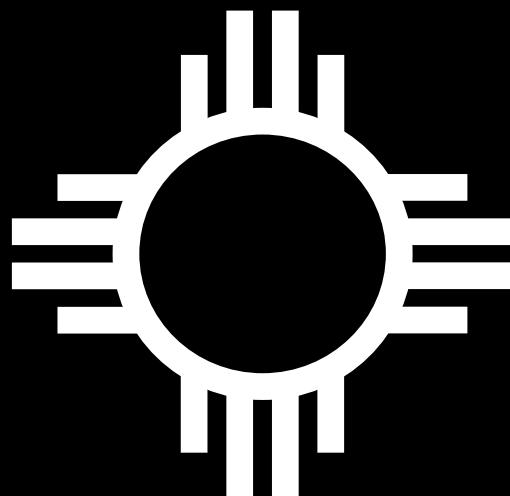


**NEW  
MEXICO  
REGISTER**

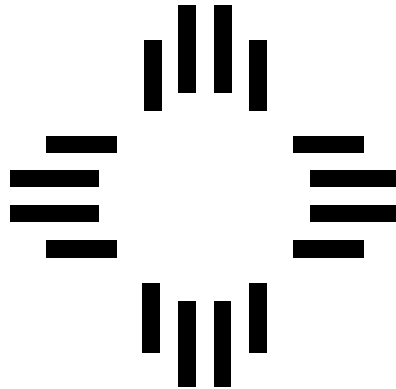


Volume XIV  
Issue Number 19  
October 15, 2003



# **New Mexico Register**

**Volume XIV, Issue Number 19**  
**October 15, 2003**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2003

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# New Mexico Register

Volume XIV, Number 19

October 15, 2003

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#### Effective Date and Validity of Rule Filings

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

**A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered**

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

## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### NOTICE OF HEARINGS AND MEETINGS; EXTENSION OF COMMENT PERIOD

On **October 8, 2003, at 3:00 PM**, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will begin a series of three public hearings in the City Council/County Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearings will address:

1. Proposal to submit a "Section 309" Regional Haze element for inclusion into the New Mexico State Implementation Plan (SIP) for air quality. "Section 309" of the federal Regional haze regulation is the provision that pertains to certain Western states, including New Mexico
2. Proposal to amend the Open Burning regulation, 20.11.21 NMAC (New Mexico Administrative Code), to incorporate requirements of the federal Regional Haze Regulation concerning smoke management
3. Proposal to incorporate an amended 20.11.21 NMAC into the SIP, superceding Regulation 3

The purpose of the first hearing is to receive testimony on proposed submission of a Regional Haze element for inclusion into the SIP. The Regional Haze SIP is a federal mandate to develop strategies to improve visibility in Class I areas to natural visibility conditions by the year 2064. Class I areas are those designated as areas of special national or regional value from a natural, scenic, recreational, and/or historic perspective. These areas are the focus of federal visibility protection regulations, including the Regional Haze regulation. Across the country, Class I areas include such places as the Grand Canyon, Yosemite, Mt. Rainier, and Yellowstone. Of the 156 mandatory federal Class I areas in the US, nine Class I areas are in New Mexico, including Carlsbad Caverns National Park, Bandelier National Monument, Bosque del Apache National Wildlife Refuge, the Gila Wilderness Area, and the San Pedro Parks

Wilderness Area.

The purpose of the second hearing is to receive testimony on proposed amendments to the Open Burning regulation to comply with federal smoke management mandates for prescribed burning, agricultural burning, and wildfires as required by the Regional Haze regulation.

Immediately after the Open Burning hearing closes, a third hearing will be held during which the Board will be asked to place the amended Open Burning regulation into the SIP if the Board adopts amendments to Open Burning.

**The Board has extended the public comment period for the October 8, 2003 hearings until November 12, 2003, which will provide additional opportunity for comment.** The three hearings that will begin on October 8, 2003 will conclude on November 12.

**November 12, 2003 is also the scheduled hearing date for a new regulation pertaining to a Backstop Trading Program for sulfur dioxide emissions that is being proposed in order to satisfy federal Regional Haze requirements. A separate notice will be published giving the date, time, location and intent of the Backstop Trading Program regulation.** An earlier legal ad stated that, at the Board's regular October 8, 2003 meeting, the Board would consider whether to approve the submission of a 'Section 309' Regional Haze SIP, whether to adopt the proposed amendments to Open Burning, and whether to incorporate the amended Open Burning regulation into the SIP. Because the Board has extended the public comment period for the three hearings that will begin October 8, the decision on whether to approve the Section 309 Regional Haze SIP, the Open Burning regulation and the placement of the Open Burning regulation into the SIP is now scheduled to occur on November 12, 2003.

**On October 27, 2003 at 5:15 PM, the Board will hold a public hearing in Room 3023 of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearing will be regarding the proposal to amend Section 5 of 20.11.1 NMAC, General Provisions, (Part 1) by deleted the requirement that all regulations become effective on the first day of the month. Proposed Section 5 will continue to state that a regulation or standard will not be effective until 30 days after filing with the State Records Center, as required**

by the State Air Quality Control Act.

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

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

Anyone intending to present technical testimony at any of the hearings is asked to submit a written notice of intent to: Attn: Hearing Record, Mr. Dan Warren, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, in advance of the hearing, you may deliver your notice of intent to testify to Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the name, address, and affiliation of the person testifying.

In addition, written comments to be incorporated into the public record for the October 8, 2003 hearings that will conclude on November 12, 2003 should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on October 30, 2003. However, the Department strongly encourages written comments to be delivered prior to the October 8, 2003 hearing. Written comments to be incorporated into the public record for the Part 1, General Provisions hearing scheduled for October 27, 2003, should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on October 21, 2003. These comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [dwarren@cabq.gov](mailto:dwarren@cabq.gov) but must still include the required name and address information.. Interested persons may obtain a copy of the proposed regulations and Regional Haze SIP element at the Environmental Health

Department Office, or by contacting Mr. Neal Butt electronically at [nbutt@cabq.gov](mailto:nbutt@cabq.gov) or by phone (505) 768-2660.

**NOTICE TO PERSONS WITH DISABILITIES:** If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, 400 Marquette Avenue NW, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

## NEW MEXICO COUNSELLING AND THERAPY PRACTICE BOARD

### Public Rule Hearing

The New Mexico Counseling and Therapy Practice Board will convene a public rule hearing on Friday November 21, 2003. The hearing will begin at 10:00 a.m. and a Board Meeting thereafter at the New Mexico Gaming Control Board, 6400 Uptown Blvd NE, Suite 100-E, Albuquerque, New Mexico. The purpose of the rule hearing is to hear public testimony and comments regarding the proposed rules and regulations:

### Proposed Rules and Regulations

- PART 1 General Provisions
- PART 2 Mental Health Core Curriculum
- PART 3 Application Procedures, Initial License, License Period
- PART 4 Requirements for Licensure as a Professional Clinical Mental Health Counselor
- PART 5 Requirements for Licensure as a Professional Clinical Mental Health Counselor for LPC's who were Grandfathered
- PART 6 Requirements for Licensure as a Marriage and Family Therapist
- PART 7 Requirements for Licensure as a Professional Art Therapist
- PART 8 Requirements for Licensure as a Professional Mental Health Counselor
- PART 9 Requirements for Licensure as a Mental Health Counselor (practice under Supervision)
- PART 10 Requirements for Licensure with Examination as an Alcohol and Drug Abuse Counselor effective July 1, 2003
- PART 11 Requirements for Licensure with Examination as an Alcohol and Drug Abuse Counselor effective July 1, 2005.
- PART 12 Requirements for Licensure as a Substance Abuse Trainee effective July 1,

- 2003
- PART 13 Requirements for Licensure as a Substance Abuse Trainee effective July 1, 2005
- PART 14 Temporary License
- PART 15 Examinations
- PART 16 Continuing Education
- PART 17 Fees
- PART 18 Code of Ethics
- PART 19 Approved Supervisors
- PART 20 Parental Responsibility Act Compliance

## NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS NEW MEXICO MUSEUM OF NATURAL HISTORY AND SCIENCE

### NOTICE OF PUBLIC HEARING

At the  
New Mexico Museum of Natural History and Science  
A Division of the Department of Cultural Affairs  
State of New Mexico

MUSEUM CONFERENCE ROOM  
1801 Mountain Road NW  
Albuquerque, New Mexico 87104  
(505) 841-2823

Friday, November 21, 2003 at 11 a.m. – 12 Noon

FOR CONSIDERATION OF ADOPTION OF MUSEUM ADMISSION FEE INCREASE AND VIRTUAL VOYAGES ADMISSION FEE CHANGE

PROPOSED CHANGE IN MUSEUM ADMISSION FEE

Adults changed to \$6 from \$5; Seniors (60+) changed to \$5 from \$4, and Children (3-12) changed to \$3 from \$2.

PROPOSED CHANGE IN VIRTUAL VOYAGES ADMISSION FEE

Adults changed to \$4 from \$5; Seniors (60+) \$4 remains the same, and Children changed to \$4 from \$3.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the public hearing, please contact Marlene Tanner before November 12, 2003 at (505) 841-2823 or TTY 841-2878.

## NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

ENERGY CONSERVATION AND  
MANAGEMENT DIVISION

### NOTICE OF PUBLIC MEETING AND HEARING OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

The New Mexico Energy, Minerals and Natural Resources Department will hold a meeting and hearing at **9:00 A.M. Monday, November 10, 2003** in Porter Hall, first floor, 1220 South Saint Francis Drive, Santa Fe, NM.

During the meeting, the New Mexico Energy, Minerals and Natural Resources Department will conduct public hearings on proposed changes to rules 3.13.19 NMAC for administration of the **Renewable Energy Production Tax Credit**, NMSA 1978, Section 7-2A-19 as amended in 2003.

Copies of the proposed amendments to the rules are available from the New Mexico Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505 or by contacting Michael McDiarmid, [mmediarid@state.nm.us](mailto:mmediarid@state.nm.us). At the conclusion of the hearing, the Energy, Minerals and Natural Resources Department may deliberate and make final decisions on the proposed amendments to rules.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Michael McDiarmid at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Michael McDiarmid at 476-3319, through New Mexico voice relay at 1-800-659-1779 or TTD 1-800-659-8331, if a summary or other type of accessible format is needed.

A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing, or submit it



at the hearing. No statements will be accepted after the conclusion of the hearing.

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT**  
and  
**NEW MEXICO TAXATION  
AND REVENUE  
DEPARTMENT**

**NOTICE OF RULEMAKING AND  
PUBLIC MEETING ON LAND  
CONSERVATION TAX INCENTIVE  
RULES**

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT AND  
TAXATION AND REVENUE  
DEPARTMENT**

The New Mexico Energy, Minerals and Natural Resources Department and Taxation and Revenue Department will hold a public hearing beginning at 10:00 a.m. on Monday, November 24, 2003 in Porter Hall located on the first floor of the Energy, Minerals and Natural Resources Department's building at 1220 South St. Francis Drive in Santa Fe, New Mexico. During the meeting, the Departments will conduct a public hearing on the adoption of a new rule to implement the land conservation incentives tax credit for donations of land or interest in land to public or private land conservation agencies for conservation purposes (to be codified at 3.13.20 NMAC). The proposed rule will establish procedures for the Energy, Minerals and Natural Resources Department to certify whether donations of land or interests in land by New Mexico taxpayers to public agencies or private land conservation agencies made on or after January 1, 2004, are eligible for the land conservation incentives tax credit and the process for claiming the tax credit.

The hearing on the proposed rulemaking will be conducted in accordance with the Open Meetings Act, NMSA 1978, Section 10-15-1 *et seq.*; and the Energy, Minerals and Natural Resources Department Guidelines for Rulemaking. All interested people may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views and arguments, orally or in writing, and to introduce exhibits.

Any member of the general public may testify at the hearing. No prior notification is

required to present testimony at the hearing. A member of the general public who wishes to submit written comments to the record proper, in lieu of or in addition to providing oral testimony at the hearing, shall file the written comments prior to the hearing, or submit them at the hearing on November 24, 2003. Written comments will be accepted until November 24, 2003. If submitting comments prior to the hearing, please mail written comments to Greg Fitch at Forestry Division, 1220 S. St. Francis Drive, Santa Fe, NM 87505, or submit them by e-mail to [gfitc@state.nm.us](mailto:gfitc@state.nm.us).

A copy of the draft agenda for the meeting will be available 24 hours before the meeting and may be obtained by contacting Greg Fitch at (505) 476-3340. A copy of the proposed rules may also be obtained by contacting Cheryl Bada at (505) 476-3214 or on the Energy, Minerals and Natural Resources Department's website at [www.nmforestry.com](http://www.nmforestry.com).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please call 1-800-659-1779, TDD, and ask to be connected to Stephanie Ortega at (505) 476-3353, at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible forms. Please contact Greg Fitch, if a summary or other type of accessible format is needed.

**NEW MEXICO  
ENVIRONMENTAL  
IMPROVEMENT BOARD**

**NEW MEXICO ENVIRONMENTAL  
IMPROVEMENT BOARD  
NOTICE OF PUBLIC HEARING TO  
CONSIDER PROPOSED REVISION  
OF LIQUID WASTE DISPOSAL REGULATIONS,  
20.7.3 NMAC**

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on December 16, 2003 at 9:00 a.m. at the New Mexico State Capitol Building, Room 317, at the corner of Don Gaspar and Paseo de Peralta, Santa Fe, New Mexico. The purpose of the hearing is to consider proposed revisions to Liquid Waste Disposal Regulations, 20.7.3 NMAC. The New Mexico Environment Department is the proponent of the amendments to the regulations.

The amendments are for the purpose of amending the Liquid Waste Disposal Regulations to allow the land application of gray water by residences under the condi-

tions expressed by the Legislature in the 2002-2003 legislative session, HB 114, codified at NMSA 1978 Section 74-6-4 (2003). The sections that would be amended include the following:

20.7.3.7.J – Definition of black water  
20.7.3.7.AF – Definition of gray water  
20.7.3.200 - Procedures  
20.7.3.300 – Standards

Please note that due to renumbering of regulatory provisions by the State Records Center, the section numbers that are amended may be numbered differently than shown above. In addition, the Board may make other amendments as necessary to accomplish the purpose of allowing the land application of graywater from residences with reasonable conditions.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150 Santa Fe, NM, 87505. Copies of the proposed revisions may be obtained by contacting Geraldine Madrid-Chavez at (505) 827-2425 or by email at [Geraldine\\_Chavez@nmenv.state.nm.us](mailto:Geraldine_Chavez@nmenv.state.nm.us). Please refer to Docket No. EIB 03-10. Written comments regarding the proposed revisions may be addressed to Ms. Madrid-Chavez at the above address, and should reference docket number EIB 03-10.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

identify the person or entity for whom the witness(es) will testify;

identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;

summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and

attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on December 5, 2003, and should reference the name of the regulation, the date of the hearing, and docket number EIB 03-10. Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid-Chavez  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150  
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by December 1, 2003. Mr. Hawley can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access his number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

HUMAN SERVICES DEPARTMENT  
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM  
8.150 NMAC  
RESPONSE TO PUBLIC COMMENTS

A public hearing was held on August 12, 2003 to receive comments on the current administration of the Low Income Home Energy Assistance Program (LIHEAP). No one attended the hearing. Written comments were received from one organization. The following comments were submitted:  
Comment: Categorical Eligibility Option

Section 2605(b)(2)(A) of the Low Income Home Energy Assistance Act (the "LIHEA" or "the Act") allows states to make payments under the Act to households in which 1 or more individuals are receiving TANF, SSI, Food Stamps, or certain needs-tested veterans benefits. This is typically referred to as categorical eligibility, and allows for households who are already receiving benefits through state HSD offices to automatically register for and receive LIHEAP benefits if they are eligible for these other benefits.

Response: Categorical eligibility was used as the primary issuance tool for LIHEAP until FFY 1999. Under welfare reform the LIHEAP application process was re-examined and brought in-house. The application approval rate has since increased. The number of approved applications for LIHEAP currently approximates the number of benefits issued using categorical eligibility. LIHEAP is also included in the services offered during ISD application intake. However, categorical eligibility continues to be an ongoing consideration. LIHEAP is a household benefit, meaning that all persons living in the home must be included on the application. The ISD2 system does not identify when the members of a food stamp or TANF household live alone or if there are other persons living with the household. Consequently, a benefit for a household may be issued that does not consider all household circumstances. Households would not get credit for all members and the result may be an inaccurate benefit.

Comment: The need for categorical eligibility for this kind of assistance is especially urgent in a rural state like New Mexico. These rural families typically have multiple barriers (such as lack of transportation and childcare) that impact their ability to travel to an ISD office for paperwork, interviews, and other appointments. Likewise, these rural families are usually isolated and are unlikely to know about a program like LIHEAP, but likely do have knowledge of food stamps and TANF, and so are much more likely to apply for the latter two programs and not the former. Lastly, rural families are likely to have high heating costs during the winter due to their increased use of propane gas and heating oil.

Response: The LIHEAP application process does not require a visit to an ISD office. A representative may apply on the household's behalf. Applications are available by mail and may be downloaded from the ISD web site on the internet. Applications may be submitted by mail or by fax in addition to being dropped off at the ISD offices. The required interview may take place by telephone. If circumstances warrant, a home visit may be scheduled under the current process. Clients who

are homebound or reside in rural areas should not be faced with significant impediments when applying for LIHEAP.

