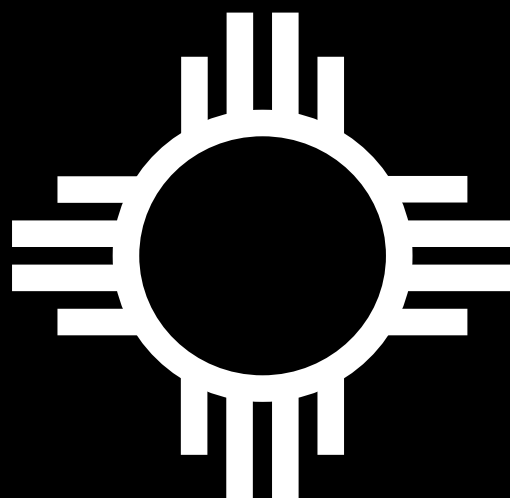


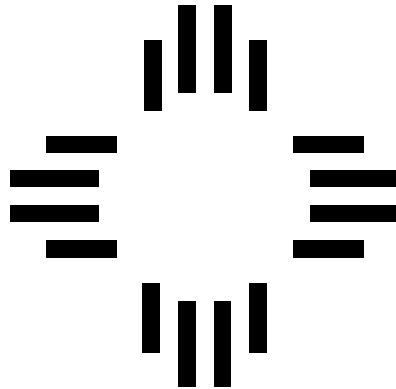
**NEW
MEXICO
REGISTER**



Volume XIV
Issue Number 18
September 30, 2003

New Mexico Register

Volume XIV, Issue Number 18
September 30, 2003



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

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2003

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New Mexico Register

Volume XIV, Number 18

September 30, 2003

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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.

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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 AGRICULTURE

Notice of Hearing

The New Mexico Department of Agriculture will hold four public hearings under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978, to establish 21 NMAC 17.42, Cotton Boll Weevil Quarantine. As eradication programs for the cotton boll weevil have been successful in New Mexico, the department is proposing to establish an internal and external quarantine to protect cotton production areas from re-infestation with cotton boll weevil.

Hearings will be held in Artesia, Lovington, Portales, and Las Cruces.

The hearing in Artesia will be held in the conference room at Central Valley Electric located at 1505 North 13th Street, Artesia, October 27, 2003, at 1:30 p.m.

The hearing in Lovington will be held at the Fair Board Meeting Room, located at 101 Commercial Street, Lovington, October 28, 2003, at 9:00 a.m.

The hearing in Portales will be held at the Memorial Building, located at 200 East Seventh Street (corner of Seventh and Abilene), Portales, October 28, 2003, at 3:00 p.m.

The hearing in Las Cruces will be held in the conference room at the New Mexico Department of Agriculture located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, October 30, 2003, at 4:00 p.m.

Written statements signed by the submitting person will be accepted if received prior to 12 noon on October 31, 2003. Written statements, inquiries, or requests for copies of the rule should be directed to Sherry Sanderson, Box 30005, MSC 3BA, Las Cruces, New Mexico 88003 or at (505) 646-3207.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

Legal Notice of Regular Meeting and
Public Rules Hearing

Local Government Division, Department of Finance and Administration
Suite 203, Bataan Memorial Building
Santa Fe, New Mexico 87501

Date: September 12, 2003

Release date: For Immediate Release

Contact: Wayne Gyulai, Special Programs Bureau (827-4991)

Reference: New Mexico Civil Legal Services Commission Public Rules Hearing and Regular Hearing

The New Mexico Civil Legal Services Commission (CLS) will hold a public rules hearing on Friday, October 31, 2003 from 1:15-1:30 p.m. in the Supreme Court Room, New Mexico Supreme Court, 237 Don Gaspar Avenue, Santa Fe, New Mexico. Immediately thereafter the CLS will hold a regular meeting at the same place.

The purpose of the public hearing is to receive public comment on adoption of a rule to permit civil legal services commissioners to participate in commission meetings via telephone or other similar communications equipment. The purpose of the meeting is to: allocate funds under Supplemental RFP # 21-341-49-00350 to provide free civil legal services for low-income persons living in New Mexico; allocate civil legal services funds for current contracts under the original RFP # 20-341-49-00350; and conduct other business related to the Civil Legal Services Program.

Copies of the agenda and of the proposed rule can be obtained at the Department of Finance and Administration, Local Government Division, Room 203, Bataan Memorial Building, Santa Fe, New Mexico. Interested individuals may testify at the public rules hearing and/or may submit written comments no later than 3:00 p.m. mountain daylight savings time on Friday, October 24, 2003 to the Local Government Division at the above address. All written and oral testimony will be considered prior to issuance of the final rules.

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 services to attend or participate in the hearing or meeting, please contact Wayne Gyulai, Local Government Division at 505-827-4991. The Department of Finance and Administration requests at least ten (10) days advance notice to provide requested alternative formats and/or special accommodations.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.29.2 NMAC "Primary and Rural Health Care Services, New Mexico Health Service Corps". The hearing will be held at 2:00 p.m. on November 3, 2003, in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to review the proposed repeal and replacement of the regulation for the New Mexico Health Service Corps. This action is being taken in response to a legislative appropriation made for the purpose of adding dentists and dental hygienists to the Health Services Corps.

A draft of the proposed regulation can be obtained from:

Joann Salazar, Bureau Chief
Health Systems Bureau
1190 St. Francis Drive, Suite N1054
Santa Fe, NM 87502
(505) 827-0007

Please submit any written comments regarding the proposed regulation to the attention of:

Joann Salazar, Bureau Chief
Health Systems Bureau
1190 St. Francis Drive, Suite N1054
Santa Fe, NM 87502
(505) 827-0007

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Joann Salazar at the above telephone number. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

STATE OF NEW MEXICO WATER QUALITY CONTROL COMMISSION

**NOTICE OF PUBLIC HEARING TO
CONSIDER PROPOSED AMEND-
MENTS TO 20.6.4 NMAC – STAN-**

DARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS – THE TRIENNIAL REVIEW

The New Mexico Water Quality Control Commission will hold a public hearing on December 2, 2003 and on subsequent days as necessary beginning at 9:00 a.m. each morning in the Cactus Room located on the second floor of the Paisano Building, 2968 Rodeo Park West, Santa Fe, New Mexico, to consider proposed amendments to 20.6.4 NMAC – Standards for Interstate and Intrastate Surface Waters.

The Surface Water Quality Bureau of the New Mexico Environment Department proposes amendments as part of the triennial review of New Mexico's surface water quality standards required by Section 303 (c) of the Federal Clean Water Act, 33 U.S.C. Section 1313 (c), which requires each state to hold a public hearing every three years for the purpose of reviewing and, as appropriate, modifying the state's surface water quality standards. The Department proposes substantial amendments in many sections of the standards. Several other petitioners are proposing amendments to the standards as well, all of which will be considered in the hearing, including, among others, Amigos Bravos, University of California, San Juan Water Commission, Elephant Butte Irrigation District, and Los Placitas Association. The Bureau will file its final proposed amendments on October 1, 2003; all other petitioners' final proposed amendments are due October 15, 2003.

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the Commission's Administrator, Geraldine Madrid-Chavez, 1190 St. Francis Drive, Room S 2054, Santa Fe, New Mexico, 87502, (505) 827-2425. You may also contact John Montgomery of the Department's Surface Water Quality Bureau, 1190 St. Francis Drive, Room N 2053, Santa Fe, New Mexico 87502, (505) 476-3671. Those petitions provided electronically, including the Bureau's, have been posted on the web page of the Surface Water Quality Bureau. Go to the web site of the New Mexico Environment Department at www.nmenv.state.nm.us; the link to the Bureau's web page is at the bottom of the Department's home page.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and the specific Hearing Guidelines and Scheduling Order

entered by the Hearing Officer appointed for this matter, Felicia Orth. Ms. Orth can be reached by contacting Ms. Madrid-Chavez. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings, the Hearing Guidelines and the Scheduling Order may be obtained from Ms. Madrid-Chavez; they are also available on the Bureau's web page.

The post-hearing process will include an opportunity for parties to submit proposed findings and conclusions and written legal argument. The Commission is expected to take up the matter for decision at its regular meeting in either April or May 2004.

Technical Testimony:

In order to present technical testimony at the hearing, a person must file a notice of intent to present technical testimony with the Commission's Administrator no later than October 31, 2003. The notice shall:

1. identify the person for whom the witness(es) will testify;
2. identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
3. attach the full direct testimony of each technical witness;
4. state the anticipated duration of the direct testimony of each technical witness;
5. include the text of any recommended modifications to the proposed regulatory change; and
6. identify and attach all exhibits to be offered by the person at the hearing.

The Hearing Officer must exclude technical testimony and exhibits not timely filed.

Participation by the General Public:

Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification is required. Persons desiring to present non-technical testimony at the hearing may be heard at 11:30 a.m. each day that the hearing continues and at the end of the technical case. Public comment will also be taken in the evening of December 2nd and December 3rd 2003 between 6:30 and 7:00 p.m. at the auditorium in the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico.

A member of the general public may submit a written non-technical statement for the record in lieu of oral testimony at the hearing at any time prior to the close of 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 November 3, 2003 at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2850 (TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque; 1-800-659-1779).

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO BOARD OF EDUCATION

The State Board of Education has repealed and replaced the following rule effective September 30, 2003:

6.60.6 NMAC	Repeal Rule	CONTINUING LICENSURE FOR LICENSED EDUCATORS IN NEW MEXICO
6.60.6 NMAC	Adopt New Rule	CONTINUING LICENSURE FOR LICENSED EDUCATORS IN NEW MEXICO

NEW MEXICO BOARD OF EDUCATION

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS
PART 6 CONTINUING LICENSURE FOR LICENSED EDUCATORS IN NEW MEXICO**

6.60.6.1 ISSUING AGENCY: State Board of Education.
[6.60.6.1 NMAC - Rp 6.60.6.1 NMAC, 09-30-03]

6.60.6.2 SCOPE: Chapter 60, Part 6 governs continuing licensure for persons holding valid New Mexico licensure and seeking continuing licensure on or after July 1, 1990.
[6.60.6.2 NMAC - Rp 6.60.6.2 NMAC, 09-30-03]

6.60.6.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-10A-3, NMSA 1978.
[6.60.6.3 NMAC - Rp 6.60.6.3 NMAC, 09-30-03]

6.60.6.4 DURATION: Permanent.
[6.60.6.4 NMAC - Rp 6.60.6.4 NMAC, 09-30-03]

6.60.6.5 EFFECTIVE DATE: September 30, 2003.
[6.60.6.5 NMAC - Rp 6.60.6.5 NMAC, 09-30-03]

6.60.6.6 OBJECTIVE: This regulation governs continuing licensure for persons holding valid New Mexico licensure and seeking continuing licensure on or after July 1, 1990.
[6.60.6.6 NMAC - Rp 6.60.6.6 NMAC, 09-30-03]

6.60.6.7 DEFINITIONS:
A. "Level one teaching license" means a provisional teaching license issued for the first three years of teaching that gives a beginning teacher the opportunity, through a formal mentorship

program, for additional preparation to be a quality teacher.

B. "Level two teaching license" means a professional teaching license given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed state board-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of his/her career.

C. "Level three-A teaching license" means a master teaching license and is the highest level of teaching competence for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention, and mentoring.
[6.60.6.7 NMAC - N, 09-30-03]

6.60.6.8 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES PRIOR TO JULY 1, 2004:

A. A person holding a valid level I license and seeking a level II license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director of the professional licensure unit (hereinafter referred to as the "director");

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the state board of education for a level II license of the type sought.

B. A person holding a valid level II license and seeking a level III license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited

college or university;

(3) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the state board of education for a level III license; or

(4) The applicant must hold a valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

C. A person holding a valid level II and/or level III license and seeking continuing licensure pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) The superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated those level II and/or level III competencies required by the state board of education.

[6.60.6.8 NMAC - Rp 6.60.6.8 NMAC, 09-30-03]

6.60.6.9 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES AFTER JUNE 30, 2004:

A. A teacher holding a valid level I license and seeking a level II license pursuant to the provisions of this regulation shall meet the following requirements:

(1) complete three full school years at level I licensure with successful annual evaluations; and

(2) submit, in a form acceptable to the director, a completed professional development dossier (PDD), as provided in 6.69.4.11 NMAC; or

B. A teacher holding a valid level II license and seeking a level III-A license pursuant to the provisions of this

regulation shall meet the following requirements:

(1) complete three full school years at level II licensure with successful annual evaluations; and

(2) hold a post-baccalaureate degree from a regionally accredited college or university and submit, in a form acceptable to the director, a completed professional development dossier (PDD), as provided in 6.69.4.11 NMAC.

C. A teacher holding a valid level II license and seeking licensure renewal pursuant to the provisions of this regulation shall meet the following requirements:

(1) submit a completed application for level II licensure renewal to the director; and

(2) submit to the director a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal that the applicant has satisfactorily demonstrated the competencies for level II licensure and met other requirements of the high objective uniform standard of evaluation for level II licensure renewal as is evidenced by the teacher's annual evaluations.

(3) if a level II teacher does not satisfactorily demonstrate the competencies of level II licensure or other requirements of the high objective uniform standard of evaluation for level II licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a license.

D. A person holding a valid level III-A license and seeking licensure renewal pursuant to the provisions of this regulation shall meet the following requirements:

(1) submit a completed application for level III licensure renewal to the director; and

(2) submit to the director a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal that the applicant has satisfactorily demonstrated the competencies for level III licensure and met other requirements of the high objective uniform standard of evaluation for level III licensure renewal as is evidenced by the teacher's annual evaluations; or

(3) if a level III teacher does not satisfactorily demonstrate the competencies of level III licensure or other requirements

of the high objective uniform standard of evaluation for level III licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a level III license.

E. A person holding a valid level III-A license may choose to not renew his or her level three-A license and apply for a level II license. The superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure must submit to the director a verification that the applicant has satisfactorily met the high objective uniform standard of evaluation for level two license as is evidenced by the teacher's annual evaluations.

F. If a level III-A teacher does not satisfactorily meet the high objective uniform standard of evaluation for level III-A licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-3-1, NMSA 1978, might not be issued a level III-A license. In that case, the applicant may be issued a level II license if the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, submits to the director a verification that the applicant has satisfactorily met the high objective uniform standards of evaluation for level II licensure as is evidenced by the teacher's annual evaluations. [6.60.6.9 NMAC - N, 09-30-03]

6.60.6.10 REQUIREMENTS FOR RENEWAL AND ADVANCEMENT FOR EDUCATORS OTHER THAN TEACHERS:

A. A person holding a valid level I license and seeking a Level II license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the state board of education for a level II license of the type sought.

B. A person holding a

valid level II license and seeking a level III license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited college or university;

(3) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the state board of education for a level III license.

C. A person holding a valid level II and/or level III license and seeking continuing licensure pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated those level II and/or level III competencies required by the state board of education.

[6.60.6.10 NMAC - N, 09-30-03]

6.60.6.11 EXCEPTIONS:

A. Exceptions for "exigent circumstances":

(1) the provisions of this paragraph shall apply to an individual holding a valid New Mexico license who, in exigent circumstances, is unable to secure a verification of the required competencies for licensure renewal.

(2) as used in this paragraph, "exigent circumstance" means:

(a) the non-availability of the superintendent of the local school district or of an authorized representative of the state institution or private school by which the applicant has been most recently employed; or

(b) the licensed individual has not been employed in elementary or secondary education during the term of the license (s) sought.

(3) a person seeking to renew his or her current level of licensure who, in exigent circumstances, is unable to secure verification of the required competencies shall submit a sworn statement asserting the exi-

gent circumstance(s). In this situation, an applicant may be granted a three-year level I license.

B. Exceptions for persons unable to demonstrate "exigent circumstances": A person seeking licensure renewal pursuant to this regulation and who cannot show exigent circumstances for the lack of verification of the satisfactory demonstration of the competencies required by the state board of education may, upon the expiration of a period of three years from the date of expiration of the valid New Mexico license, apply to the director for a level I license. Level I licenses granted pursuant to this paragraph shall be subject to advancement at level II in the same manner as other such licenses.

C. A person seeking level II, III-A, or III-B licensure renewal pursuant to this regulation who has worked in education but not in an elementary or secondary school setting under a New Mexico license during the effective period of the license shall submit a sworn statement asserting that he or she has not worked in an elementary or secondary school setting during the effective period of the license, and may renew the license at the current level he or she holds.

[6.60.6.11 NMAC - Rp 6.60.6.9 NMAC, 09-30-03]

6.60.6.12 IMPLEMENTATION: Persons meeting these requirements may obtain a license at the level and for the duration as adopted by the state board of education.

A. Absent the exceptions provided in 6.60.6.11, a level I license shall not be renewed.

B. Continuing level II and level III licenses granted pursuant to 6.60.6.8 NMAC of this regulation shall be granted for nine years.

C. Applications and requirements for licensure advancement or renewal must be completed no later than June 30 of the year following expiration of the license. After that date the license is deemed to have lapsed.

[6.60.6.12 NMAC - Rp 6.60.6.11 NMAC, 09-30-03]

HISTORY OF 6.60.6 NMAC:

PRE-NMAC HISTORY: The material in this regulation was derived from that previously filed with the state records center and archives under SBE Regulation 87-6, Continuing Licensure for Licensed Educators in New Mexico, filed June 15, 1987, and SBE Regulation 87-6, Amendment No. 1, Continuing Licensure for Licensed Educators in New Mexico, filed April 3, 1995.

HISTORY OF REPEALED MATERIAL:

6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico, filed 10-16-01 - Repealed effective 09-30-03.

NEW MEXICO BOARD OF EDUCATION

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL PART 14 CERTIFICATION IN NATIVE AMERICAN LANGUAGE AND CULTURE, K-12

6.63.14.1 ISSUING AGENCY: State Board of Education.

[6.63.14.1 NMAC - N, 9/30/03]

6.63.14.2 SCOPE: All certified Native American language and culture teachers and all applicants for Native American language and culture teacher certification. This regulation governs standards and qualifications for those persons seeking initial or renewed certification as a Native American language and culture teacher.

[6.63.14.2 NMAC - N, 9/30/03]

6.63.14.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-10A-13, 22-10A-5, 22-10A-31, NMSA 1978.

[6.63.14.3 NMAC - N, 9/30/03]

6.63.14.4 DURATION: Permanent.

[6.63.14.4 NMAC - N, 9/30/03]

6.63.14.5 EFFECTIVE DATE: September 30, 2003, unless a later date is cited in the history note at the end of a section.

[6.63.14.5 NMAC - N, 9/30/03]

6.63.14.6 OBJECTIVE: This rule provides a certification system whereby school districts may employ non-degreed individuals to teach the native language and cultures of specific tribes and pueblos in any grade K through 12.

[6.63.14.6 NMAC - N, 9/30/03]

6.63.14.7 DEFINITIONS:

A. "Collaboration with the state board of education" means those Native American tribes and pueblos in New Mexico that have signed a memorandum of agreement with the state board of education (SBE).

B. "Tribe" means an Indian nation, tribe or pueblo located within New Mexico.

C. "Verifying in writing" means signing a memorandum of agreement as between a tribe or pueblo and the state board of education.

[6.63.14.7 NMAC - N, 9/30/03]

6.63.14.8 REQUIREMENTS:

A. Persons seeking level one certification (for three years) in Native American language and culture pursuant to the provisions of this rule shall meet the requirements established by each New Mexico Native American tribe and pueblo to determine an acceptable standard of competence and language proficiency to teach the language and culture.

B. Persons seeking level one certification in Native American language and culture pursuant to the provisions of this rule shall provide the professional certification unit with verification from a New Mexico Native American tribe or pueblo authority that the candidate has met the standards and criteria for competence and language proficiency to teach the language and culture. Such verification shall be provided on a form acceptable to the state department of education.

C. Persons seeking certification in Native American language and culture pursuant to the provisions of this rule shall comply with all provisions of 6.60.7 NMAC [Educator Licensure Application Fee], 6.60.8 NMAC [Background Checks for Educator Licensure], the standards of professional conduct at 6.60.9.9 NMAC [Licensure Requirements, Code of Ethical Responsibility of the Education Profession], and the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13, NMSA 1978.

D. Holders of the certificate in Native American language and culture, K-12 may not use this certificate to provide instruction in any other subject matter or discipline, unless they hold a valid state board of education license authorizing them to provide such instructional services.

E. Persons denied certification required by this rule who desire a hearing pursuant to the Uniform Licensing Act, Sections 61-1-1 through 61-1-33, NMSA 1978, must first exhaust the procedures set forth in a memorandum of agreement with the applicable tribe or pueblo.

[6.63.14.8 NMAC - N, 9/30/03]

6.63.14.9 STANDARDS FOR COMPETENCE AND LANGUAGE PROFICIENCY:

A. Each New Mexico Native American tribe and pueblo in collab-

oration with the state board of education in certifying Native American language and culture teachers, shall develop standards and criteria for determining competency for initial certification and renewal of certification, and shall verify in writing to the state board of education that these standards and criteria have been developed and that they are maintained on file with the certifying community, tribe or pueblo.

B. Each New Mexico Native American tribe and pueblo in collaboration with the state board of education in certifying Native American language and culture teachers, shall develop and consistently use a process for determining if candidates for the initial or continuing certification for Native American language and culture have met the standards of competence and language proficiency required for certification and shall verify in writing to the state board of education that the process has been developed and is the sole basis for determining language and culture competence, and that a description of the process is maintained on file with the certifying tribe or pueblo.

[6.63.14.9 NMAC – N, 9/30/03]

6.63.14.10 RENEWAL OF CERTIFICATION IN NATIVE AMERICAN LANGUAGE AND CULTURE, K-12: A level two certificate (for nine years) may be issued upon verification that the Native American language and culture teacher satisfactorily completed renewal activities required, authorized, and verified by the authority of the Native American tribe and pueblo, and that the renewal process was carried out in collaboration with the superintendent of the employing school district.

[6.63.14.10 NMAC – N, 9/30/03]

HISTORY OF 6.63.14 NMAC:
[Reserved]

NEW MEXICO BOARD OF EDUCATION

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 69 SCHOOL PERSONNEL - PERFORMANCE PART 4 PERFORMANCE EVALUATION SYSTEM REQUIREMENTS FOR TEACHERS

6.69.4.1 ISSUING AGENCY: State Board of Education.
[6.69.4.1 NMAC - N, 09-30-03]

6.69.4.2 SCOPE: Chapter 69, Part 4 governs performance evaluation system requirements for teachers.
[6.69.4.2 NMAC – N, 09-30-03]

6.69.4.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-10A-1, et seq., NMSA 1978.
[6.69.4.3 NMAC – N, 09-30-03]

6.69.4.4 DURATION: Permanent.
[6.69.4.4 NMAC – N, 09-30-03]

6.69.4.5 EFFECTIVE DATE: September 30, 2003.
[6.69.4.5 NMAC – N, 09-30-03]

6.69.4.6 OBJECTIVE: This regulation governs the requirements for a high objective statewide standard of evaluation for teachers from early childhood through grade twelve. This regulation identifies the specific evaluation/supervision standards and indicators and requirements for a competency based evaluation system for teachers.
[6.69.4.6 NMAC – N, 09-30-03]

6.69.4.7 DEFINITIONS:
A. “Core academic subjects” means English, language arts, reading, mathematics, science, the arts, including music and visual arts, and 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 and pueblos.

B. “A highly qualified early childhood (birth-grade three) or elementary teacher (K-8)”, under this rule, means a teacher who is fully qualified for teaching birth to grade three and grades K-8, and who:

(1) meets the requirements for his/her license; and
(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and
(3) has demonstrated competency in the core academic subjects the teacher teaches by:

(a) passing the elementary teacher competency or the elementary content knowledge test of the New Mexico teacher assessments or comparable predecessor New Mexico teacher licensure examinations, or accepted comparable licensure test(s) from another state; or

(b) holding national board for professional teaching standards certification for the appropriate grade level and type; or

(c) demonstrating competence in all of the core academic subjects the teacher teaches based on the state’s high objective uniform standard of evaluation for subject area competence as provided in 6.69.4.9 NMAC.

