the due process procedures. [6.31.2.13 NMAC - Rp 6 NMAC 5.2.9.1.1-9.1.4, 5.2.9.1.6-9.1.8, 5.2.10, 8/14/2000; A, 8/15/2003]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.60.4 NMAC (NEW MEXICO SCHOOL PERSONNEL- GENERAL PROVISIONS- LICENSURE RECIPROCITY). The amendment adds a new paragraph (6) of subsection A of 6.60.4.13 NMAC, FOREIGN COUNTRY LICENSURE RECIPROCITY, for participants in a program designated by the director of the United States Information Agency, and corrects a grammatical error in subsection D.

6.60.4.13 FOREIGN COUNTRY LICENSURE RECIPROCITY:

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

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

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

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

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

(5) the person is a participant in a formal foreign teacher exchange or visitation program that has been solemnized by a memorandum of understanding or other agreement signed by the state superintendent

of public instruction and an appropriate representative of the participating foreign country or foreign educational agency, or

(6) the person is in the United States as a participant in a program designated by the director of the United States Information Agency in accordance with section 101(a)(15)(J) of the Immigration and Nationality Act.

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

C. A person issued a license under this section shall be employed under a standard contract issued pursuant to Section 22-10-11, NMSA 1978.

D. A [~~persons~~] person issued a license under this section shall not be eligible for a substandard license and shall not be employed for any position in which he/she is not properly endorsed or licensed.

[6.60.4.13 NMAC - N, 06-01-02; A, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.61.4 NMAC. Section 7 is amended to add Subsections A and B; Section 8 is amended and a new Paragraph (7) of Subsection A is added; and Section 9 is repealed.

6.61.4.7 DEFINITIONS:

A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos.

B. "A highly qualified beginning secondary teacher", under this rule, means a teacher who is fully qualified to teach the core academic subjects in grades 7-12, who is new to the profession, who has pursued a standard route to licensure and who:

(1) meets the requirements for secondary 7-12 licensure in Subsections A or B of 6.61.4.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

[6.61.4.7 NMAC - N, 08-15-03]

6.61.4.8 REQUIREMENTS:

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

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

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

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

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

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

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

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

(2) Credits from a regionally accredited college or university which include twenty-four to thirty (24-30) semester hours of professional education in a secondary education program approved by the state board of education ("state board") including completion of the state board's [~~of Education's~~] approved functional areas and related competencies in professional education; and including:

(3) A mandatory student teaching component; and

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

(5) In addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) [~~and~~], (6) and (7) of 6.61.4.8 NMAC, three (3) hours in the teaching of reading [in subject matter content] for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) Passage of all portions of the current SBE-approved teacher test; [~~or~~] and

(7) if new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school-wide, satisfy the requirements of a highly qualified beginning secondary teacher: or

B. ~~[A]~~ Possess a valid certificate issued by the National Board for Professional Teaching Standards for the appropriate grade level and type. [11-14-98; 6.61.4.8 NMAC - Rn, 6 NMAC 4.2.3.4.8 & A, 10-31-00; A, 06-01-02; A, 08-15-03]

6.61.4.9 ~~[IMPLEMENTATION: All persons holding a valid New Mexico license in secondary education on June 30, 1989, shall be entitled to licensure in secondary education. Such licensure may be further continued pursuant to regulation(s) as established by the State Board of Education.] [RESERVED]~~ [11-14-98; 6.61.4.8 NMAC - Rn, 6 NMAC 4.2.3.4.9, 10-31-00; Repealed 08-15-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.61.5 NMAC (LICENSURE FOR GRADES KINDERGARTEN THROUGH 12). Section 7 is amended by adding definitions; Section 8 is amended and a new paragraph (5) of Subsection A is added.

6.61.5.7 DEFINITIONS:

A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos.

B. "A highly qualified beginning K-12 teacher", under this rule, means a teacher who is fully qualified to teach the core academic subjects in grades K-12, who is new to the profession, who has pursued a standard route to licensure and who:

(1) meets the requirements for K-12 licensure in Subsections A or B in 6.61.5.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

[6.61.5.7 NMAC - N, 08-15-03]

6.61.5.8 REQUIREMENTS:

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

(1) Bachelor's degree from a regionally accredited college or university

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

(a) twelve semester hours in English;

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

(c) six semester hours in mathematics;

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

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

(f) six semester hours in fine arts; and

(2) Credits from a regionally accredited college or university which include twenty-four to thirty-six semester hours of professional education in an education program approved by the state board, including completion of the state board of education's approved functional areas and related competencies in professional education for grades K-12; and including

(a) a mandatory student teaching component; and

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

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

(4) Passage of all portions of the New Mexico teacher assessments or any successor teacher examination adopted by the SBE; and

(5) If new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school-wide, satisfy the requirements of a highly qualified beginning K-12 teacher; or

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

[11-14-98; 6.61.5.8 NMAC - Rn, 6 NMAC 4.2.3.5.8 & A, 06-01-02; A, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

Explanatory paragraph: This is an amendment to 6.61.8 NMAC. Section 7 is amended to add a new Subsection J. Section 8 is amended and a new paragraph (6) of Subsection A is added.

6.61.8.7 DEFINITIONS:

J. "A highly qualified beginning early childhood teacher", under this rule, means a teacher who is fully qualified for teaching children from birth through grade 3, who is new to the profession, who has pursued a standard route to licensure, and who:

(1) meets the requirements for early childhood B-3 licensure in Subsections A or B of 6.61.8.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

[11-14-98; 6.61.8.7 NMAC - Rn, 6 NMAC 4.2.3.17.7, 03-31-01; A, 11-11-02; A, 08-15-03]

6.61.8.8 REQUIREMENTS:

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

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

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

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

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

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

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

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

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

(2) Earn credits from a regionally accredited college or university which include: Thirty-six to forty-two (36-42) semester hours of professional education in

an early childhood education program approved by the SBE, including completion of the SBE's approved Early Childhood Education Competencies; and

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

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

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

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

(5) Pass all required portions of the New Mexico Teacher Assessment or any successor teacher examination adopted by the SBE; ~~or~~ and

(6) If new to the profession after June 30, 2006, or hired after the first day of school of the 2002-2003 school year and assigned to work in a Title I targeted assistance program or a Title I school-wide, satisfies the requirements of a highly qualified beginning early childhood teacher; or

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

[11-14-98; 6.61.8.8 NMAC - Rn, 6 NMAC 4.2.3.17.8 & A, 03-31-01; A, 06-01-02; A, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

Explanatory paragraph: This is an amendment to 6.61.9 NMAC (SUBSTANDARD LICENSURE). Section 3 is amended, Section 7 is amended to add new subsections J and K, and Paragraph (2) of Subsection I of Section 9 is amend-

ed. A new section 17 is added.

6.61.9.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-2-5, [~~22-10-3;~~] NMSA 1978 [6.61.9.3 NMAC - N, 07-16-01; A, 08-15-03]

6.61.9.7 DEFINITIONS:

J. "Core academic subjects" means English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

K. "Highly qualified", under this rule, means a teacher of the core academic subjects who has had no certification or licensure requirements waived on an emergency basis.

[6.61.9.7 NMAC - N, 07-16-01; A, 08-15-03]

6.61.9.9 REQUESTING INITIAL SUBSTANDARD LICENSURE:

I. With regard to taking and passing portions of the New Mexico teacher assessments ("NMTA"), substandard licensure shall be evaluated, issued and renewed as follows:

(1) No provision of this rule shall in any way restrict or prohibit the granting of a one-year nonrenewable substandard license to take the NMTA that is permitted by section 9 of 6.60.5 NMAC, ("Competency Testing for Licensure").

(2) ~~Am~~ Unless prohibited by other state board of education rules, an applicant for initial licensure who applies at any time on or after January 1st may be issued a one-time-only substandard license for an additional school year within which to take and pass all portions of the NMTA.

(3) Where an individual possesses other favorable qualifications but for good cause shown has not taken any portion of the NMTA, the PLU may renew that individual's substandard license once during which time he/she must take and pass the NMTA within the time set by the PLU.

(4) An applicant for teacher licensure who possesses other favorable qualifications shall be entitled to a renewed substandard license, provided that he/she takes and passes the general knowledge and basic skills portions of the NMTA within one school year of receiving a substandard license, and takes and passes the assessment of teacher competency portion of the NMTA within the time set by the PLU, who in setting a deadline shall take into consideration the type of license sought and the

individual's academic preparation to date. [6.61.9.9 NMAC - N, 07-16-01; A, 08-15-03]

6.61.9.17 RESTRICTIONS ON THE USE AND ISSUANCE OF SUBSTANDARD LICENSURES:

A. Consistent with Title I, Sec. 1119(a)(1) and Title IX, Sec. 9101(23)(A)(ii) of the No Child Left Behind Act, if a teacher is not highly qualified and has been issued a substandard license by the state board of education in the core academic subjects, local education agencies receiving funds under Title I of the Act shall not assign that teacher to teach the core academic subjects in a Title I targeted assistance program or schoolwide program, if he/she was initially employed after the first day of school of the 2002-2003 school year.

B. Consistent with Title I, Sec. 1119(a)(2) and Title IX, Sec. 9101(23)(A)(ii) of the No Child Left Behind Act, which requires that all teachers of the core academic subjects be highly qualified by the end of the 2005-2006 school year, the state board of education will not issue substandard licenses in the core academic subjects after June 30, 2006. [6.61.9.17 NMAC - N, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Section 8 of 6.63.3 NMAC (LICENSURE FOR RELATED SERVICE PERSONNEL NOT COVERED IN OTHER ANCILLARY REGULATIONS).

6.63.3.8 REQUIREMENTS:

All persons who perform any related services identified in Subsections A through G of this Section in public schools or in those special state-supported schools within state agencies, must hold valid standard licensure issued by the state board. A person seeking an initial, related service license shall file a completed application for an initial license with the professional licensure unit ("professional licensure") of the state department of public education, and shall provide professional licensure with a copy of their current license from their respective licensing body together with an official transcript of their coursework.

A. Interpreter for the deaf:
(1) National registry for interpreters for the deaf; or

(2) National association for the deaf national interpreter certification at levels III, IV, or V; OR

B. Orientation and mobility specialists: Association for education

and rehabilitation of the blind and visually impaired, or American association of workers for the blind, or the academy for certification of vision rehabilitation and education professionals; OR

C. Physical therapist: New Mexico physical therapy licensing board; OR

D. Occupational therapist:

(1) New Mexico occupational therapy licensing board; OR

(2) The American occupational therapy certification board; OR

E. Certified occupational therapy assistant:

(1) New Mexico occupational therapy licensing board; OR

(2) The American occupational therapy certification board; OR

F. Physical therapy assistant: New Mexico physical therapists licensing board; OR

G. Recreational therapist: National council for therapeutic recreation certification.

[11-14-98; 6.63.3.8 NMAC - Rn, 6 NMAC 4.2.3.8.8 & A, 03-31-01; A, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.66.3 NMAC (CERTIFIED (LICENSED) SCHOOL ADMINISTRATOR CONTRACT). A new subsection A is added to Section 8, previous Subsections A through I are renumbered as paragraphs, and new Subsections B, C, D, and E are added.

6.66.3.8 REQUIREMENTS:

A. All administrator contracts shall be uniform and shall substantially conform to the model set forth below, with proper names being inserted where generic description are currently found. As used herein, "substantially conform" means that all administrative contracts shall at a minimum contain the following caption, terms, and signatories, and be subject to appropriate editing and word insertion in place of the blanks:

(1) (caption) The Board of Education of _____, New Mexico, herein called Board, and _____, herein called Administrator, agree:

[A-](2) (term) The Administrator shall be employed by the Board for a period beginning _____, and ending _____, as _____ of the School District, County of _____, New Mexico.

[B-](3) (term) The Administrator shall during the term of his (her) employment faithfully perform the duties pertaining to his (her) position, administer the duties assigned by the Superintendent of the School District, and abide by the rules and regulations of the State and Local Boards of Education.

[C-](4) (term) This contract and the parties hereto are and shall continue to be subject to applicable laws of the State of New Mexico and the rules and regulations of the State and Local Boards of Education as they may exist. This contract may be canceled by the Board for cause, including unsatisfactory work performance, incompetence, insubordination, physical or mental inability to perform the required duties or for any other good and just cause, provided, that any such cancellation may be effected only in accordance with the New Mexico Statutes and any applicable rules and regulations of the State and Local Boards of Education.

[D-](5) (term) This contract may also be canceled by the Board for cause not personal to the Administrator when a reduction in personnel is required as a result of decreased enrollment or a decrease or revision of educational programs or insufficient legislative appropriation or authorization being made by the state and/or federal government for the performance of this contract, in accordance with the New Mexico Statutes and any applicable rules and regulations of the State and Local Boards of Education.