Comment: Outreach Activities Sections 2605(b)(3) and (c)(3)(a) require the state to conduct outreach activities "designed to assure that eligible households...are made aware of the assistance available under this subchapter...". In the state's LIHEAP Plan, submitted for approval to HHS on a yearly basis, the section labeled "outreach" indicates that HSD does not include inserts in energy vendor billings to inform individuals of the availability of all types of LIHEAP assistance, nor does the Department make mass mailings to past recipients of LIHEAP.

Response: HSD will re-evaluate its outreach activities and consider the suggestions. The Department is planning to reach clients through the notice being sent for food stamps. HSD will continue to look for cost effective outreach opportunities.

Comments: We understand the Department's anticipated concern that by making our suggested changes and increasing enrollment, there will be less money to go around, and that therefore benefit levels will have to be cut and/or the money for the program will be exhausted before the end of the heating season. While we believe that these are legitimate concerns, we also believe that the answer to those concerns is to increase state funding for the program and leverage more Federal funding. One way to accomplish this is to more effectively utilize the LIHEAP Incentive Program; another is to take advantage of the LIHEAP R.E.A.C.H. program.

Response: In order to receive supplemental funds under the leveraging incentive program, LIHEAP program staff have been working for more than two years to develop leveraging partners across New Mexico. In FFY 03, leveraged funds were obtained for the second time ever for the State of New Mexico. In FFY 03, additional partners have been developed and leveraging dollars will be available for FFY 04 and FFY 05. Propane vendors were asked to give discounts to LIHEAP-eligible households. More than 10 propane companies voluntarily gave discounts to LIHEAP clients during FFY 03. The dollars saved from those discounts will be reported as leveraged. An agreement was finalized this summer between HSD and The Salvation Army in order to leverage Good Neighbor fund dollars. Other leveraging projects are also being developed.

REACH projects are being explored jointly with The Department of Energy, Minerals and Natural Resources and The New Mexico Mortgage Finance Authority. REACH rarely provides additional funds for benefits. Funding for REACH projects

has typically been for home energy efficiency projects and education.

The effective date of the LIHEAP regulations remains 10-01-01.

Publication of this register approved on September 27, 2003 by:

Pamela S. Hyde, J.D., Secretary  
Human Services Department  
P.O. Box 2348  
Santa Fe, NM 87504-2348

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

**NOTICE**

The New Mexico Human Services Department (HSD) will hold a public hearing at 2:00 p.m., on November 12, 2003, at the State Personnel building, small conference room, room 239, at 2600 Cerrillos Road, Santa Fe, New Mexico. The subject of the hearing will be JUL Medicaid-School Attendance Requirements.

The Medical Assistance Division is proposing the removal of school attendance requirements for children under the age of 18. Children 18 years of age must be full-time students at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico State Department of Education to meet school attendance requirements. Whether a child is considered a full-time student and meeting full-time attendance requirements is based on the standards of the educational facility or program in which the child is enrolled. Children 18 years of age who have received a General Equivalency Development (GED) certificate or are early high school graduates are considered to have met school attendance requirements.

Interested persons may submit written comments no later than 5:00 p.m., November 12, 2003, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days

advance notice to provide requested alternative formats and special accommodations.

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

**NEW MEXICO OIL  
CONSERVATION  
COMMISSION**

**NOTICE OF RULE MAKING**

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION  
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the hearing in case 12969, originally scheduled for September 11, 2003, has been continued until 9:00 A.M. on November 13, 2003. If additional time is needed, the hearing may continue on November 14, 2003, or at a later date announced by the Commission at the hearing. The hearing concerns the following: adoption of a new rule regarding pits and below-grade tanks (to be codified as 19.15.2 NMAC); amendment of 19.15.1.7 NMAC and 19.15.5.313 NMAC; rescission of 19.15.1.18 NMAC, 19.15.3.105 NMAC, and 19.15.2.1 through 19.15.2.15 NMAC; and rescission of Orders R-3221, R-3221-A, R-03221-B, R-3221-B-1, R-3221-C, R-3221-D; R-7940, R-7940-A, R-7940-B, R-7940-B(1) and R-7940-C. The hearing will be conducted in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico. The proposed rule and amendments regulate the construction, operation and closing of pits and below-grade tanks in the interest of protection of ground and surface water and public health, safety and the environment, and replace existing rules and orders on those subjects. These changes will have statewide application. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Division Administrator Florene Davidson at 505-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible. Copies of the text of the proposed rule and amendments are available from Ms. Davidson at 505-476-3458 or from the Division's Internet web site at <http://www.emnrd.state.nm.us/ocd/whatnew.htm>. The time period for submitting

written comments and suggested amendments to, or substitutions for, the proposed rules has been extended to Friday, November 7, 2003. Written comments, amendments and substitutions must be received by Division Administrator Florene Davidson no later than 5:00 P.M. on that date, and may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 505-476-3462.

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 24th day of September, 2003.**

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

**Lori Wrotenbery, Director**

**S E A L**

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
INSURANCE DIVISION**

**STATE OF NEW MEXICO  
PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

**IN THE MATTER OF ADOPTING  
13.10.18 NMAC,  
MINIMUM COVERAGE FOR SMOKING  
CESSATION TREATMENT**

**DOCKET NO. 03-00367-IN**

**NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER**

**I. SOLICITATION OF COMMENTS**  
The Superintendent of Insurance is issuing this notice to provide an opportunity for public comment and to create a record for a decision on proposed adoption of 13.10.18 NMAC, Minimum Coverage For Smoking Cessation Treatment. The Superintendent requests written and oral comments from all interested persons and entities on the proposed amendments.

All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not con-

tained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

## II. ORDER

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on Friday, November 7, 2003, at 9:30 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before November 7, 2003. All relevant and timely comments, including data, views, or arguments will be considered by the Superintendent before final action is taken in this proceeding. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also submit a diskette copy of written comments to the Docketing Office or e-mail a copy of written comments to elizabeth.bustos@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the

Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying and postage; (2) call the Docketing Office at 505-827-4526 with the docket number, rule name, and rule number (you will be billed \$5.00 to cover the cost of copying and postage); or e-mail Elizabeth Bustos at elizabeth.bustos@state.nm.us with the docket number, rule name, and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail at no charge). The proposed rule is also available for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

## III. ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, Sub-Sections 2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rule-making and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ann Echols, on or before October 31, 2003, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

DONE, this 23rd day of September 2003.

NEW MEXICO PUBLIC REGULATION  
COMMISSION

INSURANCE DIVISION

ERIC P. SERNA, Superintendent of  
Insurance

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY MOTOR TRANSPORTATION DIVISION

### NOTICE N.M. DEPARTMENT OF PUBLIC SAFETY PUBLIC HEARING

The Department of Public Safety's Motor Transportation Division (MTD) will be holding a public hearing for the sake of receiving comments on proposed amendment revisions to 18.19.8 NMAC, the Motor Carrier Regulation pertaining to Motor Carrier Safety. The hearing will be held at the Law Enforcement Academy, on October 29, 2003 at 10:00 A.M. 4491 Cerrillos Road, Santa Fe, NM .

Proposed amendments to the rule include, but not limited to, changes of definitions and adoptions with some modifications of Part 390.5 of the Code of Federal Regulation (49CFR).

Copies of the proposed amendments may be obtained by calling Ron Cordova at 505.827.0302. Comments on these amendments are invited. Oral comments may be made at the hearing, or written comments may be substituted by mail to Ron Cordova at the Department of Public Safety PO Box 1628, Santa Fe, New Mexico 87594-1628, no later than October 29, 2003. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Mr. Cordova at least ten (10) days prior to the hearing.

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

### STATE OF NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

**NOTICE OF PUBLIC HEARING**

Public Meetings to receive comments regarding the adoption of regulations for Electrical Continuing Education and Journeyman Ratios.

\* **Santa Fe, NM** -  
November 17, 2003, 9:00 a.m. - 12:00 Noon  
RLD Conference Room, 725 St. Michael's Drive

\* **Albuquerque, NM** -  
November 18, 2003, 9:00 a.m. - 12:00 Noon  
In the Auditorium, District III, New Mexico Department of Transportation, 7500 Pan American Freeway, East Front Road

\* **Las Cruces, NM** -  
November 19, 2003, 9:00 a.m. - 12:00 Noon  
CID Conference Room, 505 S. Main, Suite 150

\* **Farmington, NM** -  
November 20, 2003, 9:00 a.m. - 12:00 Noon  
In Room A, Civic Center, 200 W. Arrington

\* **Roswell, NM** -  
November 20, 2003, 1:00 p.m. - 4:00 p.m.  
At Training Academy, New Mexico Department of Transportation, 735 Earl Cummings Loop West

You are invited to attend and express your opinion on the adoption of the above referenced draft regulations. If you cannot attend the meeting, you may send your written comments to the Mechanical or Electrical Bureau, Construction Industries Division, 725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 827-7030. FAX (505) 827-7045. All comments must be received no later than 5:00 p.m., November 14, 2003.

Copies of the draft regulations are available at the Construction Industries Division Offices.

**If you require special accommodations, please notify the Division of such needs no later than November 7, 2003.**

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

### **Response to Public Comment**

On July 23, 2003, the WCA released proposed rules regarding Laws of 2003, Chapter 258 (The Uninsured Employers' Fund). A public hearing on the

rule was conducted on Monday, August 18, 2003, after notice was published in the New Mexico Register, the New Mexico Bar Bulletin, and four newspapers of general circulation in the State of New Mexico. Verbal comments were taken at the public hearing and an opportunity to submit written comments was extended until August 25, 2003. A number of written comments were received with respect to the rule, including one comment, which was received after the deadline. All comments were reviewed and considered and this Response to Public Comment is intended to inform the public of those changes made in response to their input.

At the outset, the WCA wishes to thank all who participated in the rules review process and especially all who submitted comments, whether verbal or written. We believe that the final rule has been substantially improved by the input of the public and that the implementation of this important new social policy will be smoother and more effective as a result.

Several commentators urged, for a variety of reasons, that a new rule not be adopted and that Chapter 258 of the Laws of 2003 not be implemented at this time. While I am sympathetic to the concerns expressed by each of those commentators, the option of ignoring the law is simply not available. By its terms, the Legislature made the law effective and no Executive agency is empowered to overrule or unilaterally modify the legislature's decision in this matter. Moreover, simply not having a rule in place is not a viable solution. Assessments for collection of monies by the Uninsured Employers' Fund are required by statute. They will go on whether or not rules are in place. Absent rules, however, essential definitional and procedural matters will remain un-addressed causing confusion and inequity. Similarly, claims against the Uninsured Employers' Fund will continue to be submitted, whether or not a rule guiding or regularizing procedures for handling such claims is in place. Again, absent rules, confusion and inequity is the likely outcome. Accordingly, both because of issues of legal authority and because of significant concerns about public policy, the suggestion that no rules be adopted will not be accepted.

With regard to the definition section of the rule, commentators suggested that the term "claim" and "eligible" be defined. Definitions for the term "claim" and "eligible" and "eligibility" have been included in the final rule.

With regard to the section con-

cerning procedures for submission of claims, one commentator noted that the order of provisions in this section appeared to be less helpful than it could have been. It was suggested that the general provisions concerning submission of claims precede those sections that deal with the special provisions for claims that come in as part of the normal Workers' Compensation Administration dispute resolution process. Accordingly, provisions in this section were reordered to reflect the suggested organization. It was also suggested by one commentator that it would be more appropriate to allow all determinations of the eligibility (as opposed to compensability) to be handled as disputes in the dispute resolution procedures already in place within the Workers' Compensation Administration. That was deemed inappropriate because the termination of eligibility for handling by the Uninsured Employers' Fund logically precedes the *existence* of any dispute, where the *existence* of a dispute is a statutory prerequisite to invocation of the dispute resolution mechanism. It was also deemed desirable that eligibility determinations be handled consistently from case to case, which will be difficult if they are randomly assigned among various dispute resolution adjudicators.

One commentator noted that the procedure for submitting claims did not contain requirements for submission of sufficient information to allow the Uninsured Employers' Fund to properly communicate with the parties to the claim. Accordingly, additional information will be required for the submission of a claim against the Uninsured Employers' Fund. In a similar vein, one commentator suggested that the filing of a complaint before the Workers' Compensation Administration satisfies all steps necessary to be considered for eligibility for compensation from the Uninsured Employers' Fund. The comment was not adopted because it is inconsistent with the structure of the claims submission process. However, the substance of the comment is already present in the rules to the extent that, if a complaint is deemed to state a claim against the Uninsured Employers' Fund then the complaint, without additional information, will be treated as a claim against the Uninsured Employers' Fund.

One commentator wished a specific rule addressing out-of-state claims. The rule was deemed unnecessary as Chapter 258 is already explicit with respect to coverage of all and only claims that arose under the New Mexico Workers' Compensation Act. There is already substantial case law concerning the extent to which claims on out-of-state accidents may

be made under the New Mexico Workers' Compensation Act.

One commentator suggested alternative language for the provision which dealt with the situation where a worker had opted out of coverage under the Workers' Compensation Act under 52-1-7. The alternative language was adopted.

Several commentators objected to the provision that denied eligibility for indemnity benefits for any period of time where the worker was employed by another employer. The provision was removed. One commentator suggested that a District Court ruling that an uninsured employer should be given *res judicata* or collateral estoppel effect with respect to the determinations of the Uninsured Employers' Fund concerning eligibility. Language was inserted into the rule which recognized that a prior District Court ruling on the issue of whether or not an employer was insured was binding, but noting that there were additional, independent issues with respect to the eligibility determination which would still be independently determined by the Uninsured Employers' Fund. Commentators suggested that the provisions concerning notification of the parties concerning the eligibility determination be combined and that language be added requiring an explanation to the worker for all negative eligibility determinations. Both suggestions were adopted.

One commentator suggested that the term "Fund" be replaced with "Fund Administrator" in a number of places and that the term "or occupational disease disablement law" be added after the term "Workers' Compensation Act" in a number of places. The first suggestion was rejected on the grounds that the rule would then unnecessarily limit the Director's assignment of personnel to implement the law. The addition of coverage for occupational disease disablement law claims was added, where appropriate.

One commentator suggested that the provision with respect to telephonic and video conferencing appearances was inconsistent with case law. A change was made to remove the inconsistency.

The claims administration section of the rules also received several comments. Two commentators questioned the use of the terminology "claims administrator, third party administrator or insurer". The Workers' Compensation Administration believes that all three terms are consistent with the law as adopted by the legislature and all three were adopted to allow for max-

imum flexibility in the administration of claims. One commentator suggested that the party charged with handling claims be also charged with the filing of appropriate statistical reporting with the Workers' Compensation Administration. The suggestion was adopted. One commentator argued that it was more appropriate to refer to the Workers' Compensation Administration director or designee with respect to the audit process. The suggestion was adopted.

Several commentators objected to the provision strongly discouraging lump sum payments. The provision was dropped, as was the provision instructing the Workers' Compensation Judge to consider the fiscal impact on the Uninsured Employers' Fund of the proposed lump sum payment in a determination of whether to approve the lump sum payment.

The provision requiring a cessation of payments to a worker receiving workers' compensation of payments from another source was clarified to be limited to payments for the same injury and arising out the same accident. Similarly, the Uninsured Employers' Fund's right of reimbursement was restricted to payments for workers' compensation benefits that duplicates payments received from another source.

A series of comments was received with respect to the provisions concerning penalties collected from uninsured employers. The comments all ran one way or another, to the lack of specification of a procedure for the imposition of the penalties. The procedures set forth in 11 NMAC 4.5 were made applicable to these penalty proceedings.

The provision on assessments received considerable attention, some of which has been commented on above. A number of questions were set forth with regard to the ability of group self-insurers and insurance companies to pass on the assessments to their insureds. The Workers' Compensation Administration regards that issue as a matter of private contract and does not intend to occupy the field with respect to that issue. It should be noted, with respect to these comments, that two distinct philosophies with regard to responsibility for the assessment have been expressed. One philosophy is that individual insured companies should be financially responsible for the portion of the assessment paid by their insurer or group self-insurer attributable to accidents on their premises. The other philosophy is that the assessment should be spread equally among all the insureds of an insurance company or

group self-insurer. Many of the comments with regard to assessments, presumed the correctness of one or the other of these positions without question.

It should also be noted that the Workers' Compensation Advisory Council, at its September meeting, discussed and initiated consideration of a proposal to alter the mechanism for funding the Uninsured Employers' Fund. The rule complies with existing law but will be immediately revised if the funding mechanism is legislatively altered.

Two changes were made to the assessment provisions in response to public comment. Both were clarifications of language. The first specified that the Director issue an order publicly announcing the percentage to be applied to paid losses that form the basis of the assessment for the next calendar year. The second clarified that the percentage set by the Director as, as its upper limit, the rate set by law.

There were no specific comments aimed at any of the miscellaneous provisions.

There was a considerable volume of general commentary concerning the law and the mechanism for financing the Uninsured Employers' Fund. Those comments have been addressed above. Three other general comments were offered. One suggested that the Workers' Compensation Administration assist insurance companies and group self-insurers in collection efforts with respect to former insureds. Such governmental efforts on behalf of the private entity are barred by the Anti-Donation Clause of the Constitution of the State of New Mexico. The second suggests that alterations in the treatment of bad faith claims by workers be included in the rules. The statute presumes that the level of benefits paid by the Uninsured Employers' Fund is the level of benefits to which the worker would have been entitled under the Workers' Compensation Act. Finally, two commentators expressed concerns about the Uninsured Employers' Fund, which is an entity of the Workers' Compensation Administration, appearing before adjudicators who also work for the Workers' Compensation Administration. Sufficient protections by way of voluntary recusal and appointment of pro tem adjudicators already exists to handle any conflict which may be perceived in any particular situation.