C. “A highly qualified

middle or junior high school teacher holding elementary K-8 licensure”, under this rule, means a teacher who is fully qualified to teach the core academic subjects in a public middle or junior high school, and who:

(1) meets all of the requirements for elementary K-8 licensure; and

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

(3) has demonstrated competency in each of the core academic subjects the teacher teaches by either:

(a) passing the content knowledge test(s) of the New Mexico teacher assessments or predecessor New Mexico teacher licensure examinations, or accepted comparable licensure tests from another state in each subject area the teacher teaches; or

(b) successfully completing an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major, or a graduate degree in each subject area the teacher teaches, or

(c) obtaining advanced credentials, which means certification by either the national board for professional teaching standards for the appropriate grade level and type or by holding level III New Mexico teaching licensure at the grade level and in the subject area(s) in which the teacher teaches; or

(d) demonstrating competence in all of the core academic subjects the teacher teaches based on the state’s high objective uniform standard of evaluation for subject area competence as provided in 6.69.4.9 NMAC.

D. “A highly qualified middle level (5-9), secondary (7-12), or K-12 specialty area teacher”, under this rule, means a teacher who is fully qualified to teach the core academic subjects, and who:

(1) meets all of the requirements for his/her license; and

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

(3) has demonstrated competency in the core academic subjects the teacher teaches by:

(a) passing the content knowledge test(s) of the New Mexico teacher assessments or predecessor New Mexico teacher licensure examinations, or accepted comparable licensure tests from another state in each subject area the teacher teaches; or

(b) successfully completing an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major, or a graduate degree in each subject area the teacher teaches; or

(c) obtaining advanced creden-

tials, which means certification by either the national board for professional teaching standards for the appropriate grade level and type or by holding level III New Mexico teaching licensure at the grade level and in the subject area(s) in which the teacher teaches; or

(d) demonstrating competence in all of the core academic subjects the teacher teaches based on the state's high objective uniform standard of evaluation for subject area competence as provided in 6.69.4.9 NMAC.

[6.69.4.7 NMAC - N, 09-30-03]

6.69.4.8 REQUIREMENTS:

A. If a teacher was hired after the first day of school of the 2002-2003 school year and is assigned to teach the core academic subjects in a Title I targeted assistance program or a Title I school wide, the teacher must be highly qualified, as defined in this rule.

B. If a teacher was hired prior to the first day of school of the 2002-2003 school year and is assigned to teach in the core academic subjects in any public school, the teacher must be highly qualified, as defined in this rule, by June 30, 2006.

C. The school district must ensure, through proper annual teaching assignment and through annual professional development plans and evaluations that all teachers assigned to teach in core academic subjects are highly qualified as provided in subsections A and B of this section and as required in section 1119 of the No Child Left Behind Act in Title I of 20 USC 6301.

D. Every public school teacher must have an annual performance evaluation based on an annual professional development plan that meets the requirements of the state's high objective uniform standard of evaluation as provided in 6.69.4.10 NMAC. The format for this evaluation shall be established by the department and shall be uniform throughout the state in all public school districts.

E. Except as provided in subsection F of this section, in order for a teacher to advance from licensure level I to level II and from licensure level II to level III-A a teacher who applies for licensure after June 30, 2004 must successfully meet the requirements of the state's high objective uniform standard of evaluation as provided in 6.69.4.11 NMAC.

F. Those teachers who are in the third year of a level I license in the 2003-2004 school year may advance to level II through the rules in place prior to the adoption of this rule by the local superintendent verifying that the teacher has met the nine essential competencies required for renewal of licensure by June 30, 2004.

G. Those teachers who

hold a level II license in the 2003-2004 school year may advance to level III-A through the rules in place prior to the adoption of this rule by the local superintendent verifying that the teacher has met the nine essential competencies required for renewal of licensure by June 30, 2004.

H. On the effective date of this rule, teachers holding level I, level II, or level III licenses will continue to hold those licenses at the same level and shall meet the requirements for their level of licensure as provided in 6.69.4.12 NMAC by September 1, 2006, as established through local annual evaluations.

[6.69.4.8 NMAC - N, 09-30-03]

6.69.4.9 IMPLEMENTATION OF THE HIGH OBJECTIVE UNIFORM STANDARD OF EVALUATION-FOR DEMONSTRATING COMPETENCE IN THE CORE ACADEMIC SUBJECTS AND OTHER ENDORSEMENT AREAS: To meet the requirements of subject area competence by means of the high objective uniform standard of evaluation a candidate must:

A. have successful annual evaluations for the two school years prior to the evaluation, as is defined in 6.69.4.10 NMAC;

B. have five complete school years of successful teaching experience;

C. complete at least 12 credit hours in the core academic subject area in which the candidate is seeking to demonstrate competence. For 7-12, 5-9, and K-12 licenses, the credit hours must be upper division;

D. demonstrate competence in the instructional strand of the state board's teacher competencies and indicators for the level of licensure the candidate holds, as provided in Subparagraph (a) of Paragraph (2) of Subsection D of 6.69.4.11 NMAC, to a local panel.

(1) The local panel of teachers shall consist of two teachers.

(a) One teacher will be appointed by the principal in the school where the teacher seeking to be highly qualified is teaching. The second teacher will be appointed by the candidate.

(b) Panelists must be highly qualified, as defined in Subsection B, C or D of 6.69.4.7 NMAC, hold a current level II or III-A license, and have an endorsement in the subject area to be evaluated.

(c) Panelists may be from the candidate's same school, or same district, or from another school or district in New Mexico.

(2) The candidate must gather and submit to the panel evidence demonstrating how he/she meets the competencies in the

instructional strand of the state board's teacher competencies and indicators. Evidence must include:

(a) documentation from paragraph (1) of Subsection E of 6.69.4.11 NMAC; and

(b) observation summaries, by each panel member, of the candidate teaching in the area for which he or she is applying. Observations by the panel members may be done in person or by video; and

(c) at least two observation summaries, completed by the candidate, of a teacher(s) teaching in the subject area for which the candidate is seeking to be highly qualified.

(3) Both teachers on the panel must agree that the candidate has met, or exceeds, the competencies and indicators for the level of licensure the teacher being evaluated holds.

(4) The panel shall submit their recommendation to the state department of education in a form acceptable to the department.

(5) The state department of education will verify that the teacher has met the requirements set forth in this rule and if permitted in the state board's rules governing the subject area the candidate may be issued an endorsement in the evaluated subject area.

[6.69.4.9 NMAC - N, 09-30-03]

6.69.4.10 IMPLEMENTATION OF THE HIGH OBJECTIVE UNIFORM STANDARD OF EVALUATION-ANNUAL:

A. No later than April 1, 2004, each school district shall submit for approval to the department, policies, guidelines, and procedures for annual teacher performance evaluation that meet the requirements of this regulation. The annual evaluation plan will be combined with the evaluation plan for licensure advancement provided in subsection A of 6.69.4.11 NMAC to form an overall system for teacher evaluation and support.

B. No later than forty school days after the first of school of each school year, each teacher and his or her school principal shall establish a professional development plan for the teacher, with measurable objectives, for the coming year based on, among other things:

(1) the state board of education's nine teaching competencies and indicators for the teacher's licensure level; and

(2) the previous year's annual evaluation, if applicable; and

(3) assurance that the teacher is highly qualified in the core academic subject(s) the teacher teaches and that the district has appropriately assigned the teacher to teach in the subject(s) in which the

teacher is highly qualified, as defined in this rule.

C. Annual performance evaluations shall be based on, among other things, how well the professional development plan was carried out and the measurable objectives were achieved.

D. The school principal shall observe each teacher's classroom practice at least once annually to determine the teacher's ability to demonstrate state adopted competencies and indicators for each teacher's licensure level.

E. If a level II or level III-A teacher does not demonstrate essential competencies for a given school year, the school district shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of that school year the teacher still fails to demonstrate essential competencies, a district may choose not to contract with that teacher.

F. If a level III-A teacher does not demonstrate essential competencies at level III-A for a given school year, the school district shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of the following school year the teacher still fails to demonstrate essential level III-A competencies, the superintendent may recommend to the state superintendent of public instruction that the teacher's level III-A license be suspended until such time as the teacher demonstrates the essential competencies at level III-A. Depending on the outcome of any due process proceeding under the Uniform Licensing Act, Sections 61-1-1 through 61-1-31, NMSA 1978, and if the superintendent verifies that the teacher meets the standards for a level II license, the teacher may be issued a level II license during the period of level III-A licensure suspension. A suspended level III-A license may be reinstated by the state superintendent of public instruction either upon verification by a local superintendent that the teacher now demonstrates the essential competencies at level III-A or through the process described in 6.69.4.11 NMAC.

G. Any teacher who held a level II or level III-A license prior to April 4, 2003 shall meet the requirements of the high objective uniform standard of evaluation for his/her level of licensure through the annual evaluation process by September 1, 2006 or shall not be eligible for the increased base salary provided in 22-10A-11(C), NMSA 1978.

H. At least every two years, school principals shall attend a training program approved by the department to

improve their teacher evaluation skills. [6.69.4.10 NMAC - N, 09-30-03]

6.69.4.11 IMPLEMENTATION OF THE HIGH OBJECTIVE UNIFORM STANDARD OF EVALUATION FOR ADVANCEMENT TO LEVEL II OR LEVEL III LICENSURE:

A. No later than April 1, 2004, each school district shall submit for approval to the department, policies, guidelines, and procedures for teacher performance evaluation for licensure advancement that meet the requirements of this regulation. The licensure advancement plan will be combined with the annual evaluation plan provided in Subsection A of 6.69.4.9 NMAC to form an overall system for teacher evaluation and support.

B. With the adoption of this rule by the state board, the minimum salaries associated with licensure levels provided in Chapter 22, Article 10A, NMSA 1978 shall become effective.

C. The teacher shall develop and submit a professional development dossier (PDD) according to the following schedule:

(1) if advancing to level II, during the third year at level I;

(2) if advancing to level III, no earlier than the third year at level II.

D. The PDD shall include:

(1) evidence of competence that has been collected over a three-year period, including the year the PDD is being developed;

(2) evidence in the following format that demonstrates how the teacher meets the state board's nine teacher competencies and indicators for the level of licensure to which the teacher is advancing. Evidence that demonstrates how the teacher meets competencies related to an:

(a) instruction strand (competencies 1, 2, 5); and a

(b) student learning strand (competencies 3, 4, 6, and 7); and a

(c) professional learning strand (competencies 8 and 9).

(3) evidence from an evaluation strand that includes the teacher's annual evaluations from at least the two years prior to the application for advancement and the superintendent's recommendation for advancement to the next licensure level.

(4) a verification strand that includes:

(a) for a level I teacher advancing to level II:

(i) verification of participation in a district's formal mentorship program;

(ii) verification of three years successful teaching experience at level I;

(iii) verification by the superintendent that the work product in the dossier is that of the teacher and that the data submitted is accurate.

(b) for a level II teacher advancing to level IIIA:

(i) verification of a post baccalaureate degree or national board professional teaching certification;

(ii) verification of a minimum three years of successful teaching experience at level II;

(iii) verification by the superintendent that the work product in the dossier is that of the teacher and that the data submitted is accurate.

E. Evidence in the PDD competency strands:

(1) The instruction strand shall include evidence of:

(a) student achievement data; and

(b) assessment techniques and procedures; and

(c) instructional plans and materials; and

(d) examples of student work and performance; and

(e) evidence of implementation of state curriculum standards;

(2) The student learning strand shall include mandatory evidence and may include optional evidence as follows:

(a) the student learning strand shall include evidence of:

(i) adaptations/modification for diverse learners; and

(ii) evidence of effective classroom management strategies and procedures; and

(iii) classroom observation reports; and

(iv) evidence of communication with students and parents.

(b) the student learning strand may include evidence in the form of:

(i) student surveys; and/or

(ii) video tapes with reflections/analysis.

(3) The professional learning strand shall include evidence of at least one of the following:

(a) professional development activities associated with the teachers annual professional development plan (PDP); or

(b) evidence of collaborating with professional community; or

(c) parent surveys; or

(d) research publications; or

(e) professional presentations.

(4) Evidence comparable and equivalent to Paragraphs (1), (2) and (3) of Subsection E of this section may be developed through regionally accredited college or university programs or through certification by the national board of professional

teaching standards (NBPTS).

F. The PDD shall be submitted to the state department of education (SDE) or its contractor by the teacher.

(1) The PDD may be submitted electronically or in paper format. If submitted in paper format, the teacher must include two copies of the PDD.

(2) The teacher will submit fees for processing and evaluation of the PDD as provided in Subsection C of 6.60.7.8 NMAC.

G. The PDD shall be evaluated and scored by the superintendent of the teacher's school district and by two external reviewers, as follows:

(1) the superintendent will rate the verification and evaluation strands and the two external reviewers will rate the three competency strands as "exceeds standards," "meets standards" or "does not meet standards."

(2) each one of the five strands of a teacher's PDD must be rated as either "exceeds standards" or "meets standards" in order for the teacher to advance to the next higher level of licensure.

(3) the superintendent and the reviewers will submit the scored PDD to the SDE or its contractor with their ratings.

(4) SDE will evaluate the ratings of the superintendent and the external reviewers and approve or deny the teacher's application for licensure advancement:

(a) if one of the external reviewers rates one of the competency strands of the PDD as "exceeds standards" and the other external reviewer rates the same strand as "meets standards", the strand will be deemed passed.

(b) if one of the external reviewers rates one of the competency strands of the PDD as "does not meet standards" and the other rates the same strand as "exceeds standards", the finding will be that the candidate "meets standards" and the strand will be deemed passed.

(c) if one of the external reviewers rates one of the competency strands of the PDD as "does not meet standards" and the other rates the same strand as "meets standards," a third reviewer will resolve the discrepancy in order to determine if the strand will be passed.

(d) if both of the external reviewers rate the competency strand(s) of PDD the same, that rating will be their finding.

H. A candidate for level III-A licensure who is not successful in the PDD may continue to submit a new PDD once annually.

I. If a candidate for level III-A licensure meets or exceeds standards in one or some of the five strands, but not in all five, the teacher's score(s) of "meets standards" or "exceeds standards" may be

retained for a period of two calendar years. Any resubmission of a PDD during that two-year period need only address those strands rated "does not meet standards" in order to determine a final passing score for all five strands for licensure advancement to level III-A.

[6.69.4.11 NMAC - N, 09-30-03]

6.69.4.12 NEW MEXICO TEACHER COMPETENCIES AND INDICATORS FOR LICENSURE LEVELS I, II, III:

A. New Mexico is one of the most diverse states in the nation, and this diversity is reflected in the strengths and needs of New Mexico's students. The ability of a highly qualified teacher to address the learning needs of all of New Mexico's students, including those who learn differently as a result of disability, culture, language, or socioeconomic status, forms the framework for the New Mexico teacher competencies for licensure levels I, II, and III assessment criteria indicators.

B. Beginning July 1, 2004, the high objective standard of evaluation shall include the following standards and indicators as part of the evaluation criteria for level I teachers.

(1) The teacher accurately demonstrates knowledge of the content area and approved curriculum.

(a) utilizes and enhances approved curriculum.

(b) gives clear explanations relating to lesson content and procedure.

(c) communicates accurately in the content area.

(d) shows interrelatedness of one content area to another.

(2) The teacher appropriately utilizes a variety of teaching methods and resources for each area taught.

(a) provides opportunities for students to work independently, in small groups, and in large groups, as appropriate.

(b) uses a variety of methods such as demonstrations, lecture, student-initiated work, group work, questioning, independent practice, etc., as appropriate.

(c) uses a variety of resources such as field trips, supplemental printed materials, manipulatives, etc., as appropriate.

(d) provides opportunities for students to apply, practice, and demonstrate knowledge and skills learned through various modalities.

(e) implements necessary modifications and adaptations in instruction and curriculum so that students with disabilities have access to the general education curriculum in the least restrictive environment.

(3) The teacher communicates with and obtains feedback from students in

a manner that enhances student learning and understanding.

(a) explains and/or demonstrates the relevance of topics and activities.

(b) communicates to students the instructional intent, directions or plan at the appropriate time.

(c) establishes and states expectations for student performance.

(d) clarifies actions, directions, and explanations when students do not understand.

(e) actively solicits communication from students about their learning.

(f) communicates regularly with students about their progress.

(4) The teacher comprehends the principles of student growth, development and learning, and applies them appropriately.

(a) uses and instructs students in the use of cognitive thinking skills such as critical thinking, problem-solving, divergent thinking, inquiry, decision-making, etc.

(b) uses teaching techniques which address student learning levels, rates, and styles.

(c) uses materials and media which address student learning levels, rates and styles.

(d) uses resources such as community service agencies, school personnel, parents, etc., to meet students' learning levels, rates, and styles.

(5) The teacher effectively utilizes student assessment techniques and procedures.

(a) uses a variety of assessment tools and strategies, as appropriate.

(b) uses information gained from ongoing assessment for remediation and instructional planning.

(c) maintains documentation of student progress.

(d) communicates student progress with students and families in a timely manner.

(6) The teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment.

(a) serves as a model for constructive behavior patterns.

(b) executes routine tasks effectively and efficiently.

(c) establishes and states expectations for student behavior.

(d) handles transitions effectively.

(e) has materials and media ready for student use.

(f) minimizes distractions and interruptions.

(g) manages student behavior effectively and appropriately.

(h) identifies hazards, assesses

risks, and takes appropriate action.

(7) The teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept.

(a) demonstrates sensitivity and responsiveness to the personal ideas, learning needs, interests, and feelings of students with disabilities, and/or from culturally and linguistically diverse backgrounds (e.g., Native Americans, Hispanic Americans, African Americans, Asian Americans, as well as other recent immigrant groups.)

(b) acknowledges student performance and achievement.

(c) acknowledges that every student can learn.

(d) provides opportunities for each student to succeed.

(e) provides students with opportunities for active involvement and creativity.

(f) provides opportunities for students to be responsible for their own behavior and learning.

(g) promotes positive student/teacher relationships.

(h) encourages high student expectations.

(i) demonstrates an awareness and respect for each student's background, experience, learning ability, language and culture.

(8) The teacher demonstrates a willingness to examine and implement change, as appropriate.

(a) seeks out information on methodology, research, and current trends in education to enhance and improve the quality of learning.

(b) implements a variety of strategies to enhance learning.

(c) recognizes that change entails risk and that modifications may be needed.

(9) The teacher works productively with colleagues, parents, and community members.

(a) collaborates with colleagues.

(b) communicates with parents on a regular basis.

(c) uses conflict resolving strategies when necessary.

(d) involves parents and community in their learning environment.

(e) communicates in a professional manner with colleagues, parents, and community members regarding educational matters.

C. Beginning July 1, 2004, the high objective standard of evaluation shall include the following standards and indicators as part of the evaluation criteria for level II teachers.

(1) The teacher accurately demonstrates knowledge of the content area and approved curriculum.

(a) enhances and extends approved curriculum.

(b) gives clear explanations relating to lesson content and procedures.

(c) communicates accurately in the content area.

(d) integrates other subjects into the content curriculum.

(2) The teacher appropriately utilizes a variety of teaching methods and resources for each area taught.

(a) designs appropriate opportunities for large group, small group, and independent student learning experiences.

(b) selects from a variety of teaching methods (demonstrations, lectures, student projects, group work, independent practice) for specific instructional goals and purposes.

(c) integrates a variety of resources into instruction, including field trips, supplemental printed materials, manipulatives, and technology.

(d) demonstrates understanding and appropriate application of learning styles, modalities, and intelligences theories.

(e) designs and implements necessary modifications and adaptations in instruction and curriculum so that students with disabilities have access to the general education curriculum in the least restrictive environment.

(3) The teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding.

(a) effectively explains, demonstrates or communicates the relevance of topics and activities.

(b) consistently communicates to students the instructional intent, directions, and plans.

(c) establishes and states expectations for student performance.

(d) presents directions and explanations in a variety of ways to insure student understanding.

(e) solicits communication from students about their learning for the purposes of ongoing instructional planning.

(f) communicates regularly with students about their progress.

(4) The teacher comprehends the principles of student growth, development and learning, and applies them appropriately.

(a) consistently integrates the use of cognitive thinking skills such as critical thinking, problem-solving, divergent thinking, inquiry, and decision-making into instruction.

(b) adapts teaching techniques to accommodate a range of student learning levels, rates, styles and special needs.

(c) adapts materials and media to

address a range of student learning levels, rates, styles and special needs.

(d) selects from a variety of community service agencies, specialized school personnel, and parents to address different learning levels, rates, styles, and needs.

(5) The teacher effectively utilizes student assessment techniques and procedures.

(a) selects appropriate assessment tools and strategies for specific learning outcomes.

(b) uses formative and summative assessment for remediation and instructional planning.

(c) maintains documentation of student progress.

(d) consistently maintains communication with students and families about student progress.

(6) The teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment.

(a) identifies, explains, and models constructive behavior patterns.

(b) establishes and teaches effective and efficient routines.

(c) establishes and reinforces expectations for student behaviors that promote citizenship in a classroom community.

(d) maintains smoothness and momentum during classroom transitions.

(e) prepares and arranges material in advance for easy student accessibility.

(f) minimizes distractions and interruptions.

(g) monitors and directs student behavior effectively and appropriately.

(h) identifies hazards, assesses risks, and takes appropriate action.

(7) The teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept.

(a) acknowledges and validates the ideas, learning needs, interests, and feelings of students with disabilities and/or from culturally and linguistically diverse backgrounds (e.g., Native Americans, Hispanic Americans, African Americans, Asian Americans, as well as other recent immigrant groups).

(b) consistently recognizes student performance and achievements.

(c) understands how students differ in their approaches to learning and adjusts instruction to meet diverse needs.

(d) designs opportunities for each student to succeed, based on individual learning needs.

(e) designs specific activities that require active involvement and creativity.

(f) designs opportunities that require and reinforce student responsibility for learning.

(g) develops students' self-esteem, motivation, character, and sense of civic responsibility.

(h) establishes and communicates high expectations for all students.

(i) demonstrates knowledge of different student backgrounds, experiences, learning abilities, languages and cultures and incorporates this knowledge into curricular decisions and instructional methodology.

(8) The teacher demonstrates a willingness to examine and implement change, as appropriate.

(a) seeks out information on methodology, research and current trends in education to enhance and improve the quality of learning.

(b) demonstrates knowledge of best practices that enhance learning.

(c) participates in instructional improvement and school reform initiatives.

(9) The teacher works productively with colleagues, parents, and community members.

(a) actively promotes collegial relations with other school personnel.

(b) provides a system for interactive communication between teacher and parents.

(c) uses conflict resolution strategies as appropriate.

(d) promotes active roles for parents and community members in student learning.

(e) communicates in a professional manner with colleagues, parents, and community members regarding educational matters.

D. Beginning July 1, 2004, the high objective standard of evaluation shall include the following standards and indicators as part of the evaluation criteria for level III teachers:

(1) The teacher accurately demonstrates knowledge of the content area and approved curriculum.

(a) contributes to the refinement and development of the approved curriculum.

(b) provides clear explanations relating to lesson content and procedures in multiple ways and is aware of knowledge and preconceptions that students can bring to the subject.

(c) communicates accurately in the content area and can create multiple paths to the subject matter.

(d) can articulate to students the interrelatedness of the disciplines.

(2) The teacher appropriately utilizes a variety of teaching methods and resources for each area taught.

(a) designs and engages students in large group, small group, and independent work activities.

(b) demonstrates effective selection and use of a variety of methods to make knowledge accessible to all students.

(c) demonstrates effective integration of a variety of resources and learning experiences into the curriculum.

(d) designs opportunities for students to apply, practice, and demonstrate knowledge and skills based on knowledge of learning modalities, style preferences, and intelligences.

(e) engages with colleagues and parents to collaboratively design and implement necessary modifications and adaptations in instruction and curriculum so that students with disabilities have access to the general education curriculum in the least restrictive environment.

(3) The teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding.

(a) engages students in explaining and/or demonstrating the relevance of topics and activities.