[E-](6) (term) The Administrator will give the Board thirty (30) calendar days written notice of intention to resign. Failure to give such thirty (30) calendar day notice shall entitle the Board, in its discretion, to file a written complaint with the State Board of Education requesting suspension or revocation of the Administrator's license.

[F-](7) (term) The Administrator shall furnish the Board the following: (a) a proper license for the position to be held; (b) an official transcript showing the education record and training of the Administrator, (c) suitable evidence of date of birth; (d) such health certificates as may be required by law; and (e) any other documents as may be required by law. Failure to furnish any of the foregoing items at the required time may result in cancellation of this contract in accordance with the New Mexico Statutes and any applicable rules and regulations of the State and Local Boards of Education.

[G-](8) (term) The Administrator shall be entitled to _____ working days per year as annual leave with pay. Unused annual leave may be accumulated to a total of not more than _____ working days, but upon cancellation of this

contract, no payment shall be made for more than _____ days of unused annual leave. The Administrator shall be entitled to sick leave with pay for a total of not more than _____ working days per year. Unused sick leave may be accumulated to a total of not more than _____ working days.

[H-](9) (term) Subject to the provisions of the applicable approved budget, the Administrator shall, during the term hereof, receive a salary of \$ _____ per year, payable in _____ installments, less required or authorized deductions. The first installment shall be due and payable on _____.

(10) (term) In the event that the Administrator is employed on a two (2) year contract, Paragraph 9 of Subsection A of Section 6.66.3.8 NMAC herein may be amended in the second year to reflect any appropriate district salary adjustment factors. The Board may, but shall not be required to, increase prospectively, but not retroactively, the salary for any school year governed by the terms of this contract if revenues are available to the school district for that school year. Any increase is subject to budgetary approval by the State Department of Public Education. Notwithstanding the above, the Board shall further have the authority, for any school year governed by the terms of this contract and for which a salary increase is mandated if the school district meets conditions as specified by the Legislature of New Mexico, to implement salary adjustments during the school year in accordance with a salary schedule adopted by the Board in accordance with the legislative guidelines for that year. Any adjustment is subject to budgetary approval by the State Department of Public Education. Additionally, the Board shall have authority to implement any salary increases or other adjustments to benefits and compensation provided by the Legislature of New Mexico.

[I-](11) (signatories) BOARD OF EDUCATION OF _____ New Mexico BY: _____ President _____ Date of Execution _____ Secretary _____ Date of Execution _____ Administrator _____ Date of Execution _____.

B. No administrator contract, including any amendment or addendum, shall be signed, entered into, or executed that permits the payment of monies, dividends, differentials, bonuses, incentives, salary, wages, or renewal inducements where the payment is neither tied nor traceable to services actually rendered.

C. No administrator contract, including any amendment or addendum, shall be signed, entered into, or executed that has not first been properly noticed and voted on openly at a public meeting held pursuant to the Open Meetings Act (10-15-1 to 10-15-4, NMSA 1978).

D. Compliance with this section shall be subject to periodic review by the state department of education.

E. The SDE may take such action it deems necessary depending on the degree of noncompliance with this rule, including but not limited to bringing the matter to the state board, notifying the state auditor or other appropriate authorities, directing the district to cease and desist, directing the district to collect any improperly spent public funds, or imposing a budgetary codicil.

[09-30-97, 05-30-98; 6.66.3.8 NMAC – Rn, 6 NMAC 4.3.2.8, 12-29-00; A, 08-15-03]

NEW MEXICO BOARD OF EDUCATION

Explanatory paragraph: This renumbers and amends 6 NMAC 4.2.3.18 (LICENSURE FOR EDUCATIONAL ADMINISTRATION – GRADES K-12). 6.62.2.5 (EFFECTIVE DATE) is amended to clarify the effective date of amendments to the rule. Subsection B of 6.62.2.8 (REQUIREMENTS) is amended with regard to candidates who entered an administrator preparation program on or after April 4, 2003. Subsection D of 6.62.2.8 relating to passage of the licensure examination adopted by the state board of education is deleted. The material contained in the previous section 10 (REFERENCED MATERIAL) is removed in its entirety and new language substituted in lieu thereof.

6.62.2.5 EFFECTIVE DATE: June 15, 1998, unless a later date is cited in the history note at the end of a section. [6/15/98; 6.62.2.5 NMAC – Rn, 6 NMAC 4.2.3.18.5 & A, 08-15-03]

6.62.2.8 REQUIREMENTS: Persons seeking licensure in educational administration pursuant to the provisions of this regulations shall meet the following requirements.

A. Bachelor's degree and master's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, an apprenticeship. The apprenticeship must:

(1) be completed at a college or university with an educational administration program approved by the state board of education and consist of a minimum of 180

clock hours to include time at the beginning and end of the school year. A passing grade on the apprenticeship will verify completion of this requirement; OR

(2) be completed under the supervision of a local school superintendent or a private school official at the school and consist of a minimum of 180 clock hours to include time at the beginning and end of the school year. The local school superintendent will verify that the apprenticeship has met the state board of education's adopted competencies for educational administration. Such verification will be considered completion of this requirement;

~~B. [A valid New Mexico teaching license. A Level I license will not meet this requirement]~~ A candidate who entered an administrator preparation program on or after April 4, 2003, must hold valid Level III-A New Mexico teaching license for at least one school year. A candidate who entered an administrator preparation program prior to April 4, 2003, must hold a valid Level II New Mexico teaching license; and;

C. Eighteen semester hours of graduate credit in an educational administration program approved by the state board of education. The eighteen semester hour program must address the state board of education's approved functional areas and related competencies in educational administration. Colleges and universities may offer these hours through their educational administration, public administration, business administration, or other appropriate departments[~~;-AND~~].

~~[D. Passage of the licensure examination adopted by the state board of education.]~~ [6/15/98; 6.62.2.8 NMAC - Rn, 6 NMAC 4.2.3.18.8 & A, 08-15-03]

6.62.2.9 [IMPLEMENTATION]: ~~All persons holding a valid New Mexico license in educational administration on June 30, 1989 shall be entitled to licensure in educational administration. Such licensure may be continued pursuant to regulation(s) as established by the state board of education.]~~ [Reserved] [6/15/98; 6.62.2.9 NMAC - Rn, 6 NMAC 4.2.3.18.9 & Repealed, 08-15-03]

6.62.2.10 REFERENCED MATERIAL: Administrator licensure competencies and indicators

A. Ethical leadership - The ethical school leader demonstrates the knowledge and ability to promote the success of educational community by acting with integrity, fairness, and in an ethical manner. The administrator:

(1) Models a respect for the rights of others with regard to confidentiality and

dignity.

(2) Engages in honest interactions with all groups and individuals.

(3) Demonstrates the ability to combine objectivity, sensitivity, fairness and ethical considerations in decisions as well as interactions with others.

(4) Makes and explains decisions based upon ethical and legal principles.

(5) Understands the New Mexico Code of Ethics of the Education Profession.

(6) Demonstrates an understanding of major historical, philosophical, social and economic influences affecting education in a democratic society.

B. Visionary leadership - The visionary leader promotes the success of all students including students with disabilities and students who are culturally and linguistically diverse by facilitating the development, articulation, implementation and stewardship of learning that is shared and supported by the learning community. The administrator:

(1) Develops and demonstrates the skills needed to work with a board of education to facilitate the development of a vision of learning for a school district that promotes the success of all students including students with disabilities and students who are culturally and linguistically diverse.

(2) Bases development of the vision on relevant knowledge and theories applicable to school- level leaders applied to a school district context.

(3) Uses data-based research strategies to create a vision that takes into account the diversity of learners in a district.

(4) Demonstrates knowledge of ways to use a district's vision to mobilize additional resources to support the vision.

(5) Demonstrates the ability to articulate the components of this vision for a district and the leadership processes necessary to implement and support the vision.

(6) Demonstrates the ability to use data- based research strategies and strategic planning processes that focus on student learning to develop a vision, drawing on relevant information sources such as student assessment results, student and family demographic data, and an analysis of community needs.

(7) Demonstrates the ability to communicate the vision to school boards, staff, parents, students, and community members through the use of symbols, ceremonies, stories, and other activities.

(8) Demonstrates the ability to plan programs to motivate staff, students, and families to achieve a school district's vision.

(9) Designs research- based processes to effectively implement a district

vision throughout an entire school district and community.

(10) Demonstrates the ability to align and, as necessary, redesign administrative policies and practices required for full implementation of a district vision.

(11) Understands the theory and research related to organizational and educational leadership and engage in the collection, organization, and analysis of a variety of information, including student performance data, required to assess progress toward a district's vision, mission, and goals.

(12) Demonstrates the ability to bring together and communicate effectively with stakeholders within the district and the larger community concerning implementation and realization of the vision.

C. Instructional leadership - The instructional leader promotes the success of all students including students with disabilities and students who are culturally and linguistically diverse by maintaining a positive school culture, ensuring a successful instructional program, applying best practice to student learning, and designing comprehensive professional growth plans for staff. The administrator:

(1) Develops a sustained approach to improve and maintain a positive district culture for learning that capitalizes on multiple aspects of diversity to meet the learning needs of all students including students with disabilities and students who are culturally and linguistically diverse.

(2) Demonstrates an understanding of a variety of instructional research methodologies and can analyze the comparable strengths and weaknesses of each method.

(3) Uses qualitative and quantitative data, appropriate research methods, technology, and information systems to develop a long-range plan for a district that assesses the district's improvement and accountability systems.

(4) Demonstrates the ability to use and promote technology and information systems to enrich district curriculum and instruction, monitor instructional practices, and provide assistance to administrators who have needs for improvement.

(5) Demonstrates the ability to allocate and justify resources to sustain the instructional program.

(6) Demonstrates the ability to facilitate and engage in activities that use best practices and sound educational research to improve instructional programs.

(7) Demonstrates an ability to assist school and district personnel in understanding and applying best practices for student learning.

(8) Understands and applies human development theory, proven learn-

ing, and motivational theories, and concern for diversity to the learning process.

(9) Understands how to use appropriate research strategies to profile student performance in a district and analyze differences among subgroups.

(10) Demonstrates knowledge of adult learning strategies and the ability to apply technology and research to professional development design focusing on authentic problems and tasks, mentoring, coaching, conferencing, and other techniques that promote new knowledge and skills in the workplace.

(11) Demonstrates the ability to use strategies such as observations and collaborative reflection to help form comprehensive professional growth plans with district and school personnel.

(12) Develops personal professional growth plans that reflect commitment to life-long learning and best practices.

D. Multicultural leadership - The multicultural leader promotes the success of all students by addressing the needs of multicultural, multilingual diverse populations. The administrator:

(1) Ensures that programs for linguistically and culturally diverse students are implemented and fully integrated into all district curricula and programs.

(2) Disaggregates and analyzes student achievement data by home languages, race/ethnicity, gender and disability in order to ensure all students are learning.

(3) Understands and facilitates that the cultural and community needs and concerns are adequately identified and integrated into the educational process.

(4) Reviews the assessment process through collaborative efforts between school and community to ensure sensitivity to local cultural values and norms.

(5) Facilitates the development of curriculum that values and uses the experiences that students from diverse backgrounds bring to the classroom.

(6) Understands the need for administrators, teachers and all support staff to become familiar with the cultural and socio-linguistic background as well as the learning and behavior needs of their students.

(7) Continually researches assessment and curricula that promotes a culturally diverse model for recognizing differences as strengths that are valuable and enriching for schools and school districts.

(8) Facilitates staff development for school personnel to recognize, appreciate and value diversity in language, culture, and social class.

(9) Understands the importance of addressing in all aspects of the education

system the unique cultural and linguistically diverse (CLD) needs of students.

(10) Ensures through policy development that students with language/cultural differences who may have a disability be identified early and as comprehensively as possible, within their appropriate cultural/language context.

(11) Establishes or participates in a forum for parents, administrators and teachers to discuss school policies that fail to value or address cultural, linguistic and/or community needs.

(12) Understands the need for schools to work with families to alter structural elements that maintain unjust practices within the schools.

E. Disability leadership - The disability leader promotes the success of all students by addressing the needs of students with disabilities. The administrator:

(1) Ensures that programs for students with disabilities are implemented and fully integrated into all district curricula and programs.

(2) Disaggregates and analyzes student achievement data by home languages, race/ethnicity, gender and disability in order to ensure all students are learning.

(3) Understands and facilitates that the needs and concerns of students with disabilities are adequately identified and integrated into the educational process.

(4) Reviews the assessment process through collaborative efforts between school and community to ensure the appropriate assessment of students with disabilities.

(5) Facilitates the development of curriculum that values and uses the experiences that students with disabilities bring to the classroom.