Once again we would like to thank all the participants in the public comment process for their considerable efforts

in making this a better rule. Upon execution and filing of this Response to Public Comment, the public record on the adoption of the rules implementing Chapter 258 of the Laws of 2003 will be closed. It is our intention to file the final rule to comply with the first available publication date and effective date available in October 2003. Please see the final rule, Section 11.4.12.5 for the final effective date.

WORKERS' COMPENSATION ADMINISTRATION

By: \_\_\_\_\_

ALAN M. VARELA, Director

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules and Regulations

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This part 16.2.5 NMAC, Temporary Licensing, filed on 10/25/01 is hereby repealed and replaced by 16.2.5 NMAC, effective 10-22-03.

This part 16.2.7 NMAC, Approval of Educational Programs, filed on 4/20/00 is hereby repealed and replaced by 16.2.7 NMAC, effective 10-22-03.

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 2 ACUPUNCTURE  
AND ORIENTAL MEDICINE PRACTITIONERS  
PART 5 TEMPORARY  
LICENSING**

**16.2.5.1 ISSUING AGENCY:** New Mexico Board of Acupuncture and Oriental Medicine.  
[16.2.5.1 NMAC - Rp 16.2.5.1 NMAC; 10-22-03]

**16.2.5.2 SCOPE:** All Licensees, Applicants, Temporary Licensees, Applicants for Temporary Licensure, Externs, Educational Programs and applicants for approval of Educational Programs.  
[16.2.5.2 NMAC - Rp 16.2.5.2 NMAC; 10-22-03]

**16.2.5.3 STATUTORY AUTHORITY:** This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 12, NMSA 1978.  
[16.2.5.3 NMAC - Rp 16.2.5.3 NMAC; 10-22-03]

**16.2.5.4 DURATION:** Permanent.  
[16.2.5.4 NMAC - Rp 16.2.5.4 NMAC; 10-22-03]

**16.2.5.5 EFFECTIVE DATE:** October 22, 2003, unless a later date is cited at the end of a section.  
[16.2.5.5 NMAC - Rp 16.2.5.5 NMAC; 10-22-03]

**16.2.5.6 OBJECTIVE:** This Part establishes requirements for temporary

licensure and limited temporary licensure, prior disciplinary action relating to other licenses, prior litigation and prior felonies, the educational requirements for temporary licensure, the renewal period for temporary licensure and the requirements for renewal of temporary licenses.

[16.2.5.6 NMAC - Rp 16.2.5.6 NMAC; 10-22-03]

**16.2.5.7 DEFINITIONS:**

A "Limited Temporary License" is a license for the exclusive purpose of teaching a single complete course in Acupuncture and Oriental Medicine and assisting in the implementation of new techniques in Acupuncture and Oriental Medicine including the study of such techniques by a licensed, registered, certified or legally recognized healthcare practitioner from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person if they are not a licensee or temporary licensee. A person who has been issued a limited temporary license shall be considered a temporary licensee with regard to the administrative and disciplinary requirements of the Act and the Rules. A Limited Temporary License shall be valid for twelve (12) consecutive months from date of issuance and is not renewable. Limited Temporary Licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved Educational Program.

[16.2.5.7 NMAC - Rp 16.2.5.7 NMAC; 10-22-03]

**16.2.5.8 GENERAL REQUIREMENTS:**

A. Any Applicant for Temporary Licensure or Applicant for a Limited Temporary License who has been subject to any action or proceeding comprehended by Subsection E of 16.2.5.10 NMAC and Subsection D of 16.2.5.12 NMAC (Subsections 10.E and 12.D of Part 5 of the Rules), may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.

B. Any Applicant for Temporary Licensure or an applicant for a Limited Temporary License who provides the Board with false information or makes a false statement to the Board may be subject

to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[16.2.5.8 NMAC - Rp 16.2.5.8 NMAC; 10-22-03]

**16.2.5.9 TEMPORARY LICENSE EDUCATIONAL REQUIREMENTS:**

A. An Applicant for Temporary Licensure shall provide satisfactory proof that he or she has completed an approved Educational Program. An Applicant for Temporary Licensure who is legally recognized in any state or foreign country to practice another health care profession and who possesses knowledge and skills that are included in the scope of practice of doctors of oriental medicine shall provide satisfactory proof that he or she has completed the education required for legal recognition in that state or foreign country.

B. The Board, by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, may determine not to require the Applicant for Temporary Licensure to complete the requirements of Subsection A of 16.2.5.9 NMAC (Subsection 9.A. of Part 5 of the Rules), if the Board determines that there is good cause and the health and safety of the citizens of New Mexico will not be jeopardized.

[16.2.5.9 NMAC - Rp 16.2.5.9 NMAC; 10-22-03]

**16.2.5.10 TEMPORARY LICENSE APPLICATION:**

Upon approval of an application for a Temporary License that fulfills the requirements listed below, the Board shall issue a Temporary License that will be valid for the dates specified on the license but shall not exceed six (6) months. The Temporary License shall include the name of the Temporary Licensee, the effective dates of the license, the name of the sponsoring New Mexico Doctor of Oriental Medicine or New Mexico Educational Program, and a statement that the license shall be for the exclusive purpose of one or more of the following: teaching acupuncture and oriental medicine; consulting, in association with the sponsoring doctor of oriental medicine, regarding the sponsoring doctor's patients; performing specialized diagnostic or treatment techniques in association with the sponsoring doctor of oriental medicine regarding the sponsoring doctor's patients; assisting in the conducting of research in acupuncture and oriental medicine; or

assisting in the implementation of new techniques and technology related to acupuncture and oriental medicine. The application requirements for a Limited Temporary License shall be receipt of the following by the Board:

A. The fee for application for Temporary License specified in 16.2.10 NMAC (Part 10 of the Rules).

B. A application for Temporary License that is complete and in English on a form provided by the Board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program.

C. One (1) passport-type photograph of the applicant taken not more than six months prior to the submission of the application;

D. An affidavit as provided on the "Temporary License Application" from the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program attesting to the qualifications of the applicant and the activities the applicant will perform; and

E. An affidavit as provided on the "Temporary License Application" as to whether the applicant:

(1) Has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

(2) Has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

(3) Has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or

(4) Is in arrears on a court-ordered child support payment; and

F. An official license history, which is a certificate from each jurisdiction stating the disciplinary record of the

applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

G. An affidavit as provided on the "Temporary License Application" stating that the applicant understands that:

(1) An applicant who has been subject to any action or proceeding comprehended by Subsection E of 16.2.5.10 NMAC (Subsection 10.E of Part 5 of the Rules) may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) An applicant who provides the Board with false information or makes a false statement to the Board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; and

H. An affidavit as provided on the "Temporary License Application" stating that the applicant understands that:

(1) The applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; and

(2) The applicant must notify the Board within ten (10) days if the applicant's address changes or the circumstances of the applicant's relationship to the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program change; and

(3) The applicant may only engage in those activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program for the limited time specified on the temporary license; and

I. A copy of the applicant's license, certification or registration or other document proving that the applicant is legally recognized in another state or country to practice acupuncture and oriental medicine or another health care profession and who possesses knowledge and skill that are included in the scope of practice of doctors of oriental medicine. The copy shall

include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants in the United States who practice in a state in which there is no legal recognition, a copy of the certification document in acupuncture, Chinese herbal medicine or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) shall be sufficient. The copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal requirement for practice, the above provisions in this paragraph shall not apply; and

J. A copy of the applicant's diploma for graduation from the educational program that is required to be licensed, certified, registered or legally recognized to practice in the state or country where the applicant practices. This copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; and

K. An official copy of the applicant's transcript that shall be sent directly to the Board in a sealed envelope by the Educational Program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject. This copy of the transcript shall remain in the closed envelope secured with the official seal of the Educational Program and shall be sent by the applicant to the Board along with the applicant's application for licensure; and

L. An affidavit stating that the applicant has been officially informed by the Board in writing that either of the following two requirements has been fulfilled:

(1) The educational program in acupuncture and oriental medicine from which the applicant graduated has been approved by the Board as an Educational Program; or

(2) The Board, by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, has determined not to require the Applicant for Temporary Licensure to have graduated from an approved Educational Program as provided for in Subsection B of 16.2.5.9 NMAC (Subsection 9.B of Part 5 of the Rules); and

M. An accurate translation in English of all documents submitted in a

foreign language. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and complete translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.5.10 NMAC - Rp 16.2.5.10 NMAC; 10-22-03]

**16.2.5.11 TEMPORARY LICENSE RENEWAL:** A temporary license issued by the Board may be renewed a maximum of two times only, for a period of six (6) months for each renewal. Renewals shall run sequentially so that a renewal shall begin immediately when the previous temporary license period expires. Upon approval of an application for renewal of a Temporary License that fulfills the requirements listed below, the Board shall issue a Temporary License. The application requirements for renewal of a Temporary License shall be receipt of the following by the Board:

A. The fee for renewal of a Temporary License specified in 16.2.10 NMAC (Part 10 of the Rules).

B. An application for renewal of a Temporary License that is complete and in English on a form provided by the Board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program.

C. An affidavit from the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program attesting to the qualifications of the applicant and the activities the applicant will perform.

[16.2.5.11 NMAC - Rp 16.2.5.11 NMAC; 10-22-03]

**16.2.5.12 LIMITED TEMPORARY LICENSE APPLICATION:** Upon approval of an application for a Limited Temporary License that fulfills the requirements listed below, the Board shall issue a Limited Temporary License that will be valid for the dates specified on the license but shall not exceed twelve consecutive months, and shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of

such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. Limited Temporary Licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved Educational Program. The Limited Temporary License shall include the name of the Limited Temporary License holder, the effective dates of the license, the name of the sponsoring New Mexico Doctor of Oriental Medicine or New Mexico Educational Program, and a statement that the license shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. The requirements for a Limited Temporary License shall be:

A. The fee for application for a Limited Temporary License specified in 16.2.10 NMAC (Part 10 of the Rules).

B. An application for Limited Temporary License that is complete and in English on a form provided by the Board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program.

C. An affidavit as provided on the "Temporary License Application" from the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program attesting to the qualifications of the applicant and the activities the applicant will perform; and

D. An affidavit as to whether the applicant:

(1) Has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

(2) Has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

(3) Has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or

(4) Is in arrears on a court-ordered child support payment; and

E. An affidavit as provided on the "Temporary License Application" stating that the applicant understands that:

(1) An applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.5.12 NMAC (Subsection 12.D of Part 5 of the Rules), may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) An applicant who provides the Board with false information or makes a false statement to the Board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; and

F. An affidavit as provided on the "Temporary License Application" stating that the applicant understands that

(1) The applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; and

(2) The applicant must notify the Board within ten (10) days if the applicant's address changes or the circumstances of the applicant's relationship to the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program change; and

(3) The applicant may only engage in those activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program for the limited time specified on the temporary license; and

G. A copy of the applicant's license, certification or registration or other document proving that the applicant is legally recognized in another state or country to practice acupuncture and oriental medicine or another health care profession and who possesses knowledge and skill that

are included in the scope of practice of doctors of oriental medicine. The copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants in the United States who practice in a state in which there is no legal recognition, a copy of the certification document in acupuncture, Chinese herbal medicine or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) shall be sufficient. The copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal requirement for practice, the above provisions in this paragraph shall not apply; and

H. A copy of the applicant's diploma for graduation from the educational program that is required to be licensed, certified, registered or legally recognized to practice in the state or country where the applicant practices. This copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; and

I. An accurate translation in English of all documents submitted in a foreign language. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and complete translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an application shall be at the expense of the applicant.  
[16.2.5.12 NMAC - Rp 16.2.5.12 - 16.2.5.16 NMAC; 10-22-03]

## NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 2 ACUPUNCTURE  
AND ORIENTAL MEDICINE PRACTITIONERS  
PART 7 EDUCATIONAL  
PROGRAMS**

**16.2.7.1 ISSUING AGENCY:**  
New Mexico Board of Acupuncture and

Oriental Medicine

[16.2.7.1 NMAC - Rp, 16.2.7.1 NMAC, 10-22-03]

**16.2.7.2 SCOPE:** All licensed Doctors of Oriental Medicine, temporarily licensed Doctors of Oriental Medicine, approved Educational Programs and all Applicants for licensure as a Doctor of Oriental Medicine, Temporary Licensure and for approval of an Educational Program.

[16.2.7.2 NMAC - Rp, 16.2.7.2 NMAC, 10-22-03]

**16.2.7.3 STATUTORY AUTHORITY:** This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 14, NMSA 1978.

[16.2.7.3 NMAC - Rp, 16.2.7.3 NMAC, 10-22-03]

**16.2.7.4 DURATION:** Permanent.

[16.2.7.4 NMAC - Rp, 16.2.7.4 NMAC, 10-22-03]

**16.2.7.5 EFFECTIVE DATE:** October 22, 2003, unless a later date is cited at the end of a section.

[16.2.7.5 NMAC - Rp, 16.2.7.5 NMAC, 10-22-03]

**16.2.7.6 OBJECTIVE:** This Part establishes the requirements for approval of Educational Programs, the requirements for making an application for approval of an Educational Program, the renewal of the approval of the Educational Program and the requirement of notification of changes.

[16.2.7.6 NMAC - Rp, 16.2.7.6 NMAC, 10-22-03]

**16.2.7.7 DEFINITIONS:** [Reserved]

[16.2.7.7 NMAC - Rp, 16.2.7.7 NMAC, 10-22-03]

**16.2.7.8 EDUCATIONAL PROGRAM REQUIREMENTS:** All Educational Programs shall be approved by the Board. Using the requirements of 16.2.7.8 NMAC and 16.2.7.8.9 NMAC (Sections 8 and 9 of Part 7 of the Rules), the Board will evaluate whether or not an Educational Program shall be approved. If a visit is necessary to evaluate the Educational Program, the cost of the visit, including any administrative costs, shall be paid in advance by the Educational Program.

A. The foundation Educational Program requirement shall be the four academic year masters of oriental

medicine program that meets the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) Accreditation/Equivalent Education Policy as defined here. Graduation/education must be obtained from a formal education program that has met the standards of the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or an equivalent educational body. A program may be established as having satisfied this requirement by demonstration of one of the following:

(1) Accreditation or candidacy for accreditation by ACAOM; or

(2) Approval by a foreign government's Ministry of Education, Ministry of Health, or equivalent foreign government agency. Each candidate must submit their documents for approval by a Foreign Credential Equivalency Service approved by the NCCAOM for that purpose. Programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAOM in effect at the time of application; or

(3) Approval by a foreign private accreditation agency that has an accreditation process and standards substantially equivalent to that of ACAOM, and that is recognized for that purpose by the appropriate government entity in that foreign country. Each candidate must submit their documents for approval by a Foreign Credential Equivalency Service approved by the NCCAOM for that purpose. Programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAOM in effect at the time of application.

B. The Educational Program shall provide a program that shall be at least four academic years and shall include in-class education that comprises a minimum of 2,400 clock hours of classes including a minimum of 1,100 hours of didactic education in acupuncture and oriental medicine and a minimum of 900 hours of Supervised Clinical Practice, instruction and observation in acupuncture and oriental medicine. The curriculum shall provide the knowledge and skills required to maintain appropriate standards of acupuncture and oriental medical care. [

C. The Educational Program shall include a didactic curriculum that educates and graduates physicians who are competent to practice acupuncture and oriental medicine and who are able to diagnose, prescribe, and treat accurately and that specifically includes, in addition to the requirements of the Act, oriental principles of life therapy, including the prescription of herbal medicine, diet and nutrition, manual therapy/physical medicine and counseling,

not to exceed 900 hours of the required 2,400 hours specified in Subsection B of 16.2.7.8. NMAC (Subsection 8.B. of Part 7 of the Rules) and that includes a minimum of 450 hours of education in herbal medicine.

D. The Educational Program shall include a clinical curriculum that includes clinical instruction and direct patient contact. This clinical part of the Educational Program shall include at least 900 hours of Supervised Clinical Practice, instruction and observation in the following areas:

(1) The observation of and assistance in the application of principles and techniques of oriental medicine including diagnosis, acupuncture, moxibustion, manual therapy/physical medicine, diet and nutrition, counseling and the prescription of herbal medicine; and

(2) A minimum of 400 hours of actual treatment in which the student is required to perform complete treatment as the primary student practitioner.

E. The Educational Program may honor credit from other Educational Programs.

F. The names and educational qualifications of all teaching supervisors, resident teachers, and visiting teachers of acupuncture and oriental medicine shall be submitted to the Board and shall meet the following:

(1) All teachers of acupuncture and oriental medicine in New Mexico shall have a license or temporary license to practice acupuncture and oriental medicine in New Mexico issued by the Board. Any Educational Program in violation of this provision shall be subject to suspension or revocation of the Educational Program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC (Part 12 of the Rules).

(2) All teachers of acupuncture and oriental medicine at Educational Programs outside New Mexico shall be licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine in the state or country in which he or she practices and teaches. Any Educational Program in violation of this provision shall be subject to suspension or revocation of the Educational Program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC (Part 12 of the Rules).

(3) Exceptions may be made at the Board's discretion and for good cause.

G. Educational Programs may employ or contract with tutors to teach components of the Educational Program. Educational Programs may honor credit from tutors. A tutor is defined in the Act as "a doctor of oriental medicine with at least

ten years of clinical experience who is a teacher of acupuncture and oriental medicine."