(b) involves students in establishing instructional direction and plans.

(c) establishes and states expectations for student performance.

(d) presents directions and explanations in a variety of ways to insure student understanding.

(e) engages students in the analysis and evaluation of their learning and adjusts instruction based on student feedback.

(f) communicates regularly with students about their progress.

(4) The teacher comprehends the principles of student growth, development and learning, and applies them appropriately.

(a) consistently integrates the use of cognitive thinking skills such as critical thinking, problem-solving, divergent thinking, inquiry, and decision-making into instruction.

(b) selects the most effective teaching techniques to address a variety of student learning levels, rates, styles and needs as well as diverse interests and backgrounds.

(c) selects the most effective materials and media to address a variety of student learning levels, rates, styles and needs.

(d) integrates community resources, service agencies, other school personnel, parents, and community members into the curriculum.

(5) The teacher effectively utilizes student assessment techniques and procedures.

(a) designs and uses multiple methods of measuring student understanding and growth.

(b) integrates assessment data from multiple sources into instructional planning and improvement.

(c) maintains documentation of student progress.

(d) develops a two-way system of communicating with students and families about student progress.

(6) The teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment.

(a) integrates the teaching of constructive, pro-social behaviors into regular instruction.

(b) establishes and teaches effective and efficient routines.

(c) engages students in establishing expectations for building a learning community in the classroom.

(d) maintains smoothness and momentum during instructional transitions.

(e) establishes an environment where materials and media are available and ready for student use.

(f) minimizes distractions and interruptions.

(g) develops a classroom management system that promotes acceptable and appropriate student behavior.

(h) identifies hazards, assesses risks and takes appropriate action.

(7) The teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept.

(a) adjusts practice based on observation and knowledge of students with disabilities and/or from culturally and linguistically diverse groups (e.g., Native Americans, Hispanic Americans, African Americans, Asian Americans, as well other recent immigrant groups).

(b) creates curriculum designs that include student performance and acknowledgment of achievement.

(c) demonstrates an awareness of the influences of context disability, language, and culture on student learning.

(d) provides accommodations and interventions that allow each student to succeed based on individual learning needs.

(e) engages students in learning experiences that promote creativity, critical and divergent thinking.

(f) designs opportunities that require and reinforce student responsibility for learning.

(g) fosters the development of respect for individual, cultural, linguistic, disability, and religious differences.

(h) engages students in setting high standards for performance.

(i) treats all students equitably, recognizing and planning for individual differences in cultures, languages, learning

abilities, backgrounds, and experiences.

(8) The teacher demonstrates a willingness to examine and implement change, as appropriate.

(a) demonstrates the ability to reason, take multiple perspectives, be creative, and take reasoned risks to improve teaching.

(b) collaborates with colleagues in the research and design of improved instructional strategies

(c) assumes a leadership role in the study and implementation of instructional improvement and school reform initiatives.

(9) The teacher works productively with colleagues, parents, and community members.

(a) serves as a role model for collaborative working relations across the profession.

(b) demonstrates knowledge of specific school, family, and community resources that can support student learning.

(c) assists colleagues in the use of conflict resolution strategies.

(d) engages parents and community members productively in the work of the school.

(e) works collaboratively and creatively with colleagues, parents, and community members regarding educational matters.

E. Each school district shall select and/or develop additional standards and indicators determined appropriate by the local school district to complete the local teacher performance evaluation system.

F. Each school district shall provide training in evaluation of performance, classroom observation techniques, conference skills, and growth planning to all teachers and personnel assigned performance evaluation duties.

[6.69.4.12 NMAC - N, 09-30-03]

HISTORY OF 6.69.4 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives under SBE Regulation No. 89-6, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors, filed August 17, 1989; SBE Regulation No. 93-21, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors, filed November 16, 1993.

NMAC History:

6.69.3 NMAC, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors,

filed 6/1/2003.

6.69.4 NMAC [Performance Evaluation System Requirements for Teachers] replaces 6.69.3 NMAC, Section 8, filed 09-30-03.

History of Repealed Material:
[RESERVED]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.60.7 NMAC (EDUCATOR LICENSURE APPLICATION FEE).

6.60.7.3 STATUTORY AUTHORITY: Sections 22-2-1, NMSA 1978 and ~~[22-10-4]~~ 22-10A-3, NMSA 1978.

[6-15-98; 6.60.7.3 NMAC - Rn, 6 NMAC 4.2.4.7.3, 10-13-00; A, 09-30-03]

6.60.7.8 REQUIREMENTS:

A. Applicants seeking an initial educator license shall pay by money order or certified check to the state department of education the following fees prior to or at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2), (3) and (4) below, shall pay an application fee of \$50.00.

(2) applicants for educational assistant licensure shall pay an application fee of \$15.00.

(3) applicants for athletic coaching licensure who are seeking only a coaching license shall pay a fee of \$15.00.

~~[(4) Applicants for substitute teacher licensure shall pay a fee of \$15.00.]~~

B. Applicants seeking the renewal of an existing educator license shall pay by money order or certified check the following fees at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2), (3) and (4) below, shall pay an application fee of \$25.00.

(2) applicants for educational assistant licensure shall pay an application fee of \$15.00.

(3) applicants for athletic coaching licensure who are seeking only a coaching license shall pay a fee of \$15.00.

~~[(4) Applicants for substitute teacher licensure shall pay a fee of \$15.00.]~~

C. Applicants seeking the advancement to higher levels of teacher licensure by submission of a professional development dossier (PDD) as provided in

6.69.4.11 NMAC shall pay by money order or certified check \$175.00 to the state department of education or its contractor at the time of submission of their PDD. If submission of the PDD corresponds with the renewal of licensure, the fee for renewal in Subsection B of this section shall be waived.

[6-15-98; 6.60.7.8 NMAC - Rn, 6 NMAC 4.2.4.7.8 & A, 10-13-00; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.63.2 NMAC, Section 8.

6.63.2.8 REQUIREMENTS:

A. Persons seeking an associate school nurse license pursuant to the provisions of this regulation shall meet the following requirements:

(1) associate's degree in nursing from a regionally accredited college or university or from an institution accredited by the national league of nursing or a diploma program in nursing accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses; ~~and~~

~~(3) Two years of supervised nursing experience in community and/or child health; OR]~~

B. Persons seeking a professional school nurse license pursuant to the provisions of this regulation shall meet the following requirements:

(1) bachelor's degree in nursing or in a health related field from a regionally accredited college or university or from an institution accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses; ~~and~~

~~(3) Two years of supervised nursing experience in community and/or child health; OR]~~

C. Persons seeking a supervisory school nurse license pursuant to the provisions of this regulation shall meet the following requirements:

(1) master's degree in nursing or in a health related field from a regionally accredited college or university or from an institution accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses; ~~and~~

~~(3) Three years of supervised nursing experience, one of which must be in a school setting.~~
[07-31-97; 6.63.2.8 NMAC - Rn, 6 NMAC 4.2.3.1.8, 10-31-01; A, 9/30/03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.63.6 NMAC, Section 8.

6.63.6.8 REQUIREMENTS:
Applicants may meet this requirement by meeting requirements of Subsections ~~A and D, B and D, or C and D~~ A or B or C of 6.63.6.8 NMAC:

A. National certified school counselor credential issued by the national board for certified counselors;

B. Licensed professional mental health counselor (LPC) or licensed professional clinical mental health counselor (LPCC) credential issued by the New Mexico counseling and therapy practice board and a minimum of six semester hours of graduate credit in school counseling coursework;

C. Master's degree from a regionally accredited college or university. The master's degree requirement shall be satisfied by meeting the requirements of Paragraphs (1) and (2) of Subsection C of 6.63.6.8 NMAC.

(1) Master's degree in school counseling from a regionally accredited college or university and meeting the applicable program requirements as follows:

(a) A master's degree awarded by a New Mexico college or university must incorporate the New Mexico state board of education's ("SBE") approved competencies in the area of school counseling.

(b) A master's degree awarded by a college or university outside of New Mexico must be for a school counseling program approved by the SBE.

(2) Master's degree in a discipline other than school counseling and 36-42 graduate hours in school counseling, (which may be completed as a part of the master's degree program or in addition to the master's) meeting the applicable program requirements as follows:

(a) The 36-42 graduate hours awarded by a New Mexico college or university must incorporate the SBE's approved competencies in the area of school counseling and include a 300 hour ~~a~~ practicum or internship in a school setting.

(b) The 36-42 graduate hours awarded by a college or university outside of New Mexico must be for a school counseling program approved by the SBE and include a practicum in a school setting.

~~[D. Background—experience. The applicant may meet this requirement by meeting the requirements of paragraphs (1) or (2) of subsection D of 6.63.6.8 NMAC.~~

~~(1) Holding a valid New Mexico teaching license; provided, however, that a level 1 license will not meet this requirement.~~

~~(2) Demonstrating three (3) years of documented, verified satisfactory experience in one or a combination of the following areas:~~

~~(a) teaching, educational administration, or school counseling;~~
~~(b) clinical practice;~~
~~(c) mental health work.~~

[6.63.6.8 NMAC - Rp 6 NMAC 4.2.3.12.8, 02-14-03; A, 9/30/03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to 6.63.10 NMAC, Sections 2, 3, 8, 9, 11, 12, 13, and 14.

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL PART 10 [LICENSURE] CERTIFICATION FOR SUBSTITUTE TEACHERS

6.63.10.1 ISSUING AGENCY:
State Board of Education.
[6.63.10.1 NMAC – N, 09-29-00]

6.63.10.2 SCOPE: All ~~[licensed]~~ certified substitute teachers and all applicants for substitute teacher ~~[licensure]~~ certification. This regulation governs standards and qualifications for those persons seeking initial or renewed ~~[licensure]~~ certification as a substitute teacher.
[6.63.10.2 NMAC – N, 09-29-00; A, 09-30-03]

6.63.10.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, ~~[22-10-3, 22-10-3.3.]~~ 22-10A-15, and 22-10A-16, NMSA 1978.
[6.63.10.3 NMAC – N, 09-29-00; A, 09-30-03]

6.63.10.4 DURATION:
Permanent.
[6.63.10.4 NMAC – N, 09-29-00]

6.63.10.5 EFFECTIVE DATE:
September 29, 2000, unless a later date is cited in the history note at the end of a section.

[6.63.10.5 NMAC – N, 09-29-00]

6.63.10.6 OBJECTIVE: This regulation establishes licensure requirements for substitute teachers who provide temporary instructional services when an assigned licensed instructor is absent from class. This regulation also seeks to comply with amended legislation that set a minimum age requirement and allowed the state board of education to establish the duration of a substitute teaching license.

[6.63.10.6 NMAC – N, 09-29-00]

6.63.10.7 DEFINITIONS:
A. "high school diploma equivalency" means a New Mexico High School Diploma issued after a person has passed all five (5) subtests of the General Education Diploma ("GED"), a GED issued by the proper authority from any other state, an International Baccalaureate ("IB"), and any other diploma issued by any schools accredited by the state board of education, the North Central Accreditation ("NCA") or Western States Accreditation ("WSA").

B. "teaching experience" means any person as of the effective date of this rule, who shall have taught a minimum of 3 hours per day for 60 days as a paid substitute teacher in any school classroom in New Mexico during a regular school year.
[6.63.10.7 NMAC – N, 09-29-00]

6.63.10.8 REQUIREMENTS:
Unless otherwise stated in this rule, any person seeking to perform services as a substitute teacher must ~~be licensed~~ hold a certificate authorizing that person to perform the duties of a substitute teacher. Substitute teacher certificates shall be issued by local school districts to persons who at a minimum meet the requirements of this section. The local school district shall be responsible for issuing substitute teacher certificates and for maintaining a pool or list of qualified and certified substitute teachers whose certificates will authorize them to provide substitute teacher services within any local school or charter school located within the issuing district. A charter school may provide training and experience verification similar to that provided by the school district by issuing a letter from the governing body of the charter school. Such certificates authorize the substitute teacher to work in the issuing district only. At the very minimum, all applicants for initial substitute teacher licensure shall have attained eighteen (18) years of age for those seeking to perform instructional services in grades K-8, and twenty-one (21) years of age for those seeking to perform instructional services in grades 9-12, and have earned a high school diploma or high school diploma equivalency. Any such certificate issued by

a local school district shall be in writing. Additionally, each applicant shall meet the requirements of either Subsection H or I below, or shall meet the requirements of two or more of Subsections A through G. A local school board may provide for additional qualifications or requirements.

A. have, within 12 months of their date for initial employment with a local district, received on the job training by serving as a voluntary assistant to a licensed teacher in a school classroom for a minimum of three hours during three days;

B. have observed 3 hours or more of teaching in a school system and at the grade level of students in which the substitute will serve;

C. have completed a substitute teacher workshop conducted by or acceptable to the local school district in which the substitute teacher is employed or seeking employment;

D. have, within the past three school years of application for employment or licensure, performed at least three hours of instructional services as a substitute teacher in any school accredited or recognized by the New Mexico state board of education;

E. have engaged in any paid employment in the three years prior to applying for substitute teaching licensure or employment, which, after verification by and in the opinion of the superintendent of the local district, invests that applicant with relevant work or life experience;

F. have completed at least 60 hours of college-credit courses in a regionally accredited college;

G. have completed or ~~be~~ currently ~~be~~ enrolled in an approved college course or program from a regionally accredited college, where the course or program is structured to provide primary/secondary school teacher preparation;

H. have completed an approved teacher preparation program from a regionally accredited college or university;

I. is in possession of a current substitute or standard teaching license issued by another state's educator licensure issuing agency.

[6.63.10.8 NMAC – N, 09-29-00; A, 09-30-03]

6.63.10.9 BACKGROUND CHECKS:

As a condition for issuance of a substitute teacher ~~[licensure] certificate~~, all applicants for such initial ~~[licensure] certificate~~ shall submit to a fingerprint-based background check. The background checks procedures and requirements set forth in ~~[22-10-3.3] 22-10A-5~~, NMSA 1978 and 6.60.8 NMAC shall apply.

[6.63.10.9 NMAC – N, 09-29-00; A, 09-30-

03]

6.63.10.10 SUBSTITUTE TEACHER TRACKING: Local school districts, state institutions and nonpublic schools that utilize substitute teachers shall each develop and promulgate substitute teacher policies that at a minimum address substitute teacher qualifications, hiring guidelines, workshop guidelines, disciplinary action guidelines, and guidelines that permit the tracking of a substitute by specific classroom placement and by dates and hours in placement.

[6.63.10.10 NMAC – N, 09-29-00]

6.63.10.11 VERIFICATION OF REQUIREMENTS:

As part of the initial and continuing licensure process for substitutes, the superintendent or his/her appointed designee of the local district seeking to employ a substitute, is hereby authorized to verify that applicant's qualifications set forth at Sections 8 and 12 herein. When an unlicensed individual seeks substitute teaching employment or consideration for future employment in a local school district, state institution, or nonpublic school, the superintendent or his/her appointed designee shall verify the various requirements set forth at Sections 8 and 12 herein ~~[on a form available through the professional licensure unit].~~ Such verification shall be maintained by the local school districts.

[6.63.10.11 NMAC – N, 09-29-00; A, 09-30-03]

6.63.10.12 CONTINUING

[LICENSURE] [CERTIFICATION]: An initial substitute teaching ~~[license] certificate~~ is considered to be a level I ~~[license] certificate~~ and all renewed ~~[licenses] certificates~~ are considered to be level II ~~[licenses] certificates~~.

A. An initial substitute teacher ~~[license] certificate~~ is valid for three (3) years and commences on July first of a year and expires the 30th of June three years thereafter.

B. ~~[All] A~~ renewed substitute teacher ~~[licenses are] certificate is~~ valid for nine (9) years and ~~[commence] commences~~ on July first of a year and ~~[expire] expires~~ the 30th of June nine years thereafter.

C. Local school districts and state institutions that utilize substitute teachers shall each develop and promulgate substitute teacher advancement policies for level II ~~[licensure that require] certification that requires~~ substitutes at a minimum:

(1) to complete with a passing grade three (3) semester hours of credit from a regionally accredited college or university in areas related to the school's long range plan, student standards, or the substi-

tute teacher's classroom assignment; or,

(2) to complete forty-eight (48) contact hours in professional development activities approved by the local school district, state educational institutions, or nonpublic schools in areas related to the school's long range plan, student standards, or the substitute teacher's classroom assignment; or,

(3) obtain ~~[a written certification]~~ written verification from the superintendent of a local district, or from the governing authority of the state institution or nonpublic school where that substitute is employed that he/she has satisfactorily completed at least 270 hours of providing instructional services ~~[as a substitute teacher].~~

D. Substitute teachers who, on the effective date of this rule, hold valid, current state board of education issued certificates, may present the certificates to local school districts and be issued new certificates by the districts.

[6.63.10.12 NMAC – N, 09-29-00; A, 09-30-03]

6.63.10.13 [LIMITATIONS:

A. ~~No single class may be taught by substitute teachers in lieu of licensed teachers under contract for more than a total of sixty (60) school days during the school year.~~

B. ~~No local school district or charter school shall use substitute teachers for a single class in excess of the sixty (60) school day limitation. After a class has received instructional services from substitute teachers for thirty (30) days, no substitute teacher shall be permitted to perform substitute teaching services in that same class, until that district's school board specifically authorizes further use of substitute teacher(s) for the class. Such further use may be for any time up to an additional thirty (30) days.~~

C. ~~As to the sixty (60) day limitation, the state superintendent of public instruction may grant a written deviation from this requirement when requests by the local superintendent or the governing authority of the state institution or nonpublic school are submitted in writing which establish extraordinary circumstances justifying an extension of the sixty (60) school day limitation established herein. When reviewing such a request, the state superintendent will consider the reason for the requested deviation, the size of the school district, the geographical location, the qualifications of the substitute, if the substitute holds current New Mexico educator licensure and is not under contract with the local school district, its demonstrated effort to employ an appropriately licensed person in the area(s) of licensure needed, the historical use of substitutes in that district, and the~~

estimated number of days that the substitute teacher is expected to be utilized.] **PARENTAL NOTIFICATION:** A local superintendent or governing body of a charter school shall give written notice to parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject. [6.63.10.13 NMAC - Rp, 6 NMAC 4.2.3.16.10, 09-29-00; A, 09-30-03]

6.63.10.14 EXCEPTIONS:

~~A.~~ Until a local school board enacts a policy providing for additional qualifications or requirements, no person holding valid New Mexico teaching or administrative licensure is required to obtain substitute teacher [licensure] certification in order to perform instructional services as a substitute teacher.

~~B.~~ Where an unlicensed individual who has not applied for substitute teaching employment with, or future employment consideration by, a local school district, state institution or nonpublic school seeks substitute teaching licensure, the professional licensure unit shall verify that applicant's qualifications set forth at section 8 above. Together with an application for initial licensure, such individual shall submit a duly notarized affidavit that he/she has not applied for substitute teaching employment with or future consideration by a local school district or state institution, or nonpublic school.

~~C.~~ All applicants for an initial substitute teaching license must submit to and be cleared of a fingerprint criminal history background check. Applicants who, from July 1, 1998 up to and including December 31, 2000, have submitted to a fingerprint criminal history background check in a local school district or to the state department of public education ("SDE"), shall request that the local school district to whom they submitted fingerprint cards, forward the FBI criminal history background record to the professional licensure unit of the SDE. As long as the SDE is in possession of an applicant's FBI criminal history background record within the timeframe set forth herein, that applicant need not be re-fingerprinted and shall have satisfied the fingerprint submission requirement. In no event shall applicants for an initial substitute teaching license be issued that license until the results of their background checks have been reviewed and cleared by the SDE.

~~D.~~ Applicants for an initial substitute teaching license who submit a complete licensure application to the SDE no later than December 31, 2000, shall be exempt from having to pay an application fee and exempt from the requirements of

Section 6.63.10.8 NMAC above, provided that:

(1) they have gained, within the past five years from the date of application, no less than one and no more than two years of teaching experience, in which case they will be issued a Level I license; or

(2) they have gained, within the past five years from the date of application, three or more years of teaching experience, in which case they will be issued a Level II license; and

(3) all teaching experience shall be verified in a writing on a form available through the professional licensure unit signed by the superintendent or his/her designee of the local district where the applicant gained the teaching experience, and shall be filed with the director, professional licensure unit of the SDE. A written verification of experience must be submitted with the application to be considered complete.]

[6.63.10.14 NMAC - N, 09-29-00; A, 09-30-03]

HISTORY OF 6.63.10: The material in this part was derived from that previously filed with the State Records Center and Archives under: SBE Regulation No. 72-16 Substitute Teacher Certification, filed June 19, 1972;

SBE Regulation No. 84-3 New Mexico Requirement for Certification and Utilization of Substitute Teachers, filed March 19, 1984; SBE Regulation No. 89-4 Licensure for Substitute Teachers, filed August 17, 1989.

HISTORY OF REPEALED MATERIAL:

6 NMAC 4.2.3.16, Licensure for Substitute Teachers - Repealed, 09-29-00

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.2 NMAC (COMPETENCIES FOR ENTRY-LEVEL LANGUAGE ARTS TEACHERS).

6.64.2.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978. [07-15-99; 6.64.2.3 NMAC - Rn, 6 NMAC 4.7.1.1.3, 10-31-01; A, 09-30-03]

6.64.2.8 [CORE LICENSURE REQUIREMENTS: Persons seeking an endorsement in language arts to a New Mexico educator license must complete the following core requirements:

A. Hold a minimum of a

baccalaureate degree from a regionally accredited college or university;

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and

C. Pass the State Board's required licensure examination.]

REQUIREMENTS:

A. Beginning teachers seeking an endorsement in language arts to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in language arts and passage of a content area test in language arts.

B. Teachers seeking to add an endorsement in language arts to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience, shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in language arts; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in language arts; or

(3) obtain certification in language arts for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in language arts to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.2.8 NMAC, or by demonstrating the teaching competencies for entry level language arts teachers as provided in 6.64.2.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC. [07-15-99; 6.64.2.8 NMAC - Rn, 6 NMAC 4.7.1.1.8, 10-31-01; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.3 NMAC (COMPETENCIES FOR ENTRY-LEVEL READING

TEACHERS).

6.64.3.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978. [07-15-99; 6.64.3.3 NMAC - Rn, 6 NMAC 4.7.1.2.3, 10-31-01; A, 09-30-03]

6.64.3.8 [CORE LICENSURE REQUIREMENTS: Persons seeking an endorsement in reading to a New Mexico educator license must complete the following core requirements:

A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and

C. Pass the State Board's required licensure examination.]

REQUIREMENTS:

A. Beginning teachers seeking an endorsement in reading to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in the teaching of reading and passage of a content area test in the teaching of reading.

B. Teachers seeking to add an endorsement in the teaching of reading to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in reading; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in the teaching of reading; or

(3) obtain certification in reading for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in reading to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.3.8 NMAC, or by demonstrating the teaching competencies for entry level reading teachers as provided in 6.64.3.9 NMAC

through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[07-15-99; 6.64.3.8 NMAC - Rn, 6 NMAC 4.7.1.2.8, 10-31-01; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.4 NMAC (COMPETENCIES FOR ENTRY-LEVEL MATHEMATICS TEACHERS).

6.64.4.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978.

[07-15-99; 6.64.4.3 NMAC - Rn, 6 NMAC 4.7.1.3.3, 10-31-01; A, 09-30-03]

6.64.4.8 [CORE LICENSURE REQUIREMENTS: Persons seeking an endorsement in mathematics to a New Mexico educator license must complete the following core requirements:

A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and

C. Pass the State Board's required licensure examination.]

REQUIREMENTS:

A. Beginning teachers seeking an endorsement in mathematics to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in mathematics and passage of a content area test in mathematics.

B. Teachers seeking to add an endorsement in mathematics to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience, shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in mathematics; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate

degree in mathematics; or

(3) obtain certification in mathematics for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in mathematics to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.4.8 NMAC, or by demonstrating the teaching competencies for entry level mathematics teachers as provided in 6.64.4.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[07-15-99; 6.64.4.8 NMAC - Rn, 6 NMAC 4.7.1.3.8, 10-31-01; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.5 NMAC (COMPETENCIES FOR ENTRY-LEVEL SCIENCE TEACHERS).