(6) Understands the need for administrators, teachers and all support staff to become familiar with the learning and behavior needs of their students with disabilities.

(7) Continually researches assessment and curricula that promotes a variety of models that recognize differences as strengths that are valuable and enriching for schools and school districts.

(8) Facilitates staff development for school personnel to recognize, appreciate and value students with disabilities.

(9) Understands the importance of addressing in all aspects of the education system the unique needs of students with disabilities.

(10) Ensures through policy development that students with language/cultural differences who may have a disability be identified early and as comprehensively as possible, within their appropriate cultural/language context.

F. Leadership in community relations - The leader in community relations has the knowledge and ability to promote the success of all students including students with disabilities and students who are culturally and linguistically diverse by collaborating with families and other community members, responding to diverse community interests and needs, and mobilizing community resources. The administrator:

(1) Demonstrates the ability to facilitate the planning and implementation of programs and services that bring together the resources of families and the community to positively affect student learning.

(2) Demonstrates an ability to use public information and research-based knowledge of issues and trends to collaborate with community members and community organizations to have a positive affect on student learning.

(3) Applies an understanding of community relations models, marketing strategies and processes, data driven decision-making, and communication theory to craft frameworks for school, business, community, government, and higher education partnerships.

(4) Demonstrates an ability to develop and implement a plan for nurturing relationships with community leaders and reaching out to different business, religious, political, and service organizations to strengthen programs and support district goals.

(5) Demonstrates the ability to involve community members, groups, and other stakeholders in district decision-making, reflecting an understanding of strategies to capitalize on the district's integral role in the larger community.

(6) Demonstrates the ability to collaborate with community agencies to integrate health, social, and other services in the schools to address student and family conditions that affect learning.

(7) Demonstrates the ability to conduct community relations that reflects knowledge of effective media relations and that models effective media relations practices.

(8) Facilitates and engages in activities that reflect an ability to inform district decision-making by collecting and organizing formal and informal information from multiple stakeholders.

(9) Demonstrates the ability to promote maximum involvement with, and visibility within the community.

(10) Demonstrates the ability to interact effectively with individuals and groups that reflect conflicting perspectives.

(11) Demonstrates the ability to effectively and appropriately assess, research, and plan for diverse district and

community conditions and dynamics and capitalize on the diversity of the community to improve district performance and student achievement.

(12) Demonstrates the ability to advocate for students with special and exceptional needs.

(13) Demonstrates an understanding of and ability to use community resources, including youth services that enhance student achievement, to solve district problems and accomplish district goals.

(14) Demonstrates how to use district resources to the community to solve issues of joint concern.

(15) Demonstrates an understanding of ways to use public resources and funds appropriately and effectively to encourage communities to provide new resources to address emerging student problems.

(16) Understands the need for schools to work with families to alter structural elements that maintain unjust practices within the schools.

(17) Facilitates for families to receive all information regarding school, district and state educational initiatives and decisions.

(18) Ensures that parents are provided an accurate account of the history of educational reform so that they can become active participants in supporting or rejecting new policies.

G. Political leadership - The political leader has the knowledge and ability to promote the success of all students including students with disabilities and students who are culturally and linguistically diverse through their understanding of the political, economic, legal, and social climate that exists in school settings. The administrator:

(1) Demonstrates the ability to use appropriate research methods, theories, and concepts to improve district operations.

(2) Demonstrates an understanding of the complex causes of poverty and other disadvantages and their effects on families, communities, children, and learning.

(3) Demonstrates an understanding of the policies, laws, and regulations enacted by local, state, and federal authorities affecting a specific district.

(4) Explains the system for financing public schools and its effects on the equitable distribution of educational opportunities within a district.

(5) Demonstrates the ability to work with political leaders at the local, state, and national level.

(6) Applies an understanding of how specific laws at the local, state, and federal level affect school districts and resi-

dents.

(7) Espouses positions in response to proposed policy changes that would benefit or harm districts and explain how proposed policies and laws might improve educational and social opportunities for specific communities.

(8) Demonstrates the ability to engage students, parents, members of the school board, and other community members in advocating for adoption of improved policies and laws.

(9) Applies understanding of the larger political, social, economic, legal, and cultural context to develop activities and policies that benefit their district and its students.

(10) Demonstrates the ability to communicate regularly with all segments of the district community concerning trends, issues, and policies affecting the district.

(11) Demonstrates the ability to advocate for policies and programs that promote equitable learning opportunities and success for all students including students with disabilities and students who are culturally and linguistically diverse regardless of socioeconomic background, ethnicity, gender, disability, or other individual characteristics.

H. Legal and fiscal leadership - The legal and fiscal leader promotes the success of all students including students with disabilities and students who are culturally and linguistically diverse by managing the organization, operations, and resources within a legally sound framework to promote a safe, efficient, and effective learning environment. The administrator:

(1) Understands the state laws governing the relationship of school boards and superintendents.

(2) Applies knowledge of the laws related to service providers.

(3) Analyzes and applies knowledge of the major U.S. legal landmark decisions and their effect on school contexts.

(4) Demonstrates the ability to use research-based knowledge of learning, teaching, student development, organizational development, and data management to optimize learning for all students including students with disabilities and students who are culturally and linguistically diverse.

(5) Demonstrates effective organization of fiscal, human, and material resources, giving priority to student learning and safety, and demonstrating an understanding of district budgeting processes and fiduciary responsibilities.

(6) Demonstrates an ability to manage time effectively and to deploy financial and human resources in a way that promotes student achievement.

(7) Demonstrates the ability to

involve stakeholders in aligning resources and priorities to maximize ownership and accountability.

(8) Uses appropriate and effective needs assessment, research-based data, and group process skills to build consensus, communicate, and resolve conflicts in order to align resources with the district vision.

(9) Develops staff communication plans for integrating district's schools and divisions.

(10) Develops a plan to promote and support community collaboration among district personnel.

(11) Uses problem-solving skills and knowledge of strategic, long-range, and operational planning (including applications of technology) in the effective, legal, and equitable use of fiscal, human, and material resource allocation that focuses on teaching and learning.

(12) Seeks new resources to facilitate learning.

(13) Applies an understanding of school district finance structures and models to ensure that adequate financial resources are allocated equitably for the district.

(14) Applies and assess current technologies for management, business procedures, and scheduling.

I. Personal and professional leadership - The personal and professional leader promotes the success of all students including students with disabilities and students who are culturally and linguistically diverse by maintaining a process of continuous personal and professional development. The administrator:

(1) Keeps current with school district guidelines, policies, and professional literature that enhance the educational opportunities for all learners.

(2) Nurtures and mentors the development of other educators.

(3) Participates in local, state, and other professional learning opportunities.

(4) Promotes leadership through active involvement in professional organizations.

(5) Models life-long learning.

[6/15/98; 6.62.2.10 NMAC - Rn, 6 NMAC 4.2.3.18.10 & A, 08-15-03]

**NEW MEXICO
ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

This is an amendment to 19.15.1 NMAC, Section 35 is new material which is effective 8-15-03.

19.15.1.35

COMPULSORY

POOLING. CHARGE FOR RISK

A. General Rule - Compulsory pooling orders entered by the Division pursuant to NMSA 1978 Section 70-2-17, as amended, may provide for the recovery, out of the share of production allocable to the working interest of any party that elects not to pay its proportionate share of well costs in advance, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion, or working over and recompletion of each unit well for which provision is made in the order. Unless otherwise ordered pursuant to Subsection B of 19.15.1.35 NMAC, the charge for risk shall be 200% of well costs.

(1) "Well costs" shall mean all reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in any formation pooled by the order; and equipping the well for production. If, however, any well was previously completed in another formation or bottom-hole location, or was previously abandoned without completion, well costs as to such well shall mean only the reasonable costs of re-entering, reworking, diverting, deepening, plugging back or testing the well; completion in the pooled formation or formations and; if necessary, reequipping the well for production, unless the Division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances. If a well is completed in two or more formations having diverse ownership or a different risk charge percentage, the order shall provide for allocation of well costs between the formations. As to any interest owner who elects not to pay its share of well costs associated with a specific well in advance, as provided in the applicable order, "well costs" shall include costs of any subsequent operation undertaken to secure or enhance production from any formation pooled by the order prior to the time that the entire amount of such non-consenting owner's share of well costs and applicable risk charge have been recovered from such non-consenting owner's share of production from such well. Such costs shall include expenses for reworking, diverting, deepening, plugging back, testing, completion or recompletion and equipping for production, but not ordinary operating expenses.

(2) Well costs shall also include reasonable costs of drilling, testing, completing, and equipping a substitute well if, in the drilling of a well pursuant to a compulsory pooling order, the operator loses the hole or encounters mechanical difficulties rendering it impracticable to drill to the objective depth, and the substitute well is located within 330 feet of the original well

and drilling thereof is commenced within ten (10) days of the abandonment of the original well.

(3) An applicant for compulsory pooling shall not be required to present technical evidence justifying the risk charge provided in Subsection A of 19.15.1.35 NMAC.

B. Exceptions - Any person responding to a compulsory pooling application who seeks a different risk charge than that provided in subsection A shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with Subsection B of 19.15.14.1208 NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence. The hearing officer shall have discretion to allow a responding party who has not filed a pre-hearing statement, but who appears in person or by attorney at the hearing, to offer evidence in support of a different risk charge than that provided in Subsection A of 19.15.1.35 NMAC, but in such cases a continuance of the hearing shall be allowed, if requested, to enable the applicant to present rebuttal evidence.

[19.15.1.35 NMAC - N, 8-15-03]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

This is an amendment to 20.2.72.219 NMAC, effective 08/27/03:

20.2.72.219 PERMIT REVISIONS:

A. Administrative Permit Revisions:

(1) Administrative permit revision procedures may be used only for those permit revisions that:

(a) Correct typographical errors;

(b) Provide for a minor administrative change at the source, such as a change in ownership or a change in the address or phone number of any person identified in the permit;

(c) Incorporate a change in the permit solely involving the retiring of a source or closing of a facility upon notification of the Department that the permittee has ceased operations of the source or facility;

(d) Incorporate a change in the permit solely involving the deletion from the permit of a source or sources upon notification of the Department that the source or sources have not been and will not be built; or

(e) Incorporate a source or activity at the facility which is exempted under

Subsection B of 20.2.72.202 NMAC;

(2) The permittee shall apply for an administrative permit revision by filing a certified written notification of the proposed revision with the Department which includes all information required by the Department to review the request. The certification shall be made as required under Paragraph 12 of Subsection A of 20.2.72.203 NMAC;

(3) The administrative permit revision is effective upon receipt of the notification by the Department;

(4) Administrative permit revisions shall not be subject to public notification requirements under Subsection B of 20.2.72.203 NMAC and 20.2.72.206 NMAC. The Department shall attach the revision to the permit;

(5) Administrative permit revisions shall not be subject to filing fees or permit fees under 20.2.75 NMAC (Construction Permit Fees);

(6) The Department is not required to reissue the permit to incorporate an administrative permit revision.

B. Technical Permit Revisions:

(1) Technical permit revision procedures may be used only for:

(a) Permit revisions that incorporate a change in the permit solely involving a change to monitoring, record keeping, or reporting requirements by the permittee, provided that the Department determines that such change does not reduce the enforceability of the permit;

(b) Permit revisions that incorporate a change in the permit solely involving additional equipment with a potential emission rate of no more than one (1) pound per hour for any pollutant for which a National or New Mexico Ambient Air Quality Standard has been set or one (1) pound per hour for any VOC;

(c) Permit revisions that incorporate a change in the permit solely involving the placement of permit conditions, including emissions limitations, on sources which existed on August 31, 1972 and which have been regularly operated since that time;

(d) Modifications that replace an emissions unit for which the allowable emissions limits have been established in the permit, provided that the new emissions unit:

(i) Is equivalent to the replaced emissions unit, and serves the same function within the facility and process;

(ii) Has the same or lower capacity and potential emission rates;

(iii) Has the same or higher control efficiency, and stack parameters which are at least as effective in the dispersion of air pollutants;

(iv) Would not result in an increase of the potential emission rate of any other equipment at the facility;

(v) Shall be subject to the same or lower allowable emissions limits under the permit, and to all other permit conditions which have applied to the replaced emissions unit;

(vi) Would not, when operated under applicable permit conditions, cause or contribute to a violation of any National or New Mexico Ambient Air Quality Standard; and

(vii) Would not, as determined by the Department, require additional permit conditions in order to ensure the enforceability of the permit, such as additional record keeping or reporting to show compliance. [☞]

(e) Permit revisions that make adjustments to the emissions limitations based on the result of the initial compliance test(s), provided that:

i. The test is performed in accordance with permit conditions;

(ii) Such adjustment occurs within six (6) months of the compliance test;

(iii) No other such adjustment has occurred since the most recent permit issuance or reissuance;

(iv) Such adjustment does not: alter any other permit condition; trigger additional requirements under any other Part, including 20.2.74 NMAC (Prevention of Significant Deterioration); or result in allowable emissions which could contribute to a violation of any National or New Mexico Ambient Air Quality Standard;

(v) Such request does not increase the permitted allowable emissions of the unit(s) on which the initial compliance test(s) have been performed by more than ten (10) percent; and

(vi) Where the permit fee calculated under 20.2.75 NMAC (Construction Permit Fees) would have been greater if it had been based on the potential emission rate as indicated by the compliance test, the balance of the permit fee is submitted as part of the technical permit revision application;

(f) Permit revisions that incorporate a change in the permit solely involving the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment provided that such addition or substitution shall not result in an increase in the potential emission rate of more than one (1) pound per hour for any pollutant for which a National or New Mexico Ambient Air Quality Standard has been set, or one (1) pound per hour for total VOCs; or

(g) Permit revisions that incorporate terms and conditions in the permit, such

as a cap on hours of operation, limitations on throughput of a specific product or products, or limitations on equipment capacity, for the purpose of reducing the potential emission rate of a unit or source.