I. The Educational Program may be subject to inspection by the Board.

[16.2.7.8 NMAC - Rp, 16.2.7.8 NMAC, 10-22-03]

**16.2.7.9 EDUCATIONAL PROGRAM CERTIFICATE OR DIPLOMA AND TRANSCRIPT REQUIREMENTS:** Educational Programs shall provide the following:

A. A transcript of grades, as part of the student's record, that includes the following:

- (1) Name of the student;
- (2) Address of the student;
- (3) Date of birth;
- (4) Course titles;
- (5) Grade received in each course;

and

- (6) Number of clock hours per course.

B. A certificate or diploma stating that the student has satisfactorily completed the Educational Program only after personal attendance in all required classes, and satisfactory completion of the Educational Program requirements.

[16.2.7.9 NMAC - Rp, 16.2.7.9 NMAC, 10-22-03]

**16.2.7.10 APPLICATION FOR ANNUAL APPROVAL OF AN EDUCATIONAL PROGRAM:** All Educational Programs in New Mexico are required to be annually approved by the Board. Any Educational Program outside New Mexico, that so chooses, may apply to receive annual approval status. These Educational Programs shall be granted approval after submitting to the Board:

A. The initial application fee for annual approval of an Educational Program specified in 16.2.10 NMAC (Part 10 of the Rules) and paid by certified check or money order in U.S. funds; and

B. An application that is complete and in English on a form prescribed by the Board that contains the matriculation date for the Educational Program and the information necessary to verify that the standards of professional education required by 16.2.7.8 and 16.2.7.9 NMAC (Sections 8 and 9 of Part 7 of the Rules) are being met including an official copy of the curriculum. The Board shall act upon the application within sixty (60) days of the receipt of the application and shall inform the Educational Program of the status of the application in writing by mail postmarked within seven (7) days of acting on it.

[16.2.7.10 NMAC - Rp, 16.2.7.10 NMAC,

10-22-03]

**16.2.7.11 APPLICATION FOR SINGLE INSTANCE APPROVAL OF AN EDUCATIONAL PROGRAM:** An Educational Program that does not have annual approval status from the Board shall receive a single instance approval of the Educational Program for use by a single Applicant after the Educational Program that graduated the Applicant has submitted to the Board:

A. The application fee for a single instance approval of an Educational Program, specified in 16.2.10 NMAC (Part 10 of the Rules), paid by certified check or money order in U.S. funds; and

B. An application that is complete and in English on a form prescribed by the Board that contains the matriculation date for the Educational Program and the information necessary to verify that the standards of professional education required by 16.2.7.8 and 16.2.7.9 NMAC (Sections 8 and 9 of Part 7 of the Rules) are being met including an official copy of the curriculum. The application and the application fee shall be received at the Board's office at least ninety (90) days prior to the next scheduled Clinical Skills Examination. The Board shall send a written response to the applicant for approval of an Educational Program informing the applicant of the application's completeness or needed documentation postmarked at least eighty-five (85) days before the next scheduled Clinical Skills Examination date. All documentation requested to complete the application shall be received at the Board's office at least seventy (70) days before the next scheduled Clinical Skills Examination date. The applicant shall be notified of approval or denial of the application in writing by mail postmarked at least sixty (60) days prior to the next scheduled Clinical Skills Examination date. Note that the above deadlines exist to synchronize with the deadlines for Applicants regarding the Clinical Skills Exam as defined in 16.2.4.11 NMAC (Section 11 of Part 4 of the Rules).

[16.2.7.11 NMAC - Rp, 16.2.7.11 NMAC, 10-22-03]

**16.2.7.12 ANNUAL RENEWAL, LATE RENEWAL AND EXPIRED APPROVAL:** To maintain annual approval status, an Educational Program shall submit by May 1st an annual renewal application that is complete and in English on a form prescribed by the Board and the required fee for renewal of approval of an Educational Program, specified in 16.2.10 NMAC (Part 10 of the Rules), paid by certified check or money order in U.S. funds. The approval period is defined as August 1st to July 31st

of the subsequent year. The approval expires at 12:00 midnight on July 31st. Renewal applications received after September 30th of any year must be submitted with the late fee specified in 16.2.10 NMAC (Part 10 of the Rules) and paid by certified check or money order in U.S. funds. If the annual renewal application and fee are not received within sixty (60) days after expiration, following the approval period, the annual approval is expired and the Educational Program shall submit the initial application and initial application fee to become approved.

[16.2.7.12 NMAC - Rp, 16.2.7.12 NMAC, 10-22-03]

#### 16.2.7.13 NOTIFICATION OF CHANGES:

If ownership of the Educational Program changes or the Educational Program is substantially changed the Educational Program shall notify the Board within ten (10) days of such change. The Educational Program may then be subject to inspection. The Educational Program shall be on a probationary approval status until final approval is given under the changed circumstances.

[16.2.7.13 NMAC - Rp, 16.2.7.13 NMAC, 10-22-03]

### NEW MEXICO BOARD OF EDUCATION

**This is an amendment to 6.20.2 NMAC (GOVERNING BUDGETING AND ACCOUNTING FOR NEW MEXICO PUBLIC SCHOOLS AND SCHOOL DISTRICTS). Sections 2, 7, 8, 10, 13, 23, and 24.**

**6.20.2.2 SCOPE:** This regulation applies to public school districts, charter schools, and [~~Regional Center Cooperatives~~] regional education cooperatives in the state of New Mexico.

[11-01-97, 01-15-99; 6.20.2.2 NMAC - Rn, 6 NMAC 2.2.1.2, 05-31-01; A, 10-15-03]

#### 6.20.2.7 DEFINITIONS:

A. "Budget" - A written plan of financial operation for one fiscal year to include an estimate of revenues and proposed expenditures.

B. "Operating budget" - The budget submitted and approved by the local board by June 20 and certified by the state department of education (SDE) on or before July 1.

C. "Fiscal year" - A twelve-month period, beginning July 1 and ending June 30, to which the annual operating budget applies.

D. "Fixed assets" - Land, buildings, improvements other than buildings, equipment, machinery, construction

work in progress, and capital leased assets with a cost of \$500 or more. The definition of fixed assets applies to all assets purchased regardless of funding source.

E. "GAAP" - Generally Accepted Accounting Principles.

F. "Local board" - The local board of education.

G. "School districts" - New Mexico public school districts, including charter schools, and [~~Regional Center Cooperatives (RCCs)] regional education cooperatives (RECs).~~

H. "SDE" - The state department of education.

[02-03-93, 11-01-97, 01-15-99, 09-15-99; 6.20.2.7 NMAC - Rn, 6 NMAC 2.2.1.7, 05-31-01; A, 10-15-03]

#### 6.20.2.8 PROCEDURAL REQUIREMENTS

A. All school districts shall account for financial transactions and develop and maintain their budgets in accordance with the Public School Code, GAAP and SDE procedures for public school accounting and budgeting, which are referenced where applicable.

B. The deadlines identified in this regulation pertaining to the submittal of required reports and documents may be extended by the state superintendent or his designee after a request has been submitted by the school district, provided the extension is not in violation of state or federal law.

C. If reporting requirements and deadlines are not met, the department may withhold funds, suspend payments or both, pursuant to 6.21.2.10 NMAC and 6.21.2.11 NMAC.

D. Business officials, serving in the capacity of a supervisor or director or manager of accounting and/or bookkeeping as mentioned in 6.63.12.8 NMAC, responsible for the preparation and presentation of all financial documentation and budget maintenance will meet the competency requirements enumerated in 6.63.12.9 NMAC.

[02-03-93, 11-01-97, 01-15-99; 6.20.2.8 NMAC - Rn, 6 NMAC 2.2.1.8, 05-31-01; A, 10-15-03]

#### 6.20.2.10 BUDGET MAINTENANCE STANDARDS:

A. Budget adjustment requests shall be submitted on the most current form prescribed by the SDE. The school district shall maintain a log of all budget adjustment requests to account for status, numerical sequence, and timely approval at each level. The log is to be retained for audit purposes.

B. School districts shall submit budget adjustment requests for the

operating budget to the SDE for budget increases, budget decreases, transfers between functional categories, and transfers from the emergency reserve account. SDE must take action on budget adjustment requests within 30 calendar days from the date of receipt by the SDE or such requests will otherwise be considered approved. Expenditures shall not be made by the school district until budget authority has been established and approval received from the SDE. Budget adjustments shall not be incorporated into the school district's accounting system until approval is received by the SDE.

C. School districts shall submit periodic financial reports to the SDE using the SDE approved format. Reporting shall be either monthly or quarterly at the discretion of the SDE. The school district shall be notified of its required reporting frequency in writing by the SDE. Required reporting frequency may be changed by the SDE at any time during the year. Reports are due at the SDE by the last working day of the month following the end of the required reporting period, unless extended to a later date by the state superintendent.

[12-08-89, 02-03-93, 11-01-97, 01-15-99, 09-15-99; 6.20.2.10 NMAC - Rn, 6 NMAC 2.2.1.10, 05-31-01; A, 10-15-03]

#### 6.20.2.13 FINANCIAL STANDARDS:

A. General ledger: All school districts shall establish and maintain a general ledger in accordance with GAAP. The general ledger will be comprised of individual funds and account groups using the SDE uniform chart of accounts and shall be reconciled every fiscal year with SDE records.

B. Funds and account groups: School districts shall use funds and account groups to report their financial position and operating results. Funds are classified into three broad categories: a) governmental funds, b) proprietary funds and c) fiduciary funds. There are two account groups: a) general fixed assets and b) general long-term debt.

C. Chart of accounts: All school districts shall prepare, maintain, and report budget and financial information utilizing a standard and uniform chart of accounts.

D. Basis of accounting: In accordance with GASB 34, school districts shall use a [~~modified~~] full accrual basis of accounting in preparation of annual financial statements and cash basis of accounting for budgeting and reporting.

E. Financial statements: Financial statements are the responsibility of the school district. The school district shall maintain adequate accounting records,

prepare financial statements in accordance with GAAP (specifically, GASB 34), and provide complete, accurate, and timely information to the independent public accountant (IPA) as requested. If there are differences between the financial statements ~~[and the books]~~, school district records and SDE records, the IPA should provide the adjusting entries to the school district to reconcile the report to the ~~[books]~~ school district records. If the IPA prepared the financial statements, this fact must be disclosed in the notes to the financial statements. If the IPA prepared the financial statements, this fact must be disclosed in the notes to the financial statements. All efforts should be made by the school district to assist the IPA with financial statement preparation.

F. Financial and compliance audit: All school districts shall have a yearly audit performed on its financial records as required by Section 12-6-3, NMSA 1978.

G. Financial reporting: All school districts shall provide periodic financial information to the local board as prescribed by local board action. Information shall be presented at a regularly scheduled board meeting.

[12-08-89, 02-03-93, 11-01-97, 01-15-99; 6.20.2.13 NMAC - Rn, 6 NMAC 2.2.1.13, 05-31-01; A, 10-15-03]

#### 6.20.2.23 OTHER SERVICES:

A. Food services: Food service funds are to be accounted for in the special revenue fund or the enterprise fund. All monies collected from the sale of food for the food service operation are to be accounted for in accordance with GAAP, U.S. department of agriculture (USDA) requirements, and Section 22-13-13, NMSA 1978.

B. Federal/state grants:

(1) Flowthrough funds: For grant money that flows through the SDE, school districts shall utilize the funding for the purpose in which it was awarded. School districts shall submit complete and accurate reports required by the grant and the SDE within the prescribed time. This funding shall be accounted for in accordance with GAAP, applicable federal regulations, and procedures set forth in the grant award.

(2) Direct funds: For grant money that is sent direct, school districts shall utilize the funding for the purpose in which it was awarded. School districts shall submit complete and accurate reports required by the grant within the prescribed time. This funding shall be accounted for in accordance with GAAP, applicable federal regulations, and procedures set forth in the grant award. These direct funds shall be incorporated into the school district operating budget without prior approval provided that a

budget adjustment request is submitted to SDE.

C. Student activity funds (non-instructional activities): Funds set aside for non-instructional activities shall be accounted for the same as any other funding budgeted in the operational sub-fund. Other assets held by the school district in a trustee capacity or as an agent for school organizations are considered agency funds, shall be accounted for in accordance with GAAP, and are not required to be budgeted. The school district is responsible for the accountability of agency funds. These funds are not considered public money for purposes of the State Procurement Code. School districts shall follow all applicable laws, rules and regulations in the disbursement of activity funds.

D. Joint powers agreements: Accounting for joint powers agreements, entered into pursuant to the Joint Powers Agreement Act, Sections 11-1-1 through 11-1-7, NMSA 1978, shall be in accordance with the agreement.

[02-03-93, 11-01-97, 01-15-99; 6.20.2.23 NMAC - Rn, 6 NMAC 2.2.1.23, 05-31-01; A, 10-15-03]

#### 6.20.2.24 OTHER ADMINISTRATIVE STANDARDS:

A. Instructional materials: School districts shall be allowed credit for textbooks and supplementary instructional materials adopted by the state board of education pursuant to the Instructional Materials Act, Section 22-15-9, NMSA 1978. Districts shall report in accordance with the Instructional Materials Act and account for instructional materials in accordance with GAAP. Audited instructional material records are the official accounting of these funds.

B. Transportation: Student transportation is provided for in Section 22-16-1 et seq., NMSA 1978. Monies allocated by the transportation unit of SDE shall be utilized for transportation expenditures only and accounted for in accordance with SDE transportation regulations and GAAP.

C. Records retention/disposition: The management of school district records shall be in accordance with the Public Records Act, Section 14-3-1 et seq., NMSA 1978.

D. Open Meetings Act: School districts shall comply with the provisions of the Open Meetings Act, Section 10-15-1 supra, NMSA 1978.

[02-03-93, 11-01-97, 01-15-99; 6.20.2.24 NMAC - Rn, 6 NMAC 2.2.1.24, 05-31-01; A, 10-15-03]

## NEW MEXICO BOARD OF EDUCATION

**This is an amendment to Section 11 of 6.21.2 NMAC (AUDIT RESOLUTION PROCESS, APPLICATION HEARING PROCESS, ENFORCEMENT PROCESS).**

#### 6.21.2.11 STATE FUNDS ENFORCEMENT PROCESS

A. Scope: This section shall apply to the accountability of state funds where there is a failure to correct a deficiency cited in an audit. The remedies set forth in this section may be used only after the department has requested in writing that the deficiency or deficiencies in question be corrected and there has been a failure to correct the deficiency or deficiencies after a reasonable opportunity to do so. When applicable, the department may avail itself of any of the remedies hereinafter set forth in this section, notwithstanding the fact that other remedies are available to or may have been used by the department.

B. Procedures: In order to enforce the provisions of the Public School Code of the state of New Mexico, Section 22-1-1 et. seq., NMSA 1978, any other applicable state or federal law, or as a result of an unresolved audit finding, the department may, pursuant to applicable state law:

(1) Suspend recommend suspension of a local school board which has been designated as its own board of finance from acting as a board of finance if the state superintendent reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's control, in accordance the provisions of Sections 22-8-39 NMSA 1978;

(2) disapprove instructional units or administrative functions which are determined to be detrimental to the educational process in accordance with the provisions of Section 22-2-14 NMSA 1978;

(3) suspend from authority and responsibility any local school board, which has notice of disapproval and fails to comply with procedures of Subsection B, Paragraph (2) of 6.21.2.11 NMAC in accordance with the provisions of Sections 22-2-14 and 22-2-15 NMSA 1978;

(4) institute legal proceedings for violation and/or enforcement of the Public School Code in accordance with the provisions of Sections 22-2-2 and 22-8-42 NMSA 1978;

(5) refer audit finding(s) to the proper law or other enforcement agency (ies) as appropriate;

(6) institute legal proceedings of other enforcement provisions as provided

by any applicable state law.

C. Withholding of funds: In accordance with subsection D of Section 22-8-13, the department shall withhold allotments of funds to any school district where the superintendent has failed to comply with the requirements of Section 22-8-13 NMSA 1978 until the superintendent complies with and agrees to continue complying with requirements. The following procedures shall apply:

(1) The state superintendent or his designee will advise the business manager of the district/charter school of the deficiency(ies) and establish timelines for compliance.

(2) If compliance is not effectuated in accordance with the timeline(s) established in paragraph (1), the director of the school budget planning unit or his designee will advise the district/charter school superintendent that the district/charter school has not made progress toward resolution of the issues. At the discretion of the director of the school budget planning unit, further technical assistance may be provided to the district/charter school.

(3) Upon a determination by the director of the school budget planning unit that the district/charter school has not made adequate progress toward resolution of the issues, the state superintendent or his designee will inform the appropriate district/charter school personnel in writing that the district/charter school has been given ample opportunity to correct the deficiencies and progress has not been made. A copy of the letter will also be sent to the local school board or the governance council of the applicable charter school. As a result, the department will begin withholding of funds until the district/charter school has corrected the problem(s) or made significant progress toward the resolution of the problem areas.

D. Reports to the state board of education: The state superintendent shall notify the state board of education if remedies outlined in this section are initiated.