6.64.5.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and [22-10-3] 22-10A-3, NMSA 1978.

[01-14-00; 6.64.5.3 NMAC - Rn, 6 NMAC 4.7.1.4.3 & A, 07-31-01; A, 09-30-03]

6.64.5.8 [CORE LICENSURE REQUIREMENTS: Persons seeking an endorsement in science to a New Mexico educator license must complete the following core requirements:

A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and

C. Pass the State Board of Education's required teacher examination.]

REQUIREMENTS:

A. Beginning teachers seeking an endorsement in science to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in science and passage of a content area test in science.

B. Teachers seeking to add an endorsement in science to an existing New Mexico teaching license of any level where the candidate has less than five full

academic years of teaching experience shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in science; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in science; or

(3) obtain certification in science for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in science to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.5.8 NMAC, or by demonstrating the teaching competencies for entry level science teachers as provided in 6.64.5.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[01-14-00; 6.64.5.8 NMAC - Rn, 6 NMAC 4.7.1.4.8 & A, 07-31-01; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.6 NMAC (COMPETENCIES FOR ENTRY-LEVEL SOCIAL STUDIES TEACHERS).

6.64.6.3 **STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978.

[07-15-99; 6.64.6.3 NMAC - Rn, 6 NMAC 4.7.1.5.3, 10-31-01; A, 09-30-03]

6.64.6.8 **[CORE LICENSURE REQUIREMENTS:]** Persons seeking an endorsement in social studies to a New Mexico educator license must complete the following core requirements:

A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and

C. Pass the State Board's required licensure examination.] **REQUIREMENTS:**

A. Beginning teachers seeking an endorsement in social studies to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in social studies and passage of a content area test in social studies.

B. Teachers seeking to add an endorsement in social studies to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments as provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in social studies; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in social studies; or

(3) obtain certification in social studies for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in social studies to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.6.8 NMAC, or by demonstrating the teaching competencies for entry level social studies teachers as provided in 6.64.6.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[07-15-99; 6.64.6.8 NMAC - Rn, 6 NMAC 4.7.1.5.8, 10-31-01; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.7 NMAC (COMPETENCIES FOR ENTRY-LEVEL HEALTH EDUCATION TEACHERS).

6.64.7.3 **STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978.

[07-15-99; 6.64.7.3 NMAC - Rn, 6 NMAC 4.7.1.6.3, 10-31-01; A, 09-30-03]

6.64.7.8 **[CORE LICENSURE REQUIREMENTS:]** Persons seeking an endorsement in health education to a New Mexico educator license must complete the following core requirements:

A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;

B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and

C. Pass the State Board's required licensure examination.] **REQUIREMENTS:**

A. Beginning teachers seeking an endorsement in health education to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in health education.

B. Teachers seeking to add an endorsement in health education to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience, shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in health education; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in health education; or

(3) obtain certification in health education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in health education to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.7.8 NMAC, or by demonstrating the teaching competencies for entry level health education teachers as provided in 6.64.7.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[07-15-99; 6.64.7.8 NMAC - Rn, 6 NMAC 4.7.1.6.8, 10-31-01; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.8 NMAC (COMPETENCIES FOR ENTRY-LEVEL LIBRARY MEDIA SPECIALISTS).

6.64.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978.
[07-15-99; 6.64.8.3 NMAC - Rn, 6 NMAC 4.7.1.7.3, 10-31-01; A, 09-30-03]

6.64.8.8 [CORE LICENSURE REQUIREMENTS: ~~Persons seeking an endorsement in library media to a New Mexico educator license must complete the following core requirements:~~

~~A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;~~

~~B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching, and~~

~~C. Pass the State Board's required licensure examination.]~~
REQUIREMENTS:

A. Beginning teachers seeking an endorsement in library/media to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in library/media.

B. Teachers seeking to add an endorsement in library/media to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience, shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in library/media; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in library/media; or

(3) obtain certification in library/media for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in library/media to an existing New Mexico educator license of any level where the candidate has at least five full academic years of teaching or school

library experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.8.8 NMAC, or by demonstrating the competencies for entry level library/media specialists as provided in 6.64.8.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[07-15-99; 6.64.8.8 NMAC - Rn, 6 NMAC 4.7.1.7.8, 10-31-01; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.11 NMAC (TESOL COMPETENCIES)

6.64.11.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978.

[6.64.11.3 NMAC - N, 09-29-00; A, 09-30-03]

6.64.11.8 [CORE LICENSURE REQUIREMENTS: ~~Persons seeking an endorsement in TESOL to a New Mexico educator license must complete the following core requirements:~~

~~A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;~~

~~B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching, and~~

~~C. Pass the State Board's required licensure examination.]~~
REQUIREMENTS:

A. Beginning teachers seeking an endorsement in TESOL to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in TESOL.

B. Teachers seeking to add an endorsement in TESOL to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience, shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in Subsection B of 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in TESOL; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in TESOL; or

(3) obtain certification in TESOL for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in TESOL to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.11.8 NMAC, or by demonstrating the teaching competencies for entry level TESOL teachers as provided in 6.64.11.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[6.64.11.8 NMAC - N, 09-29-00; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.12 NMAC (LICENSURE IN MODERN, CLASSICAL, AND NATIVE LANGUAGES)

6.64.12.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978.

[6.64.12.3 NMAC - N, 02-14-03; A, 09-30-03]

6.64.12.8 [CORE LICENSURE REQUIREMENTS: ~~Persons seeking an endorsement in modern, classical, and native languages to a New Mexico educator license must complete the following core requirements:~~

~~A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;~~

~~B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching, and~~

~~C. Pass the State Board of Education's required licensure examination.]~~
REQUIREMENTS:

A. Beginning teachers seeking an endorsement in modern, classical, and native languages to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other

requirements, 24-36 semester hours in a single modern, classical, or native language and passage of a content area test in a single language if required or provided in Paragraph (3) of Subsection B of 6.60.5.8 NMAC.

B. Teachers seeking to add an endorsement in modern, classical, and native languages to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in a single language if required or provided in Paragraph (3) of Subsection B of 6.60.5.8 NMAC; or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in a single modern, classical, or native language; or

(3) obtain certification in modern, classical, and native languages in a single language for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in modern, classical, and native languages to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.12.8 NMAC, or by demonstrating the teaching competencies for entry level modern, classical, and native languages teachers as provided in 6.64.12.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[6.64.12.8 NMAC - N, 02-14-03; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.13 NMAC (COMPETENCIES FOR ENTRY-LEVEL PERFORMING ARTS AND VISUAL ARTS EDUCATION TEACHERS)

6.64.13.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, [22-10-3, and 22-10-22] and 22-10A-3, NMSA 1978.

[6.64.13.3 NMAC - N, 07-01-02; A, 09-30-03]

6.64.13.8 [CORE LICENSURE REQUIREMENTS: ~~Persons seeking an endorsement in performing arts and visual arts to a New Mexico educator license must complete the following core requirements:~~

~~A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;~~

~~B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and~~

~~C. Pass the State Board's required licensure examination.]~~

REQUIREMENTS:

A. ~~Beginning teachers seeking an endorsement in performing arts and visual arts to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in performing arts and visual arts and passage of a content area test in performing arts and visual arts as provided in Subsection B of 6.60.5.8 NMAC.~~

B. ~~Teachers seeking to add an endorsement in performing arts and visual arts to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience shall meet one of the following requirements:~~

~~(1) pass the content knowledge test(s) of the New Mexico teacher assessments, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in performing arts and visual arts as provided in Subsection B of 6.60.5.8 NMAC; or~~

~~(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in performing arts and visual arts; or~~

~~(3) obtain certification in performing arts and visual arts for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.~~

C. ~~Persons seeking to add an endorsement in performing arts and visual arts to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.13.8 NMAC, or by demonstrating the teaching competencies for entry level performing arts and visual arts teachers as provided in 6.64.13.9 and 6.64.13.10 NMAC through the state's high~~

~~objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.~~

[6.64.13.8 NMAC - N, 07-01-02; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

This is an amendment to Sections 3 and 8 of 6.64.14 NMAC (COMPETENCIES FOR ENTRY-LEVEL PHYSICAL EDUCATION TEACHERS)

6.64.14.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and [22-10-3] 22-10A-3, NMSA 1978.

[6.64.14.3 NMAC - N, 07-01-02; A, 09-30-03]

6.64.14.8 [CORE LICENSURE REQUIREMENTS: ~~Persons seeking an endorsement in physical education to a New Mexico educator license must complete the following core requirements:~~

~~A. Hold a minimum of a baccalaureate degree from a regionally accredited college or university;~~

~~B. Have completed an approved educator preparation program that includes at least 14 weeks of supervised student teaching; and~~

~~C. Pass the State Board's required licensure examination.]~~

REQUIREMENTS:

A. ~~Beginning teachers seeking an endorsement in physical education to an initial level I New Mexico teaching license, must satisfy all of the requirements of the license as provided in state board of education rule for that license, which includes, among other requirements, 24-36 semester hours in physical education.~~

B. ~~Teachers seeking to add an endorsement in physical education to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience, shall meet one of the following requirements:~~

~~(1) pass the content knowledge test(s) of the New Mexico teacher assessments if provided in Subsection B of 6.60.5.8 NMAC, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state in physical education; or~~

~~(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in physical education; or~~

~~(3) obtain certification in physical education for the appropriate grade level of~~

New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in physical education to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.14.8 NMAC, or by demonstrating the teaching competencies for entry level physical education teachers as provided in 6.64.14.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas as set forth in 6.69.4.9 NMAC.

[6.64.14.8 NMAC – N, 07-01-02; A, 09-30-03]

NEW MEXICO BOARD OF EDUCATION

Explanatory paragraph: This is an amendment to 6.69.3 NMAC, Sections 2, 3, 6 and 10. Section 8 of 6.69.3 NMAC is repealed in its entirety. The repealed section is replaced by a new rule at 6.69.4 NMAC [Performance Evaluation System Requirements for Teachers].

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 69 SCHOOL PERSONNEL - PERFORMANCE PART 3 PERFORMANCE EVALUATION REQUIREMENTS FOR [TEACHERS,] ADMINISTRATORS, LIBRARY MEDIA SPECIALISTS, AND COUNSELORS

6.69.3.2 SCOPE: Chapter 69, Part 3, governs performance evaluation requirements for [~~teachers,~~] administrators, library media specialists, and counselors. [01-15-99; 6.69.3.2 NMAC – Rn, 6 NMAC 4.5.2.2, 06-14-01; A, 09-30-03]

6.69.3.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and [~~22-10-3-1(A)~~] 22-10A-19 NMSA 1978. [01-15-99; 6.69.3.3 NMAC – Rn, 6 NMAC 4.5.2.3, 06-14-01; A, 09-30-03]

6.69.3.6 OBJECTIVE: This regulation governs the requirements for the performance evaluation system for [~~teachers,~~] administrators, library media specialists, and counselors, grades K-12. This regulation identifies the specific evaluation/supervision competencies and indicators for [~~teachers,~~] administrators, library media specialist, and counselors.

[01-15-99; 6.69.3.6 NMAC – Rn, 6 NMAC 4.5.2.6, 06-14-01; A, 09-30-03]

6.69.3.8 [RESERVED]

[01-15-99; 6.69.3.8 NMAC – Rn, 6 NMAC 4.5.2.8, 06-14-01; A, 9-30-03]

6.69.3.10 EVALUATION OF LIBRARY/MEDIA SPECIALIST PERFORMANCE:

A. Beginning August 1, 1994, each school district shall implement a system of library/media specialist performance evaluation which meets the requirements of this regulation.

B. Each evaluation/supervision system shall include the following competencies as part of the evaluation criteria.

(1) The library/media specialist, in conjunction with teachers and administrators, plan and implements a program of user guidance and a sequential program of library skills instruction.

(a) Consults with teachers to relate the library skills instruction to the curriculum.

(i) Plans library units within specific disciplines.

(ii) Plans presentation of library skills through classes.

(b) Provides individual or group instruction and user guidance in the organization and location of resources in the library media center.

(i) Orients users to the availability, location, and use of library media center resources.

(ii) Utilizes a variety of teaching methods and materials which address student learning rates, level, and styles.

(iii) Provides opportunities and materials for students to practice skills and use the library media center.

(c) Provides individual or group instruction and user guidance in reference/study skills and systematic research techniques either initiating or supporting classroom activities.

(i) Teaches identification and use of parts of books.

(ii) Teaches identification and use of reference books.

(iii) Teaches identification and use of specialized indexes.

(d) Provides individual or group instruction and user guidance in print and non-print media interpretation skills.

(i) Teaches users to distinguish between fiction and nonfiction.

(ii) Teaches recognition of various forms of fiction (i.e., mystery, historical fiction, science fiction, and fantasy).

(iii) Teaches recogni-

tion of various forms of nonfiction (i.e., science, biography, and history).

(iv) Encourages the development of critical reading, viewing, and listening skills.

(2) The library/media specialist organizes and manages the library media center in accordance with established written policies and procedures.

(a) Organizes the library media center to help users' needs.

(i) Provides adequate circulation system for all media.

(ii) Provides for the processing of new materials, including classification and cataloging.

(iii) Maintains bookshelves and audiovisual storage areas for efficient use.

(b) Selects resources which reflect the priorities of the instructional program, as well as the recreational reading needs of the patrons.

(i) Identifies needed resources.

(ii) Evaluates media for quality and for instructional relevance.

(iii) Acquires media which support the instructional program.

(c) Maintains an inventory of the library media center's resources.

(i) Keeps accurate shelf list of all media.

(ii) Keeps accurate equipment inventory.

(iii) Keeps separate records of all media and/or equipment purchased with federal funds.

(d) Adheres to established timelines and procedures.

(i) Establishes long- and short- range goals based on assessed program needs.

(ii) Plans and expends budget allocations within established timelines.

(iii) Completes reports accurately and on time.

(iv) Follows district policies and procedures.

(e) Trains and supervises the library media center's student assistants, volunteers, and/or library clerks.

(f) Evaluates and adjusts library media center program and services.

(i) Conducts program assessment.

(ii) Analyzes data and modifies program.

(3) The library media specialist promotes effective use of the library media center and its services.

(a) Maintains positive public relations and accessibility by scheduling services and resources.

(i) Informs faculty of

the resources and services of the library media center.

(ii) Publicizes the services of the library media center.

(b) Creates an appropriate learning environment in the library media center.

C. The library/media specialist performance evaluation plan ~~[will include the five activities described in subsection F. of Section 6.69.3.8 NMAC, with appropriate adjustments.]~~ shall include at least the following components:

(1) conduct and document multiple observations of the library/media specialist's performance to determine the presence and extent of competencies demonstrated;

(2) confer with the library/media specialist prior to each observation and as soon as possible after each observation to ensure the adequacy, accuracy, and completeness of the information obtained;

(3) identify strengths and areas of the library/media specialist's performance where growth can occur;

(4) collaborate with the library/media specialist on development of a written plan for improvement or growth. The plan should include observations and conferences with the library/media specialist to determine progress toward completion of the plan;

(5) provide assistance to the library/media specialist through individual guidance, workshops, classes, or other such means for completing the growth plan.

[01-15-99; 6.69.3.10 NMAC - Rn, 6 NMAC 4.5.2.10, 06-14-01; A, 09-30-03]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

19 NMAC 15.K, Gas Purchasing and Transporting, filed 01-18-96, has been reformatted and renumbered to 19.15.11 NMAC to comply with the current NMAC requirements, effective 09-30-03.

NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

This is an amendment to 8.50.109 NMAC, Sections 1-3, 6-13, and 15-17.

TITLE 8 SOCIAL SERVICES CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM PART 109 MEDICAL SUP- PORT

8.50.109.1 ISSUING AGENCY: New Mexico Human Services Department ~~{Child Support Enforcement Division}~~
[8.50.109.1 NMAC - Rp 8 NMAC 5.CSE.000.1, 5/31/01; A, 10/1/03]

8.50.109.2 SCOPE: To the general public. For ~~[usability]~~ use by the enforcement officer and recipient of IV-D services.

[8.50.109.2 NMAC - Rp 8 NMAC 5.CSE.000.2, 5/31/01; A, 10/1/03]

**8.50.109.3 S T A T U T O R Y
AUTHORITY:** Public Assistance Act, Section 27-2-27 NMSA 1978. Mandatory Medical Support Act, Section 40-4C-1 et.seq., NMSA 1978. Support Enforcement Act, Section 40-4A-1, et.seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).

[8.50.109.3 NMAC - Rp 8 NMAC 5.CSE.000.3, 5/31/01; A, 10/1/03]

8.50.109.4 D U R A T I O N : Permanent.

[8.50.109.4 NMAC - Rp 8 NMAC 5.CSE.000.4, 5/31/01]

8.50.109.5 EFFECTIVE DATE: May 31, 2001.

[8.50.109.5 NMAC - Rp 8 NMAC 5.CSE.000.5, 5/31/01]

8.50.109.6 OBJECTIVE: To ~~[repeal all existing regulations for the Child Support Enforcement Division filed at State Records as 8 NMAC 5 CSE 000.000 through 979.000 and to replace the existing regulations with new regulations and]~~ conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Child Support Performance and Incentive Act of 1998. The regulations here codify present practices in accordance with federal and state law and regulations.

[8.50.109.6 NMAC - Rp 8 NMAC 5.CSE.000.6, 5/31/01; A, 10/1/03]

8.50.109.7 DEFINITIONS: The following definitions apply to this part. Additional definitions may be found under child support enforcement program general provisions at 8.50.100.7 NMAC.

A. "Health care insurance plan" or "plan" means health care coverage, not including medicaid, generally associated with a medical or dental plan of benefits, whether it be an employment-related or other group health plan, a health maintenance organization, a non-profit

health plan, or any other type of health insurance coverage under which medical or dental services are provided, regardless of service delivery mechanism. Any health care insurance plan coverage of a minor child shall, at a minimum, meet the standards of minimum health care protection as defined in the New Mexico Insurance Code, Section 59A-23B NMSA 1978.

B. "National medical support notice" or "notice" means a qualified court-ordered notice to an employer that an employee's children must be covered by the employment-related health care insurance plan.

[8.50.109.7 NMAC - N, 10/1/03]

8.50.109.8 ESTABLISHMENT OF MEDICAL SUPPORT: All orders obtained by the IV-D agency must include a provision for the health care coverage of the children. If the non-custodial parent provides health care coverage and changes employment, and the new employer provides health care coverage, the IV-D agency must transfer notice of the provision to the new employer. The IV-D agency must request the inclusion of a medical support provision even when employment-related or other group health care insurance is not available or when children cannot be added at the time the order is entered. [Federal regulations state that] The cost of health insurance is considered reasonable if it is ~~[offered by the employer through membership of a professional organization, which may include labor unions]~~ employment-related or other group health care insurance, regardless of service delivery mechanism. If the court does not enter an order for medical support, the case record must reflect that a medical support order was requested but was not issued.

[8.50.109.8 NMAC - Rp 8 NMAC 5.CSE.830, 5/31/01; A, 10/1/03]

8.50.109.9 TIME FRAMES AND REQUIREMENTS: ~~[Federal regulations require]~~ For all referral cases ~~[or applications]~~, within ninety calendar days of locating a non-custodial parent or of establishing paternity, child and/or medical support orders must be established or service of process must be completed to establish a support order. If service of process could not be completed, ~~[than the office must document]~~ then the case record must reflect unsuccessful attempts to serve process [after diligent efforts were made]. If the court dismisses a petition for support order without prejudice, the office must, at the time of dismissal, examine the reasons for dismissal and determine when it could be appropriate to seek an order in the future and seek a support order at that time.

[8.50.109.9 NMAC - Rp 8 NMAC

5.CSE.831, 5/31/01; A, 10/1/03]

8.50.109.10 AVAILABILITY OF MEDICAL INSURANCE:

Medical support will be addressed in actions to establish, enforce, or modify a child support award for minor children. All support orders obtained or modified by the IV-D agency will include a provision requiring the non-custodial parent to ~~[keep the IV-D agency informed]~~ promptly inform the IV-D agency of the name and address of his or her current employer, whether the non-custodial parent has access to health care insurance coverage ~~[at reasonable cost]~~ and, if so, the health insurance policy information.

A. The non-custodial parent may be required to provide immediate health or dental insurance coverage for the minor children if insurance (not including medicaid) is not available to the custodial parent at a more reasonable cost than to the non-custodial parent for coverage of the minor child; and it is available to the non-custodial parent through an ~~[employer, labor union]~~ employment-related or other group health care insurance plan, regardless of service delivery mechanism, which may be a labor organization, union, non-profit organization or professional association.

B. If medical insurance is not available to the non-custodial parent through an ~~[employer, labor union, or professional association,]~~ employment-related or other group health care insurance plan, and health insurance is not being provided by the custodial parent, the non-custodial parent may be required to provide immediate health insurance coverage for the children when it becomes available ~~[at a reasonable cost]~~ through an ~~[employer, labor union, or professional association,]~~ employment-related or other group health care insurance plan.

C. Failure by a non-custodial parent to provide health insurance coverage for the minor children, and to provide information concerning the coverage, will subject the non-custodial parent to legal proceedings requiring the non-custodial parent to show cause as to why the non-custodial parent should not be held in contempt of court for failure to fulfill the requirements of the court order. This will be true even if medical support is the only area in which the non-custodial parent is not in compliance with the terms of the order.

D. ~~[Because federal regulations specify that]~~ Medical insurance is reasonable in cost if employment-related or available through a group health care insurance plan, which may include but is not limited to a union, labor ~~[union]~~ organization, non-profit organization or professional association. Only the court may determine appropriateness of premium cost for a ~~[non-~~

~~custodial]~~ parent.

[8.50.109.10 NMAC - Rp 8 NMAC 5.CSE.832, 5/31/01; A, 10/1/03]

8.50.109.11 PROVIDING CUSTODIAL PARENTS WITH MEDICAL INSURANCE INFORMATION:

~~[Federal regulations require]~~ The IV-D agency ~~[to]~~ will provide the custodial parent with available health care insurance plan information when the non-custodial parent secures coverage for the dependent children. This includes any information available to ~~[IV-D about the medical insurance policy]~~ the IV-D agency about the health care insurance plan that would permit a claim to be filed or ~~[in the case of Health Maintenance Organizations,]~~ services to be provided. In cases enforced by the national medical support notice, the health care insurance plan shall provide this information to the custodial parent and the IV-D agency, as outlined on the notice.

[8.50.109.11 NMAC - Rp 8 NMAC 5.CSE.831, 5/31/01; A, 10/1/03]

8.50.109.12 MONITORING AND ENFORCING COVERAGE:

In all cases in which there is a court order with no medical insurance coverage ordered, the case will be reviewed pursuant to the IV-D agency's plan for automatic review of all IV-D cases every three years. Even if no other modification is expected, the IV-D agency must seek modification to include medical support, except in non-IV-A non-Medicaid cases where the custodial parent has not consented to the IV-D agency obtaining medical support. All remedies available for the collection and enforcement of child support apply to medical support. In cases where the non-custodial parent is required to provide health care coverage through an employment-related or other group health insurance plan pursuant to a child support order, the IV-D agency shall use, where appropriate, the national medical support notice to enforce the provisions of health care coverage for the children.

A. The IV-D agency must use the notice, when appropriate, to notify employers of the provision for health care coverage of the children. The agency must transfer the notice to the employer within two business days after the date of entry of an employee who is an obligor in a IV-D case in the state directory of new hires.

B. Employers must transfer the notice to the appropriate group health care insurance plan for which the children are eligible within twenty business days after the date of the notice.

C. Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the children and send any amount

withheld directly to the health care insurance plan. Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must proceed with withholding until such time as the employer receives notice from the IV-D agency that the contest is resolved.

D. Upon receipt of the national medical support notice, the health care insurance plan shall enroll the obligor's children as eligible dependents. Except as specifically outlined on the notice, the health care insurance plan shall not be required to provide benefits or eligibility for such benefits in addition to those provided under the terms of the plan immediately before receipt of the notice.