(2) A request for a technical permit revision shall be accomplished by filing a certified written notification of the proposed revision with the Department on forms provided by the Department and shall include all information required by the Department to review the request. The certification shall be made as required under Paragraph 12 of Subsection A of 20.2.72.203 NMAC;

(3) The Department shall approve or deny the technical permit revision, or inform the applicant that the request must be submitted as a significant permit revision:

(a) Within thirty (30) days of receipt of the application; or

(b) If in response to significant public interest the Department holds a public meeting regarding the technical permit revision, within sixty (60) days of receipt of the application;

(4) The Department may deny an application for a technical permit revision or require that such application be submitted as a significant permit revision if:

(a) Such revision does not meet the criteria of this section;

(b) In the judgment of the Department the revision would require a decision on a significant or complex issue; or

(c) In the judgment of the Department the permittee has submitted multiple or subsequent applications for technical permit revisions under this Part that segment a larger revision or modification that would not be eligible for a technical permit revision;

(5) The technical permit revision shall become effective upon written approval from the Department;

(6) Technical permit revisions shall not be subject to public notification requirements under Paragraphs 1, 4 and 5 of Subsection B of 20.2.72.203 NMAC, and 20.2.72.206 NMAC. The Department shall attach the technical permit revision to the permit.

C. [RESERVED]

D. Significant Permit Revisions:

(1) A significant permit revision is required for any modification to a source, and for revisions to any term or condition of such permit, including but not limited to emissions limitation, control technology, operating conditions, and monitoring requirements; that:

(a) Do not meet the criteria under the provisions for administrative or techni-

cal permit revisions under Subsections A or B of 20.2.72.219 NMAC; or

(b) Meet the applicability criteria under 20.2.72.402 NMAC regarding toxic air pollutants;

(2) Applications for significant permit revisions shall meet all requirements of this Part for permits and shall be processed in accordance with the public notice, review, and hearing procedures set forth in this Part for such permits.

[11/30/95; Rn, 20 NMAC 2.72.202, 01/07/98; A, 01/07/98; A, 01/01/00; A, 08/25/03] 20.2.72.219 NMAC - Rn, 20 NMAC 2.72.219, 02/02/01; A, 08/27/03]

**NEW MEXICO
DEPARTMENT OF
GAME AND FISH**

This is an emergency amendment to 19.30.9 NMAC, Section 9

19.30.9.9 ESTABLISHING CERTAIN LICENSES, PERMITS, CERTIFICATES AND FEES: Licenses, permit, or certificate

	Fee
A.	Airborne hunting \$10.00
B.	Call pen 15.00
C.	Class A lake 101.00
D.	Additional Class A lake 26.00
E.	Class A park 501.00
F.	Field trial/importation 15.00
G.	Falconry 25.00
H.	Game bird propagation 10.00
I.	Importation [6.00]

(1) protected ungulate:

(a) initial 500.00/source & up to 2 animals (valid 6 months)

(b) for additional animals, same source property/owner 50.00 per animal (if no acquisitions to source herd during 6 month period of validity)

(2) furbearer 40.00/animal

(3) non-game 25.00/animal

(4) other 15.00

(5) fish 6.00

J.	Protected mammal 10.00
K.	Shooting preserve 200.00

L.	Zoo 15.00
M.	Scientific collecting/bird banding 15.00
N.	Bait dealers 21.00
O.	Transportation 0.00
P.	Retention 1.25
Q.	Triploid grass carp 25.00
R.	Commercial fishing 25.00
S.	Certificate of application 6.00
T.	Wildlife conservation stamp 10.00
U.	Duplicate license 6.00
V.	Landowner authorization certificate 15.00
W.	Additional antelope permit tag 25.00
X.	Migratory bird permit 0.00
Y.	Big game depredation damage stamp resident 3.00
Z.	Big game depredation damage stamp non-resident 10.00
AA.	Public land user stamp 5.00
BB.	Commercial collecting permit 50.00

**NEW MEXICO
DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION
OFFICE OF EPIDEMIOLOGY**

7 NMAC 4.3 "Control of Disease and Conditions of Public Health Significance" filed 10/16/96, is hereby repealed and replaced by 7.4.3 NMAC, effective 8/15/03.

**NEW MEXICO
DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION
OFFICE OF EPIDEMIOLOGY**

**TITLE 7 HEALTH
CHAPTER 4 DISEASE CONTROL (EPIDEMIOLOGY)
PART 3 CONTROL OF DIS-**

EASE AND CONDITIONS OF PUBLIC HEALTH SIGNIFICANCE

7.4.3.1 ISSUING AGENCY: New Mexico Department of Health.

[7.4.3.1 NMAC - Rp, 7 NMAC 4.3.1, 8/15/2003]

7.4.3.2 SCOPE: All physicians, laboratories, health care professionals, and other persons having knowledge of disease or illness covered by these regulations.

[7.4.3.2 NMAC - Rp, 7 NMAC 4.3.2, 8/15/2003]

7.4.3.3 STATUTORY AUTHORITY: These provisions set forth herein are promulgated by the secretary of the department of health by authority of Section 9-7-6(E) NMSA 1978 and in conformity with the Public Health Act, particularly Sections 24-1-3, 24-1-7, 24-1-8 and 24-1-15 NMSA 1978. Administration and enforcement of these regulations are the responsibility of the office of epidemiology of the department of health.

[7.4.3.3 NMAC - Rp, 7 NMAC 4.3.3, 8/15/2003]

7.4.3.4 DURATION: Permanent.

[7.4.3.4 NMAC - Rp, 7 NMAC 4.3.4, 8/15/2003]

7.4.3.5 EFFECTIVE DATE: August 15, 2003, unless a later date is cited at the end of a section.

[7.4.3.5 NMAC - Rp, 7 NMAC 4.3.5, 8/15/2003]

7.4.3.6 OBJECTIVE: The essential objective of these regulations are the control of communicable disease and conditions of public health significance through the prompt identification of disease, notification of responsible health authorities, and institution of preventive and ameliorative measures.

[7.4.3.6 NMAC - Rp, 7 NMAC 4.3.6, 8/15/2003]

7.4.3.7 DEFINITIONS: As used in these provisions, the following terms shall have the meaning given to them, except where the context clearly requires otherwise.

A. "Cancer" means all malignant neoplasms and in situ neoplasms and all intracranial neoplasms, regardless of the tissue of origin.

B. "Cancer registry" means the New Mexico tumor registry, located at the university of New Mexico health sciences center.

C. "Carrier" means an

infected person or animal that harbors a specific infectious agent without clinical symptoms and that serves as a potential source of infection for humans.

D. "Communicable disease" means an illness caused by infectious agents or their toxic products which may be transmitted to a susceptible host.

E. "Condition of public health significance" means a condition dangerous to public health or safety.

F. "District or local public health office" means a public health office designated by the public health division of the department of health.

G. "Health care professional" means any licensed doctor of medicine or osteopathy, nurse, physician's assistant, midwife, or other licensed health care provider unless the context clearly requires otherwise.

H. "Isolation, detention or quarantine" means the complete separation or partial restriction of movement and association in such manner and for such period as will prevent the direct and indirect transmission of the infectious agent.

I. "Laboratory" means the scientific laboratory division of the department of health or any other laboratory which performs diagnostic tests on specimens obtained from New Mexico sources or from sources having significant epidemiological contact with New Mexico, for diseases and conditions covered by these regulations.

J. "Notifiable condition" means a communicable disease or condition of public health significance required by statute or these regulations to be reported to the office.

K. "Office" means the office of epidemiology of the department of health, P.O. Box 26110, Santa Fe, NM 87502-6110.

L. "Other person" includes but is not limited to: a laboratory; an official in charge of any health facility; hospital records or administrative personnel; the principal or person in charge of any private or public school, or child care center, teachers and school nurses; and a householder or any other person, in the absence of a health care professional having direct knowledge of communicable disease or condition of public health significance.

M. "Report" means a notification to the office which indicates the disease being reported, the patient's name, date of birth/age, sex, race/ethnicity, address, telephone number, and occupation and the physician's or laboratory's name and telephone number.

N. "Specimen" means any material derived from humans or animals for examination for diagnosis, prevention or

treatment of any communicable disease condition of public health significance.

[7.4.3.7 NMAC - Rp, 7 NMAC 4.3.7, 8/15/2003]

7.4.3.8 NOTIFIABLE CONDITIONS:

A. Declaration of notifiable conditions: The office shall periodically issue an index of notifiable conditions according to reporting category as 7.4.3.13 NMAC. The index shall be reviewed at least annually and revised as necessary. Diseases shown in 7.4.3.13 NMAC are declared notifiable conditions as of the effective date.

B. Official listing: The index of notifiable conditions shall be issued in a quick reference format and shall show that it is the current official list and shall specify its effective date. The office shall routinely supply the current official index to health care professionals and health facilities and to other persons or entities on request.

C. Reporting of notifiable conditions: Reporting will be by means of:

(1) the office's 24-hour telephone number as listed in the "New Mexico epidemiology report," the office's newsletter or by direct telephone contact with the district or local public health office;

(2) the office's toll-free telephone receiving and recording system telephone number listed in the "New Mexico epidemiology report,"

(3) for specified conditions, reporting to the address/phone number published on the printed form of the "list of notifiable conditions;"

(4) written report to the office, or

(5) electronic transmission, which includes facsimile and computer data transfers, in accordance with the procedures in the "New Mexico epidemiology report".

D. Reporting requirements - health care professionals: Every health care professional treating any person having or suspected of having any notifiable condition shall report the same within the time and in the manner set out in the index of diseases.

E. Reporting requirements - laboratories: All laboratories performing diagnostic tests for any notifiable condition shall report all positive findings within the time and in the manner set out in the index. Reports shall include the name of the reporting laboratory, the patient's name, date of birth/age, and address, the date of clinical diagnosis, if known, and the physician or hospital requesting the test.

F. Reporting requirement - other persons: Any other person, including all persons listed in Section 7.12 [now Subsection L of 7.4.3.7 NMAC] of these

regulations, having knowledge of any person having or suspected of having a notifiable condition, shall immediately report the instance to the office.

G. Conditions of public health significance: Any person, including health care professionals and persons listed in Section 7.12 [now Subsection L of 7.4.3.7 NMAC] of these regulations, having knowledge of a notifiable condition shall immediately report the condition to the office.

[7.4.3.8 NMAC - Rp, 7 NMAC 4.3.8, 8/15/2003]

7.4.3.9 CONTROL OF CONDITIONS OF PUBLIC HEALTH SIGNIFICANCE:

A. Responsibility for protection of public health: The department of health may take such measures on the advice of its medical officer or officers as are deemed necessary and proper for the protection of the public health.

B. Coordination among agencies: The department of health shall coordinate the efforts of other concerned or interested federal, state and local agencies and shall cooperate with local health care professionals and health care facilities.

C. Imposition of isolation or quarantine: The department of health may establish or require isolation or quarantine of any animal, person, institution, community or region.

D. Case incidence in schools or health facilities: Where any case of communicable disease occurs or is likely to occur in public, private, or parochial school or in a health care facility, including child care facilities, the department of health may require:

(1) exclusion of infected persons and non-immune persons, whether students, patients, employees or other persons;

(2) closure and discontinuance of operations if there is likelihood of epidemic.

E. Refusal of voluntary treatment, detention or observation: When a person who is actively infectious with a threatening communicable disease and refuses voluntary treatment, detention or observation, the department of health may seek a court order to detain and treat that person pursuant to Section 24-1-15 NMSA 1978 of the Public Health Act.