[01-15-99; 6.21.2.11 NMAC - Rn, 6 NMAC 2.3.1.11, 05-31-01; A, 10-15-03]

## NEW MEXICO BOARD OF EDUCATION

**Explanatory paragraph: This is an amendment to 6.30.2 NMAC (STANDARDS FOR EXCELLENCE), Section 15. The amendment replaces Section 15 (CONTENT STANDARDS – SCIENCE) in its entirety.**

### 6.30.2.15 CONTENT STANDARDS -- SCIENCE

#### A. Kindergarten – 4th Grade

**(1) Strand I: Scientific Thinking and Practice - Standard I: Understand the processes of scientific investigations and use inquiry and scientific ways of observing, experimenting, predicting, and validating to think critically.**

**(a) K-4 Benchmark I: Use scientific methods to observe, collect, record, analyze, predict, interpret, and determine reasonableness of data.**

**(i) Grade K performance standards: a) Use observation and questioning skills in science inquiry (e.g., What happens when something is pushed or pulled?); b) Ask and answer questions about surroundings and share findings with classmates; and c) Record observations and data with pictures, numbers, and/or symbols.**

**(ii) Grade 1 performance standards: a) Make observations, develop simple questions, and make comparisons of familiar situations (e.g., What does the seed look like when it starts to grow?); and b) Describe relationships between objects (e.g., above, next to, below) and predict the results of changing the relationships (e.g., When that block moves, what will happen to the one next to it?).**

**(iii) Grade 2 performance standards: a) Conduct simple investigations (e.g., measure the sizes of plants of the same kind that are grown in sunlight and in shade); b) Use tools to provide information not directly available through only the senses (e.g., magnifiers, rulers, thermometers); c) Make predictions based on observed patterns as opposed to random guessing; and d) Follow simple instructions for a scientific investigation.**

**(iv) Grade 3 performance standards: a) Make new observations when discrepancies exist between two descriptions of the same object or phenomenon to improve accuracy; b) Recognize the difference between data and opinion; c) Use numerical data in describing and comparing objects, events, and measurements; d) Collect data in an investigation and analyze those data; and e) Know that the same scientific laws govern investigations in different times and places (e.g., gravity, growing plants).**

**(v) Grade 4 performance standards: a) Use instruments to perform investigations (e.g., timers, balances) and communicate findings; b) Differentiate observation from interpretation and understand that a scientific explanation comes in part from what is observed and in part from how the observation is interpreted; c) Conduct multiple trials to test a prediction, draw logical conclusions, and construct and interpret graphs from measurements; and d)**

Collect data in an investigation using multiple techniques, including control groups, and analyze those data to determine what other investigations could be conducted to validate findings.

**(b) K-4 Benchmark II: Use scientific thinking and knowledge and communicate findings.**

**(i) Grade K performance standards: a) Communicate observations and answer questions about surroundings.**

**(ii) Grade 1 performance standards: a) Know that simple investigations do not always turn out as planned.**

**(iii) Grade 2 performance standards: a) Understand that in doing science it is often helpful to work with a team and share findings; and b) Make accurate observations and communicate findings about investigations.**

**(iv) Grade 3 performance standards: a) Use a variety of methods to display data and present findings; and b) Understand that predictions are based on observations, measurements, and cause-and-effect relationships.**

**(v) Grade 4 performance standards: a) Communicate ideas and present findings about scientific investigations that are open to critique from others; b) Describe how scientific investigations may differ from one another (e.g., observations of nature, measurements of things changing over time); and c) Understand how data are used to explain how a simple system functions (e.g., a thermometer to measure heat loss as water cools).**

**(c) K 4 Benchmark III: Use mathematical skills and vocabulary to analyze data, understand patterns and relationships, and communicate findings.**

**(i) Grade K performance standards: a) Observe and describe the relative sizes and characteristics of objects (e.g., bigger, brighter, louder, smellier).**

**(ii) Grade 1 performance standards: a) Use numbers and mathematical language (e.g., “addition” instead of “add to,” “subtraction” instead of “take away”) to describe phenomena.**

**(iii) Grade 2 performance standards: a) Record observations on simple charts or diagrams; and b) Measure length, weight, and temperature with appropriate tools and express those measurements in accurate mathematical language.**

**(iv) Grade 3 performance standards: a) Use numerical data in describing and comparing objects, events, and measurements; b) Pose a question of interest and present observations and measurements with accuracy, and c) Use various methods to display data and present findings and communicate results in accurate mathematical language.**



(v) Grade 4 performance standards: a) Conduct multiple trials using simple mathematical techniques to make and test predictions; b) Use mathematical equations to formulate and justify predictions based on cause-and-effect relationships; and c) Identify simple mathematical relationships in a scientific investigation (e.g., the relationship of the density of materials that will or will not float in water to the density of water).

**(2) Strand II Content of Science – Standard I (Physical Science):** Understand the structure and properties of matter, the characteristics of energy, and the interactions between matter and energy.

**(a) K 4 Benchmark I:** Recognize that matter has different forms and properties.

(i) Grade K performance standards: a) Observe that objects are made of different types of materials (e.g., metal, plastic, cloth, wood), and b) Observe that different materials have different properties (e.g., color, odor).

(ii) Grade 1 performance standards: a) Observe that the three states of matter (i.e., solids, liquids, and gases) have different properties (e.g., water can be liquid, ice, or steam), and b) Describe simple properties of matter (e.g., hardness, flexibility, transparency).

(iii) Grade 2 performance standards: a) Observe that properties of substances can change when they are mixed, cooled, or heated (e.g., salt dissolves in water, ice melts); and b) Describe the changes that occur when substances are heated or cooled and change from one state of matter to another (i.e., solid, liquid, and gas).

(iv) Grade 3 performance standards: a) Identify and compare properties of pure substances and mixtures (e.g., sugar, fruit juice); and b) Separate mixtures based on properties (e.g., by size or by substance; rocks and sand, iron filings and sand, salt and sand).

(v) Grade 4 performance standards: a) Know that changes to matter may be chemical or physical and when two or more substances are combined, a new substance may be formed with properties that are different from those of the original substances (e.g., white glue and borax, cornstarch and water, vinegar and baking soda); b) Know that materials are made up of small particles (atoms and molecules) that are too small to see with the naked eye; and c) Know that the mass of the same amount of material remains constant whether it is together, in parts, or in a different state.

**(b) K-4 Benchmark II:** Know that energy is needed to get things done and that energy has different forms.

(i) Grade K performance standards: a) Observe how energy does things (e.g., batteries, the sun, wind, electricity).

(ii) Grade 1 performance standards: a) Observe and describe how energy produces changes (e.g., heat melts ice, gas makes car go uphill, electricity makes TV work).

(iii) Grade 2 performance standards: a) Describe how heat can be produced (e.g., burning, rubbing, mixing some substances); b) Know that heat moves more rapidly in thermal conductors (e.g., metal pan) than in insulators (e.g., plastic handle); c) Describe the usefulness of some forms of energy (e.g., electricity, sunlight, wind, sound) and how energy (e.g., heat, light) can affect common objects (e.g., sunlight warms dark objects, heat melts candles); d) Observe that sound is made by vibrating objects and describe it by its pitch and loudness; and e) Recognize that moving objects carry energy (kinetic energy).

(iv) Grade 3 performance standards: a) Understand that light is a form of energy and can travel through a vacuum; b) Know that light travels in a straight line until it strikes an object and then it is reflected, refracted, or absorbed; c) Measure energy and energy changes (e.g., temperature changes); and d) Construct charts or diagrams that relate variables associated with energy changes (e.g., melting of ice over time).

(v) Grade 4 performance standards: a) Identify the characteristics of several different forms of energy and describe how energy can be converted from one form to another (e.g., light to heat, motion to heat, electricity to heat, light, or motion); b) Recognize that energy can be stored in many ways (e.g., potential energy in gravity or springs, chemical energy in batteries); c) Describe how some waves move through materials (e.g., water, sound) and how others can move through a vacuum (e.g., x-ray, television, radio); and d) Demonstrate how electricity flows through a simple circuit (e.g., by constructing one).

**(c) K-4 Benchmark III:** Identify forces and describe the motion of objects.

(i) Grade K performance standards: a) Observe that things move in many different ways (e.g., straight line, vibration, circular); and b) Know that the position and motion of an object (direction or speed) are changed by pushing or pulling it.

(ii) Grade 1 performance standards: a) Describe ways to make things move, what causes them to stop, and what causes a change of speed, or change of direction; and b) Observe that gravity makes things fall to the ground unless

something holds them up.

(iii) Grade 2 performance standards: a) Describe how the strength of a push or pull affects the change in an object's motion (e.g., how a big or small push affects how high a swing rises); and b) Observe that electrically charged materials and magnets attract and repel each other, and observe their effects on other kinds of materials.

(iv) Grade 3 performance standards: a) Recognize that magnets can produce motion by attracting some materials (e.g., steel) and have no effect on others (e.g., plastics); b) Describe how magnets have poles (N and S) and that like poles repel each other while unlike poles attract; c) Observe that some forces produce motion without objects touching (e.g., magnetic force on nails); and d) Describe motion on different time scales (e.g., the slow motion of a plant toward light, the fast motion of a tuning fork).

(v) Grade 4 performance standards: a) Know that energy can be carried from one place to another by waves (e.g., water waves, sound waves), by electric currents, and by moving objects; b) Describe the motion of an object by measuring its change of position over a period of time; c) Describe that gravity exerts more force on objects with greater mass (e.g., it takes more force to hold up a heavy object than a lighter one); and d) Describe how some forces act on contact and other forces act at a distance (e.g., a person pushing a rock versus gravity acting on a rock).

**(3) Strand II: Content of Science - Standard II (Life Science):** Understand the properties, structures, and processes of living things and the interdependence of living things and their environments.

**(a) K-4 Benchmark I:** Know that living things have diverse forms, structures, functions, and habitats.

(i) Grade K performance standards: a) Identify major structures of common living organisms (e.g., stems, leaves, and roots of plants; arms, wings, and legs of animals); and b) Observe that differences exist among individual living organisms (e.g., plants, animals) of the same kind.

(ii) Grade 1 performance standards: a) Know that living organisms (e.g., plants, animals) have needs (e.g., water, air, food, sunlight); b) Know that living organisms (e.g., plants, animals) inhabit various environments and have various external features to help them satisfy their needs (e.g., leaves, legs, claws); c) Describe the differences and similarities among living organisms (e.g., plants, animals); and d) Observe that living organisms (e.g., plants, animals) have predictable but varied life

cycles.

(iii) Grade 2 performance standards: a) Observe that diversity exists among individuals within a population; b) Observe and describe various shapes of fungi; and c) Know that bacteria and viruses are germs.

(iv) Grade 3 performance standards: a) Know that an adaptation in physical structure or behavior can improve an organism's chance for survival (e.g., horned toads, chameleons, cacti, mushrooms); b) Observe that plants and animals have structures that serve different functions (e.g., shape of animals' teeth); c) Classify common animals according to their observable characteristics (e.g., body coverings, structure); and d) Classify plants according to their characteristics (e.g., tree leaves, flowers, seeds).

(v) Grade 4 performance standards: a) Explain that different living organisms have distinctive structures and body systems that serve specific functions (e.g., walking, flying, swimming); b) Know that humans and other living things have senses to help them detect stimuli, and that sensations (e.g., hunger) and stimuli (e.g., changes in the environment) influence the behavior of organisms; c) Describe how roots are associated with the intake of water and soil nutrients and green leaves are associated with making food from sunlight (photosynthesis); d) Describe the components of and relationships among organisms in a food chain (e.g., plants are the primary source of energy for living systems); and e) Describe how all living things are made up of smaller units that are called cells.

(b) **K-4 Benchmark II:** Know that living things have similarities and differences and that living things change over time.

(i) Grade K performance standards: a) Observe and describe similarities and differences in the appearance and behavior of living organisms (e.g., plants, animals); and b) Observe that living organisms (e.g., plants, animals) closely resemble their parents.

(ii) Grade 1 performance standards: a) Identify differences between living and nonliving things; and b) Recognize the differences between mature and immature plants and animals (e.g., trees/seedlings, dogs/puppies, cats/kittens).

(iii) Grade 2 performance standards: a) Explain that stages of the life cycle are different for different animals (e.g., mouse, cat, horse, butterfly, frog); b) Observe that many characteristics of the offspring of living organisms (e.g., plants, animals) are inherited from their parents; and c) Observe how the environment influences some characteristics of living things (e.g., amount of sunlight required for plant

growth).

(iv) Grade 3 performance standards: a) Identify how living things cause changes to the environments in which they live, and that some of these changes are detrimental to the organism and some are beneficial; and b) Know that some kinds of organisms that once lived on Earth have become extinct (e.g., dinosaurs) and that others resemble those that are alive today (e.g., alligators, sharks).

(v) Grade 4 performance standards: a) Know that in any particular environment some kinds of plants and animals survive well, some survive less well, and others cannot survive at all; b) Know that a change in physical structure or behavior can improve an organism's chance of survival (e.g., a chameleon changes color, a turtle pulls its head into its shell, a plant grows toward the light); and c) Describe how some living organisms have developed characteristics from generation to generation to improve chances of survival (e.g., spines on cacti, long beaks on hummingbirds, good eyesight on hawks).

(c) **K-4 Benchmark III:** Know the parts of the human body and their functions.

(i) Grade K performance standards: a) Use the senses (e.g., sight, hearing, smell, taste, touch) to observe surroundings, and describe the observations; and b) Identify the parts of the human body (e.g., legs, arms, head, hands) and the functions of these parts.

(ii) Grade 1 performance standards: a) Describe simple body functions (e.g., breathing, eating); b) Describe the basic food requirements for humans; and c) Describe how some parts of human bodies differ from similar parts of other animals (e.g., hands and feet/paws; ears).

(iii) Grade 2 performance standards: a) Identify a variety of human organs (e.g., lungs, heart, stomach, brain); b) Know that various nutrients are required for specific parts and functions of the body (e.g., milk for bones and teeth, protein for muscles, sugar for energy); and c) Identify the functions of human systems (e.g., respiratory, circulatory, digestive).

(iv) Grade 3 performance standards: a) Know that bacteria and viruses are germs that affect the human body; and b) Describe the nutrients needed by the human body.

(v) Grade 4 performance standards: a) Know that the human body has many parts that interact to function as systems (e.g., skeletal, muscular) and describe the parts and their specific functions in selected systems (e.g., the nose, lungs, and diaphragm in the respiratory system); and b) Recognize that the human body

is organized from cells, to tissues, to organs, to systems, to the organism.

(4) **Strand II: Content of Science - Standard III (Earth and Space Science):** Understand the structure of Earth, the solar system, and the universe, the interconnections among them, and the processes and interactions of Earth's systems.

(a) **K-4 Benchmark I:** Know the structure of the solar system and the objects in the universe.

(i) Grade K performance standards: a) Observe that there are many objects in the night sky and that some are brighter than others; and b) Describe the location and movements of objects in the sky (e.g., stars, sun, moon).

(ii) Grade 1 performance standards: a) Observe the changes that occur in the sky as day changes into night and night into day; b) Describe the basic patterns of objects as they move through the sky: sun appears in the day, moon appears at night but can sometimes be seen during the day, sun and moon appear to move across the sky, moon appears to change shape over the course of a month; and c) Recognize that the sun, moon, and stars all appear to move slowly across the sky.

(iii) Grade 2 performance standards: a) Observe that the phase of the moon appears a little different every day but looks the same again after about four weeks; b) Observe that some objects in the night sky are brighter than others; and c) Know that the sun is a star.

(iv) Grade 3 performance standards: a) Describe the objects in the solar system (e.g., sun, Earth and other planets, moon) and their features (e.g., size, temperature); b) Describe the relationships among the objects in the solar system (e.g., relative distances, orbital motions); c) Observe that the pattern of stars stays the same as they appear to move across the sky nightly; d) Observe that different constellations can be seen in different seasons; and e) Know that telescopes enhance the appearance of some distant objects in the sky (e.g., the moon, planets).

(v) Grade 4 performance standards: a) Understand that the number of stars visible through a telescope is much greater than the number visible to the naked eye; b) Know that there are various types of telescopes that use different forms of light to observe distant objects in the sky; and c) Know that the pattern of stars (e.g., constellations) stays the same although they appear to move across the sky nightly due to Earth's rotation.

(b) **K-4 Benchmark II:** Know the structure and formation of Earth and its atmosphere and the processes that shape them.

(i) Grade K perform-

ance standards: a) Observe that changes in weather occur from day to day and season to season; and b) Observe that the sun warms the land and water and they warm the air.

(ii) Grade 1 performance standards: a) Know that simple tools can be used to measure weather conditions (e.g., thermometer, wind sock, hand held anemometer, rain gauge) and that measurements can be recorded from day to day and across seasons; and b) Know that there are different climates (e.g., desert, arctic, rain-forest).

(iii) Grade 2 performance standards: a) Know that rocks have different shapes and sizes (e.g., boulders, pebbles, sand) and that smaller rocks result from the breaking and weathering of larger rocks; b) Understand that rocks are made of materials with distinct properties; c) Know that soil is made up of weathered rock and organic materials, and that soils differ in their capacity to support the growth of plants; and d) Recognize the characteristics of the seasons.

(iv) Grade 3 performance standards: a) Know that Earth's features are constantly changed by a combination of slow and rapid processes that include the action of volcanoes, earthquakes, mountain building, biological changes, erosion, and weathering; b) Know that fossils are evidence of earlier life and provide data about plants and animals that lived long ago; c) Know that air takes up space, is colorless, tasteless, and odorless, and exerts a force; and d) Identify how water exists in the air in different forms (e.g., in clouds and fog as tiny droplets; in rain, snow, and hail) and changes from one form to another through various processes (e.g., freezing/condensation, precipitation, evaporation).

(v) Grade 4 performance standards: a) Know that the properties of rocks and minerals reflect the processes that shaped them (i.e., igneous, metamorphic, and sedimentary rocks); b) Describe how weather patterns generally move from west to east in the United States; and c) Know that local weather information describes patterns of change over a period of time (e.g., temperature, precipitation symbols, cloud conditions, wind speed/direction).

**(5) Strand III: Science and Society - Standard I:** Understand how scientific discoveries, inventions, practices, and knowledge influence, and are influenced by, individuals and societies.

(a) **K-4 Benchmark I:** Describe how science influences decisions made by individuals and societies.