E. If the obligor is enrolled in a plan, the children shall be enrolled in the same plan in which the obligor is enrolled. If the obligor is not enrolled in a plan, the premiums charged for enrollment of the children only shall be the same as would be charged for enrollment of the obligor only. If the obligor is not enrolled in a plan and there is more than one plan option available for enrollment of the children, the plan shall notify the IV-D agency and the agency, in consultation with the custodial parent, will select a plan option. If the custodial parent does not notify the agency of the selected plan option within the timeframe required by the agency, the children shall be enrolled in the plan's default option, which is defined as the least costly plan.

F. The health care insurance plan must notify the IV-D agency of the status of health care coverage for the children, as outlined on the notice, within forty days after the date of the notice. The plan shall also promptly notify the custodial parent of the plan coverage and effective date, as outlined on the notice.

G. Employers must notify the IV-D agency promptly whenever the obligor's employment is terminated, in the same manner as is required for income withholding cases.

H. The IV-D agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible.

[8.50.109.12 NMAC - Rp 8 NMAC 5.CSE.832.2, 5/31/01; A, 10/1/03]

8.50.109.13 MEDICAL INSURANCE CARRIED BY THE CUSTODIAL PARENT:

In cases where the custodial parent has satisfactory medical insurance for the minor children other than medicaid, the amount expended by the custodial parent for health insurance will be taken into account pursuant to the New Mexico child

support guidelines worksheet ~~[which]~~ that that will be attached to the order.
[8.50.109.13 NMAC - Rp 8 NMAC 5.CSE.832.3, 5/31/01; A, 10/1/03]

8.50.109.14 COMMUNICATION WITH THE MEDICAL ASSISTANCE DIVISION: The IV-D agency is required to relay information regarding private health and dental insurance to the medical assistance division. This information includes newly obtained coverage, changes in coverage, or coverage lapses.
[8.50.109.14 NMAC - Rp 8 NMAC 5.CSE.832.4, 5/31/01]

8.50.109.15 ORDERING SPECIFIC DOLLAR AMOUNTS FOR MEDICAL SUPPORT: Specific dollar amounts received for medical support must be sent to the medical assistance division (MAD) for distribution when the case receives medicaid (IV-A, or medicaid only). When the family ceases to receive medicaid, assignment for medical benefits terminates, except for the amounts of any unpaid medical support obligation that has accrued under the assignment, ~~[IV-D] the IV-D agency~~ will attempt to collect any unpaid dollar amounts designated in the court order for medical purposes and must forward the collection to the medical assistance division for distribution. The order may include a set amount and specify that the amount set is for medical care. If the order does not designate a specific dollar amount for medical purposes, the agency is not required to collect the money. For example, if the non-custodial parent is ordered to pay for the child's orthodontia, but no dollar amount is ordered, the IV-D agency is not required to enforce this order. ~~[If any assigned medical support payment is received and retained by a person who has assigned medical support rights to the state, and the IV-D agency learns about it, the IV-D agency must notify Medicaid that the payment has been received and returned.]~~
[8.50.109.15 NMAC - Rp 8 NMAC 5.CSE.832.5, 5/31/01; A, 10/1/03]

8.50.109.16 PENALTIES: If any person willfully fails to withhold or pay over income to the health care insurance plan pursuant to the national medical support notice, Mandatory Medical Support Act, or Support Enforcement Act, or willfully discharges, disciplines, refuses to hire or otherwise penalizes an obligor as prohibited by Subsection D of Section 40-4A-8 NMSA 1978, the court, upon due notice and hearing:

A. may impose a fine against the payor for the total amount that the payor willfully failed to withhold or pay over;

B. may order reinstatement of or award damages, or both, to the obligor;

C. may take such other action, including action for contempt of court, as may be appropriate.
[8.50.109.16 NMAC - N, 10/1/03]

8.50.109.17 FEES: In IV-D cases being enforced for medical support pursuant to the requirements of the national medical support notice, an employer may not assess a fee for withholding or for sending to the health care insurance plan, the employee contributions necessary for health care coverage of the children.
[8.50.109.17 NMAC - N, 10/1/03]

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

This is an amendment to Section 8 of 8.102.500 NMAC. This amendment implements the annual adjustments to the maximum income limits for participation in the NMW cash assistance and Support Services programs.

8.102.500.8 GENERAL REQUIREMENTS

A. **Need determination process:** Eligibility for NMW or Refugee cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1500 liquid and \$2000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. **GA program need determination:** Eligibility for the GA program requires a finding that the benefit group's countable gross earned and unearned income does not equal or exceed the standard of need for the size of the benefit group.

C. **Gross income limits:** The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are

revised and adjusted each year in October.
(2) The gross income limit for the size of the benefit group is as follows:
(a) One person [~~\$ 628~~]
\$637
(b) Two persons [~~\$ 846~~]
\$859
(c) Three persons [~~\$1,064~~]
\$1,081
(d) Four persons [~~\$1,283~~]
\$1,304
(e) Five persons [~~\$1,500~~]
\$1,526
(f) Six persons [~~\$1,719~~]
\$1,748
(g) Seven persons [~~\$1,937~~]
\$1,971
(h) Eight persons [~~\$2,155~~]
\$2,193
(i) Nine persons [~~\$2,373~~]
\$2,416
(j) Ten persons [~~\$2,591~~]
\$2,638
(k) For more than ten persons, add [~~\$218~~] \$223 for each additional person.

D. **Eligibility for support services only:** Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

(1) One person [~~\$ 739~~] \$ 749
(2) Two persons [~~\$ 995~~] \$1,010
(3) Three persons [~~\$ 1,252~~]
\$1,272

(4) Four persons [~~\$ 1,509~~] \$1,534
(5) Five persons [~~\$ 1,765~~]
\$1,795
(6) Six persons [~~\$ 2,022~~] \$2,057
(7) Seven persons [~~\$ 2,279~~]
\$2,319

(8) Eight persons [~~\$ 2,535~~]
\$2,580
(9) Nine persons [~~\$ 2,792~~]
\$2,842

(10) Ten Persons [~~\$ 3,049~~] \$3,104
(11) For more than ten persons, add [~~\$257~~] \$262 for each additional person.

E. **Standard of need:**
(1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the individual's share of benefit group supplies.

(3) The financial standard includes approximately \$79 per month for each individual in the benefit group.

(4) The standard of need for the NMW, GA, and Refugee cash assistance

benefit group is:

- (a) One person \$ 231
- (b) Two persons 310
- (c) Three persons 389
- (d) Four persons 469
- (e) Five persons 548
- (f) Six persons 627
- (g) Seven persons 706
- (h) Eight persons 802
- (i) Nine persons 881
- (j) Ten persons 960

(k) For more than 10 persons, add \$79 for each additional person.

F. Special needs:

(1) Special clothing allowance:

In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$44 for the month of August only.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, GA, or Refugee cash assistance benefit group for the month of August.

(c) The clothing allowance is not allowed in determining eligibility for NMW, GA, or Refugee cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is or will be included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

G. Shelter home care: A cash payment may be made to a GA or an SSI recipient when the recipient resides in a licensed shelter care home because the recipient needs help with personal care, such as bathing, dressing, eating or taking prescribed medication.

(1) The payment shall be allowed only if the GA or SSI recipient is living in a residential shelter care facility that is licensed by the New Mexico department of health.

(2) **Eligibility and payment standard for GA recipients:** The payment for a GA recipient living in a licensed residential shelter care facility is equal to the cash assistance payment plus \$100.

(3) **Payment to an SSI recipient:** The payment made to an SSI recipient living in a licensed residential shelter care facility is \$100 per month.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003]

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

This is an amendment to 8.139.410 NMAC, Section 9. This amendment expands eligibility for children who are qualified aliens, are lawfully present in the United States, and are under eighteen years of age.

8.139.410.9 CITIZENSHIP AND ALIEN STATUS:

Participation in the Food Stamp Program is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible alien status. Among those ineligible for participation are alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.

A. Eligibility: No individual is eligible to participate in the Food Stamp Program unless that individual is otherwise eligible and is:

- (1) a U.S. citizen;
- (2) a U.S. non-citizen national;
- (3) an American Indian who is:

(a) an American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(b) a member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) **Hmong or Highland Laotian:**

(a) a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975 who is lawfully residing in the U.S.;

(b) the spouse, or surviving spouse of such Hmong or Highland Laotian, or

(c) an unmarried or surviving dependent child who is under the age of 18 or if a full-time student under the age of 22; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday of such Hmong or Highland Laotian.

(5) Qualified and eligible alien:

An individual who is both a "qualified alien" and an "eligible alien" as defined in Subsection B of 8.139.410.9 NMAC.

B. Qualified and eligible

aliens: An alien may qualify for participation in the Food Stamp Program if the alien meets at least one definition of "qualified alien" from Paragraph (1) below and one definition of "eligible alien" as defined in Paragraph (2) below.

(1) Qualified alien: A "qualified alien" means:

(a) an alien who is lawfully admitted for permanent residence under the INA;

(b) an alien who is granted asylum under section 208 of the INA;

(c) a refugee who is admitted to the United States under section 207 of the INA;

(d) an alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(e) an alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(f) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(g) an alien, an alien child's parents or an alien child who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse;

(h) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(2) Eligible alien: A qualified alien, as defined in Paragraph (1) of this Subsection, must have a status of at least one of the following to be eligible to receive food stamps:

(a) an alien who is lawfully admitted to the United States, either as a Lawful Permanent Resident (LPR) or in any other qualified alien status, and who has been living in the United States for at least five years from the date of the alien's entry into the United States;

(b) an alien who is lawfully admitted to the United States for permanent residence (LPR) under the Immigration and Nationality Act, and has worked for 40 qualifying quarters of coverage as defined under Title II of the Social Security Act, or can be credited with such qualifying quarters. The definition of lawfully admitted for permanent residence under the Immigration and Nationality Act shall be based on standards issued by the U.S. Immigration and Naturalization Service.

(c) an alien admitted as a refugee under section 207 of the INA. Eligibility is limited to 7 years from the date of the alien's

entry into the U.S.

(d) an alien granted asylum under section 208 of the INA. Eligibility is limited to 7 years from the date asylum was granted.

(e) an alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA. Eligibility is limited to 7 years from the date deportation or removal was withheld.

(f) an alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980). Eligibility is limited to 7 years from the date the status as a Cuban or Haitian entrant was granted.

(g) an Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461. Eligibility is limited to 7 years from the date admitted as an Amerasian.

(h) an alien with one of the following military connections:

(i) a veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements including an individual who died in active military, naval or air service.

(ii) an individual on active duty in the Armed Forces of the U.S. (other than for training).

(iii) the spouse or surviving spouse of a veteran or active duty military alien described above provided the spouse has not remarried.

(iv) a child or surviving child of a deceased veteran (provided such child was dependent upon the veteran at the time of the veteran's death) who is under the age of 18 (if a full-time student, under the age of 22); or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

(i) a qualified alien who is lawfully residing in the U.S. and is receiving benefits or assistance for blindness or disability as defined in Paragraph (23) of Subsection A of 8.139.100.7 NMAC.

(j) an individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(k) an individual who ~~on August 22, 1996, was~~ is lawfully residing in the U.S. and is ~~now~~ under 18 years of age.

(3) Quarters of coverage:

(a) SSA reports quarters of coverage through the Quarters of Coverage History System (QCHS).

(b) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under

title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(i) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility.

(ii) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the caseworker shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(c) **Disputing quarters:** If an applicant disputes the SSA determination of quarters of coverage reported by QCHS, the individual may participate for up to six (6) months pending the results of an SSA investigation. The individual or HSD must have requested an investigation from SSA in order to participate. The household is responsible for repayment of any food stamp benefits issued for such individual during the investigation if SSA determines that the individual cannot be credited with 40 quarters of coverage under Title II of the Social Security Act.

(4) **Federal means-tested benefit:** After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit or actually received food stamps in that quarter. If the alien earns the 40th quarter of coverage prior to applying for food stamps or any other federal means-tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

(a) Federal means-tested benefits include, but may not be limited to, benefits from:

(i) the food stamp program;

(ii) the food assistance block grant programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(iii) supplemental security income (SSI);

(iv) TANF block grant

under Title IV of the Social Security Act.

(b) For purposes of determining whether an alien has or has not received a federal means-tested benefit during a quarter, the definition of federal means-tested benefit shall not include:

(i) medical assistance under Title XIX of the Social Security Act (Medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(ii) short-term, non-cash, in-kind emergency disaster relief;

(iii) assistance or benefits under the National School Lunch Act;

(iv) assistance or benefits under the Child Nutrition Act of 1966;

(v) public health assistance (not including any assistance under Title XIX Medicaid) for immunizations, and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(vi) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child is a qualified alien;

(vii) programs, services, or assistance, delivering in-kind services at the community level and necessary for the protection of life or safety, that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(viii) programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act;

(ix) means-tested programs under the Elementary and Secondary Education Act of 1965;

(x) benefits under the Head Start Act;

(xi) benefits under the Workforce Investment Act.

C. Verification of citizenship/eligible alien status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) **U.S. citizenship:** Any mem-

ber whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining household members.

(2) Eligible alien status: Verification of eligible alien status is mandatory at initial certification. Only those household members identified as aliens with qualified and eligible alien status are eligible to participate in the FSP.

(3) Ineligible or questionable alien status: Any household member identified as an ineligible alien, or whose alien status is in question cannot participate in the FSP. The caseworker is responsible for offering to contact the Immigration and Naturalization Service if the alien has a document that does not clearly indicate eligible or ineligible alien status.

D. Need for documentation:

(1) Household members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) A caseworker shall allow aliens a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an individual's eligible status is not provided by the deadline, the eligibility of the remaining household members shall be determined. Verification of eligible alien status provided at a later date shall be treated as a reported change in household membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual of HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual for up to six months pending the results of the inquiry. The six-month time limit begins in the month the original request for verification is made.

(5) If a caseworker accepts a non-INS document and determines that it is reasonable evidence of eligible alien status, the document shall be copied and sent to INS for verification. The caseworker shall not delay, deny, reduce, or terminate the individual's participation pending verification from INS.

(6) Inability to obtain INS documentation: If a household indicates an inability to provide documentation of alien status for any member of the household,

that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.

E. Failure to cooperate: If a household, or a household member, indicates an unwillingness to provide documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation.

F. Reporting illegal aliens:

(1) HSD shall inform the local INS office immediately when a determination is made that any member of a household is present in the US in violation of the INA.

(2) A determination that an alien is in the US in violation of the INA is made when:

(a) there has been a finding or conclusion of law through a formal determination process by the INS or the Executive Office of Immigration Review (EOIR) that the alien is unlawfully residing in the US; or

(b) the alien states to the department that he or she is in the US in violation of the INA, and the statement is supported by an INS or EOIR finding.

(c) An alien who resides in the US in violation of the INA shall be considered an ineligible alien until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.

(3) Illegal alien status is considered reported when the caseworker enters the information on the household's computer file.

G. Income and resources of ineligible aliens: All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and food stamp benefit amount for the remaining eligible household members.

[02/01/95, 07/01/98, 02/01/99; 8.139.410.9 NMAC - Rn, 8 NMAC 3.FSP.412, 05/15/2001; A, 02/14/2002; A, 10/01/2002; A, 04/01/2003; A, 10/01/2003]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to Section 8 of 8.139.500 NMAC. This amendment includes the annual adjustments to the Food Stamp Program maximum income limits, standards, deductions and maximum food stamp allotments mandated each year by the Food Stamp Act.

8.139.500.8 BASIS OF ISSUANCE

A. Income standards: Determination of need in the Food Stamp Program is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is 130 percent (130%) of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent (130%) of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 states and the District of Columbia.

E. Issuance table: The issuance table lists applicable income guidelines used to determine food stamp (FS) eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for FS benefits must have income below the appropriate gross income limit for household size.

[Please see Table, page 671]

Household Size	Maximum Gross Monthly Income Elderly/Disabled Separate Status at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	[\$1,219] \$1,265	[\$960] \$973	[\$739] \$749	[\$139] \$141
2	[\$1,642] \$1,707	[\$1,294] \$1,313	[\$995] \$1,010	[\$256] \$259
3	[\$2,066] \$2,150	[\$1,628] \$1,654	[\$1,252] \$1,272	[\$366] \$371
4	[\$2,489] \$2,592	[\$1,961] \$1,994	[\$1,509] \$1,534	[\$465] \$471
5	[\$2,913] \$3,034	[\$2,295] \$2,334	[\$1,765] \$1,795	[\$553] \$560
6	[\$3,336] \$3,476	[\$2,629] \$2,674	[\$2,022] \$2,057	[\$663] \$672
7	[\$3,760] \$3,918	[\$2,962] \$3,014	[\$2,279] \$2,319	[\$733] \$743
8	[\$4,183] \$4,360	[\$3,296] \$3,354	[\$2,535] \$2,580	[\$838] \$849
Each Additional Member	[\$424] + \$443	[\$334] + \$341	[\$257] + \$262	[\$105] + \$106

F. Deductions and standards:

(1) **Determination:** Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) **Yearly adjustment:** The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st.

(3) **Expense deductions and standards table:**

Standard Deduction for Household Size of 1 through 4	\$134.00
Standard Deduction for Household Size of 5	[\$147.00] \$149.00
Standard Deduction for Household Size of 6 or more	[\$168.00] \$171.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction Limit (per dependent)	
Under age 2	\$ 200.00
All others including elderly dependent	\$ 175.00
Heating/Cooling Standard Utility Allowance (HCSUA)	[\$176.00] \$193.00
Limited Utility Allowance (LUA)	[\$91.00] \$ 86.00
Telephone Standard (TS)	[\$23.00] \$ 28.00
Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	[\$ 367.00] \$378.00
Homeless Household Shelter Standard	\$ 143.00
Minimum Allotment for Eligible One-and Two-Person Households	\$ 10.00

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003]

NEW MEXICO MEDICAL BOARD

16 NMAC 10.18, Physician Assistant Advisory Committee is repealed effective 10/5/03.

NEW MEXICO MEDICAL BOARD

This is an amendment to sections 1 and 10 of 16.10.3 NMAC.

16.10.3.1 ISSUING AGENCY: New Mexico ~~Board of Medical Examiners~~ Medical Board, hereafter called the board. [16.10.3.1 NMAC - N, 4/18/02; A, 10/5/03]

16.10.3.10 Successful Completion of Examinations

A. An applicant must score a minimum of 75 on each component part of a board-approved examination as

described in Subsection C of 16.10.3.8 NMAC. The minimum score of 75 may not be achieved for any component part of an examination by averaging that component's scores with scores of other component part(s).

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

C. An applicant who has taken the Canadian Medical Licensing Examination (LMCC) must achieve the minimum passing score established for the exam as documented by LMCC certification.

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

step of the examination is passed.

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

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

~~[F.]~~ **G.** Candidates may repeat a previously passed step if they need to

retake the exam in order to bring an entire sequence within the mandated time frame.

H. The board may allow exceptions to the time limits established by this rule for qualified applicants with bona fide disabilities, on a case by case basis.
[16.10.3.10 NMAC - Rp 16 NMAC 10.9.2, 4/18/02; A, 10/5/03]

NEW MEXICO MEDICAL BOARD

These are amendments to sections 1, 8, 9, 10 and 16 of 16.10.15 NMAC.

16.10.15.1 ISSUING AGENCY:
New Mexico ~~[Board of Medical Examiners]~~
Medical Board hereafter called the board.
[16.10.15.1 NMAC - Rp 16 NMAC 10.15.1, 7/15/01; A, 10/5/03]

16.10.15.8 QUALIFICATIONS FOR LICENSURE AS A PHYSICIAN ASSISTANT

A. Graduation from a program for physician assistants accredited by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association, the Accreditation Review Committee on Education for the Physician Assistant (ARC-PA) or its successor agency, and

~~**B.** Possess a Baccalaureate degree or two (2) years working experience as a Certified Physician Assistant.~~

~~**C.** Current NCCPA certification. Physician assistants not currently certified by NCCPA have a one-time grace period of one year from the date of the interview to become certified.]~~

B. Current NCCPA certification.

~~**D.] C.** Good moral and professional character.~~

~~**E.** Not have had a physician assistant's registration or license refused, suspended, or revoked by any other state for any reason defined in Section 61-6-8, NMSA 1978.]~~

[16.10.15.8 NMAC - Rp 16 NMAC 10.15.8, 7/15/01; A, 10/5/03]

16.10.15.9 LICENSURE PROCESS. Each applicant for a license as a physician assistant shall submit the required fees and following documentation:

A. A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for 1 year from the date of receipt.

B. Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice. Letters of recommendation must be sent directly to the board from the individual recommending the applicant.

C. Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s). Verification must include a raised seal; attest to current status, issue date, license number, and all other related information.

D. All applicants ~~[must]~~ may be required to personally appear before the board or the board's designee for an interview and must present original documents, as the board requires. The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

~~**E.** Each applicant approved for licensure must attend the license orientation meeting to obtain a permanent license.~~

~~**F.] E.** The initial license is valid until August 31 of the next even-numbered year.
[16.10.15.9 NMAC - N, 7/15/01; A, 10/5/03]~~

16.10.15.10 INTERIM PERMITS

A. Are issued to eligible applicants who have completed the application process and complied with all other requirements except certification by the NCCPA and attendance at a license orientation meeting; Interim permits are issued to eligible applicants who have completed the application process and complied with all other licensure requirements except certification by the NCCPA.

B. Physician assistants not currently certified by NCCPA have a one-time grace period of one-year from the date of graduation from a program approved by ARC-PA or its successor agency to become certified. Are valid until the license orientation meeting at which time a permanent license is issued.

~~**C.** A second interim permit may be issued to a physician assistant who is unable to attend the first scheduled license orientation meeting following completion of all other requirements. An additional interim permit fee is required and~~

C. Upon expiration of the interim permit the physician assistant may no longer practice and may reapply upon

NCCPA certification.

~~**D.** Upon expiration of the second interim permit, the physician assistant may no longer practice and shall reapply.]~~

[16.10.15.10 NMAC - N, 7/15/01; A, 10/5/03]

16.10.15.16 LICENSE EXPIRATION, RENEWAL, CHANGE OF STATUS

A. Physician assistant licenses expire on August 31 of each even-numbered year. Licenses not renewed by September 1 of the expiration year are considered expired.

B. A completed renewal application, post-marked on or before August 31 of the renewal year, shall include the required fees as defined in 16.10.9.9 NMAC, and proof of current NCCPA certification.

C. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal application if one has not been received.

D. Renewal applications postmarked or hand-delivered after August 31 will be subject to late penalties as defined in 16.10.9.9 NMAC.

E. Unless a complete renewal application is received by the board office, or post-marked, before November 30, the license shall be summarily suspended.

F. At the time of license renewal a physician assistant may request a status change. ~~[A processing fee may apply.]~~ A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC.

G. Re-instatement within two years. An inactive or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current NCCPA certification.

H. Re-instatement after two years. An inactive or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

[16.10.15.16 NMAC - N, 7/15/01; A, 10/5/03]

NEW MEXICO MEDICAL BOARD

This is an amendment to sections 1 and 10 of 16.10.19 NMAC

16.10.19.1 ISSUING AGENCY:

New Mexico ~~[Board of Medical Examiners]~~ Medical Board, hereafter called the board.

[16.10.19.1 NMAC - N, 8/11/01; A, 10/5/03]

16.10.19.10 SUPERVISION REQUIREMENTS:

A. Pursuant to Session Laws of 2001, Ch.311, Section 9, an anesthesiologist may not supervise more than ~~two (2)~~ three (3) anesthesiologist assistants, except in emergency cases. An anesthesiologist shall not supervise, except in emergency cases, more than four anesthesia providers if at least one is an anesthesiologist assistant.

B. The supervising anesthesiologist shall submit written notice of intent to supervise an anesthesiologist assistant on forms prescribed by the board. These forms must be submitted and approved before the anesthesiologist assistant begins work. Supervising anesthesiologists who are notifying the board of their intent to supervise an anesthesiologist assistant with less than one year of experience will include a plan for providing enhanced supervision during the first year of practice.