F. Other public health orders: The department of health may issue orders for the testing of particular populations or groups of persons or animals to identify carriers of disease, including immigrants, travelers, students or preschoolers and others who have been at risk of transmission or exposure. The department of health may require that all tests be done

under the control of the scientific laboratory division or by a laboratory approved for that purpose.

G. Enforcement of public health orders: Any order issued by the department of health under the Public Health Act or these regulations shall be enforceable as provided by law and violation is punishable in accordance with Section 24-1-21 NMSA 1978.

H. Medical records: To carry out its duties to investigate and control disease and conditions of public health significance, the department of health shall have access to all medical records of persons with, or suspected of having, notifiable diseases or conditions of public health significance. The department of health is a "public health authority" as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Privacy Rule. The department of health is authorized to receive protected health information without patient authorization for purposes of public health surveillance, investigation and interventions and as otherwise required by law.

I. Confidentiality of reports: All notifiable condition reports are confidential. Disclosure to any person of report information that identifies, or could lead to the identification of, an individual, except for disclosure for the purpose of prevention or control is prohibited unless disclosure required by law.

J. Research use of notifiable condition data: Researchers authorized by the office, and who certify to the satisfaction of the office that confidentiality of data will be maintained in accordance with applicable state and federal confidentiality requirements, may conduct studies utilizing notifiable condition data, including studies of the sources and causes of conditions of public health significance, evaluations of the cost, quality, efficacy and appropriateness of screening, diagnostic, therapeutic, rehabilitative and preventive services and programs relating to conditions of public health significance and other clinical or epidemiologic research.

[7.4.3.9 NMAC - Rp, 7 NMAC 4.3.9, 8/15/2003]

7.4.3.10 CANCER REPORTING:

A. Responsible agency: The New Mexico tumor registry is the agency responsible for operating a statewide cancer registry.

B. Reporting requirements - facilities: Hospitals and other facilities providing screening, diagnostic or therapeutic services to patients with respect to cancer shall report cancer cases to the cancer registry.

C. Reporting requirements - health care professionals: Health care professionals diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in this state and reported by those facilities shall report cancer cases to the cancer registry.

D. Medical records: The cancer registry is authorized to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals or agencies providing such services to patients which would identify cases of cancer or would establish the characteristics of the cancer, treatment of the cancer or medical status of any identified patient.

E. Reporting format: Cancer case data shall be reported to the cancer registry in such a format, with such data elements and in accordance with such standards of quality, timeliness and completeness as may be established by the cancer registry.

F. Confidentiality: All cancer case data reported to the statewide cancer registry is confidential. Disclosure to any person of information reported to the cancer registry that identifies, or could lead to the identification of an individual cancer patient, except for disclosure to other state cancer registries, local and state health officers, or cancer researchers for the purposes of cancer prevention, control or research, is prohibited.

G. Research use of registry data: Researchers authorized by the cancer registry or the department may conduct studies, utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy and appropriateness of screening, diagnostic, therapeutic, rehabilitative and preventive services and programs relating to cancer and any other clinical, epidemiologic or other cancer research.

[7.4.3.10 NMAC - Rp, 7 NMAC 4.3.10, 8/15/2003]

7.4.3.11 OCCUPATIONAL ILLNESS AND INJURY REPORTING:

A. Responsible agency: The New Mexico occupational health registry is the agency responsible for operating a statewide registry of occupationally-related illnesses and injuries.

B. Reporting requirements - facilities: Hospitals and other facilities providing screening, diagnostic or therapeutic services to patients with occupationally-related illnesses and injuries shall report such cases to the New Mexico occupational health registry.

C. Reporting requirements - health care professionals: Health care professionals diagnosing or providing treatment for patients with occupationally-related illnesses and injuries shall report such cases to the New Mexico occupational health registry.

D. Medical records: The New Mexico occupational health registry is authorized to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals or agencies providing such services to patients which would identify or establish the characteristics or outcome of occupationally-related illnesses and injuries.

E. Reporting format: Case data on occupationally-related illnesses and injuries shall be reported to the New Mexico occupational health registry in such a format, with such data elements and in accordance with such standards of quality, timeliness and completeness as may be established by the New Mexico occupational health registry.

F. Confidentiality: All case data on occupationally-related illnesses and injuries reported to the statewide New Mexico occupational health registry is confidential. Disclosure to any person of information reported to the New Mexico occupational health registry that identifies, or could lead to the identification of an individual patient, except for disclosure to other state occupational health registries, local and state health officers, or researchers for the purposes of prevention, control or research, is prohibited.

G. Research use of registry data: Researchers authorized by the New Mexico occupational health registry or the department may conduct studies, utilizing statewide New Mexico occupational health registry data, including studies of the sources and causes of occupationally-related illnesses and injuries, evaluations of the cost, quality, efficacy and appropriateness of screening, diagnostic, therapeutic, rehabilitative and preventive services and programs relating to occupationally-related illnesses and injuries and any other clinical, epidemiologic or other research.

[7.4.3.11 NMAC - N, 8/15/2003]

7.4.3.12 REPEALER: These requirements repeal and replace all previous regulations, particularly regulations governing the control of communicable disease of November 11, 1952, regulations governing the reporting of notifiable disease of June 29, 1974 and regulations governing the control of disease and conditions of public health significance of 1980.

[7.4.3.12 NMAC - Rp, 7 NMAC 4.3.11, 8/15/2003]

7.4.3.13 NOTIFIABLE DISEASES/CONDITIONS IN NEW MEXICO:

A. All reports must include:

- (1) the disease or problem being reported;
- (2) patient's name, date of birth/age, gender, race/ethnicity, address, telephone number, and occupation;
- (3) physician's (or laboratory's) name and telephone number.
- (4) laboratory or clinical samples for conditions marked with [*] are requested to be sent to the scientific laboratory division.

B. Emergency reporting of communicable diseases: The following diseases, confirmed or suspected, require immediate reporting by telephone to the office of epidemiology at (505) 827-0006. If no answer, call (505) 984-7044.

- (1) Infectious diseases:
 - (a) anthrax*;
 - (b) botulism (any type) *;
 - (c) cholera;
 - (d) diphtheria*;
 - (e) haemophilus influenzae invasive infections*;
 - (f) measles;
 - (g) meningococcal infections, invasive*;
 - (h) pertussis*;
 - (i) plague*;
 - (j) poliomyelitis, paralytic;
 - (k) Q fever;
 - (l) rabies;
 - (m) rubella (incl congenital);
 - (n) severe acute respiratory syndrome (SARS)*;
 - (o) smallpox*;
 - (p) tularemia*;
 - (q) typhoid fever*;
 - (r) yellow fever.
- (2) Other conditions:
 - (a) suspected foodborne illness in two or more unrelated persons*;
 - (b) suspected waterborne illness in two or more unrelated persons*;
 - (c) illnesses suspected to be caused by the intentional or accidental release of biologic or chemical agents*;
 - (d) acute illnesses of any type involving large numbers of persons in the same geographic area;
 - (e) severe smallpox vaccine reaction (includes accidental implantation, eczema vaccinatum, generalized vaccinia, progressive vaccinia);
 - (f) other conditions of public health significance.
- (3) Infectious diseases in animals:
 - (a) anthrax;
 - (b) plague;
 - (c) rabies;
 - (d) tularemia.

C. Routine reporting:

- (1) Infectious diseases (report case within 24 hours to the office of epidemiology at 1-800-432-4404 or 505-827-0006; or contact the local health office).
 - (a) brucellosis;
 - (b) campylobacter infections;
 - (c) coccidioidomycosis;
 - (d) Colorado tick fever;
 - (e) cryptosporidiosis;
 - (f) cysticercosis;
 - (g) cyclosporiasis;
 - (h) E. coli 0157:H7 infections*;
 - (i) E. coli, shiga-toxin producing (STEC) infections*;
 - (j) encephalitis, other;
 - (k) giardiasis;
 - (l) Group A streptococcal invasive infections*;
 - (m) Group B streptococcal invasive infections*;
 - (n) hantavirus pulmonary syndrome;
 - (o) hemolytic uremic syndrome, postdiarrheal;
 - (p) hepatitis A, acute;
 - (q) hepatitis B, acute or chronic;
 - (r) hepatitis C, acute or chronic;
 - (s) hepatitis E, acute;
 - (t) influenza, laboratory confirmed only;
 - (u) legionnaires' disease;
 - (v) leprosy;
 - (w) leptospirosis;
 - (x) listeriosis*;
 - (y) lyme disease;
 - (z) malaria;
 - (aa) mumps;
 - (bb) psittacosis;
 - (cc) relapsing fever;
 - (dd) Rocky Mountain spotted fever;
 - (ee) salmonellosis*;
 - (ff) shigellosis*;
 - (gg) St. Louis encephalitis infections;
 - (hh) streptococcus pneumoniae, invasive infections*;
 - (ii) tetanus;
 - (jj) trichinosis;
 - (kk) toxic shock syndrome;
 - (ll) varicella;
 - (mm) vibrio infections*;
 - (nn) west nile virus infections;
 - (oo) western equine encephalitis infections;
 - (pp) yersinia infections*.
- (2) Infectious diseases in animals (report case within 24 hours to the office of epidemiology at 1-800-432-4404 or 505-827-0006; or contact the local health office).
 - (a) arboviral, other;
 - (b) brucellosis;
 - (c) psittacosis;
 - (d) west nile virus infections.

(3) Tuberculosis* or other nontuberculous mycobacterial infections. Report suspect or confirmed cases within 24 hours to tuberculosis program, NM Department of Health, P. O. Box 26110, Santa Fe, NM 87502-6110; or call 505-827-2474 or 505-827-2473.

(4) Sexually transmitted diseases. Report to infectious disease bureau – STD program, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110, fax 505-476-3638; or call 505-476-3636.

(a) chancroid;

(b) chlamydia trachomatis infections;

(c) gonorrhea;

(d) syphilis.

(5) HIV (human immunodeficiency virus) and AIDS (acquired immunodeficiency syndrome). Report to office of epidemiology, HIV/AIDS epidemiology unit, 625 Silver SW suite 412, Albuquerque, NM 87102, fax 505-841-5985; or call 505-841-5893 or 1-888-878-8992.

(a) HIV: (1) confirmed positive HIV antibody test (screening test plus confirmatory test), or (2) any test for HIV RNA or HIV cDNA ('viral load'), or (3) any test to detect HIV proteins, or (4) any positive HIV culture, or (5) any other test or condition indicative of HIV infection as defined by the United States centers for disease control and prevention.

(b) AIDS: Opportunistic infections, cancers, CD4 lymphocyte count (<200 per uL or <14 percent of total lymphocytes), or any condition indicative of AIDS.

(6) Occupational illness and injury. Report to New Mexico occupational health registry, MSC 105550, 1 university of New Mexico, Albuquerque, NM 87131-0001.

(a) asbestosis;

(b) chronic beryllium lung disease;

(c) coal worker's pneumoconiosis;

(d) heavy metal poisoning;

(e) hypersensitivity pneumonitis;

(f) mesothelioma;

(g) noise induced hearing loss;

(h) occupational asthma;

(g) silicosis;

(h) other illnesses related to occupational exposure.

(7) Health conditions related to environmental exposures and certain injuries. Report to office of epidemiology, P.O. Box 26110, Santa Fe, NM 87502-6110; or call 1-800-432-4404 or 505-827-0006 .

(a) drug overdose;

(b) firearm injuries;

(c) lead (all blood levels);

(d) pesticide-poisoning;

(e) spinal cord injuries;

(f) traumatic brain injuries;
 (g) other environmentally-induced health conditions.

(8) Adverse vaccine reactions. Report to vaccine adverse events reporting system, <http://www.vaers.org>. Send copy of report to immunization program vaccine manager, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110; fax 505-827-1741.

(9) Cancer. Report to New Mexico tumor registry, university of New Mexico school of medicine, Albuquerque, NM 87131. Report all malignant and in situ neoplasms and all intracranial neoplasms, regardless of the tissue of origin.

(10) Birth defects.

(a) Report to birth defects registry, children's medical services, 2040 S. Pacheco, Santa Fe, NM 87505; or call 505-476-8854.

(b) All birth defects diagnosed by age 14 years, including:

(i) defects diagnosed during pregnancy;

(ii) defects diagnosed on fetal deaths.

[7.4.3.13 NMAC - Rp, 7 NMAC 4.3.12, 8/15/2003]

HISTORY OF 7.4.3 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:

HSSD 72-3, Regulations Governing The Reporting Of Notifiable Diseases, filed 10/4/72.

HSSD 74-16, Regulations Governing The Reporting Of Notifiable Diseases, filed 7/30/74.

HED-79-4 (HSD), Regulations Governing The Control Of Disease And Conditions Of Public Health Significance, filed 12/20/79.