(i) Grade K performance standards: a) Recognize that germs

exist and may cause disease; and b) Describe how science helps provide products we use every day (e.g., gasoline for cars; electricity for lights, refrigerators, TVs; gas or electricity for heating, cooking).

(ii) Grade 1 performance standards: a) Know that germs can be transmitted by touching, breathing, and coughing, and that washing hands helps prevent the spread of germs; b) Describe how science has assisted in creating tools (e.g., plows, knives, telephones, cell phones, computers) to make life easier and more efficient; c) Describe how tools and machines can be helpful, harmful, or both (e.g., bicycles, cars, scissors, stoves); and d) Know that men and women of all ethnic and social backgrounds practice science and technology.

(iii) Grade 2 performance standards: a) Describe ways to prevent the spread of germs (e.g., soap, bleach, cooking); b) Know that science has ways to help living things avoid sickness or recover from sickness (e.g., vaccinations, medicine) and adult supervision is needed to administer them; c) Know that some materials are better than others for making particular things (e.g., paper, cardboard, plastic, metal, fiberglass, wood); d) Understand that everybody can do science, invent things, and formulate ideas; and e) Know that science has discovered many things about objects, events, and nature and that there are many more questions to be answered.

(iv) Grade 3 performance standards: a) Describe how food packaging (e.g., airtight containers, date) and preparation (heating, cooling, salting, smoking, drying) extend food life and the safety of foods (e.g., elimination of bacteria); b) Know that science produces information for the manufacture and recycling of materials (e.g., materials that can be recycled [aluminum, paper, plastic] and others that cannot [gasoline]); c) Know that naturally occurring materials (e.g., wood, clay, cotton, animal skins) may be processed or combined with other materials to change their properties; and d) Know that using poisons can reduce the damage to crops caused by rodents, weeds, and insects, but their use may harm other plants, animals, or the environment.

(v) Grade 4 performance standards: a) Know that science has identified substances called pollutants that get into the environment and can be harmful to living things; b) Know that, through science and technology, a wide variety of materials not appearing in nature have become available (e.g., steel, plastic, nylon, fiber optics); c) Know that science has created ways to store and retrieve information (e.g., paper and ink, printing press, comput-

ers, CD ROMs) but that these are not perfect (e.g., faulty programming, defective hardware); and d) Know that both men and women of all races and social backgrounds choose science as a career.

(b) [Reserved]

**B. 5th – 8th Grade**

**(1) Strand I: Scientific**

**Thinking and Practice - Standard I:** Understand the processes of scientific investigations and use inquiry and scientific ways of observing, experimenting, predicting, and validating to think critically.

(a) **5-8 Benchmark I:** Use scientific methods to develop questions, design and conduct experiments using appropriate technologies, analyze and evaluate results, make predictions, and communicate findings.

(i) Grade 5 performance standards: a) Plan and conduct investigations, including formulating testable questions, making systematic observations, developing logical conclusions, and communicating findings; b) Use appropriate technologies (e.g., calculators, computers, balances, spring scales, microscopes) to perform scientific tests and to collect and display data; c) Use graphic representations (e.g., charts, graphs, tables, labeled diagrams) to present data and produce explanations for investigations; d) Describe how credible scientific investigations use reproducible elements including single variables, controls, and appropriate sample sizes to produce valid scientific results; and e) Communicate the steps and results of a scientific investigation.

(ii) Grade 6 performance standards: a) Construct appropriate graphs from data and develop qualitative and quantitative statements about the relationships between variables being investigated; b) Examine the reasonableness of data supporting a proposed scientific explanation; and c) Justify predictions and conclusions based on data.

(iii) Grade 7 performance standards: a) Use a variety of print and web resources to collect information, inform investigations, and answer a scientific question or hypothesis; and b) Use models to explain the relationships between variables being investigated.

(iv) Grade 8 performance standards: a) Evaluate the accuracy and reproducibility of data and observations; b) Use a variety of technologies to gather, analyze and interpret scientific data; and c) Know how to recognize and explain anomalous data.

(b) **5-8 Benchmark II:** Understand the processes of scientific investigation and how scientific inquiry results in scientific knowledge.

(i) Grade 5 perform-

ance standards: a) Understand that different kinds of investigations are used to answer different kinds of questions (e.g., observations, data collection, controlled experiments); and b) Understand that scientific conclusions are subject to peer and public review.

(ii) Grade 6 performance standards: a) Understand that scientific knowledge is continually reviewed, critiqued, and revised as new data become available; b) Understand that scientific investigations use common processes that include the collection of relevant data and observations, accurate measurements, the identification and control of variables, and logical reasoning to formulate hypotheses and explanations; and c) Understand that not all investigations result in defensible scientific explanations.

(iii) Grade 7 performance standards: a) Describe how bias can affect scientific investigation and conclusions; b) Critique procedures used to investigate a hypothesis; and c) Analyze and evaluate scientific explanations.

(iv) Grade 8 performance standards: a) Examine alternative explanations for observations; b) Describe ways in which science differs from other ways of knowing and from other bodies of knowledge (e.g., experimentation, logical arguments, skepticism); and c) Know that scientific knowledge is built on questions posed as testable hypotheses, which are tested until the results are accepted by peers.

**(c) 5-8 Benchmark III:** Use mathematical ideas, tools, and techniques to understand scientific knowledge.

(i) Grade 5 performance standards: a) Use appropriate units to make precise and varied measurements; b) Use mathematical skills to analyze data; c) Make predictions based on analyses of data, observations, and explanations; and d) Understand the attributes to be measured in a scientific investigation and describe the units, systems, and processes for making the measurement.

(ii) Grade 6 performance standards: a) Evaluate the usefulness and relevance of data to an investigation; and b) Use probabilities, patterns, and relationships to explain data and observations.

(iii) Grade 7 performance standards: a) Understand that the number of data (sample size) influences the reliability of a prediction; b) Use mathematical expressions to represent data and observations collected in scientific investigations; and c) Select and use an appropriate model to examine a phenomenon.

(iv) Grade 8 performance standards: a) Use mathematical expressions and techniques to explain data

and observations and to communicate findings (e.g., formulas and equations, significant figures, graphing, sampling, estimation, mean); and b) Create models to describe phenomena.

**(2) Strand II: Content of Science - Standard I (Physical Science):** Understand the structure and properties of matter, the characteristics of energy, and the interactions between matter and energy.

**(a) 5-8 Benchmark I:** Know the forms and properties of matter and how matter interacts.

(i) Grade 5 performance standards: a) Describe properties (e.g., relative volume, ability to flow) of the three states of matter; b) Describe how matter changes from one phase to another (e.g., condensation, evaporation); c) Know that matter is made up of particles (atoms) that can combine to form molecules and that these particles are too small to see with the naked eye; d) Know that the periodic table is a chart of the pure elements that make up all matter; e) Describe the relative location and motion of the particles (atoms and molecules) in each state of matter; and f) Explain the relationship between temperature and the motion of particles in each state of matter.

(ii) Grade 6 performance standards: a) Understand that substances have characteristic properties and identify the properties of various substances (e.g., density, boiling point, solubility, chemical reactivity); b) Use properties to identify substances (e.g., for minerals: the hardness, streak, color, reactivity to acid, cleavage, fracture); c) Know that there are about 100 known elements that combine to produce compounds in living organisms and nonliving substances; and e) Know the differences between chemical and physical properties and how these properties can influence the interactions of matter.

(iii) Grade 7 performance standards: a) Explain how matter is transferred from one organism to another and between organisms and their environment (e.g., consumption, the water cycle, the carbon cycle, the nitrogen cycle); b) Know that the total amount of matter (mass) remains constant although its form, location, and properties may change (e.g., matter in the food web); c) Identify characteristics of radioactivity, including: decay in time of some elements to others, release of energy, damage to cells; d) Describe how substances react chemically in characteristic ways to form new substances (compounds) with different properties (e.g., carbon and oxygen combine to form carbon dioxide in respiration); and e) Know that chemical reactions are essential to life processes.

(iv) Grade 8 perform-

ance standards: Properties of Matter: a) Know how to use density, boiling point, freezing point, conductivity, and color to identify various substances; b) Distinguish between metals and non-metals; and c) Understand the differences among elements, compounds, and mixtures by classification of materials as elements, compounds, or mixtures, interpretation of chemical formulas, separation of mixtures into compounds by methods including evaporation, filtration, screening, magnetism. Structure of Matter: a) Identify the protons, neutrons, and electrons within an atom and describe their locations (i.e., in the nucleus or in motion outside the nucleus); b) Explain that elements are organized in the periodic table according to their properties; and c) Know that compounds are made of two or more elements, but not all sets of elements can combine to form compounds. Changes in Matter: a) Know that phase changes are physical changes that can be reversed (e.g., evaporation, condensation, melting); b) Describe various familiar physical and chemical changes that occur naturally (e.g., snow melting, photosynthesis, rusting, burning); c) Identify factors that influence the rate at which chemical reactions occur (e.g., temperature, concentration); and d) Know that chemical reactions can absorb energy (endothermic reactions) or release energy (exothermic reactions).

**(b) 5-8 Benchmark II:** Explain the physical processes involved in the transfer, change, and conservation of energy.

(i) Grade 5 performance standards: a) Know that heat is transferred from hotter to cooler materials or regions until both reach the same temperature; b) Know that heat is often produced as a by-product when one form of energy is converted to another form (e.g., when machines or organisms convert stored energy into motion); c) Know that there are different forms of energy; and d) Describe how energy can be stored and converted to a different form of energy (e.g., springs, gravity) and know that machines and living things convert stored energy to motion and heat.

(ii) Grade 6 performance standards: a) Identify various types of energy (e.g., heat, light, mechanical, electrical, chemical, nuclear); b) Understand that heat energy can be transferred through conduction, radiation and convection; c) Know that there are many forms of energy transfer but that the total amount of energy is conserved (i.e., that energy is neither created nor destroyed), and d) Understand that some energy travels as waves (e.g., seismic, light, sound), including: the sun as source of energy for many processes on Earth, different wavelengths of sunlight (e.g., visible, ultraviolet, infrared), vibrations of matter (e.g., sound, earthquakes), different speeds

through different materials.

(iii) Grade 7 performance standards: a) Know how various forms of energy are transformed through organisms and ecosystems, including: sunlight and photosynthesis, energy transformation in living systems (e.g., cellular processes changing chemical energy to heat and motion), effect of mankind's use of energy and other activities on living systems (e.g., global warming, water quality).

(iv) Grade 8 performance standards: Energy Transformation: a) Know that energy exists in many forms and that when energy is transformed some energy is usually converted to heat; b) Know that kinetic energy is a measure of the energy of an object in motion and potential energy is a measure of an object's position or composition, including: transformation of gravitational potential energy of position into kinetic energy of motion by a falling object; c) Distinguish between renewable and nonrenewable sources of energy; and d) Know that electrical energy is the flow of electrons through electrical conductors that connect sources of electrical energy to points of use, including: electrical current paths through parallel and series circuits, production of electricity by fossil-fueled and nuclear power plants, wind generators, geothermal plants, and solar cells, use of electricity by appliances and equipment (e.g., calculators, hair dryers, light bulbs, motors). Waves: a) Understand how light and radio waves carry energy through vacuum or matter by: straight-line travel unless an object is encountered, reflection by a mirror, refraction by a lens, absorption by a dark object, separation of white light into different wavelengths by prisms, visibility of objects due to light emission or scattering; and b) Understand that vibrations of matter (e.g., sound, earthquakes, water waves) carry wave energy, including: sound transmission through solids, liquids, and gases, relationship of pitch and loudness of sound to rate and distance (amplitude) of vibration, ripples made by objects dropped in water.

(c) **5-8 Benchmark III:** Describe and explain forces that produce motion in objects.

(i) Grade 5 performance standards: a) Understand how the rate of change of position is the velocity of an object in motion; b) Recognize that acceleration is the change in velocity with time; c) Identify forces in nature (e.g., gravity, magnetism, electricity, friction); d) Understand that when a force (e.g., gravity, friction) acts on an object, the object speeds up, slows down, or goes in a different direction; and e) Identify simple machines and describe how they give advantage to users (e.g., levers, pulleys, wheels and axles, inclined planes,

screws, wedges).

(ii) Grade 6 performance standards: a) Know that every object exerts gravitational force on every other object dependent on the masses and distance of separation (e.g., motions of celestial objects, tides), and; b) Know that gravitational force is hard to detect unless one of the objects (e.g., Earth) has a lot of mass.

(iii) Grade 7 performance standards: a) Know that forces cause motion in living systems, including: the principle of a lever and how it gives mechanical advantage to a muscular/skeletal system to lift objects, forces in specific systems in the human body (e.g., how the heart generates blood pressure, how muscles contract and expand to produce motion).

(iv) Grade 8 performance standards: Forces: a) Know that there are fundamental forces in nature (e.g., gravity, electromagnetic forces, nuclear forces); b) Know that a force has both magnitude and direction; c) Analyze the separate forces acting on an object at rest or in motion (e.g., gravity, elastic forces, friction), including how multiple forces reinforce or cancel one another to result in a net force that acts on an object; d) Know that electric charge produces electrical fields and magnets produce magnetic fields; e) Know how a moving magnetic field can produce an electric current (generator) and how an electric current can produce a magnetic field (electromagnet); and f) Know that Earth has a magnetic field. Motion: a) Know that an object's motion is always described relative to some other object or point (i.e., frame of reference); and b) Understand and apply Newton's Laws of Motion: Objects in motion will continue in motion and objects at rest will remain at rest unless acted upon by an unbalanced force (inertia). If a greater force is applied to an object a proportionally greater acceleration will occur. If an object has more mass the effect of an applied force is proportionally less.

(3) **Strand II: Content of Science - Standard II (Life Science):** Understand the properties, structures, and processes of living things and the interdependence of living things and their environments.

(a) **5-8 Benchmark I:** Explain the diverse structures and functions of living things and the complex relationships between living things and their environments.

(i) Grade 5 performance standards: a) Identify the components of habitats and ecosystems (producers, consumers, decomposers, predators); b) Understand how food webs depict relationships between different organisms; c) Know that changes in the environment can have

different effects on different organisms (e.g., some organisms move, some survive, some reproduce, some die); and d) Describe how human activity impacts the environment.

(ii) Grade 6 performance standards: a) Understand how organisms interact with their physical environments to meet their needs (i.e., food, water, air) and how the water cycle is essential to most living systems; b) Describe how weather and geologic events (e.g., volcanoes, earthquakes) affect the function of living systems; and c) Describe how organisms have adapted to various environmental conditions.

(iii) Grade 7 performance standards: Populations and Ecosystems: a) Identify the living and non-living parts of an ecosystem and describe the relationships among these components; b) Explain biomes (i.e., aquatic, desert, rainforest, grasslands, tundra) and describe the New Mexico biome; c) Explain how individuals of species that exist together interact with their environment to create an ecosystem (e.g., populations, communities, niches, habitats, food webs); d) Explain the conditions and resources needed to sustain life in specific ecosystems, and e) Describe how the availability of resources and physical factors limit growth (e.g., quantity of light and water, range of temperature, composition of soil) and how the water, carbon, and nitrogen cycles contribute to the availability of those resources to support living systems. Biodiversity: a) Understand how diverse species fill all niches in an ecosystem; and b) Know how to classify organisms: domain, kingdom, phylum, class, order, family, genus, species.

(iv) Grade 8 performance standards: a) Describe how matter moves through ecosystems (e.g., water cycle, carbon cycle); b) Describe how energy flows through ecosystems (e.g., sunlight, green plants, food for animals); and c) Explain how a change in the flow of energy can impact an ecosystem (e.g., the amount of sunlight available for plant growth, global climate change).

(b) **5-8 Benchmark II:** Understand how traits are passed from one generation to the next and how species evolve.

(i) Grade 5 performance standards: a) Know that plants and animals have life cycles that include birth, growth and development, reproduction, and death and that these cycles differ for different organisms; b) Identify characteristics of an organism that are inherited from its parents (e.g., eye color in humans, flower color in plants) and other characteristics that are learned or result from interactions with the environment; and c) Understand that hered-

ity is the process by which traits are passed from one generation to another.

(ii) Grade 6 performance standards: a) Understand that the fossil record provides data for how living organisms have evolved; and b) Describe how species have responded to changing environmental conditions over time (e.g., extinction, adaptation).

(iii) Grade 7 performance standards: **Reproduction:** a) Know that reproduction is a characteristic of all living things and is essential to the continuation of a species; b) Identify the differences between sexual and asexual reproduction; c) Know that, in sexual reproduction, an egg and sperm unite to begin the development of a new individual; and d) Know that organisms that sexually reproduce fertile offspring are members of the same species. **Heredity:** a) Understand that some characteristics are passed from parent to offspring as inherited traits and others are acquired from interactions with the environment; and b) Know that hereditary information is contained in genes that are located in chromosomes, including: determination of traits by genes, traits determined by one or many genes, more than one trait sometimes influenced by a single gene. **Biological Evolution:** a) Describe how typical traits may change from generation to generation due to environmental influences (e.g., color of skin, shape of eyes, camouflage, shape of beak); b) Explain that diversity within a species is developed by gradual changes over many generations; c) Know that organisms can acquire unique characteristics through naturally occurring genetic variations; d) Identify adaptations that favor the survival of organisms in their environments (e.g., camouflage, shape of beak); e) Understand the process of natural selection; f) Explain how species adapt to changes in the environment or become extinct and that extinction of species is common in the history of living things; and g) Know that the fossil record documents the appearance, diversification, and extinction of many life forms.

(iv) Grade 8 performance standards: a) Understand that living organisms are made mostly of molecules consisting of a limited number of elements (e.g., carbon, hydrogen, nitrogen, oxygen); b) Identify DNA as the chemical compound involved in heredity in living organisms; and c) Describe the widespread role of carbon in the chemistry of living systems.