C. An anesthesiologist assistant shall only work under the supervision of an anesthesiologist approved by the board.

D. Failure of the supervising anesthesiologist to comply with the Medical Practice Act and the Rules may result in denial of approval for current or future anesthesiologist assistant supervision.

E. Except in cases of emergency, the supervising anesthesiologist must be present in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, and the presence of the supervising anesthesiologist must be documented in the patient record.

F. The supervising anesthesiologist must be present within the operating suite and immediately available to the operating room when an anesthesiologist assistant is performing anesthesia procedures.

G. The supervising anesthesiologist shall ensure that all activities, functions, services and treatment measures are properly documented in writing and that all anesthesia records are reviewed, countersigned and dated.

[16.10.19.10 NMAC - N, 8/11/01; A, 1/20/03; A, 10/5/03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.100 NMAC, Section 7.

2.80.100.7 DEFINITIONS: As used in the Public Employees Retirement Act:

A. "Accumulated member contributions" means amounts deducted from the salary of a member and credited to the member's individual account, together with interest if any, credited to that account; it also includes repaid withdrawn contributions not including interest paid thereon, or amounts paid to purchase service credit as allowed under the PERA Act.

B. "Active duty" for purposes of acquiring service credit under NMSA 1978, Section 10-11-7, as amended, for periods of active duty with uniformed service of the United States, means full-time duty in the active uniformed service of the United States, including full-time training duty, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. "Active duty" does not include full-time National Guard duty, which is training or other duty performed by a member of the Air or Army National Guard of a state or territory, for which the member is entitled to pay from the United States or for which the member has waived pay from the United States. "Active duty" includes duty in the full-time military service reserve components activated pursuant to a federal call to duty, deployment for a peacekeeping mission or other declared national emergency.

C. "Adult correctional officer member" means a person who is an adult correctional officer or an adult correctional officer specialist employed by the corrections department or its successor agency.

~~[C-] D.~~ "Another retirement program" means retirement plans established by the Judicial Retirement Act, Magistrate Retirement Act, and the Educational Retirement Act.

~~[D-] E.~~ "Elected official" means a person elected to a public office by registered voters, who is paid a salary; "elected official" includes a person who is appointed to fill an unexpired term of an elected public office, who is paid a salary.

~~[E-] F.~~ "Filed" means that PERA has received the complete document as evidenced by a writing on the document indicating the date of receipt by PERA.

~~[F-] G.~~ "Fire member" means any member who is employed as a firefighter by an affiliated public employer, is paid a salary and has taken the oath prescribed for firefighters. The term shall not include volunteer firefighters or any civilian employees of a fire department.

~~[G-] H.~~ "Hazardous duty member" means a juvenile or adult correctional officer employed by ~~[a corrections facility of the corrections department]~~ the children, youth and families department or its successor agency, but does not include any member who is a "police member" or a "fire member". A hazardous duty member shall, however, be considered a state policeman for federal Social Security Act purposes.

~~[H-] I.~~ "Leave office" means an elected official's successor has been duly elected or appointed and qualified for office, or upon the date of death of an elected official.

~~[I-] J.~~ "Legal representative" means "personal representative" as defined in the Probate Code of New Mexico which includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same functions under the law governing their status, or an attorney or a person acting pursuant to a power of attorney for a member, retired member or beneficiary.

K. "Municipal detention officer" means a member who is employed by an affiliated public employer other than the state who has inmate custodial responsibilities at a facility used for the confinement of persons charged or convicted of a violation of a law or ordinance. "Municipal detention officer" includes both juvenile and adult municipal detention officers.

L. "Permissive service credit" means service credit recognized by the retirement system for purposes of calculating a member's retirement benefit, which is available only by making a voluntary additional contribution which does not exceed the amount necessary to fund the benefit attributable to such service credit. A vested member may purchase a total of five (5) years of permissive service credit as permitted by the Internal Revenue Code Section 415(n)(3)(B) limitations on non-qualified service credit. "Permissive service credit" includes service eligible for purchase under NMSA 1978, Sections 10-11-7 and 10-11-8(H), as amended.

~~[J-] M.~~ "Police member" means any member who is employed as a police officer by an affiliated public employer, who is paid a salary, and who has taken the oath prescribed for police officers.

The term shall not include volunteers, hazardous duty members, or employees who do not perform primarily police functions including, but not limited to jailers, cooks, matrons, radio operators, meter checkers, pound employees, crossing guards, police judges, park conservation officers, and game wardens. A member who is employed by an affiliated public employer as a police officer and as a non-police officer employee ~~[by the affiliated public employer]~~ shall be regarded as a police member if more than fifty percent of the member's total salary is paid as a police officer.

~~[K.]~~ N. "Private retirement program" for the purpose of exclusion from membership under NMSA 1978, Section 10-11-3(B)(5) means a retirement program of the affiliated public employer which meets the Internal Revenue Service minimum standards regarding benefits as outlined in 26 C.F.R. Section 31.3121(b) (7)F of the Employment Tax Regulations and IRS Rev. Proc. 91-40.

~~[L.]~~ O. "Reenlistment" as used in NMSA 1978, Section 10-11-6(A)(3), means enlistment or voluntary entry into one of the armed services as either enlisted personnel or as a commissioned officer.

~~[M.]~~ P. "Retired member" means a person who is being paid a normal, deferred or disability pension on account of that person's membership in the association. "Retired member" shall not include any persons receiving a pre-retirement survivor pension, post-retirement survivor pension, or reciprocity retirement pension where the payer system is not PERA, or any other person unless specifically included by definition as a "retired member".

~~[N.]~~ Q. "Salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered to an affiliated public employer. "Salary" includes a member's fixed, periodical compensation from full or part time employment; shift differentials; and wages paid while absent from work on account of vacation, holiday, injury or illness, which means payment made by continuing the member on the regular payroll. "Salary" includes incentive pay that is not temporary and becomes part of member's base salary. "Salary" also includes temporary promotions, temporary salary increases, but no other temporary differentials. "Salary" shall not include overtime pay, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment. "Salary" also does not include lump sum payments which are not part of the member's fixed periodical compensation, such as lump sum annual and sick

leave or occasional payments to elected officials for attending meetings, allowances for any purpose, employer contributions to a private retirement program, or other fringe benefits, even if they are paid to or for a member on a regular basis, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes.

R. "State legislator member" means a person who is currently serving or who has served as a state legislator or lieutenant governor and who has elected to participate in a state legislator member coverage plan. A former legislator or former lieutenant governor may be a "state legislator member" whether or not currently receiving a pension under a state legislator member coverage plan.

~~[O.]~~ S. "State system" means a retirement program provided for in the Public Employees Retirement Act, Magistrate Retirement Act, or Judicial Retirement Act.

~~[P.]~~ T. "Terminate employment" means that a member has a complete break in service and an absolute cessation of employment with ~~[an]~~ all affiliated public [employer] employers, including employment as an elected official, as evidenced by a personnel action form or other equivalent document, and the member is not reemployed by an affiliated public employer for 30 days; or upon the date of death of a member.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.100.7 NMAC – Rn & A, 2 NMAC 80.100.7, 12-28-00; A, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to Section 2.80.400 NMAC, Section 10

2.80.400.10 MEMBER COVERAGE UNDER PERA

A. Full-time employees who work 40 or more hours in a week and part-time employees who work 20 or more hours but fewer than 40 hours in a week shall be members.

B. The following employees are excluded from coverage:

(1) Retired members or PERA or retired members from any other state system as defined in subsection ~~[C]~~ D of 2.80.100.7 NMAC who subsequently become employees of affiliated public employers.

(2) Independent contractors.

Persons who render services to an affiliated public employer as independent contractors are not employees who are entitled to PERA membership unless the employment contract provides that they are "employees" for federal and state taxation purposes, or the IRS had determined that they are "employees" under the contract.

(3) Seasonal or student employees.

(a) "Seasonal employee" or "temporary employee" means an employee who works in a position designated by the affiliated public employer as seasonal or temporary and created to last no more than 9 consecutive months. Retired members returning to work with an affiliated public employer shall not be re-employed under this subsection 3(b).

(b) "Student employee" means an employee who during at least 8 months in any calendar year, or during the period of employment, is enrolled at an educational institution whose academic credits would be accepted by a state educational institution or a public school district and carrying at least 12 credit hours or is enrolled in an educational institution's graduate studies program and carrying at least 9 credit hours. Any person who is a regular full-time employee is not a "student" for purposes of exclusion from PERA membership.

~~[(4) Retired members of PERA who are subsequently employed by an affiliated public employer and who have not earned \$15,000.00 or more in a calendar year.]~~

[10-15-97; 12-15-99; 2.80.400.10 NMAC – Rn & A, 2 NMAC 80.400.10, 12-28-00; A, 8-15-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is a new Section to 2.80.500 NMAC

2.80.500.9 REMITTANCE OF CONTRIBUTIONS FOR RE-EMPLOYED RETIREMENT MEMBERS

A. In accordance with the Public Employees Retirement Act each state agency or affiliated public employer shall be responsible for deducting the applicable contribution from the salary or wages paid to each re-employed retired member for each payroll period. Retired member contributions shall be separately tracked, but shall not be posted to the retired member's account or refunded to the retired member or the employer upon termination of employment.

B. The employer shall

transmit to PERA the retired member and employer contributions for every retired member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall clearly set forth the amount of employer and retired member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in subsection D below, interest will be assessed on any remittance of retired member and employer contributions not made by the due day of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st. Any interest paid on unremitted contributions shall not be posted to the member's account or refunded to the member or the employer.

D. Except as provided in subsection F below, a penalty of fifty dollars (\$50) per day shall be assessed for nay employee and employer contribution transmittal report that is untimely. For purposes of this subsection, "untimely" is defined as fifteen (15) days after the end of the month in which the transmittal report was due.

E. In the event the employer fails to make the necessary deductions, the employer shall be responsible to remit to PERA the total amount due for both the retired member and employer contributions plus interest as provided in subsection C above.

F. If an employer, for good cause, is unable to timely transmit retired member employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four (24) hours prior to the due date, and may request waiver of the interest and/or penalty that would otherwise be assessed. The executive director may waive interest and/or penalty for up to thirty-one (31) calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

[2.80.500.9 NMAC – N, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.600 NMAC, Sections 10, 20 and 30

2.80.600.10 GENERAL PROVISIONS

A. Service shall be credited to the nearest month.

(1) Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office or terminates employment on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

(2) A member who is a full-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member is paid 50% or more of his or her monthly salary as reported by the member's affiliated public employer.

(3) If a member who is a full-time employee of an affiliated public employer is paid less than 50% of the member's monthly salary as reported by the member's affiliated public employer, employer and member contributions shall be paid on any salary paid during that month, and the member contributions shall be posted to the member's individual member contribution account, but no service credit shall be acquired for that month, even if unpaid leave was taken pursuant to the Family Medical Leave Act.

(4) A member who is a part-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member ~~is paid 100% of his or her monthly salary~~ works twenty (20) or more hours per week, totaling forty (40) or more hours in an eighty hour pay period as reported by the member's affiliated public employer. A part-time employee is an employee who works forty (40) or more hours but less than eighty (80) hours in an eighty (80) hour pay period or twenty (20) or more hours but less than forty (40) hours in a week.

B. A part-time employee who works fewer than forty (40) hours ~~but less than eighty (80) hours~~ in an eighty (80) hour pay period or fewer than twenty (20) hours in a forty (40) hour week shall be exempt from membership by filing a PERA Exclusion from Membership form pursuant to 2.80.400.40 NMAC.

C. If a member has an incomplete contract to purchase service credit at the time of termination of employment, the contract must be paid in full within thirty (30) days of termination or the amount already paid under the contract will be refunded and no corresponding service credit will be granted.

D. Overlapping service credit.

(1) If a member has service credit for the same period of time for employment by public employers covered under different state systems, service credit may only be

acquired under one stat system for the period of overlapping service credit. In no case shall a member be credited with more than one month of service credit for all service in any calendar month.

(2) If a member accrues service credit under PERA and another stat system for an overlapping period, the member shall be granted service credit for this overlapping period in accordance with all applicable statutes and rules that provide for the highest pension factor.

[10-15-97; 11-15-97; 12-15-99; 2.80.600.10 NMAC – Rn, 2 NMAC 80.600.10, 8-15-01; A, 9-30-03]

2.80.600.20 SERVICE CREDIT

A. In order to claim service credit for service rendered prior to August 1, 1947 or for a period prior to the employer becoming an affiliated public employer, a member shall:

(1) file a claim for the period of employment showing specific beginning and ending dates of employment;

(2) provide certification of employment to the association for the period or periods claimed as prior service;

(3) file an affidavit, to be certified and signed by two other persons who know of the employment, together with any additional documentary evidence available which may be required by the board if no records are available for the period of prior service claimed;

(4) provide payroll records, personnel action forms showing hire date(s), term of employment, full-time or part-time, job classification, salary amounts and dates of personnel actions, job description, if any;

(5) contribution history from the federal social security administration for the claimed period of employment, if applicable.

B. Forfeited service credit may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board, under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive but not necessarily continuous months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions

withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the Educational Retirement Association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the Educational Retirement Association (ERA).

(4) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(5) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

C. "Actual credited service" for purposes of NMSA 1978, Section 10-11-27 means only that service credit earned during periods of employment with the New Mexico state police in the positions of patrolman, ~~or~~ sergeant, lieutenant or captain, or as an aircraft division pilot, or with the corrections department or its successor agency after July 1, 2004 in the positions of adult correctional officer or adult correctional officer specialist. No permissive service credit which is ~~either~~ purchased ~~or acquired free~~ by state police members or adult correctional officer members shall be increased by 20% as provided in NMSA 1978, Section 10-11-27. With respect to service credit acquired for periods of military service, only that service credit which is acquired for intervening military service during period of employment as a state police member or as adult correctional officer members after July 1, 2004 shall be increased by 20% as provided in NMSA 1978, Section 10-11-27.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to NMSA 1978, Section 10-11-6 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The affiliated public employer

by whom the member was employed immediately prior to entering a uniformed service of the United States shall certify in writing the date of termination of employment of the member. This requirement may be waived if PERA records contain sufficient documentation of the date of termination of such prior employment.

(3) The affiliated public employer by whom the member was employed immediately after discharge from a uniformed service of the United States shall certify in writing to the association the member's date of return to employment within thirty days of reemployment. This requirement may be waived if PERA records contain sufficient documentation of the date of return to employment. Members who are not reemployed by an affiliated public employer within ninety days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the affiliated public employer that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment shall be awarded only upon compliance by the member and the affiliated public employer with the provisions of NMSA 1978, Section 10-11-6, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) PERA members who are also members of the military service reserve components who are activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free service credit subject to the conditions of this section. The member must provide a form DD 214 ~~and~~ or other documentation as required by PERA to support an award of free service credit.

E. A member who claims service credit for one or more periods of employment for which an employer failed to remit the required contributions to the association may receive service credit only after receipt by the association of payment by the employer of the delinquent contributions plus applicable interest and penalties, if any, along with the following documenta-

tion:

(1) payroll records for the claimed periods of employment, indicating the salary for the claimed employment dates;

(2) personnel action forms showing hire date(s), term of employment, job classification, salary amounts and dates of personnel actions;

(3) job description;

(4) contribution history from the federal social security administration for the claimed period of employment, if applicable;

(5) explanation from the employer as to why contributions were not withheld or paid to the association;

(6) any other information requested by the association. If original records have been lost or destroyed, affidavits in a form acceptable to the association may be submitted for the purpose of substantiating the employment. The association may accept such affidavits in lieu of original records if it deems them sufficient to establish the required employment information.

E. At any time prior to retirement, a member may purchase up to one year of permissive service credit at its full actuarial present value as determined by the association, under the following conditions:

(1) Service credit may be purchased in one-month increments.

(2) The amount of service credit purchased under this Subsection (F) shall not exceed one year reduced by any other period of permissive service credit purchased.

(3) Service credit purchased cannot be used for the purpose of calculating final average salary, eligibility for pension factor of a coverage plan or achieving the pension maximum for pension calculation and retirement purposes.

(4) For members employed in part-time positions, for purposes of calculating the full actuarial present value purchase cost of service credit under this Subsection (F), the member's hourly salary shall be annualized as if the member was employed full-time.

(5) Payment for service credit under this subsection must be received within sixty (60) days of the date the member is informed in writing of the purchase price of the service credit.

(6) The purchase cost received to purchase service credit under this subsection shall not be refunded to the member. [10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.600.20 NMAC - Rn & A, 2 NMAC 80.600.20, 8-15-01; A, 12-28-01; A, 9-30-03]

2.80.600.30

PAYMENT FOR PUR-

CHASE OF SERVICE CREDIT

A. No installment payment contracts may be used for the purchase of any service credit.

B. The rate or rates of interest for the purchase or reinstatement of service credit shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st.

C. A vested member may purchase a total of five (5) years of permissive service credit as allowed under the Public Employees Retirement Act in one lump-sum or as provided by statute in one-year increments.

D. A member may rollover funds from an Internal Revenue Code Section 457, 403(b), 401(k), IRA or another 401(a) qualified account to pay for forfeited or permissive service credit allowed by the Public Employees Retirement Act. The rollover of funds must be made by a trustee-to-trustee transfer and the account from which the funds come must be in the name of the member requesting the transfer. [10-15-97; 2.80.600.30 NMAC – Rn, 2 NMAC 80.600.30, 8-15-01; A, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.700 NMAC, Section 10

2.80.700.10 PROCEDURE FOR RETIREMENT

A.

(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement. Any changes to an application for retirement that has already been submitted to PERA, including, but not limited to, retirement date, designation of survivor beneficiary or form of payment option, must be in writing and filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension

payable under form of payment A within a reasonable time of receipt of the properly completed application and required documents. If the member also desires an estimate of retirement pension payable under forms of payment B, C and D, the member shall request such an estimate in writing.

(3) When the application is filed, PERA shall furnish the member's last affiliated public employer with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the affiliated public employer.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the form of payment and beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service and age; and c) the member's termination of employment with all affiliated public employers.

(8) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries. Acceptable documents are a birth certificate, a baptismal certificate or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age eighteen (18) years;
- (e) military record;
- (f) birth certificate of child show-

ing age of parent;

(g) physician's or midwife's record of birth;

(h) passport;

(i) immigration record;

(j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated beneficiary to be identified as a spouse.

(3) Complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required.

(4) Any member with an effective retirement date after December 31, 1998 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution, or a waiver in lieu thereof. Such authorization or waiver shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. If a member has three or more years of service credit under each of two or more coverage plans, the pension factor and pension maximum provided under the coverage plan which produces the highest pension shall apply. The coverage plan from which the member was last employed shall govern the age and service requirements for retirement. Permissive service credit purchased pursuant to NMSA 1978, Section 10-11-7(H) cannot be used to determine final average salary, pension factor or pension maximum for pension calculation purposes.

E. Upon meeting the membership requirements in 2.80.400 NMAC, a member shall combine concurrent salaries received from two affiliated public employers. In the case of concurrent full-time and part-time employment or full-time and elected official service, service credit shall be earned only for the full-time employment. In the case of two part-time employments, service credit shall be earned only for the employment which has the lowest pension factor and pension maximum.

In the case of concurrent employment, termination from all affiliated public employers is required before retirement. No combining of concurrent salary may occur for employees who are on extended annual or sick leave until retirement.

F. A member is vested in his or her accrued benefits when the member reaches normal retirement age of the plan in which he or she is a member at the time of retirement or was last a member. If there is a termination of the PERA retirement system, or if employer contributions to the PERA fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

G. A member who retires must remain unemployed by an employer covered by any state system for a period of at least 90 days before returning to public employment. If the retired member is re-employed by an employer covered by any state system within 90 days of retirement, ~~his or her pension will be suspended immediately.~~ the member shall be immediately removed from retirement and any pension amounts paid since the member's retirement shall be considered an overpayment that must be reimbursed to PERA by the member. A retired member who performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA is not subject to the provisions of this section. A retired member who works for an employer covered by ~~any state system~~ the Judicial Retirement Act or the Magistrate Retirement Act and who is exempt or excluded from membership in that system under the applicable retirement act is not subject to the provisions of this section. A retired member who ~~performs work~~ works for an employer affiliated with the Educational Retirement Association is not subject to the provisions of this section. [10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.700.10 NMAC – Rn & A, 2 NMAC 80.700.10, 12-28-00; A, 8-15-01; A, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.900 NMAC, Sections 6 and 8

2.80.900.6 OBJECTIVE: ~~[This]~~ The objective of this rule is to establish procedures for payment of pre-retirement survivor pensions.

[10-15-97; 2.80.900.6 NMAC – Rn, 2 NMAC 80.900.6, 12-28-01; A, 9-30-03]

2.80.900.8 PRE-RETIREMENT SURVIVOR PENSIONS: The procedure for payment of a pre-retirement survivor pension is:

A. Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.

B. The completed application shall be returned to PERA with the following documents:

(1) A certified copy of the death certificate or other proof of death acceptable in a court of law;

(2) Copy of marriage license or other proof of marital status acceptable in a court of law if the application is for a surviving spouse;

(3) Affidavit of surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased member;

(4) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

(5) Documents required under the Probate Code for payments to a minor if the application is on behalf of eligible surviving children.

(6) Affidavit that the applicant is unmarried if the applicant is a child of the deceased member.

(7) Copies of social security cards for all prospective payees.

(8) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required.

C. When the application and accompanying documentation as

required in ~~[Section 8-1-2]~~ Subsection B of 2.80.900.8 NMAC above are filed, PERA will determine whether a pension is payable. The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the member's death. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

D. Duty death.

(1) If the application is for a survivor pension resulting from duty death, the application shall be accompanied by documentation supporting the claim, in addition to the documentation required in ~~[paragraph 8-1-2]~~ Subsection B of 2.80.900.8 NMAC above. Documentation may include but is not limited to the following:

(a) a certified copy of the death certificate or other proof of death acceptable in a court of law;

(b) employer's report of accident;

(c) determination of duty death by another agency such as workers compensation administration or social security administration although such a determination does not necessarily prove the death was a duty death for PERA purposes;

(d) autopsy report;

(e) attending physician's narrative report containing the conclusion of duty death and stating the basis therefor;

(f) any other information requested by the association

(2) The burden of proof of duty death is on the applicant.

(a) "Solely and exclusively" means the member's work is so substantial a factor of the death that the death would not have occurred at the time without it.

(b) "Course of the member's performance of duty" means place or activity for which the employer's business required the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his normal work station or is within the "special errand" rule in which case such time will be considered in the course of employment.

(3) The board hereby authorizes the director of member services to determine whether the death was the natural and proximate result of causes arising solely and exclusively out of and the course of the member's performance of duty with an

affiliated public employer. Such determination shall be presented to the board for ratification at the next regular meeting of the board. The board may remove the matter from the consent calendar and substitute its own determination for that of the director of member services, or it may assign the matter to an administrative hearing officer for determination.

[10-15-97; 11-15-97; 2.80.900.8 NMAC – Rn, 2 NMAC 80.900.8, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1000 NMAC, Sections 2, 7, 30 and 50

2.80.1000.2 SCOPE: This rule affects the members, disability retirees, beneficiaries, affiliated public employers, the retirement board and the association under the Public Employees Retirement Act. [10-15-97; 2.80.1000.2 NMAC – Rn, 2 NMAC 80.1000.2, 12-28-00; A, 9-30-03]

2.80.1000.7 DEFINITIONS: For purposes of disability retirement the following definitions shall apply:

A. “Commensurate” employment means that the applicant is able to engage in some profitable employment or enterprise in the state of New Mexico, ~~but does not require that the applicant be able to perform work which pays an equivalent or substantially equivalent salary as] which approximates to a substantial degree the applicant’s pre-injury compensation but is not necessarily equal to the applicant’s pre-injury employment.~~

B. “Course of the member’s performance of duty” means place or activity for which the employer’s business requires the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the “special errand” rule, in which case such time will be considered to be in the course of employment. Mere presence on the employer’s premises while coming to or going from the job shall not establish this element unless the member has also assumed or is performing job duties.