History of Repealed Material: 7 NMAC 4.3, Control of Disease and Conditions of Public Health Significance, filed 10/31/96, repealed 8/15/2003.

Other History: HED-79-4 (HSD), Regulations Governing The Control Of Disease And Conditions Of Public Health Significance, filed 12/20/79 was renumbered, reformatted, and amended into the first version of the New Mexico Administrative code as 7 NMAC 4.3, Control of Disease and Conditions of Public Health Significance, effective 10/31/96.

7 NMAC 4.3, Control of Disease and Conditions of Public Health Significance, filed 10/16/96 was replaced by the second version of the New Mexico Administrative code as 7.4.3 NMAC, Control of Disease and Conditions of Public Health Significance, effective 8/15/2003.

NEW MEXICO ORGANIC COMMODITY COMMISSION

This is an amendment to 21.15.1 NMAC, Sections 9, 10, 11, and 12. Organic Agriculture Generally.

21.15.1.9 STATUTORY REQUIREMENTS COMMON TO ALL CATEGORIES: The following practices are required of all participants in the NM Organic Certification Program.

A. All certified production, processing and handling operations must employ practices consistent with the purposes of the New Mexico Organic Commodity Act and the Organic Foods Production Act of 1990 contained at Title XXI, 1990 Federal Farm Bill. When in doubt consult the Acts themselves, this handbook, or contact the commission. [Authority: NMSA 1978 Section 76-22-15(D) (1990 Cum.Supp.); Organic Foods Production Act of 1990, Section 2108(b)(2)(B), Section 2113.]

B. All certified production, processing and handling operations "... shall keep records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission." [Authority: NMSA 1978 Section 76-22-20 (1990 Cum.Supp.); Organic Foods Production Act of 1990, Section 2112(d)].

C. All certified production, processing and handling operations must annually certify to the commission that such operation has not produced, processed or handled any food article sold or labeled as organically produced or processed except in accordance with all applicable laws. [Authority: NMSA Section 76-22-14(C) (1990 Cum.Supp.); Organic Foods Production Act of 1990, Section 2107(a)(4)].

D. All certified production, processing and handling operations will be annually inspected. The products of such operations may undergo periodic residue testing at the discretion of the commission. All crops-in-the-field may be subject to pre-harvest tissue sampling. [Authority: NMSA 1978 Section 76-22-13(B)(4),(5),(6) (1990 Cum.Supp.); Organic Foods Production Act of 1990, Section 2107(a)(1)(B)(4),(5), Section 2112(a),(b)].

E. certified production, processing and handling operations shall maintain appropriate care of physical facilities and machinery and adopt management practices, as demonstrated through records,

to prevent the mixing of organic and non-organic products and to prevent penetration of a certified area by prohibited or restricted substances. [Authority: Organic Foods Production Act of 1990, Section 2107(b)(1)(c)].

F. certified production, processing and handling operations shall remit an annual application fee to the commission for their certification. In addition, they will be assessed annually based on one half of one percent of their gross sales, unless gross sales are under \$2000, in which case they are exempt from paying assessments. Certified entities may also be assessed a supplemental fee. [Authority: NMSA 1978 Sections 76-22-14(A),16,17 (1990 Cum.Supp.); Organic Foods Production Act of 1990, Section 2107(a)(10)].

G. applicants must establish an Organic Production Plan. [Authority: NMSA 1978 Section 76-22-13 (1990 Cum.Supp.); Organic Foods Production Act of 1990, Section 2107(a)(2)].

H. All applicants for certification shall be permitted to appeal an administrative determination denying a requested certification. All certified operations may appeal any adverse administrative determination by the commission. [Authority: NMSA 1978 Section 76-22-13(B)(3) (1990 Cum.Supp.); Organic Foods Production Act of 1990, Section 2107(a)(1)(B)(3)].

[21.15.1.9 NMAC - Rp 21 NMAC 15.9.1, 8/30/2001; A, 8/15/2003]

21.15.1.10 FARM CROP PRODUCTION CERTIFICATION STANDARDS

A. These standards must be complied with for a farm or part of a farm to be certified for organic production by the commission. These standards are in addition to those contained in 21.15.1 NMAC, Section 9, "Statutory Requirements Common to All Certification Categories."

B. Admissibility

(I) Farms, fields and split operations: Certification may be on a whole farm or on a field by field basis. The commission encourages farmers to certify their entire operation. In certain situations, this will not be feasible. NMOCC allows split organic/conventional operations, if and only if the operator can demonstrate that they possess the physical and managerial ability to prevent contamination and/or commingling. Equipment used in conventional fields must be cleaned prior to use in organic fields. The commission strongly suggests that the same crops not be grown in the organic and conventional fields; if this is done, an additional inspection may be required to verify

adequate separation and accounting, and the cost of this additional inspection will be borne by the client.

(2) Three-year rule: A farm or field may be certified for organic production only when it can be demonstrated that an application of prohibited materials or the use of prohibited production practices has not occurred during the year of production or at any time during the three years (36 months) immediately preceding the harvest. An exception may be granted where:

(a) the application of the prohibited substance is caused by drift or involuntary mechanism;

(b) the organic producer demonstrates, by clear and convincing evidence, that no intentional application has occurred; and,

(c) the organic producer demonstrates, by evidence, that the background residue in the soil, from the known contaminant, does not exceed 5 percent of applicable federal tolerance levels.

(d) See Transitional Status below (Paragraph 4 of Subsection B of 21.15.1.10 NMAC) for additional exception.

(3) Status Rotation Prohibited: A farm or field, once granted certified status, may not be rotated into conventional production. If prohibited materials or practices are used, see Paragraph 2 of Subsection B of 21.15.1.10 NMAC.

(4) Transitional Status: A field or whole farm may be granted the status of Transitional, provided that all production standards and requirements are met, as described in this handbook and in the national standards, with the sole exception that: the land has been free from prohibited material input for a period of at least one year. This status may be used for two years for any given field or farm. At the end of this period, the field or farm must request Certified Organic status to continue in the program. Producers using the Transitional label may not use the word organic to describe their operation or products.

(5) Buffer Zone: There must exist adequate physical barriers or a 25 foot (8 meter) minimum distance between organic crops and conventionally grown crops to maintain the organic integrity of certified fields. The commission reserves the right to require additional buffering where unusual circumstances warrant it.

C. The Organic Farm Production Plan

(1) Purpose: The purpose of the Organic Farm Production Plan is to provide the commission and the farmer with an agreed upon document which addresses at least the following issues:

(a) a description of farm practices and procedures to be performed in the management of the farm, including known or

estimated frequencies;

(b) a list of all substances to be used as inputs, including information on the input source, composition and usage locations;

(c) a description of the record keeping system to be used;

(d) a description of practices and procedures used to prevent contamination and/or commingling;

(e) additional information as deemed necessary by the commission.

(2) The statutory requirement that all applications made to the commission must contain an Organic Plan is satisfied by completely filling out the application forms and noting any appropriate additional information.

D. Testing - Soil Nutrient Testing

(1) During the initial on-site inspection of first time applicants, and any time thereafter, the inspector ~~[shall]~~may collect a representative sample of soil from an appropriate cropping area, with written consent of a responsible party, which shall be noted in the inspection report. This sample shall be returned to the commission along with the inspection report. The commission shall have the sample analyzed for standard nutrient, structural and chemical characteristics, at a commercial analysis laboratory. ~~[In some cases, the applicant may have had soil analysis done prior to the inspection; in such cases, the inspector will determine the equivalency of the analysis done to determine whether it satisfies this requirement. If equivalency is found, the inspector will not take a sample for analysis.]~~

(2) ~~[The cost of the analysis will be billed to the client. Failure to pay this bill prior to the issuance of a certification will result in the commission withholding the certification pending payment.]~~ If the applicant desires to use an input material for which the NOP requires demonstration of need, the responsibility for soil and/or tissue sample collection and testing/analysis to demonstrate the need, falls on the applicant.

~~[(3) Every subsequent third year, a new soil sample will be taken by the inspector and submitted as above. This sample will be analyzed and billed as above. Failure to pay this bill will result in the commission revoking the certification.]~~

~~[(4)](3)~~ Tissue Testing: For certain crops (i.e. fruit and nut trees), a tissue test may be a more appropriate indicator of soil nutrient status and availability. In such a case, a tissue sample will be taken by the inspector in an appropriate manner, and with written consent of a responsible party, and will be expeditiously submitted to the agency for analysis. ~~[Subsequent third year testing shall also be done with tissue sam-~~

~~ples].~~

~~[(5)](4)~~ Residue Testing and GMO Testing: In accordance with state and federal laws and regulations, the commission will develop and institute ~~[and]a~~ residue sampling procedure. In addition to chemical residues, the presence of materials produced by excluded methods (genetically modified organisms) may be investigated.

E. Harvest, Post-harvest Handling and Transportation

(1) All harvesting must be done in accordance with these standards. Equipment also used to harvest conventional crops must be thoroughly cleaned prior to the organic harvest, and the cleaning must be documented in the farm records.

(2) All post-harvest handling must be in accordance with these standards. Product must be packed in containers that do not compromise the organic status. Re-use of corrugated carton boxes previously used to contain conventional agricultural products is prohibited. Product may be packed in re-used organic product corrugated carton boxes, in new boxes, in plastic lugs and totes (provided they are clean and have not contained any prohibited materials).

(3) Transportation to market in any vehicle is allowed; however, due to the likelihood that the vehicle has hauled many different materials, some of which are likely prohibited for contact with organic product, vehicles must be thoroughly inspected and cleaned if necessary prior to transportation of organic products. The commission will ask for documentation that the above policy was followed. Producers are advised to document cleaning specifications and frequencies in their farm records.

F. Production Methods and Materials: Wild Plants: An Organic Plan for the harvesting of wild crops shall:

(1) designate the area from which the wild crop will be gathered or harvested;

(2) include a three year history of the management of the area showing that no prohibited substances have been applied to the designated area for a period of three years immediately preceding the harvest of the wild crop;

(3) include a plan for the harvesting or gathering of the wild crops assuring that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop;

(4) include provisions that the producer will apply no prohibited substances.

G. Production Methods and Materials: Greenhouse

(1) Existing standards apply as expressed elsewhere in the commission's

regulations;

(2) Nitrate testing is to be conducted on growing plants on a case by case basis;

(3) Air and water quality must meet all applicable federal and state standards.

(4) Any nonorganic production must not occur in the same production unit as the organic production.

H. Production Methods and Materials: Sprouts. Admissibility is the same as for other crops. Basic criteria include:

(1) Seeds must be certified organic origin;

(2) Seeds may be treated with the following methods/materials to prevent food-borne pathogens:

(a) Heat;

(b) Hydrogen peroxide, periacetic acid;

(c) Ozone products and processes;

(d) Any other substances that are approved and appear on the National Organic Program Material Lists.

(3) Water must meet all certification standards (i.e. potable water, as defined by the criteria of the Safe Drinking Water Act). Seeds or growing sprouts shall not be rinsed or immersed in water with chemicals capable of releasing chlorine in solution in excess of federal water quality guidelines;

(4) Growing media must be free of contaminants and prohibited materials, whether soil or soil-less media is used;

(5) Any fertilizers, soil amendments, sanitizers and disinfectants not on the National List are prohibited and shall not be applied to the water or growing media. Soluble fertilizers shall not be used unless determined by a competent reviewer to meet all federal organic production requirements;

(6) Pest management must primarily be preventative;

(7) Light source may be artificial or natural.

I. Production Methods and Materials: Mushrooms

(1) Organic mushrooms may be grown indoors or outdoors.

(2) Mushrooms grown indoors: Mushrooms grown indoors shall comply with all provisions of these standards, except such operations shall be allowed to plant organic mushrooms after demonstrating to the commission's satisfaction that:

(a) The operation shall be managed organically throughout the entire growing period of the fungus to be sold as organic;

(b) No prohibited substances will compromise the integrity of the organic mushroom production system;

(c) Organic mushroom houses shall be operated and labeled as distinct units from any conventional mushroom houses on the same site;

(d) All sources of substrate and spawn shall be documented in the Organic Plan;

(e) Un-composted substrate from agricultural sources, including grain, straw, etc., shall be organically produced. Sawdust of wood products used for substrate must be obtained from sources that have not been treated with materials prohibited for use in organic production.

(f) The commission may require testing of substrate for residues of prohibited materials, with the cost of such testing borne by the producer.

(g) Organically produced spawn must be used when commercially available. If documented as unavailable, non-organic spawn may be used.

(h) The mushroom strains and any substrates must not be produced by excluded methods.

(i) Sanitizers and disinfectants not found on the National List of allowed substances shall not be applied to mushroom crops or growing substrates. Chlorine (bleach) may be used for sanitizing equipment and facilities, but may not be applied to crops or substrate in concentrations above maximum recommended disinfection limit of the Safe Water Drinking Act.