(c) **5-8 Benchmark III:** Understand the structure of organisms and the function of cells in living systems.

(i) Grade 5 performance standards: a) Understand that all living organisms are composed of cells from one to many trillions, and that cells are usu-

ally only visible through a microscope; b) Know that some organisms are made of a collection of similar cells that cooperate (e.g., algae) while other organisms are made of cells that are different in appearance and function (e.g., corn, birds); and c) Describe the relationships among cells, tissues, organs, organ systems, whole organisms, and ecosystems.

(ii) Grade 6 performance standards: a) Explain how fossil fuels were formed from animal and plant cells; and b) Describe the differences between substances that were produced by living organisms (e.g., fossil fuels) and substances that result from nonliving processes (e.g., igneous rocks).

(iii) Grade 7 performance standards: **Structure of Organisms:** a) Understand that organisms are composed of cells and identify unicellular and multicellular organisms; and b) Explain how organs are composed of tissues of different types of cells (e.g., skin, bone, muscle, heart, intestines). **Function of Cells:** a) Understand that many basic functions of organisms are carried out in cells, including: growth and division to produce more cells (mitosis), and specialized functions of cells (e.g., reproduction, nerve-signal transmission, digestion, excretion, movement, transport of oxygen); b) Compare the structure and processes of plant cells and animal cells; c) Describe how some cells respond to stimuli (e.g., light, heat, pressure, gravity); and d) Describe how factors (radiation, UV light, drugs) can damage cellular structure or function.

(iv) Grade 8 performance standards: a) Describe how cells use chemical energy obtained from food to conduct cellular functions (i.e., respiration); b) Explain that photosynthesis in green plants captures the energy from the sun and stores it chemically; and c) Describe how chemical substances can influence cellular activity (e.g., pH).

(4) **Strand II: Content of Science - Standard III (Earth and Space Science):** Understand the structure of Earth, the solar system, and the universe, the interconnections among them, and the processes and interactions of Earth's systems.

(a) **5-8 Benchmark I:** Describe how the concepts of energy, matter, and force can be used to explain the observed behavior of the solar system, the universe, and their structures.

(i) Grade 5 performance standards: a) Know that many objects in the universe are huge and are separated from one another by vast distances (e.g., many stars are larger than the sun but so distant that they look like points of light); b) Understand that Earth is part of a larger

solar system, which is part of an even larger galaxy (Milky Way), which is one of many galaxies; and c) Know that there have been manned and unmanned journeys to space and to the moon.

(ii) Grade 6 performance standards: **Universe:** a) Describe the objects in the universe, including: billions of galaxies, each containing billions of stars, and different sizes, temperatures, and colors of stars in the Milky Way galaxy. **Solar System:** a) Locate the solar system in the Milky Way galaxy; b) Identify the components of the solar system, and describe their defining characteristics and motions in space, including: sun as a medium sized star, sun's composition (i.e., hydrogen, helium) and energy production, and nine planets, their moons, asteroids; and c) Know that the regular and predictable motions of the Earth-moon-sun system explain phenomena on Earth, including: Earth's motion in relation to a year, a day, the seasons, the phases of the moon, eclipses, tides, and shadows, and moon's orbit around Earth once in 28 days in relation to the phases of the moon.

(iii) Grade 7 performance standards: a) Explain why Earth is unique in our solar system in its ability to support life, and b) Explain how energy from the sun supports life on Earth.

(iv) Grade 8 performance standards: a) Understand how energy from the sun and other stars, in the form of light, travels long distances to reach Earth; b) Explain how the properties of light (e.g., emission, reflection, refraction) emitted from the sun and stars are used to learn about the universe, including: distances in the solar system and the universe, and temperatures of different stars; and c) Understand how gravitational force acts on objects in the solar system and the universe, including: similar action on masses on Earth and on other objects in the solar system, and explanation of the orbits of the planets around the sun.

(b) **5-8 Benchmark II:** Describe the structure of Earth and its atmosphere and explain how energy, matter, and forces shape Earth's systems.

(i) Grade 5 performance standards: a) Understand that water and air relate to Earth's processes, including: how the water cycle relates to weather, and how clouds are made of tiny droplets of water, like fog or steam; b) Know that air is a substance that surrounds Earth (atmosphere), takes up space, and moves, and that temperature fluctuations and other factors produce wind currents; c) Know that most of Earth's surface is covered by water, that most of that water is salt water in oceans, and that fresh water is found in rivers, lakes, underground sources, and glaciers; and d)

Recognize that the seasons are caused by Earth's motion around the sun and the tilt of Earth's axis of rotation.

(ii) Grade 6 performance standards: Structure of Earth: a) Know that Earth is composed of layers that include a crust, mantle, and core; b) Know that Earth's crust is divided into plates that move very slowly, in response to movements in the mantle; and c) Know that sedimentary, igneous, and metamorphic rocks contain evidence of the materials, temperatures, and forces that created them. Weather and Climate: a) Describe the composition (i.e., nitrogen, oxygen, water vapor) and strata of Earth's atmosphere, and differences between the atmosphere of Earth and those of other planets; b) Understand factors that create and influence weather and climate, including: heat, air movement, pressure, humidity, oceans, how clouds form by condensation of water vapor, how weather patterns are related to atmospheric pressure, global patterns of atmospheric movement (e.g., El Niño), and factors that can impact Earth's climate (e.g., volcanic eruptions, impacts of asteroids, glaciers); and c) Understand how to use weather maps and data (e.g., barometric pressure, wind speeds, humidity) to predict weather.

Changes to Earth: a) Know that landforms are created and change through a combination of constructive and destructive forces, including: weathering of rock and soil, transportation, deposition of sediment, and tectonic activity, similarities and differences between current and past processes on Earth's surface (e.g., erosion, plate tectonics, changes in atmospheric composition), and impact of volcanoes and faults on New Mexico geology; and b) Understand the history of Earth and how information about it comes from layers of sedimentary rock, including: sediments and fossils as a record of a very slowly changing world, and evidence of asteroid impact, volcanic and glacial activity.

(iii) Grade 7 performance standards: a) Understand how the remains of living things give us information about the history of Earth, including: layers of sedimentary rock, the fossil record, and radioactive dating showing that life has been present on Earth for more than 3.5 billion years; b) Understand how living organisms have played many roles in changes of Earth's systems through time (e.g., atmospheric composition, creation of soil, impact on Earth's surface); and c) Know that changes to ecosystems sometimes decrease the capacity of the environment to support some life forms and are difficult and/or costly to remediate.

(iv) Grade 8 performance standards: a) Describe the role of pressure (and heat) in the rock cycle; b)

Understand the unique role water plays on Earth, including: ability to remain liquid at most Earth temperatures, properties of water related to processes in the water cycle: evaporation, condensation, precipitation, surface run-off, percolation, dissolving of minerals and gases and transport to the oceans, fresh and salt water in oceans, rivers, lakes, and glaciers, and reactant in photosynthesis; and c) Understand the geologic conditions that have resulted in energy resources (e.g., oil, coal, natural gas) available in New Mexico.

(5) **Strand III: Science and Society - Standard I:** Understand how scientific discoveries, inventions, practices, and knowledge influence, and are influenced by, individuals and societies.

(a) **5-8 Benchmark I:** Explain how scientific discoveries and inventions have changed individuals and societies.

(i) Grade 5 performance standards: a) Describe the contributions of science to understanding local or current issues (e.g., watershed and community decisions regarding water use); and b) Describe how various technologies have affected the lives of individuals (e.g., transportation, entertainment, health).

(ii) Grade 6 performance standards: a) Examine the role of scientific knowledge in decisions (e.g., space exploration, what to eat, preventive medicine and medical treatment); and b) Describe the technologies responsible for revolutionizing information processing and communications (e.g., computers, cellular phones, Internet).

(iii) Grade 7 performance standards: a) Analyze the contributions of science to health as they relate to personal decisions about smoking, drugs, alcohol, and sexual activity; b) Analyze how technologies have been responsible for advances in medicine (e.g., vaccines, antibiotics, microscopes, DNA technologies); and c) Describe how scientific information can help individuals and communities respond to health emergencies (e.g., CPR, epidemics, HIV, bio-terrorism).

(iv) Grade 8 performance standards: a) Analyze the interrelationship between science and technology (e.g., germ theory, vaccines); b) Describe how scientific information can help to explain environmental phenomena (e.g., floods, earthquakes, volcanoes, fire, extreme weather); c) Describe how technological revolutions have significantly influenced societies (e.g., energy production, warfare, space exploration); and d) Critically analyze risks and benefits associated with technologies related to energy production.

(b) [Reserved]

C. **9th – 12th Grade**

(1) **Strand I: Scientific**

**Thinking and Practice - Standard I:** Understand the processes of scientific investigations and use inquiry and scientific ways of observing, experimenting, predicting, and validating to think critically.

(a) **9-12 Benchmark I:** Use accepted scientific methods to collect, analyze, and interpret data and observations and to design and conduct scientific investigations and communicate results. Grade 9-12 performance standards: i) Describe the essential components of an investigation, including appropriate methodologies, proper equipment, and safety precautions; ii) Design and conduct scientific investigations that include: testable hypotheses, controls and variables, methods to collect, analyze, and interpret data, results that address hypotheses being investigated, predictions based on results, re-evaluation of hypotheses and additional experimentation as necessary, and error analysis; iii) Use appropriate technologies to collect, analyze, and communicate scientific data (e.g., computers, calculators, balances, microscopes); iv) Convey results of investigations using scientific concepts, methodologies, and expressions, including: scientific language and symbols, diagrams, charts, and other data displays, mathematical expressions and processes (e.g., mean, median, slope, proportionality), clear, logical, and concise communication, and reasoned arguments; and v) Understand how scientific theories are used to explain and predict natural phenomena (e.g., plate tectonics, ocean currents, structure of atom).

(b) **9-12 Benchmark II:** Understand that scientific processes produce scientific knowledge that is continually evaluated, validated, revised, or rejected. Grade 9-12 performance standards: i) Understand how scientific processes produce valid, reliable results, including: consistency of explanations with data and observations, openness to peer review, full disclosure and examination of assumptions, testability of hypotheses, and repeatability of experiments and reproducibility of results; ii) Use scientific reasoning and valid logic to recognize: faulty logic, cause and effect, the difference between observation and unsubstantiated inferences and conclusions, and potential bias; iii) Understand how new data and observations can result in new scientific knowledge; iv) Critically analyze an accepted explanation by reviewing current scientific knowledge; v) Examine investigations of current interest in science (e.g., superconductivity, molecular machines, age of the universe); and vi) Examine the scientific processes and logic used in investigations of past events (e.g., using data from crime scenes, fossils), investigations that can be planned in

advance but are only done once (e.g., expensive or time-consuming experiments such as medical clinical trials), and investigations of phenomena that can be repeated easily and frequently.

(c) **9-12 Benchmark III:** Use mathematical concepts, principles, and expressions to analyze data, develop models, understand patterns and relationships, evaluate findings, and draw conclusions. Grade 9-13 performance standards: i) Create multiple displays of data to analyze and explain the relationships in scientific investigations; ii) Use mathematical models to describe, explain, and predict natural phenomena; iii) Use technologies to quantify relationships in scientific hypotheses (e.g., calculators, computer spreadsheets and databases, graphing software, simulations, modeling); iv) Identify and apply measurement techniques and consider possible effects of measurement errors; and v) Use mathematics to express and establish scientific relationships (e.g., scientific notation, vectors, dimensional analysis).

(2) **Strand II: The Content of Science - Standard I (Physical Science):** Understand the structure and properties of matter, the characteristics of energy, and the interactions between matter and energy.

(a) **9-12 Benchmark I:** Understand the properties, underlying structure, and reactions of matter. Grade 9-12 performance standards: Properties of Matter: i) Classify matter in a variety of ways (e.g., element, compound, mixture; solid, liquid, gas; acidic, basic, neutral); ii) Identify, measure, and use a variety of physical and chemical properties (e.g., electrical conductivity, density, viscosity, chemical reactivity, pH, melting point); iii) Know how to use properties to separate mixtures into pure substances (e.g., distillation, chromatography, solubility); and iv) Describe trends in properties (e.g., ionization energy or reactivity as a function of location on the periodic table, boiling point of organic liquids as a function of molecular weight). Structure of Matter: i) Understand that matter is made of atoms and that atoms are made of subatomic particles; ii) Understand atomic structure, including: most space occupied by electrons, nucleus made of protons and neutrons, isotopes of an element, masses of proton and neutron 2000 times greater than mass of electron, and atom held together by proton-electron electrical forces; iii) Explain how electrons determine the properties of substances by: interactions between atoms through transferring or sharing valence electrons, ionic and covalent bonds, and the ability of carbon to form a diverse array of organic structures; iv) Make predictions about elements using the periodic table (e.g., number of valence electrons, metallic character, reactivity, conduc-

tivity, type of bond between elements); v) Understand how the type and arrangement of atoms and their bonds determine macroscopic properties (e.g., boiling point, electrical conductivity, hardness of minerals); vi) Know that states of matter (i.e., solid, liquid, gas) depend on the arrangement of atoms and molecules and on their freedom of motion; and vii) Know that some atomic nuclei can change, including: spontaneous decay, half-life of isotopes, fission, fusion (e.g., the sun), alpha, beta, and gamma radiation. Chemical Reactions: i) Know that chemical reactions involve the rearrangement of atoms, and that they occur on many timescales (e.g., picoseconds to millennia); ii) Understand types of chemical reactions (e.g., synthesis, decomposition, combustion, redox, neutralization) and identify them as exothermic or endothermic; iii) Know how to express chemical reactions with balanced equations that show: conservation of mass, and products of common reactions; and iv) Describe how the rate of chemical reactions depends on many factors that include temperature, concentration, and the presence of catalysts.

(b) **9-12 Benchmark II:** Understand the transformation and transmission of energy and how energy and matter interact. Grade 9-12 performance standards: Energy Transformation and Transfer: i) Identify different forms of energy, including kinetic, gravitational (potential), chemical, thermal, nuclear, and electromagnetic; ii) Explain how thermal energy (heat) consists of the random motion and vibrations of atoms and molecules and is measured by temperature; iii) Understand that energy can change from one form to another (e.g., changes in kinetic and potential energy in a gravitational field, heats of reaction, hydroelectric dams) and know that energy is conserved in these changes; iv) Understand how heat can be transferred by conduction, convection, and radiation, and how heat conduction differs in conductors and insulators; v) Explain how heat flows in terms of the transfer of vibrational motion of atoms and molecules from hotter to colder regions; and vi) Understand that the ability of energy to do something useful (work) tends to decrease (and never increases) as energy is converted from one form to another. Interactions of Energy and Matter: i) Understand that electromagnetic waves carry energy that can be transferred when they interact with matter; ii) Describe the characteristics of electromagnetic waves (e.g., visible light, radio, microwave, X-ray, ultraviolet, gamma) and other waves (e.g., sound, seismic waves, water waves), including: origin and potential hazards of various forms of electromagnetic radiation, and energy of electromagnetic waves carried in discrete energy packets (photons)

whose energy is inversely proportional to wavelength; iii) Know that each kind of atom or molecule can gain or lose energy only in discrete amounts; iv) Explain how wavelengths of electromagnetic radiation can be used to identify atoms, molecules, and the composition of stars; and v) Understand the concept of equilibrium (i.e., thermal, mechanical, and chemical).

(c) **9-12 Benchmark III:** Understand the motion of objects and waves, and the forces that cause them. Grade 9-12 performance standards: Forces: i) Know that there are four fundamental forces in nature: gravitation, electromagnetism, weak nuclear force, and strong nuclear force; ii) Know that every object exerts gravitational force on every other object, and how this force depends on the masses of the objects and the distance between them; iii) Know that materials containing equal amounts of positive and negative charges are electrically neutral, but that a small excess or deficit of negative charges produces significant electrical forces; iv) Understand the relationship between force and pressure, and how the pressure of a volume of gas depends on the temperature and the amount of gas; v) Explain how electric currents cause magnetism and how changing magnetic fields produce electricity (e.g., electric motors, generators); vi) Represent the magnitude and direction of forces by vector diagrams; and vii) Know that when one object exerts a force on a second object, the second object exerts a force of equal magnitude and in the opposite direction on the first object (i.e., Newton's Third Law). Motion: i) Apply Newton's Laws to describe and analyze the behavior of moving objects, including: displacement, velocity, and acceleration of a moving object, Newton's Second Law,  $F = ma$  (e.g., momentum and its conservation, the motion of an object falling under gravity, the independence of a falling object's motion on mass), and circular motion and centripetal force; ii) Describe relative motion using frames of reference; iii) Describe wave propagation using amplitude, wavelength, frequency, and speed; iv) Explain how the interactions of waves can result in interference, reflection, and refraction; and v) Describe how waves are used for practical purposes (e.g., seismic data, acoustic effects, Doppler effect).

(3) **Strand II: The Content of Science - Standard II (Life Science):** Understand the properties, structures, and processes of living things and the interdependence of living things and their environments.