C. “Likely to be permanent” means that the weight of the medical evidence presented indicates that the applicant has either reached maximum medical

improvement and the disability will probably last at least until the applicant reaches the age at which he or she will become eligible for normal retirement or that the medical information supports a determination of permanent disability, even though maximum medical improvement has not been reached.

D. “Solely and exclusively” means the member’s work is so substantial a factor of the disability that the disability would not have occurred at the time without it and a pre-existing condition is not a significant contributing factor material to the disability.

E. “Totally incapacitated” means inability, as a result of either sudden injury or illness or the cumulative long-term effects of injury or illness, to work the member’s regular work week.

[10-15-97; 1-15-99; 2.80.1000.7 NMAC – Rn, 2 NMAC 80.1000.7, 12-28-00; A, 8-15-01; A, 9-30-03]

2.80.1000.30 INITIAL APPLICATION PROCEDURE

A. Application. The association shall provide application forms for members to use in complying with these provisions. No member shall be deemed an applicant for disability retirement until the member or his or her representative or employer has completed and filed the disability application package, including all the forms ~~[for disability retirement.] required in order to process the application.~~ The following forms shall be required in order to process the application:

(1) Employer’s report of disability (not applicable to members who are not currently employed contributing members). If the employer refuses to provide the report, the committee may take whatever steps it deems necessary to obtain the required information.

(2) Member’s examining physician’s statement for disability retirement benefits. If the application is for disability retirement based on physical incapacity, the examining physician must be a medical doctor (M.D.) licensed in the state in which he or she practices. If the application is for disability retirement based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices or psychiatrist (M.D.) licensed in the state in which he or she practices. If the application is for disability retirement based on both physical and mental incapacity, reports must be made for each kind of incapacity ~~[by the appropriate medical professionals].~~ The examining physician’s statements shall be based on an examination of the member not more than 3 months prior to the date of ~~[consideration of the] submitting the appli-~~

cation.

(3) Employer’s first report of injury, if any.

(4) A list of all health care practitioners consulted who have examined or treated the member regarding the disability and all records, reports, narratives, evaluations, diagnoses, prognoses or notes discussing, establishing, evaluating or measuring the disability. Such records shall include, but not be limited to, one or more reports, evaluations, analyses or narratives made within ninety (90) days of application.

(5) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred.

(6) Release of medical information to PERA on a form signed by the applicant or his or her legal representative.

(7) Any other information requested by members of the committee.

B. If information requested by members of the committee is not provided by the disability applicant within sixty (60) days of the written request, the application, if otherwise complete, will be considered by the committee in the absence of the requested information and the applicant’s failure to provide the requested information may be considered by the committee in its consideration of the application.

~~[B.] C.~~ Notification: The applicant shall be given notice of every meeting at which his or her application is to be considered. Such notice shall be in writing and mailed not less than five days prior to such disability review committee meeting, unless the applicant waives, in writing, the notification requirement in order to expedite any action on his or her application.

~~[C.] D.~~ Meetings: The committee shall hold its regular meetings at designated times at the PERA building, Santa Fe, New Mexico. A majority of the committee members, at least one of whom must be a physician, shall constitute a quorum. No action may be taken by the committee in the absence of a quorum.

(1) Confidentiality: Meetings of the committee shall not be open to the public in order to preserve the confidentiality of medical records pursuant to NMSA 1978, Section 14-2-1. The applicant and the applicant’s guest(s) or representative may be present to hear discussion and to address the committee during consideration of his or her application.

(2) Testimony and oral statements or arguments made by an applicant or his or her representative shall be tape recorded.

~~[D.] E.~~ Release of medical reports: Copies of medical reports may be given to the applicant or his or her representative, provided a release of information

form is signed by the applicant or his or her legal representative.

[E.] E. Examination: Upon receipt and consideration of the completed disability retirement forms required in 30.A above, the committee may notify the applicant in writing if further examination is necessary, and if so, the type of examination and information necessary to document the disability application. If, after the applicant has been notified in writing, the applicant fails without good cause to report to an examining physician within 90 days, his or her application for disability retirement benefits shall become void.

[F.] G. The committee shall determine whether the applicant meets the requirements for disability retirement, and approve or deny the application. The applicant shall be notified by letter of the committee's action within 10 working days of its meeting. If the application is approved, the type (duty or non-duty) of the retirement pension and the effective date shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

[G.] H. If the application for disability retirement is approved, the member, unless excluded from coverage by the federal social security administration, shall apply for federal disability benefits within 30 calendar days of approval of the application for disability retirement. A copy of the federal social security administration application shall be submitted to PERA.

[H.] I. If an application for disability retirement benefits is approved and the member does not terminate employment within 45 calendar days, a new application must be filed and approved by the committee before a disability retirement pension can be paid.

[I.] J. If an application for disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may ~~not~~ re-apply and present new medical evidence in support of a new application for disability retirement benefits based on the same disorder ~~[for at least]~~ one year after the date of the initial denial. The applicant may not re-apply for disability benefits for the same medical condition without new medical evidence made within ninety (90) days of the re-application.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.1000.30 NMAC – Rn, 2 NMAC 80.1000.30, 12-28-00; A, 8-15-01; A, 9-30-03]

2.80.1000.50 CONTINUATION PROCEDURE

A. At the end of the first year that a disability retirement pension is paid, the disability retired member's condi-

tion shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension.

B. The disability retired member must submit a copy of the application for benefits with the federal social security administration and written evidence of payment of federal disability benefits in the following form: 1) a copy of a warrant for federal disability benefits; or 2) a letter from the federal social security administration confirming that the disability retired member is receiving federal disability benefits.

C. If the disability retired member has not applied for federal disability benefits, has applied and has not received a written final determination, or has received federal social security disability for a different condition than presented in the application for PERA disability, the committee shall determine the disability retired member's eligibility for continuation of payment of a state disability retirement pension. The following forms and information are required for re-evaluation for continuation of disability retirement benefits:

(1) Examining physician's statement for continuation of disability retirement pension. If disability retirement was granted based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices or psychiatrist (M.D.) licensed in the state in which he or she practices. If the disability retirement was granted based on both physical and mental incapacity, reports must be made for each kind of incapacity by the appropriate health care professionals. The examining physician's statements shall be based on an examination of the disability retired member not more than 3 months prior to the date of consideration of the re-evaluation;

(2) Disability retired member's statement for continuation of disability retirement pension;

(3) A list of all health care practitioners consulted who have examined or treated the disability retired member regarding the disability;

(4) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred. At re-evaluation for continuation of disability retirement benefits, at least one vocational rehabilitation report by a vocational rehabilitation evaluator approved by PERA must be submitted to the committee. In addition to any other vocational rehabilitation reports, if the disability retired member was referred by PERA to the division of vocational rehabilitation ("DVR") at the time of initial approval of disability retirement benefits, a report from DVR must be submitted at re-

evaluation.

(5) Any other information requested by the committee.

D. Disability retired members whose examination reports are under consideration by the committee have the right to be heard by and to present any pertinent evidence which they may have to the committee. They may also review any and all evidence ~~[which]~~ that the committee may have which pertains to their case.

E. Appeals of denial of continuation of disability retirement pensions by members who are not covered by or who are not eligible to apply for federal disability benefits shall be conducted according to NMSA 1978, Section 10-11-120 and 2.80.1500 NMAC.

F. If the disability retired member fails to appeal as provided herein the committee's decision becomes final.

G. If continuation of disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may not re-apply for disability retirement benefits based on the same condition(s) for at least one year after the initial denial of continuation of disability retirement benefits.

[10-15-97; 1-15-99; 2.80.1000.50 NMAC – Rn, 2 NMAC 80.1000.50, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1100 NMAC, Sections 6, 20, 30 and 40

2.80.1100.6 OBJECTIVE: The objective of this rule is to establish standards and procedures for the payment ~~[, suspension,]~~ removal from retirement and reinstatement of pensions of retired members; to establish notification and reporting requirements for post-retirement employment; and to establish conditions for retired members who work for affiliated public employers as independent contractors.

[10-15-97; 2.80.1100.6 NMAC – Rn, 2 NMAC 80.1100.6, 12-28-00; A, 9-30-03]

2.80.1100.20 POST-RETIREMENT EMPLOYMENT:

[A.] When a retired member is subsequently employed by an affiliated public employer, the retired member shall notify PERA immediately on the form prescribed by the association of the hire date, position and salary of the subsequently employed retired member.

~~[(1) Unless exempt from suspension of benefits according to the provisions of NMSA 1978, Section 10-11-8, the subsequently employed retired member shall notify PERA when he or she has earned from all public employment with an affiliated public employer \$15,000 in a calendar year.~~

~~[(2) A. If a retired member [fails to report earnings from subsequent employment with an affiliated public employer and consequently continues to receive pension payments after earning \$15,000 in a calendar year,] returns to work within ninety (90) days of their effective date of retirement, the retired member will be removed from retirement and will be required to repay [to] PERA any pension amounts erroneously [received,] paid, plus interest at the rate set by the board for collecting overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated, or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.~~

~~[B- The affiliated public employer shall notify PERA when the subsequently employed retired member terminates employment and shall report the gross amount of wages paid to date of termination or when the subsequently employed retired member earns \$15,000 in a calendar year.~~

~~C. A retired member who is subsequently employed by an employer covered under any state system may request suspension of his or her pension at any time in order to earn eligible reciprocal service credit for the purpose of reciprocity. (See 2.80.1400 NMAC.)~~

B. A retired member re-employed by an affiliated public employer shall not be eligible to accrue service credit or eligible to acquire or purchase service credit for the retired member's period of post-retirement public affiliated employment.

C. A retired member re-employed by an affiliated public employer shall be required to make non-refundable employee contributions as required by statute.
[10-15-97; 11-15-97; 2.80.1100.20 NMAC – Rn & A, 2 NMAC 80.1100.20, 12-28-00; A, 12-28-01; A, 9-30-03]

2.80.1100.30 REINSTATEMENT OF PENSION:

~~[A-] When a retired member is subsequently employed by an affiliated~~

~~public [employer, causing suspension of pension] employer within ninety (90) days of their effective retirement date, causing removal from retirement and resulting in re-establishment of PERA membership, that person will be eligible to reinstate his or her pension at the termination of the subsequent employment period under the following conditions:~~

~~[(4) A. The member files an application for retirement in accordance with the provisions of 2.80.700.10 NMAC.~~

~~[(2) B. The recomputed pension, under form of payment A, shall not be less than the amount of the [suspended] previous pension under form of payment A.~~

~~[(3) If the re-retiring member acquires three or more years of service credit during the subsequent employment with an affiliated public employer, the following provisions apply:~~

~~(a) the re-retiring member may re-retire under the coverage plan applicable at the time of re-retirement;~~

~~(b) the pension payment shall be made employing the form of payment selected by the re-retiring member upon his or her application for re-retirement;~~

~~(c) the re-retiring member may designate any person as survivor beneficiary.]~~

[10-15-97; 2.80.1100.30 NMAC – Rn, 2 NMAC 80.1100.30, 12-28-00; A, 9-30-03]

2.80.1100.40 I N D E P E N D E N T CONTRACTORS: A retired member who intends to render services to an affiliated public employer as an independent contractor shall submit the contract to the association at least fifteen (15) working days prior to the effective date of the contract. If a retired member contracts to perform work for any affiliated public employer, the following conditions shall apply:

A. PERA shall evaluate the contract to determine whether, under the terms of the contract, the retired member is an "employee" or an "independent contractor". To make this determination, PERA shall refer to the common-law control test guidelines as expressed in the Social Security Handbook published by the U.S. department of health and human services, as revised and amended. If PERA determines that the retired member is actually an "employee" rather than an "independent contractor" under the terms of the contract, the provisions of NMSA 1978, Section 10-11-8 and 2.80.1100.20 NMAC, will be applicable to the retired member. If the retired member disagrees with PERA's determination, the retired member may appeal PERA's decision pursuant to 2.80.1500 NMAC.

B. Renewals, amendments or modifications of a previously approved

post-retirement contract shall also be submitted to PERA for evaluation fifteen (15) working days prior to their effective date. The provisions of this section will apply to such renewals, amendments or modifications.

~~[C. Post-retirement employment contracts under which the retired member contractor would earn less than \$15,000.00 will be automatically approved for PERA purposes unless more than one such contract is entered into or payments are received from such a contract in the same calendar year, and providing that the retired member has been retired for at least 90 days before the term of the contract begins.]~~

[10-15-97; 11-15-97; 2.80.1100.40 NMAC – Rn & A, 2 NMAC 80.1100.40, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1200 NMAC, Sections 3, 9, 10 and 12

2.80.1200.3 S T A T U T O R Y AUTHORITY: Sections 10-11-39 through 43 NMSA 1978 create state legislator member coverage plan 1. Sections 10-11-43.1 through 10-11-43.5 NMSA 1978 create state legislator member coverage plan 2. Section 10-11-129.1 creates the legislative retirement fund. Section 10-11-130, NMSA 1978, authorizes the Public Employees Retirement Board to make and adopt such reasonable rules and regulations as may be necessary or convenient to carry out the duties of the retirement board and activities of the association.

[6-15-96; 2.80.1200.3 NMAC – Rn, 2 NMAC 80.1200.3, 12-28-00; A, 9-30-03]

2.80.1200.9 ENROLLMENT:

A. Participation in state legislator member coverage plan 1 is voluntary for legislators and lieutenant governors whose terms of office ended on or before December 21, 2002. Legislators and lieutenant governors may enroll ~~[in the plan]~~ in state legislator member coverage plan 1 by completing and filing a written application with PERA and paying member contributions on or before December 31, 2003 for one year or more of service credit earned by them after December 31, 1959. No survivor, estate, heir, personal representative or beneficiary of a deceased legislator or lieutenant governor may enroll in the plan. State legislative member coverage plan 1 closes to new members on December 31,

2003.

B. The board, the attorney general and certain retirees and members under state legislator member coverage plan 1 entered into Stipulated Partial Final Judgments in the matter of State v. Public Employees Retirement Board et al., First Judicial District Court, Case No. SF 87-2682(C). Unless otherwise provided by law, the association is bound by the provisions of the judgments so long as the judgments remain valid and effective.

C. Participation in state legislator member coverage plan 2 is voluntary for legislators and lieutenant governors whose terms of office ended after December 31, 2002. Legislators and lieutenant governors may enroll in state legislator member coverage plan 2 by completing and filing a written application with PERA on or before the later of one hundred eighty (180) days from July 1, 2003 or one hundred eighty (180) days after first taking office, and paying member contributions for one or more years of service credit earned after December 31, 2002. No survivor, estate, heir, personal representative or beneficiary of a deceased legislator or lieutenant governor may enroll in the plan.

[6-15-96; 2.80.1200.9 NMAC – Rn, 2 NMAC 80.1200.9, 12-28-00; A, 9-30-03]

2.80.1200.10 SERVICE CREDIT:

A. Service under state legislator member coverage plan 1 or state legislator member coverage plan 2 shall be credited by the calendar year.

B. One year of service credit may be earned for each calendar year during which the member fulfilled the obligations of the position of legislator or lieutenant governor for more than six months of the calendar year, including the legislative session. No service credit may be posted to a member's file until member contributions plus interest, if any, have been paid to PERA and the legislative council service has verified legislative service for the years claimed.

C. If a legislative member has service credit under PERA, other than as a legislative member, the legislative service credit and the regular PERA service credit may be combined for retirement purposes, provided that:

(1) the legislative member has at least five years of service credit under a coverage plan other than state legislator member coverage plan 1 or state legislator member coverage plan 2; and

(2) the legislative member meets the age requirement for normal retirement in the other coverage plan. In computing the benefits for the combined service, the pension shall be the sum of the benefits under state legislator member coverage plan

1 or state legislator member coverage plan 2 for the service as a legislator and the benefits for the remaining service under the applicable coverage plan.

D. In accordance with NMSA 1978, Section 10-11-7(E), the purchase cost for each year of credited military service under a state legislator coverage plan is equal to ~~[the sum of the member contribution and an employer contribution calculated as ten times the annual amount of pension]~~ three times the normal member contribution per year under the state legislator coverage plan applicable to the member.

E. In order to post or adjust service credit for increased retirement benefits available to members under state legislator member coverage plan 1 for one or more calendar years after December 31, 1959 and prior to January 1, 2004, PERA must receive the required member contributions totaling two hundred dollars (\$200.00) on or before December 31, 2003.

E. In order to post or adjust service credit for increased retirement benefits available to members under state legislator member coverage plan 2 for one or more calendar years after December 31, 1959 and prior to January 1, 2003, PERA must receive the required member contributions totaling five hundred dollars (\$500.00) on or before December 31, 2004. No survivor, estate, heir personal representative or beneficiary of a deceased legislator or lieutenant governor may post or adjust service credit under the plan.

[11-19-81; 8-1-87; 6-15-96; 2.80.1200.10 NMAC – Rn & A, 2 NMAC 80.1200.10, 12-28-00; A, 9-30-03]

2.80.1200.12 BENEFITS SUSPENDED BECAUSE OF LITIGATION:

The administration of state legislator member coverage plan 1 was suspended from December 29, 1988 through November 2, 1993 and July 12, 1994 through the thirtieth day after the effective date of this rule. Retirees or their beneficiaries who were receiving benefits or who had filed applications for benefits prior to one or both of these periods of suspension may receive benefits for the period(s). In order to pay such benefits, PERA must receive updated information concerning the affected persons on PERA forms. In making ~~[benefits] benefit~~ payments for these periods, PERA is entitled to rely upon the information furnished to PERA. PERA is not obligated to pay benefits for these periods until the thirty-first day after the effective date of this rule, or sixty days from PERA's receipt of the updated information, whichever comes later. No interest will be paid by PERA on benefits accumulated for periods during which administration of the plan was suspended; however, applicable cost of living

adjustments will be included.

[6-15-96; 2.80.1200.12 NMAC – Rn, 2 NMAC 80.1200.12, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1400 NMAC, Section 10

2.80.1400.10 GENERAL PROVISIONS

A. "Salary" is defined by each state system for that state system. Each system shall certify the member's salary as defined by that system to the payor system, and the payor system shall accept that salary for pension calculation purposes where applicable.

B. The Public Employees Retirement Reciprocity Act applies to normal retirement only, and does not apply to disability retirement or pre-retirement survivor pensions.

~~[C. PERA Retiree: If a retired member whose service credit at retirement was acquired only under PERA is:~~

~~(1) subsequently employed by an employer covered under another state system, and~~

~~(2) the retired member becomes a contributing member of that system, and~~

~~(3) the retired member's PERA pension is suspended for the period of membership under that system, and~~

~~(4) the retired member acquires service credit under that system, then the subsequently acquired service credit is eligible reciprocal service credit. When the member terminates the subsequent employment and retires again, the subsequent retirement shall be governed by the provisions of the Public Employees Retirement Reciprocity Act.]~~

~~[D.] C. Retiree under another state system: If a retired member whose service credit at retirement was acquired only under another state system is:~~

~~(1) subsequently employed by an employer covered under PERA, and~~

~~(2) the retired member becomes a contributing member of PERA, and~~

~~(3) the retired member's pension is suspended for the period of membership under PERA, and~~

~~(4) the retired member acquires service credit under PERA, then the subsequently acquired service credit is eligible reciprocal service credit. When the member terminates the subsequent employment and retires again, the subsequent retirement~~

shall be governed by the provisions of the Public Employees Retirement Reciprocity Act.

~~[E.]~~ D. Overlapping service credit.

(1) If a member has service credit for the same period of time for employment by public employers covered under different state systems, service credit may only be acquired under one state system for the period of overlapping service credit.

(2) If a member retires with service credit under more than one state system for an overlapping period, the member shall be granted service credit for this overlapping period as follows:

(a) PERA, JRA or MRA shall grant service credit earned for the months the member was employed by an employer covered under one or more of these systems in accordance with all applicable statutes and rules.

(b) ERA shall grant service credit for the quarters of ERA service credited to the member in accordance with all applicable ERA statutes and rules less the amount of service credit granted by PERA, JRA or MRA in subparagraph 2(a) above. In no case shall a member be credited with more than one month of service credit for all service in any calendar month.

~~[F.]~~ E. Free or purchased military service credit under any state system may only be considered eligible reciprocal service credit under one state system for reciprocity retirement purposes.

~~[G.]~~ E. When a member retires according to the provisions of the Public Employees Retirement Reciprocity Act, each state system under which the member has acquired eligible reciprocal service credit shall furnish the payor system with a certified statement of the member's service credit, and other pertinent data necessary to compute the member's pension.

~~[H.]~~ G. A member retired according to the provisions of the Public Employees Retirement Reciprocity Act shall receive the same cost of living adjustments provided by each state system under which the retired member acquired eligible reciprocal service credit. Each state system shall pay the cost of living adjustment due under the provisions of that state system for the portion of the total pension attributable to service credit acquired under that state system.

~~[I.]~~ H. Amendments to this Rule shall be effective only if adopted by the educational retirement board and the public employees retirement board.

[10-15-97; 11-15-97; 2.80.1400.10 NMAC - Rn, 2 NMAC 80.1400.10, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1500 NMAC, Section 10

2.80.1500.10 GENERAL PROVISIONS

A. The denial of any claim for retirement benefits may be appealed by a claimant. The appeal shall be initiated by receipt by PERA of a notice of appeal within ninety (90) days of the date of the letter in which the written notification to the claimant of the denial. The notice of appeal must state the reasons for claiming the denial is improper. If the claimant fails to submit a notice of appeal as provided herein, the initial denial of any claim shall constitute the final order of the board.

B. The appeal shall be heard by a hearing officer designated to represent the board unless otherwise provided by the board or board rules.

C. Procedure.

(1) PERA's office of general counsel will establish internal procedures for processing appeals, within the parameters set by this Rule, for handling appeals.

(2) Discovery and evidence.

(a) Following the filing of an appeal, the parties must submit to the hearing officer, with a copy to the other parties, including PERA, at least fifteen (15) days prior to the scheduled hearing, any documentary evidence he or she may wish to present for consideration at the de novo hearing. The hearing officer may grant a request for extension of time to submit documentary evidence for good cause, if such extension is not prejudicial to another party. This documentary evidence shall include all documents that will be introduced as exhibits at the hearing. Failure to comply with the requirements of this paragraph may result in the consideration of the appeal without the documentary evidence.

(b) At the same time documentary evidence is due to be submitted, PERA may, but is not required to file a written response to claimant's notice of appeal.

~~[(b)]~~ (c) Upon written request of any party, the parties shall provide to the other parties the names and addresses of persons that may be called as witnesses at the hearing.

~~[(c)]~~ (d) Pre-hearing discovery permitted by the rules of civil procedure for the district courts in New Mexico shall be allowed as authorized by the hearing officer. Upon the request of any party in writing, the hearing officer may authorize depositions.

~~[(d)]~~ (e) Upon request, the claimant shall provide to the attorney for the association authorizations for the release of records regarding the claimant's health care and employment (whether self-employed or as an employee or an independent contractor).

~~[(e)]~~ (f) The Rules of Evidence do not apply, but the hearing officer may admit all relevant evidence, which in the opinion of the hearing officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness. Such evidence shall be given the weight the hearing officer deems appropriate.

~~[(f)]~~ (g) The hearing officer may, upon good cause shown, remand the matter back to the disability review committee or the association for reconsideration.

(3) Hearing.

(a) A hearing shall be held within sixty (60) days of receipt of the notice of appeal unless the parties mutually agree to an extension of time and the extension is approved in writing by the hearing officer. The parties shall be given at least thirty (30) days written notice of the scheduled hearing.

(b) The board's authority to issue subpoenas is delegated to the hearing officer for the purpose of obtaining evidence or testimony not otherwise available.

(c) The board's authority to administer oaths is delegated to the hearing officer for the purpose of conducting the hearing.

(d) The parties have the right to present argument and evidence orally, to present or cross-examine witnesses, and to be accompanied by counsel.

(e) Failure of the claimant or his or her representative to appear at the hearing, without prior approval from the hearing officer, shall result in automatic final denial of any claims previously asserted.