(3) Mushrooms grown outdoors: Mushrooms grown outdoors shall comply with all provisions of these standards, except such operations shall be allowed to plant organic mushrooms after demonstrating to the Commission's satisfaction that:

(a) The operations shall be managed organically throughout the entire growing period of the fungus to be sold as organic.

(b) All sources of trees and spawn shall be documented.

(c) To be used as substrate for organic mushrooms, logs shall be organically produced or be sourced from sites documented to have not been treated with prohibited substances for a minimum of three years prior to harvest of the logs for mushroom production.

(d) Organically produced spawn must be used when commercially available. If organically produced spawn is documented to be unavailable, nonorganic spawn may be used.

(e) The mushroom strains and log substrates must not be produced through excluded methods.

J. Records and Record Keeping: In addition to information submitted to the certification agent in the Organic Plan, producers shall keep the following records, as applicable:

(1) Records, including receipts, of all applied substances, including fertilizers, soil amendments, pest and disease control substances, growth regulators and weed control agents.

(a) Records should give the location, date, application rates, brand name, manufacturer's name, and name and address of applicator.

(b) All materials listed with conditions for use must be noted with a description of use, according to the annotations in the National List and in these standards. Practices that are listed as regulated or restricted must be described.

(2) Records of all purchased seeds, including cover crop seeds, with documentation of attempts to source organic or untreated seeds, as applicable.

(3) Records of all purchased seedlings and/or planting stock, including documentation of attempts to source organic stock, as applicable.

(4) Crop harvest records per field or production unit, storage records, names of buyers, and gross organic sales for the certified operation. Wholesale sales must have invoices with lot numbers keyed to field and/or bin numbers, or other audit trail system as approved by the commission.

(5) Records that document the management of buffers, including but not limited to: their location; whether crops are grown in the buffer; buffer crop harvest, storage and sales; actions taken to prevent commingling non-certified buffer crops with organic crops.

(6) Copies of notices sent to neighbors, highway officials, etc. regarding the operation's organic status.

(7) Documentation or evidence that packages, storage containers and transport vehicles used for organic crops are suitable for organic packaging and/or organic product transport. Additional records as required by the Commission, as in: ~~Neighboring Land Use Statements;~~ Custom Operator Affidavits, etc.

(8) Producers shall retain copies of all applicable records for five years from the date when the record was generated, in compliance with the National Organic Program standards.

K. National Materials List: The United States Department of Agriculture's National Organic Program is the final authority for compiling the National List of Allowed and Prohibited Substances. This list is based on the following criteria: all natural materials are allowed unless specifically listed as prohibited; all synthetic materials are prohibited unless specifically listed as allowed. The commission adopts the National List as it is compiled on the latest effective date of this Subsection.

L. Synthetic substances allowed for use in organic crop production:

(1) As algacide, disinfectants and sanitizers, including irrigation system cleaning systems:

(a) Alcohols: Ethanol, Isopropanol.

(b) Chlorine materials, except that residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act: Calcium hypochlorite, Chlorine dioxide; Sodium hypochlorite.

(c) Soap-based algacide/demisters.

(2) As herbicides, weed barriers, as applicable:

(a) Soap-based herbicides – for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops;

(b) Mulches: Newspaper or other recycled paper, without glossy or colored inks; Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC)).

(3) As compost feedstocks: Newspaper or other recycled paper, without glossy or colored inks.

(4) As animal repellants: Ammonium soaps – large animal repellent only, no contact allowed with soil or edible portion of crop.

(5) As insecticides:

(a) Ammonium carbonate – for use as bait in insect traps only, no direct contact with soil or crop;

(b) Boric acid – structural pest control, no direct contact with organic foods or crops;

(c) Elemental sulfur;

(d) Lime sulfur – including calcium polysulfide;

(e) Oils, horticultural – narrow range oils as dormant, suffocating and summer oils;

(f) Soaps, insecticidal;

(g) Sticky traps/barriers.

(6) As insect attractants: pheromones.

(7) As rodenticides:

(a) Sulfur dioxide – underground rodent control only (smoke bombs);

(b) Vitamin D3.

(8) As slug or snail bait: none.

(9) As plant disease control:

(a) Coppers, fixed – copper hydroxide, copper oxide, copper oxychloride, includes products exempted from EPA tolerance; provided that copper based materials must be used in a manner that minimizes accumulation of copper in the soil and shall not be used as herbicides;

(b) Copper sulfate – substances must be used in a manner that minimizes accumulation of copper in the soil;

(c) Hydrated lime;

(d) Lime sulfur;

(e) Oils, horticultural – narrow range oils as dormant, suffocating and summer oils;

(f) Potassium bicarbonate;

(g) Elemental sulfur;

(h) Streptomycin, for fire blight control in apples and pears only;

(i) Tetracycline (oxytetracycline calcium complex) for fire blight control only;

(10) As plant or soil amendments:

(a) Aquatic plant extracts (other than hydrolyzed) – extraction process limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction;

(b) Elemental sulfur;

(c) Humic acids – naturally occurring deposits, water and alkali extracts only;

(d) Lignin sulfonate – chelating agent, dust suppressant, floatation agent;

(e) Magnesium sulfate – allowed with a documented soil deficiency;

(f) Micronutrients – not to be used as a defoliant, herbicide or desiccant; those made from nitrates or chlorides are not allowed; soil deficiency must be documented by testing;

(g) Soluble boron products;

(h) Sulfates, carbonates, oxides or silicates of zinc, copper, iron, manganese, molybdenum, selenium and cobalt.

(i) Liquid fish products – can be pH adjusted with sulfuric, citric or phosphoric acid; the amount of acid used shall not exceed the minimum needed to lower the pH to 3.5;

(j) Vitamins B1, C and E.

(11) As plant growth regulators: ethylene, for regulation of pineapple flowering.

(12) As floating agents in postharvest handling:

(a) Lignin sulfonate;

(b) Sodium silicate – for tree fruit and fiber processing.

(13) As synthetic inert ingredients as classified by the Environmental Protection Agency, for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances: EPA List 4 – Inerts of Minimal Concern.

M. Nonsynthetic substances prohibited for use in organic crop production:

(1) Ash from manure burning;

(2) Arsenic;

(3) Lead salts;

(4) Sodium fluoaluminate (mined);

(5) Strychnine;

(6) Tobacco dust (nicotine sulfate);

(7) Potassium chloride – unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil;

(8) Sodium nitrate.

N. Synthetic substances allowed for use in organic livestock production:

(1) As disinfectants, sanitizers and medical treatments as applicable:

(a) Alcohols: Ethanol, disinfectant and sanitizer only, prohibited as feed additive; Isopropanol, disinfectant only.

(b) Aspirin – approved for health care use to reduce inflammation;

(c) Chlorine materials – disinfecting and sanitizing facilities and equipment; residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act: Calcium hypochlorite; Chlorine dioxide; Sodium hypochlorite.

(d) Chlorohexidine – allowed for surgical procedures conducted by a veterinarian; allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness;

(e) Electrolytes – without antibiotics;

(f) Glucose;

(g) Glycerin – allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils;

(h) Iodine;

(i) Hydrogen peroxide;

(j) Magnesium sulfate;

(k) Oxytocin – use in postparturition therapeutic applications;

(l) Parasiticides: Ivermectin – prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder livestock when organic system plan-approved preventative management does not prevent infestation; milk or milk products from a treated animal cannot be labeled as organic for 90 days following treatment; in breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period of breeding stock;

(m) Phosphoric acid – allowed as an equipment cleaner, provided that no direct contact with organically managed livestock or land occurs;

(n) Biologics – vaccines.

(2) As topical treatment, external parasiticide or local anesthetic as applicable:

(a) Iodine;

(b) Lidocaine – as a local anesthetic; use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after

administering to dairy animals;

(e) Lime, hydrated (bordeaux mixes) – not permitted to cauterize physical alterations or deodorize animal wastes;

(d) Mineral oil – for topical use and as a lubricant;

(e) Procaine – as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals;

(f) Copper sulfate.

(3) As feed supplements: milk replacers – without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals;

(4) As feed additives:

(a) Trace minerals, used for enrichment or fortification when FDA approved, including: Copper sulfate; Magnesium sulfate.

(b) Vitamins, used for enrichment or fortification when FDA approved.

(5) As synthetic inert ingredients as classified by the Environmental Protection Agency, for use with nonsynthetic substances or a synthetic substance listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances: EPA List 4 – Inerts of Minimal Concern.

O. Nonsynthetic substances prohibited for use in organic livestock production: Strychnine.

P. Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food groups)”:

(1) Nonsynthetics allowed:

(a) Acids: Alginic; Citric – produced by microbial fermentation of carbohydrate substances; Lactic;

(b) Bentonite;

(c) Calcium carbonate;

(d) Calcium chloride;

(e) Colors, nonsynthetic sources only;

(f) Dairy cultures;

(g) Diatomaceous earth – food filtering aid only;

(h) Enzymes – must be derived from edible, nontoxic plants, nonpathogenic fungi or nonpathogenic bacteria;

(i) Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservatives;

(j) Kaolin;

(k) Magnesium sulfate, nonsynthetic sources only;

(l) Nitrogen – oil-free grades;

(m) Oxygen – oil-free grades;

(n) Perlite – for use only as a filter aid in food processing;

(o) Potassium chloride;

(p) Potassium iodide;

(q) Sodium bicarbonate;

(r) Sodium carbonate;

(s) Waxes – nonsynthetic: Carnauba wax; Wood resin.

(t) Yeast – nonsynthetic; grown on petrochemical substrate and sulfite waste liquor is prohibited: Autolysate; Bakers; Brewers; Nutritional; Smoked – nonsynthetic smoke flavoring process must be documented.

(2) Synthetics allowed:

(a) Alginates;

(b) Ammonium bicarbonate – for use only as a leavening agent;

(c) Ammonium carbonate – for use only as a leavening agent;

(d) Ascorbic acid;

(e) Calcium citrate;

(f) Calcium hydroxide;

(g) Calcium phosphates (monobasic, dibasic and tribasic);

(h) Carbon dioxide;

(i) Chlorine materials – disinfectant and sanitizing food contact surfaces, except that residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act: Calcium hypochlorite; Chlorine dioxide; Sodium hypochlorite.

(j) Ethylene – allowed for postharvest ripening of tropical fruit;

(k) Ferrous sulfate – for iron enrichment or fortification of foods when required by regulation or recommended (independent organization);

(l) Glycerides (mono and di) – for use only in drum drying of food;

(m) Glycerin – produced by hydrolysis of fats and oils;

(n) Hydrogen peroxide;

(o) Lecithin – bleached;

(p) Magnesium carbonate – for use only in agricultural products labeled “made with organic (specified ingredients or food groups)”, prohibited in agricultural products labeled “organic”;

(q) Magnesium chloride – derived from sea water;

(r) Magnesium stearate – for use only in agricultural products labeled “made with organic (specified ingredients or food groups)”, prohibited in agricultural products labeled “organic”;

(s) Nutrient vitamins and minerals, in accordance with federal guidelines in 21 CFR 104.20, Nutritional Quality Guidelines For Foods;

(t) Ozone;

(u) Pectin (low-methoxy);

(v) Phosphoric acid – cleaning of food-contact surfaces and equipment only;

(w) Potassium acid tartrate;

(x) Potassium tartrate made from tartaric acid;

(y) Potassium carbonate;

(z) Potassium citrate;

(aa) Potassium hydroxide – prohibited for use in lye peeling of fruits and vegetables;

(bb) Potassium iodide – for use only in agricultural products labeled “made with organic (specified ingredients or food groups)”, prohibited in agricultural products labeled “organic”;

(cc) Potassium phosphate – for use only in agricultural products labeled “made with organic (specified ingredients or food groups)”, prohibited in agricultural products labeled “organic”;

(dd) Silicon dioxide;

(ee) Sodium citrate;

(ff) Sodium hydroxide – prohibited for use in lye peeling of fruits and vegetables;

(gg) Sodium phosphates – for use only in dairy foods;

(hh) Sulfur dioxide – for use only in wine labeled “made with organic grapes”, provided that the total sulfite concentration does not exceed 100 ppm;

(ii) Tocopherols – derived from vegetable oil when rosemary extracts are not a suitable alternative;

(jj) Xanthan gum.

Q. Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as organic or made with organic ingredients:

(1) Any nonorganically produced agricultural product may be used in accordance with the restrictions specified in ~~the~~ this Section and when the product is not commercially available in organic form.

(2) Cornstarch (native);

(3) Gums – water extracted only (arabic, guar, locust bean, carob bean);

(4) Kelp – for use only as a thickener and dietary supplement;

(5) Lecithin – unbleached;

(6) Pectin (high-methoxy).