(f) If the claimant or his or her representative requests rescheduling of a hearing so late that additional costs are incurred, any additional costs incurred shall be assessed against the claimant.

(4) Burden of persuasion. Unless otherwise established by law, the claimant has the burden of proving by a preponderance of the evidence the facts relied upon to show he or she is entitled to the benefit denied.

(5) Record. The hearing shall be recorded by a certified court reporter, and copies of all evidence offered shall be maintained by the association for a period of not less than five (5) years. Any party desiring a copy of the transcript of the proceedings shall be responsible for paying the cost, if any, of preparing such copy. The appellant shall make arrangements with the associa-

tion for the preparation of transcripts for appeal to the district court.

(6) Recommended decision.

(a) The hearing officer's recommended decision shall be based upon the evidence adduced at the hearing and shall be issued by the hearing officer within sixty (60) days following the close of the record.

(b) The hearing officer shall propose findings of fact and conclusions of law as part of the recommended decision to the board.

(7) Exceptions to recommended decision.

(a) The parties to a proceeding may file with the board exceptions to the hearing officer's recommended decision within fifteen (15) days of the date of issuance of the recommended decision. Upon the written request of a party, and for good cause shown, the hearing officer may extend the time to file exceptions.

(b) Copies of such exceptions and any briefs shall be served on all parties and the hearing officer, and a statement of such service shall be filed with the exceptions.

(c) Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken and shall be based only on the evidence and arguments presented at the hearing.

(d) Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded.

(e) The hearing officer may file with the board a response to any exceptions filed within fifteen (15) days of the date of filing of the exceptions and shall serve copies on all parties.

D. Final action by the board.

(1) The board shall consider the hearing officer's recommended decision, exceptions and any supporting briefs to the recommended decision, and the hearing officer's response to the exceptions, if any. The board may review all of the record made before the hearing officer.

(2) The board shall not consider any additional oral argument, evidence or affidavits not in the record before the hearing officer, or pleadings not filed in accordance with these rules.

(3) The board may request that the hearing officer be present at the time the board reviews a recommended decision issued by a hearing officer and may discuss the recommended decision with the hearing officer. The board members may also discuss the recommended decision among themselves and with legal counsel to the board.

(4) The board's final action shall be rendered no later than 180 days from the

date of the hearing officer's recommended decision. Board members who need additional time to review the record before taking final action may request of the board chair that additional time for review be given. If additional time is requested, the deadline for the board's final action shall be extended for one month.

(5) Ex parte communication with board members or hearing officers concerning a decision that is on appeal is prohibited.

(6) The board may remand a recommended decision to the hearing officer for additional findings, conclusions, clarification and/or the taking of additional evidence. Such a remand shall restart the time frames contained in this Rule.

(7) The board shall approve, disapprove or modify the recommended decision, and shall enter a final order concerning the matter being appealed. The board may modify the proposed conclusions of law based on the proposed findings of fact. If the board wishes to modify the proposed findings of fact, it may do so only after review of the record before the hearing officer. The board shall provide a reasoned basis for changing the hearing officer's recommendation.

[10-15-97; 11-15-97; 12-15-99; 2.80.1500.10 NMAC – Rn, 2 NMAC 80.1500.10, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1600 NMAC, Sections 30 and 40

2.80.1600.30 FORM OF PAYMENT

A. When a retired member who has chosen either form of payment B or C with the retired member's spouse as the named survivor beneficiary is divorced, ~~[if an appropriate court order so provides,]~~ the retired member may either: 1) make no change in the form of payment and beneficiary; or 2) change the form of payment to form of payment A, which does not provide for a survivor beneficiary, if an appropriate court order so provides.

B. If the retired member elects to change from form of payment B or C to A, permission to make such an election must be included in a court order.

C. A court order requiring an election of a particular form of payment at retirement shall be addressed to the non-retired member, and the member shall be responsible for executing the proper PERA forms and providing the documentation necessary to effectuate the election. A

member who violates such an order may be in contempt of court.

[10-15-97; 11-15-97; 2.80.1600.30 NMAC – Rn, 2 NMAC 80.1600.30, 12-28-01; A, 9-30-03]

2.80.1600.40 TAXES

A. Each party must submit a completed W-4 form to PERA when applying for a retirement pension.

B. ~~[Each party]~~ The member must submit a completed PERA termination notice/request for refund when applying for a refund of contributions.

[10-15-97; 2.80.1600.40 NMAC – Rn, 2 NMAC 80.1600.40, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1700 NMAC, Section 8

2.80.1700.8 GENERAL PROVISIONS

A. An affiliated public employer desiring to conduct an election to adopt a new coverage plan or for a change in coverage plan shall adopt and file with the board a resolution so stating. In addition to the resolution, the affiliated public employer shall also file for board approval, a sample ballot and a list of employee election committee members.

B. The resolution shall specify the date of the election, which election shall be held not fewer than thirty (30) nor more than sixty (60) days after the approval by the board of the resolution, except as provided in subsection E below.

C. The affiliated public employer shall give notice of the election to its members in the form prescribed by the association. Actual notice to each member is not required, but the manner in which notice is given shall be reasonably calculated to inform all affected members of the election.

D. Ballots shall be prepared by the affiliated public employer in sufficient quantity for all eligible members to vote and in the form prescribed by the association. Ballots for an election for a new coverage plan or a change in coverage plan shall be separate from the ballots for any other question being voted on by the members.

E. The association may postpone an election for coverage if it determines the affiliated public employer has not substantially complied with the procedures required by this rule and may require that

remedial measures be taken, including, but not limited to, requiring that a new notice be given to members, preparing a new ballot or register, and rescheduling the election. The board may rescind an election if it determines the affiliated public employer did not substantially comply with the procedures required by this rule.

F. A register shall be prepared by the affiliated public employer containing names of members entitled to vote in the election. Names shall be manually added to the printed register to include the names of those members desiring to vote who become eligible to vote after printing of the register, provided verification is made by the affiliated public employer of the member's eligibility to vote in the election. An affiliated public employer may cease manually adding names to the printed register twenty-four (24) hours prior to the commencement of voting on election day. Members shall sign their names to the register when issued a ballot. If a member who has voted absentee subsequently ceases to be eligible prior to the date of election, that vote shall be valid.

G. Before issuing a ballot to a member, identification may be required of the member.

H. Voting shall be permitted by absentee ballot. Absentee ballots may be voted by the member and thereafter delivered to the person designated by the affiliated public employer to receive absentee ballots. Absentee ballots shall be made available not later than 5 days prior to the election day. No absentee ballots may be counted unless received at or before 5:00 p.m. on the day prior to the election day. Absentee ballots shall not be opened until voting has ceased on the election day.

I. Voting shall be conducted at a minimum of one voting location continuously throughout a minimum 9 hour period including the hours between 8:00 a.m. and 5:00 p.m., but if all eligible members have voted prior to the posted closing time, the voting shall end at the earlier time.

J. The affiliated public employer shall appoint a committee of employees of the employer to be approved by the board. The committee shall be present at the voting places during the election day and during the process of counting the votes. The chair of the committee shall sign his or her name to the final tally indicating that the tally is, to the best of his or her information, a correctly computed tally. A representative of the affiliated public employer shall be designated by the affiliated public employer as responsible for the election, and he or she shall also so indicate on the tally by signing his or her name.

K. The final tally of votes shall be filed with the association within 72

hours after closing of the election, unless the offices of the association are closed due to weekends or holidays for a period of three consecutive days after the election day, in which case the tally shall be filed on the next business day following the election day.

L. Elections for changes in coverage plan may be conducted for designated employee groups of an affiliated public employer. A designated group may be all members employed by the affiliated public employer, an organizational group whose compensation is established by negotiated contract or all members employed by the affiliated public employer whose compensation is not established by negotiated contract. The resolution required in subsection A shall state the designated employee group.

M. Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election provided the results of the election would not have been affected.

N. "First full pay period" for the purpose of adopting a new coverage plan shall mean the first pay period that ends within the month in which the new coverage plan becomes applicable to a member.

O. An election adopting a coverage plan is irrevocable for the purpose of subsequently adopting a coverage plan that would decrease employee or employer contributions with respect to all current and future members of that affiliated employer. [10-15-97; 11-15-97; 12-15-99; 2.80.1700.8 NMAC – Rn, 2 NMAC 80.1700.8, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.2100 NMAC, Section 8

2.80.2100.8 GENERAL PROVISIONS

A. No partial refund of a member's contributions is permitted.

B. A member shall not receive a refund of contributions if the member terminates employment with one affiliated public employer and is thereafter employed by the same or another affiliated public employer within thirty (30) days of termination. The application for a refund of member contributions, if desired, must be filed prior to any subsequent employment. If the application for refund is not filed

within this period of time, no refund shall be permitted until termination of all affiliated public employment.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the Letters of Administration or Order of Appointment of Personal Representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) If the member has been divorced, the member shall provide PERA with complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered under NMSA 1978, Section 10-11-136, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code.

(4) The member's last affiliated public employer must certify to the termination of employment of the member before a refund may be made.

D. Interest on member contributions shall be posted annually effective June 30 of each year at the rate of 5.25%.

E. A refund of member contributions includes interest on those contributions as provided in this Rule. Effective July 1, 2004, a refund of member contributions includes interest on those contributions calculated through the last working day of the month prior to the date of

refund.

F. A refund of member contributions shall not include the purchase cost received to buy permissive service credit pursuant to Section 10-11-7(H) NMSA 1978.

[F.] G. If a court order issued pursuant to Section 10-11-136 NMSA 1978 or Section 10-11-136.1 NMSA 1978 restraining, withholding, or dividing a refund of member contributions is received by PERA after a request for refund of contributions has been received but has not been paid, PERA will comply with the order.

[G.] H. Pursuant to Section 10-11-135, NMSA 1978, PERA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts as provided in Section 10-11-136 NMSA 1978 or in enforcement of child support obligations as provided in Section 10-11-136.1 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of the Public Employees Retirement Act.

(1) IRS Notices of Levy for unpaid taxes will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the levy is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

(2) Orders by a U.S. Bankruptcy Court will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

[H.] I. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by PERA. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

[I.] J. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any member would

otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

[J.] K. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

[K.] L. For purposes of the direct rollover provisions in NMSA 1978, Section 10-11-124(C), another qualified plan shall mean an IRA, an Internal Revenue Code Section 401(a) plan, an Internal Revenue Code Section 401(k) plan, an annuity contract under Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457 that is maintained by a state or political subdivision and which agrees to separately account for amounts transferred into such a plan from the PERA retirement plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under an Order Dividing PERA Benefits. After tax-employee contributions shall be paid directly to the member.

[10-15-97; 11-15-97; 12-15-99; 2.80.2100.8 NMAC – Rn & A, 2 NMAC 80.2100.8, 12-28-00; A, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.83.100 NMAC, Sections 2 and 7

2.83.100.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, the retirement board, and the association under the Judicial Retirement Act.

[10-15-97; 2.83.100.2 NMAC – Rn, 2 NMAC 83.100.2, 12-28-00; A, 9-30-03]

2.83.100.7 DEFINITIONS

A. "Judicial agency" means the district courts, the metropolitan courts, the court of appeals, the supreme court, or the administrative office of the courts ~~[, whichever]~~ or the employer that pays the member's salary.

B. "Public employer" means any employer covered under any state system or the Educational Retirement Act.

C. "Legal representative" means "personal representative" as defined in the Probate Code of New Mexico which includes executor, administrator, successor

personal representative, special administrator and persons who perform substantially the same functions under the law governing their status, or an attorney or a person acting pursuant to a power of attorney for a member, retired member or beneficiary.

D. "State system" means a retirement program provided for in the Public Employees Retirement Act, Magistrate Retirement Act, or Judicial Retirement Act.

[10-15-97; 2.83.100.7 NMAC – Rn & A, 2 NMAC 83.100.7, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.83.500 NMAC, Sections 2 and 8

2.83.500.2 SCOPE: This rule affects the members, judicial agencies, the retirement board and the association under the Judicial Retirement Act.

[10-15-97; 2.83.500.2 NMAC – Rn, 2 NMAC 83.500.2, 12-28-00; A, 9-30-03]

2.83.500.8 GENERAL PROVISIONS

A. A member who leaves office for reasons other than retirement may request a refund of his or her total accumulated member contributions. Refunds shall include interest as provided in Subsection D of this section.

B. No partial refund of a member's contributions is permitted.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the Letters of Administration or Order of Appointment of Personal Representative, signed and filed in court, or must comply with NMSA 1978, Section 45-3-1201.

(3) The member's judicial agency must certify that the member has left office before a refund may be made.

(4) If the member has been divorced, the member shall provide the

association with complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered pursuant to NMSA 1978, Section 10-12B-7, as amended, the member's former spouse may request, on a form prescribed by the association that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code.

D. Interest on member contributions shall be posted annually effective June 30 at the rate of 5.25%.

E. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by the association. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

F. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any judge would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

G. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

H. For purposes of the direct rollover provisions in NMSA 1978, Section 10-12B-6(A), another qualified plan shall mean an IRA, an Internal Revenue Code Section 401(a) plan, an Internal Revenue Code Section 401(k) plan,

an annuity contract under Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457 that is maintained by a state or political subdivision and which agrees to separately account for amounts transferred into such a plan from the judicial retirement plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under an Order Dividing Judicial Retirement Benefits. After tax-employee contributions shall be paid directly to the member.

[10-15-97; 11-15-97; 2.83.500.8 NMAC – Rn & A, 2 NMAC 83.500.8, 12-28-00; A, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.100 NMAC, Sections 2 and 7

2.84.100.2 SCOPE: This rule affects the members, former member, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.100.2 NMAC – Rn, 2 NMAC 84.100.2, 12-28-00; A, 9-30-03]

2.84.100.7 DEFINITIONS:

A. "Magistrate" or magistrate judge has the meaning used throughout Chapter 35 of the New Mexico Statutes Annotated, as amended and excludes judges of the metropolitan court, district court or court of appeals and justices of the supreme court.

B. "Magistrate court" has the meaning used throughout Chapter 35 of the New Mexico Statutes Annotated, as amended.

~~A.~~ C. "Judicial agency" means the ~~[district courts, the metropolitan courts, the court of appeals, the supreme court,]~~ magistrate court or the administrative office of the courts, [whichever] or the employer that pays the member's salary.

~~B.~~ D. "Public employer" means any employer covered under any state system or the Educational Retirement Act.

~~C.~~ E. "Legal representative" means "personal representative" as defined in the Probate Code of New Mexico which includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same functions under the law governing their status, or an attorney or a person acting

pursuant to a power of attorney for a member, retired member or beneficiary.

~~D.~~ E. "State system" means a retirement program provided for in the Public Employees Retirement Act, Magistrate Retirement Act, or Judicial Retirement Act.

[10-15-97; 2.84.100.7 NMAC – Rn & A, 2 NMAC 84.100.7, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.300 NMAC, Section 2

2.84.300.2 SCOPE: This rule affects ~~[magistrate judges, judicial agencies]~~ the members, former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.300.2 NMAC – Rn, 2 NMAC 84.300.2, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.400 NMAC, Sections 2 and 8

2.84.400.2 SCOPE: This rule affects the members, ~~[former members, judicial agencies, the Administrative Office of the Courts,]~~ retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.400.2 NMAC – Rn, 2 NMAC 84.400.2, 12-28-00; A, 9-30-03]

2.84.400.8 GENERAL PROVISIONS

A. Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

B. Service credit that was forfeited when a member left office and withdrew his or her accumulated member contributions may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate

or rates set by the board under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive, but not necessarily continuous, months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) The rate or rates of interest for the purchase or reinstatement of service credit shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1.

(4) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(5) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(6) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit, which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

C. Service credit that a member would have earned if the member had not elected to be excluded from membership may be purchased under the following conditions:

(1) the member first reinstates all previously withdrawn MRA service credit;

(2) the member may purchase service credit in increments of not less than one year except where the total excluded service credit is less than one year;

(3) the member pays the full cost as determined under NMSA 1978, Section 10-12C-5(F) within sixty days of the notification of that amount.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to NMSA 1978, Section 10-12C-5 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The ~~[Administrative Office of the Courts]~~ judicial agency shall certify in writing the date the member left office to enter a uniformed service of the United States. This requirement may be waived if PERA records contain sufficient documentation of the date of termination.

(3) The ~~[Administrative Office of the Courts]~~ judicial agency shall certify in writing to the association the member's date of return to office within thirty days of reemployment. This requirement may be waived if PERA records contain sufficient documentation of the date of return, to office. Members who do not return, to office within ninety days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the ~~[Administrative Office of the Courts]~~ judicial agency that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment, shall be awarded only upon compliance by the member and the ~~[Administrative Office of the Courts]~~ judicial agency with the provisions of NMSA 1978, Section 10-12C-5, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) MRA members who are also members of the military service reserve components who re activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free credit service subject to the conditions of this section. The member must provide a form DD 214 and other documentation as required by PERA to support an award of free service

credit.

E. No installment payment contracts may be used for the purchase of any service credit. A member may purchase a total of five (5) years of permissive service credit as allowed by the Magistrate Retirement Act in one lump-sum or in one-year increments.

F. A member may rollover funds from an Internal Revenue Code Section 457, 403(b), 401(k), IRA or another 401(a) qualified account to pay for forfeited or permissive service credit allowed by the Magistrate Retirement Act. The rollover of funds must be by a trustee-to-trustee transfer and the account from which the funds come must be in the name of the member requesting the transfer.

[10-15-97; 11-15-97; 2.84.400.8 NMAC – Rn & A, 2 NMAC 84.400.8, 12-28-00; A, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.500 NMAC, Sections 2 and 8

2.84.500.2 SCOPE: This rule affects the members, [judicial agencies], former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.500.2 NMAC – Rn, 2 NMAC 84.500.2, 12-28-00; A, 9-30-03]

2.84.500.8 GENERAL PROVISIONS

A. A member who leaves office for reasons other than retirement may request a refund of his or her total accumulated member contributions. Refunds shall include interest as provided in Subsection (D) of this section.

B. No partial refund of a member's contributions is permitted.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a

copy of the Letters of Administration or Order of Appointment of Personal Representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) The member's judicial agency must certify that the member has left office before a refund may be made.

(4) If the member has been divorced, the member shall provide the association with complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documentation shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final divorce decree is required but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered pursuant to NMSA 1978, Section 10-12C-7, as amended, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code.

D. Interest on member contributions shall be posted annually effective June 30 at the rate of 5.25%.

E. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by the association. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

F. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any magistrate would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

G. The maximum annual contribution limits contained in Internal

Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

H. For purposes of the direct rollover provisions in NMSA 1978, Section 10-12C-6(A), another qualified plan shall also mean an IRA, an Internal Revenue Code Section 401(a) plan, an Internal Revenue Code Section 401(k) plan, an annuity contract under Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457 that is maintained by a state or political subdivision and which agrees to separately account for amounts transferred into such a plan from the magistrate retirement plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under an Order Dividing Magistrate Retirement Benefits. After tax-employee contributions shall be paid directly to the member.

[10-15-97; 11-15-97; 2.84.500.8 NMAC – Rn & A, 2 NMAC 84.500.8, 12-28-00; A, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.700 NMAC, Section 2

2.84.700.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, [judicial agencies] public employers, the retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.700.2 NMAC – Rn, 2 NMAC 84.700.2, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.800 NMAC, Section 2

2.84.800.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.800.2 NMAC – Rn, 2 NMAC 84.800.2, 12-28-01; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.1100 NMAC, Sections 2 and 20

2.84.1100.2 SCOPE: This rule affects the members, retirees, beneficiaries, public employers, retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.1100.2 NMAC – Rn, 2 NMAC 84.1100.2, 12-28-00; A, 9-30-03]

2.84.1100.20 POST-RETIREMENT EMPLOYMENT

A. A member who retires must remain unemployed by an employer covered by any state system for a period of at least 90 days before returning to public employment. A retired member who performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA is not subject to the provisions of this section.

B. When a retired member [~~an independent contractor under a contract approved by PERA is not subject to the provisions of this section~~] is subsequently employed by an affiliated public employer, the retired member shall notify PERA immediately of the hire date, position and salary of the subsequently employed retired member.

C. The retired member's pension shall be suspended effective the first of the month following the month in which the subsequent employment begins.

D. If a retired member fails to report earnings from subsequent employment with an affiliated public employer, and consequently continues to receive pension payments after such payments should have been suspended pursuant to the requirements of NMSA 1978, Section 10-12C-16 and rules promulgated thereunder, the retired member will be required to repay to PERA any amounts erroneously received, plus interest at the rate set by the board for overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

[10-15-97; 2.84.1100.20 NMAC – Rn & A, 2 NMAC 84.1100.20, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.1200 NMAC, Section 2

2.84.1200.2 SCOPE: This rule affects the members, [judicial agencies,] former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.

[10-15-97; 2.84.1200.2 NMAC – Rn, 2 NMAC 84.1200.2, 12-28-00; A, 9-30-03]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.85.100 NMAC, Section 8

2.85.100.8 GENERAL PROVISIONS

A. Unforeseeable emergency withdrawal applications. The deferred compensation third party administrator shall handle the processing of unforeseeable emergency withdrawal applications including, but not limited to:

- (1) sending out withdrawal applications;
- (2) answering questions on the process and rules;
- (3) reviewing applications for completeness and compliance;
- (4) making decisions concerning whether or not withdrawal applications are approved;
- (5) sending appropriate notices to participants (approved or denied);
- (6) sending detailed denial letters explaining specific reason(s) why application was denied and instructions for ~~reap-~~ application appeal reapplication and notice of the right to appeal, if any.

B. Appeals. Appeals of denials of applications for unforeseeable emergency withdrawals, if any, shall be handled by the deferred compensation third party administrator. The deferred compensation third party administrator shall also maintain files on approvals/denials and provide regular reports to the board on unforeseeable emergency activity.

C. Unforeseeable emergency. In the event of an unforeseeable emergency, a participant may request that benefits be paid to him or her immediately, provided, however, that payment of any

such benefits after the elected or mandatory commencement date shall be subject to any limitations specified by an investment carrier. Such request shall be filed with the third party administrator. If the third party administrator determines that the application for unforeseeable emergency meets the standards of the Internal Revenue Service guidelines and the plan document, payment will be made within twenty-four (24) hours of such approval. Benefits to be paid shall ~~[be limited strictly to the amount necessary to meet the unforeseeable emergency constituting financial hardship to the extent such unforeseeable emergency is not relieved.]~~ not exceed the lesser of (i) the amount reasonably needed to satisfy the emergency need, which may include any amounts necessary to pay any federal, state, or local taxes, or (ii) an amount which, together with any prior distribution or withdrawal, does not exceed the value of the participant's plan benefit determined as of the most recent valuation date. An amount will not be considered to be reasonably needed to meet the financial need created by an unforeseeable emergency to the extent that such need is or may be relieved:

- (1) through reimbursement or compensation by insurance or otherwise;
- (2) by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause financial hardship; or
- (3) by cessation of deferrals under the plan.

D. Matters not constituting unforeseeable emergencies. Divorce or foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, etc., will not constitute an unforeseeable emergency. [10-15-97; 2.85.100.8 NMAC – Rn, 2 NMAC 85.100.8, 12-28-00; A, 8-15-01; A, 1-31-02; A, 9-30-03]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

Explanatory Paragraph: This is an amendment to 20.6.2 NMAC, Section 4105, it expands the existing exemption for corrective action of releases from underground storage tanks from the requirement for an abatement plan to include corrective action of releases from above ground storage tanks. It also updates the reference to the chapter name for 20.5 NMAC, Petroleum Storage Tanks. This amendment will become effective 10-15-03.

20.6.2.4105 EXEMPTIONS FROM

ABATEMENT PLAN REQUIREMENTS:

A. Except as provided in Subsection B of this Section, Sections 20.6.2.4104 and 20.6.2.4106 NMAC do not apply to a person who is abating water pollution:

- (1) from ~~[an underground]~~ a storage tank, under the authority of the [Underground] Petroleum Storage Tank regulations (20.5 NMAC) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act;

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

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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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