R. Amending the National List

(1) Any person may petition the National Organic Standards Board for the purpose of having a substance evaluated by the Board for recommendation to the USDA Secretary for inclusion on or deletion from the National List.

(2) A person petitioning for amendment of the National List should contact USDA/NOP for details.

S. Other Generic and Brand Name Lists: In addition to the National Materials List, there is a list developed by the Organic Materials Review Institute (OMRI), which list covers both generic types of materials and specific brand names. OMRI does technical reviews of materials against the National List specifications, and for the purpose of

these regulations is considered a competent reviewer. For specific generic material or brand name information, persons should visit the OMRI website at: www.omri.org. Hard copies of the OMRI list are also available from the commission for a small fee. [21.15.1.10 NMAC - Rp 21 NMAC 15.1.10, 8/30/2001; A, 8/15/2003]

21.15.1.11 FEES AND ASSESSMENTS

A. Application fee: all applicants, regardless of category, must remit a [~~\$125.00~~]\$150.00 application fee with the completed application. Applications without accompanying fees shall be deemed incomplete and the applicant shall be notified that the application will not be further processed without the fee. Applicants applying for dual categories (crop and processor, animal and processor, but not crop and animal) must pay two fees, except where total annual gross sales of organic product are less than \$50,000.00 and all handling/processing is performed by the certified producer; in such cases only one fee will be required. Annual update applications must also be accompanied by a [~~\$125.00~~]\$150.00 fee payment. Annual update applications sent in after the announced due date will be subject to a \$75.00 late fee, in addition to the regular application fee of [~~\$125.00~~]\$150.00.

B. All operations receiving certification from the commission must also remit annually by March 15 an assessment based on gross sales of organic products for the calendar year just ended. The commission shall send out a reminder notification of the assessment obligation in January.

(1) Producers, processors and handlers shall be assessed at a rate of one-half of one percent (½ percent) of total annual gross sales of organically produced agricultural products, except:

(2) As provided for in the Organic Commodity Act, at 76.22.16 (d), the commission may, following notice and comment, adjust the assessment rate up or down by no more than one hundred percent.

(3) As provided for in the Organic Commodity Act, at 76.22.17, the commission may authorize a supplemental assessment, which shall not exceed one-fourth of one percent (1/4 percent) of total annual gross sales of organically produced agricultural products.

C. Collection of Assessments: all assessment shall be collected directly by the commission and shall be deposited into the Organic Market Development Fund.

[21.15.1.11 NMAC - Rp 21 NMAC 15.1.14, 8/30/2001; A, 8/15/2003]

21.15.1.12 EXEMPTED AND EXCLUDED CATEGORIES

A. A production or handling/processing operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales total \$5,000.00 or less annually is exempt from certification and from submitting an organic system plan, but must comply with the applicable organic production and handling requirements, record keeping requirements, and must annually register with the commission.

(1) Registration of exempt business will require the annual filing of a registration application and a fee of \$50.00.

(2) Registered exempt businesses must be available for inspection and audit by the commission during regular business hours.

(3) Annual registration update applications sent in after the announced due date will be subject to a \$25.00 late fee, in addition to the regular registration fee of \$50.00.

B. A handling operation that is a retail food establishment or portion thereof and that handles organically produced agricultural products but does not process them is exempt from certification as provided for by the USDA's National Organic Program.

C. A handling operation or portion thereof that only handles agricultural products that contain less than 70 percent organic ingredients by total finished-product weight (excluding water and salt) is exempt from certification as provided for by the USDA's National Organic Program.

D. A handling operation or portion thereof that only identifies organic ingredients on the information panel is exempt from certification as provided for by the USDA's National Organic Program.

E. A handling operation that meets 25.15.1.12 A or 25.15.1.12 B above must maintain the records sufficient to:

(1) Prove that ingredients identified as organic were organically produced and handled, and;

(2) Verify quantities produced from such ingredients.

F. A handling operation or portion thereof is excluded from the requirements of certification, except for the requirements for the prevention of commingling and contact with prohibited substances, if such operation or portion thereof only sells organic agricultural products labeled as "100 percent organic", "organic" or "made with organic (specified ingredients or food groups)" that:

(1) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation, and;

(2) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

G. A handling operation that is a retail food establishment of portion thereof that processes, on the premises of the retail food establishment, raw and ready-to-eat food from agricultural products that were previously labeled as "100 percent organic", "organic" or "made with organic (ingredients or food groups)" is excluded from the certification requirements, except:

(1) Requirements for the prevention of contact with prohibited substances;

(2) Labeling provisions.

H. Any operation exempt under the above guidelines must maintain business records related to their organic operation and/or sales and such records must be maintained for no less than 3 years beyond their creation and the operation must allow representatives of the commission and of USDA's National Organic Program access to the records for inspection and copying during normal business hours, for the purpose of determining compliance with the applicable regulations.

I. Any operation certified by the NMOCC with annual gross sales of less than \$2000 is exempt from paying assessments on their sales.

[21.15.1.12 NMAC - N, 8/30/2001; A, 8/15/2003]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to Subsection B of 1.7.9.9 NMAC and 1.7.9.10 NMAC, effective 7/30/03.

This amendment is the result of action taken by the State Personnel Board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This amendment expires 120 calendar days after filing.

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 [~~during the agency's focal point appraisal period.~~] in accordance with Director issued guidelines.

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 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 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; A, 7/30/03]

[This amendment is the result of action taken by the State Personnel Board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This amendment expires 120 calendar days after filing.]

1.7.9.10 ~~[FOCAL POINT APPRAISAL]~~

A. ~~Each agency shall develop an agency plan, which outlines how it will conduct employee performance appraisals in accordance with these rules and the 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 1.7.4.13 NMAC, and will be reviewed by the Board annually.~~

B. ~~Agencies shall select a specific focal point period of time, not to exceed 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.]~~
[RESERVED]

[1.7.9.10 NMAC – N, 07/01/02; A, 11/14/02; A, 7/30/03]

[This amendment is the result of action taken by the State Personnel Board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This amendment expires 120 calendar days after filing.]

NEW MEXICO SECRETARY OF STATE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 22 PROVISIONAL VOTING SECURITY

1.10.22.1 ISSUING AGENCY: Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.

[1.10.22.1 NMAC - N, 8-15-2003]

1.10.22.2 SCOPE: This rule applies to any special statewide election, general election, primary election, county wide election or elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).

[1.10.22.2 NMAC - N, 8-15-2003]

1.10.22.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Chapter 356, Laws 2003, Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall issue rules to ensure securing the secrecy of the provisional ballot and protect against fraud in the voting process.

[1.10.22.3 NMAC - N, 8-15-2003]

1.10.22.4 DURATION: Permanent.

[1.10.22.4 NMAC - N, 8-15-2003]

1.10.22.5 EFFECTIVE DATE: August 15, 2003 unless a later date is cited at the end of a section.

[1.10.22.5 NMAC - N, 8-15-2003]

1.10.22.6 OBJECTIVE: The

Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional ballot. The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process.

[1.10.22.6 NMAC - N, 8-15-2003]

1.10.22.7 DEFINITIONS:

A. "Absentee ballot register" means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

B. "Absentee provisional ballot" means the paper ballot card issued to an absent provisional voter.

C. "Absentee provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

D. "Alternate location" means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot seventeen (17) days prior to an election.

E. "County canvassing board" means the board of county commissioners in each county (Section 1-13-1 NMSA 1978).

F. "Early voter" means a voter who votes in person before election day and not by mail.

G. "Election" means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections.

H. "Marksense or optical scan ballot" means a paper ballot card used on an electronic vote tabulating system, but for the purposes of this rule is hand tallied.

I. "Precinct board" means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate site.

J. "Provisional ballot" means a marksense or optical scan paper ballot card marked by a provisional voter.

K. "Provisional ballot tally sheet" means a document prepared and used by the county clerk for counting

votes cast for candidates and questions by provisional voters.

L. "Provisional ballot transmission envelope" means an envelope marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate site to the office of the county clerk.

M. "Provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

N. "Signature roster" means the certified list of voters at a polling place which is signed by a voter when presenting himself for voting on election day.

O. "Voter" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the state of New Mexico.

[1.10.22.7 NMAC - N, 8-15-2003]

1.10.22.8 PRECINCT BOARD PROCEDURES:

A. A provisional ballot shall not be placed in a ballot box at the polling place, alternate location or county clerk's office. Provisional ballots shall be deposited in a special provisional ballot transmission envelope designated by the county clerk for that purpose.

B. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote whose name is not on the roster. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote who is required to provide identification pursuant to the Election Code. The precinct board shall ensure that the name of a provisional voter is entered in the roster on the line immediately following the last entered voter's name, pursuant to the Election Code.

C. Upon sealing the voter's provisional ballot envelope, the precinct board shall provide the voter with the toll free telephone number, attached to the provisional ballot outer envelope, to use if the voter wishes to determine whether or not the provisional ballot was counted. The precinct board shall ensure that each provisional voter completes the certificate of voter registration attached to the provisional ballot outer envelope and that the certificate of registration is not placed in the envelope but returned to the county clerk.

D. The precinct board shall ensure that each provisional ballot cast at a polling place or alternate site is placed in an inner or secrecy envelope prior to placing the inner or secrecy envelope in the outer envelope containing the provisional

voter's oath or affirmation. The precinct board shall ensure that each provisional voter is provided with a toll free telephone number that may be called fourteen (14) days after the election for a determination on whether the provisional ballot was counted.

E. Absentee precinct boards shall not open or tally any provisional absentee ballots, but shall convey them to the county clerk for processing according to the provisions of the Election Code and this rule. The county clerk shall process provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location. Identification documents submitted with provisional absentee ballots shall be attached to the voter's certificate of registration and a notation that the documents have been submitted shall be entered into the electronic file of registered voters.

F. Provisional voters are not subject to challenge under the procedures provided in the Election Code.

G. The voter registration card attached to the outer provisional ballot envelope shall be placed in the provisional ballot transmission envelope and returned to the county clerk.

[1.10.22.8 NMAC - N, 8-15-2003]

1.10.22.9 CLERK PROCEDURES:

A. The provisional ballot outer envelope containing the voter's oath shall not be opened until the county clerk has determined the reason the provisional voter's name was not on the signature roster, or whether the voter has provided identification, if required, by the Election Code.

B. The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope marked "unqualified provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked "qualified provisional ballot outer envelopes" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk shall mark the number of the voter's correct precinct on the inner secrecy envelope, but no other information indicating the identity of the voter shall be furnished to the county canvassing board. After the tally of qualified provisional ballots, the county clerk shall deposit the

counted provisional ballots in an envelope marked "counted provisional ballots" and retained for a twenty-two (22) months pursuant to 42 USC 1972.

C. The county clerk shall prepare a tally of qualified provisional ballots and include them in the canvass presented to the county canvassing board. The tally sheet may be a photocopy of a precinct tally sheet, however it shall be clearly marked as designated for provisional ballot tally. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional ballots cast within the county. The report shall contain the name, address, date of birth and social security number of each provisional voter. The report shall include an explanation why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot was not counted.

D. The county clerk may designate emergency paper ballots for use as provisional ballots.

[1.10.22.9 NMAC - N, 8-15-2003]

1.10.22.10 SECRETARY OF STATE PROCEDURES:

A. Provisional voters wishing to determine the disposition of their ballot may call the office of the secretary of state fourteen (14) days after the election. The secretary of state shall make the agency toll free number available to county clerks for the purpose of determining the status of provisional ballots. The secretary of state, prior to providing information to a voter on the disposition of his ballot, shall verify the identity of the voter by name, address, date of birth and social security number.

B. The secretary of state shall not discuss the disposition of any provisional ballot with any person other than the provisional voter.

[1.10.22.10 NMAC - N, 8-15-2003]

History of 1.10.22 NMAC: [RESERVED]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO
COMMISSION OF
PUBLIC RECORDS
HISTORICAL RECORDS
ADVISORY BOARD****NOTICE OF REGULAR MEETING**

The New Mexico Historical Records Advisory Board will meet on Friday August 15, 2003 at 9:00 A.M. The meeting will be held at the El Rancho Hotel, in Gallup, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Darlene Torres at the New Mexico State Records Center and Archives by August 8, 2003. Public documents, the agenda, and minutes can be provided in various accessible formats. Please contact Darlene Torres at the State Records Center and Archives, 476-7956, if a summary or other type of accessible format is needed. A copy of the proposed agenda may be obtained at the State Records Center and Archives' website at <http://www.nmcpr.state.nm.us/>, or onsite at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2003

Volume XIV	Submittal Deadline	Publication Date
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

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