(a) **9-12 Benchmark I:** Understand how the survival of species depends on biodiversity and on complex interactions, including the cycling of matter



and the flow of energy. Grade 9-12 performance standards: Ecosystems: i) Know that an ecosystem is complex and may exhibit fluctuations around a steady state or may evolve over time; ii) Describe how organisms cooperate and compete in ecosystems (e.g., producers, decomposers, herbivores, carnivores, omnivores, predator-prey, symbiosis, mutualism); iii) Understand and describe how available resources limit the amount of life an ecosystem can support (e.g., energy, water, oxygen, nutrients); and iv) Critically analyze how humans modify and change ecosystems (e.g., harvesting, pollution, population growth, technology). Energy Flow in the Environment: i) Explain how matter and energy flow through biological systems (e.g., organisms, communities, ecosystems), and how the total amount of matter and energy is conserved but some energy is always released as heat to the environment; ii) Describe how energy flows from the sun through plants to herbivores to carnivores and decomposers; and iii) Understand and explain the principles of photosynthesis (i.e., chloroplasts in plants convert light energy, carbon dioxide, and water into chemical energy). Biodiversity: i) Understand and explain the hierarchical classification scheme (i.e., domain, kingdom, phylum, class, order, family, genus, species), including: classification of an organism into a category, similarity inferred from molecular structure (DNA) closely matching classification based on anatomical similarities, and similarities of organisms reflecting evolutionary relationships; and ii) Understand variation within and among species, including: mutations and genetic drift, factors affecting the survival of an organism, and natural selection.

**(b) 9-12 Benchmark II:** Understand the genetic basis for inheritance and the basic concepts of biological evolution. Grade 9-12 performance standards: Genetics: i) Know how DNA carries all genetic information in the units of heredity called genes, including: the structure of DNA (e.g., subunits A, G, C, T), information-preserving replication of DNA, and alteration of genes by inserting, deleting, or substituting parts of DNA; ii) Use appropriate vocabulary to describe inheritable traits (i.e., genotype, phenotype); iii) Explain the concepts of segregation, independent assortment, and dominant/recessive alleles; iv) Identify traits that can and cannot be inherited; v) Know how genetic variability results from the recombination and mutation of genes, including: sorting and recombination of genes in sexual reproduction result in a change in DNA that is passed on to offspring, and radiation or chemical substances can cause mutations in cells, resulting in a permanent change in DNA; vi)

Understand the principles of sexual and asexual reproduction, including meiosis and mitosis; and g) Know that most cells in the human body contain 23 pairs of chromosomes including one pair that determines sex, and that human females have two X chromosomes and human males have an X and a Y chromosome. Biological Evolution: i) Describe the evidence for the first appearance of life on Earth as one-celled organisms, over 3.5 billion years ago, and for the later appearance of a diversity of multicellular organisms over millions of years; ii) Critically analyze the data and observations supporting the conclusion that the species living on Earth today are related by descent from the ancestral one-celled organisms; iii) Understand the data, observations, and logic supporting the conclusion that species today evolved from earlier, distinctly different species, originating from the ancestral one-celled organisms; iv) Understand that evolution is a consequence of many factors, including the ability of organisms to reproduce, genetic variability, the effect of limited resources, and natural selection; v) Explain how natural selection favors individuals who are better able to survive, reproduce, and leave offspring; and vi) Analyze how evolution by natural selection and other mechanisms explains many phenomena including the fossil record of ancient life forms and similarities (both physical and molecular) among different species.

**(c) 9-12 Benchmark III:** Understand the characteristics, structures, and functions of cells. Grade 9-12 performance standards: Structure and Function: i) Know that cells are made of proteins composed of combinations of amino acids; ii) Know that specialized structures inside cells in most organisms carry out different functions, including: parts of a cell and their functions (e.g., nucleus, chromosomes, plasma, and mitochondria), storage of genetic material in DNA, similarities and differences between plant and animal cells, and prokaryotic and eukaryotic cells; iii) Describe the mechanisms for cellular processes (e.g., energy production and storage, transport of molecules, waste disposal, synthesis of new molecules); iv) Know how the cell membrane controls which ions and molecules enter and leave the cell based on membrane permeability and transport (i.e., osmosis, diffusion, active transport and passive transport); v) Explain how cells differentiate and specialize during the growth of an organism, including: differentiation, regulated through the selected expression of different genes, and specialized cells, response to stimuli (e.g., nerve cells, sense organs); and vi) Know that DNA directs protein building (e.g., role of RNA). Biochemical Mechanisms: Describe how

most cell functions involve chemical reactions, including: promotion or inhibition of biochemical reactions by enzymes, processes of respiration (e.g., energy production, ATP), and communication from cell to cell by secretion of a variety of chemicals (e.g., hormones).

**(4) Strand II: The Content of Science - Standard III (Earth and Space Science):** Understand the structure of Earth, the solar system, and the universe, the interconnections among them, and the processes and interactions of Earth's systems.

**(a) 9-12 Benchmark I:** Examine the scientific theories of the origin, structure, contents, and evolution of the solar system and the universe, and their interconnections. Grade 9-12 performance standards: i) Understand the scale and contents of the universe, including: range of structures from atoms through astronomical objects to the universe, and objects in the universe such as planets, stars, galaxies, and nebulae; ii) Predict changes in the positions and appearances of objects in the sky (e.g., moon, sun) based on knowledge of current positions and patterns of movements (e.g., lunar cycles, seasons); iii) Understand how knowledge about the universe comes from evidence collected from advanced technology (e.g., telescopes, satellites, images, computer models); iv) Describe the key observations that led to the acceptance of the Big Bang theory and that the age of the universe is over 10 billion years; v) Explain how objects in the universe emit different electromagnetic radiation and how this information is used; vi) Describe how stars are powered by nuclear fusion, how luminosity and temperature indicate their age, and how stellar processes create heavier and stable elements that are found throughout the universe; and vii) Examine the role that New Mexico research facilities play in current space exploration (e.g., Very Large Array, Goddard Space Center).

**(b) 9-12 Benchmark II:** Examine the scientific theories of the origin, structure, energy, and evolution of Earth and its atmosphere, and their interconnections. Grade 9-12 performance standards: Characteristics and Evolution of Earth: i) Describe the characteristics and the evolution of Earth in terms of the geosphere, the hydrosphere, the atmosphere, and the biosphere; ii) Recognize that radiometric data indicate that Earth is at least 4 billion years old and that Earth has changed during that period; iii) Describe the internal structure of Earth (e.g., core, mantle, crust) and the structure of Earth's plates; iv) Understand the changes in Earth's past and the investigative methods used to determine geologic time, including: rock sequences, relative dating, fossil correla-

tion, and radiometric dating, and geologic time scales, historic changes in life forms, and the evidence for absolute ages (e.g., radiometric methods, tree rings, paleomagnetism); and v) Explain plate tectonic theory and understand the evidence that supports it. Energy in Earth's System: i) Know that Earth's systems are driven by internal (i.e., radioactive decay and gravitational energy) and external (i.e., the sun) sources of energy; ii) Describe convection as the mechanism for moving heat energy from deep within Earth to the surface and discuss how this process results in plate tectonics, including: geological manifestations (e.g., earthquakes, volcanoes, mountain building) that occur at plate boundaries, and impact of plate motions on societies and the environment (e.g., earthquakes, volcanoes); and iii) Describe the patterns and relationships in the circulation of air and water driven by the sun's radiant energy, including: patterns in weather systems related to the transfer of energy, differences between climate and weather, global climate, global warming, and the greenhouse effect, and El Niño, La Niña, and other climatic trends. Geochemical Cycles: i) Know that Earth's system contains a fixed amount of natural resources that cycle among land, water, the atmosphere, and living things (e.g., carbon and nitrogen cycles, rock cycle, water cycle, ground water, aquifers); ii) Describe the composition and structure of Earth's materials, including: the major rock types (i.e., sedimentary, igneous, metamorphic) and their formation, and natural resources (e.g., minerals, petroleum) and their formation; iii) Explain how layers of the atmosphere (e.g., ozone, ionosphere) change naturally and artificially; and d) Explain how the availability of ground water through aquifers can fluctuate based on multiple factors (i.e., rate of use, rate of replenishment, surface changes, and changes in temperature).

(5) **Strand III: Science and Society - Standard I:** Understand how scientific discoveries, inventions, practices, and knowledge influence, and are influenced by, individuals and societies. **9-12 Benchmark I:** Examine and analyze how scientific discoveries and their applications affect the world, and explain how societies influence scientific investigations and applications. Grade 9-12 performance standards: Science and Technology: i) Know how science enables technology but also constrains it, and recognize the difference between real technology and science fiction (e.g., rockets vs. antigravity machines; nuclear reactors vs. perpetual-motion machines; medical X-rays vs. Star-Trek tricorders); ii) Understand how advances in technology enable further advances in science (e.g., microscopes and cellular struc-

ture; telescopes and understanding of the universe); iii) Evaluate the influences of technology on society (e.g., communications, petroleum, transportation, nuclear energy, computers, medicine, genetic engineering) including both desired and undesired effects, and including some historical examples (e.g., the wheel, the plow, the printing press, the lightning rod); iv) Understand the scientific foundations of common technologies (e.g., kitchen appliances, radio, television, aircraft, rockets, computers, medical X-rays, selective breeding, fertilizers and pesticides, agricultural equipment); v) Understand that applications of genetics can meet human needs and can create new problems (e.g., agriculture, medicine, cloning); vi) Analyze the impact of digital technologies on the availability, creation, and dissemination of information; vii) Describe how human activities have affected ozone in the upper atmosphere and how it affects health and the environment; and h) Describe uses of radioactivity (e.g., nuclear power, nuclear medicine, radiometric dating). Science and Society: i) Describe how scientific knowledge helps decision makers with local, national, and global challenges (e.g., Waste Isolation Pilot Project [WIPP], mining, drought, population growth, alternative energy, climate change); ii) Describe major historical changes in scientific perspectives (e.g., atomic theory, germs, cosmology, relativity, plate tectonics, evolution) and the experimental observations that triggered them; iii) Know that societal factors can promote or constrain scientific discovery (e.g., government funding, laws and regulations about human cloning and genetically modified organisms, gender and ethnic bias, AIDS research, alternative-energy research); iv) Explain how societies can change ecosystems and how these changes can be reversible or irreversible; v) Describe how environmental, economic, and political interests impact resource management and use in New Mexico; and vi) Describe New Mexico's role in nuclear science (e.g., Manhattan Project, WIPP, national laboratories). Science and Individuals: i) Identify how science has produced knowledge that is relevant to individual health and material prosperity; ii) Understand that reasonable people may disagree about some issues that are of interest to both science and religion (e.g., the origin of life on Earth, the cause of the Big Bang, the future of Earth); iii) Identify important questions that science cannot answer (e.g., questions that are beyond today's science, decisions that science can only help to make, questions that are inherently outside of the realm of science); iv) Understand that scientists have characteristics in common with other individuals (e.g., employment and career needs, curiosity, desire to per-

form public service, greed, preconceptions and biases, temptation to be unethical, core values including honesty and openness); and v) Know that science plays a role in many different kinds of careers and activities (e.g., public service, volunteers, public office holders, researchers, teachers, doctors, nurses, technicians, farmers, ranchers). [10-31-96, 01-14-00; 6.30.2.15 NMAC - Rn, 6 NMAC 3.2.12 11-14-00; A, 10-15-03]

## NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

### OIL CONSERVATION DIVISION

19 NMAC 15.L, Refining, filed 01-18-96, has been reformatted and renumbered to 19.15.12 NMAC to comply with the current NMAC requirements, effective 10-15-03.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.410 NMAC, Section 12. This amendment revises the work requirements for Food Stamp Program participants who must comply with Employment and Training work requirements.

### 8.139.410.12 EMPLOYMENT, TRAINING AND WORK REGISTRATION

#### A. E & T work

**[Requirements] registration:** Compliance with work **[requirements] registration** is a prerequisite to certification and cannot be waived. Benefits may not be conditionally granted before registration of all mandatory household members, except when verification cannot be obtained prior to the expedited service time limit. Work registration exemptions must be verified before certification.

#### B. ~~[Voluntary Quit and~~

~~Work Hours:~~ Verification is mandatory for all individuals participating in the Food Stamp Program. ~~Benefits may not be conditionally granted pending verification of voluntary quit and reduction in work hours, except when verification cannot be obtained prior to the expedited service time limit.]~~ **Compliance with E & T work requirements:** As a condition of eligibility for food stamps, every physically or mentally fit household member who is 16 years of age or older and under age 60, and who is determined mandatory, must comply with the work requirements of the food stamp E & T program.

**C. General conditions for participation:** No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the FSP if the individual:

(1) refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by ISD;

(2) refuses without good cause to participate in an employment and training program, to the extent required by ISD;

(3) refuses without good cause to accept an offer of employment at a site or plant not subject to a strike or lockout, at a wage not less than the higher of:

(a) the applicable federal or state minimum wage; or

(b) 80% of the wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment.

(4) refuses without good cause to provide ISD with sufficient information to allow ISD to determine the employment status or the job availability of the individual.

(5) voluntarily and without good cause:

(a) quits a job of 30 hours or more a week or a job that provided weekly earnings at least equivalent to the federal minimum wage multiplied by 30 hours; or

(b) reduces work effort, and after the reduction, the individual is working less than 30 hours a week; or

(c) fails to comply with the requirements of a workfare program.

(6) **Strike against the government:** An employee of the federal government, or state or a political subdivision of the state, who is dismissed for participating in a strike against the federal government, state or political subdivision of the state, will be considered to have voluntarily quit without good cause.

(7) **Title IV-A/unemployment compensation benefit (UCB) participants:** Individuals who fail or refuse to comply with the requirements under Title IV-A of the Social Security Act, or work requirements for individuals receiving UCB, will be considered to have failed to comply with food stamp program E & T work requirements.

**D. Employment and training (E & T) work requirements:**

(1) **General conditions for registration:**

(a) Unless exempt, every household member age 16 through 59 must register for employment. If a household member has his/her 16th birthday within a certification period, the work registration requirement must be fulfilled as part of the next

scheduled recertification process, unless the member qualifies for ~~another~~ an exemption.

(b) An individual who does not qualify for an exemption must be registered for employment at initial certification, or when added to the food stamp household, and at least every twelve (12) months thereafter, as a condition of eligibility.

(c) An individual required to register need not be present during the registration process.

(d) Strikers whose households are eligible to apply for assistance, as defined in Subsection B of 8.139.400.11 NMAC, must register for work, unless covered by an exemption.

(e) Individuals exempt from registration may volunteer to participate in the E & T program.

(2) **Individuals exempt from registration:** The following individuals are exempt from the work registration requirement:

(a) ~~[An Individual Younger Than Age 16 or Age 60 or Older.]~~ an individual younger than 16 years of age or an individual 60 years of age or older.

(b) ~~[A 16 or 17 year old is exempt if he/she]~~ an individual age 16 or 17 who is not the head of household or is attending school or enrolled in an employment and training program at least half time, as defined by the school or employment and training program.

(b) ~~(c)~~ (c) an individual who is physically or mentally unfit for employment. If physical or mental unfitness is claimed but not evident, verification is required. Verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or a statement from a physician or licensed or certified psychologist.

(c) ~~(d)~~ (d) a parent or other household member who is responsible for the care of a dependent child under age 6 or an incapacitated person.

(i) If the child has his/her 6th birthday during the certification period, the individual responsible for the care of the child is required to be registered as part of the next scheduled recertification, unless the individual qualifies for another exemption.

(ii) The exemption applies to the person who actually provides the care.

(iii) The dependent child or incapacitated person need not be considered a member of the food stamp household or even reside with the household. The exemption will not apply if the dependent or incapacitated person resides with others who provide the care.

(d) ~~(e)~~ (e) an individual subject to

and complying with any work requirement under Title IV of the Social Security Act, including TANF work requirements.

(f) ~~(f)~~ (f) an individual who receives unemployment compensation benefits and is subject to and complying with a federal or state unemployment compensation system. An individual who has applied for but who has not yet received UCB is exempt if required to register with the department of labor as part of the unemployment compensation application process.

(g) ~~(g)~~ (g) an individual who is a regular participant in a drug or alcohol treatment and rehabilitation program. The program must qualify for state certification as an effective rehabilitation program.

(h) ~~(h)~~ (h) an individual who is employed or self-employed and working a minimum of thirty (30) hours a week or receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours.

(i) Migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days are exempt, although this does not prevent such individuals from seeking services from the E & T program.

(ii) Workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage.

(h) ~~(i)~~ (i) a student who is eligible to participate in the FSP, and who is enrolled at least half time in any recognized school, high school, training program, or institution of higher education. This exemption remains in effect during normal periods of class attendance, vacations, and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer session).

(h) ~~(j)~~ (j) a household member who has made application for SSI and food stamp benefits at the social security administration, and whose application for food stamp benefits has been received by HSD, and who is determined eligible for food stamp benefits, shall be exempt from work registration until an SSI determination is made. A household member who is determined ineligible for SSI shall have the exemption from E & T work requirements evaluated at the time of the denial of SSI.

(3) **Interim changes in status:**

(a) Anyone losing exempt status because of changes subject to the reporting requirements in Paragraph 2 of Subsection A of 8.139.120.9 NMAC, will be required to register when the change is reported.

(b) Anyone gaining or losing

exempt status because of changes not subject to the reporting requirements in Paragraph 2 of Subsection A of 8.139.120.9 NMAC, will have his/her work status evaluated at the next recertification.

**(4) Processing changes:** [Registrants] Mandatory work participants who move out of a project area retain their work registration status at their new location, unless they become exempt.

**(5) Residing in a non-work program county:**

**(a)** The appropriate work registration code of any individual living in a project area which does not administer a work program through income support division, and who is not exempt from E & T work registration, will be entered into the individual's computer file. Those individuals will be dropped from referral to the E & T work program.

**(b)** Any household member living in a non-work program area may volunteer to participate in the E & T work program. The nearest project area administering a work program through ISD will accept the participant.

**E. E & T work program and responsibilities:** The income support division (ISD) administers the work program for applicants for and recipients of food stamp benefits who are required to comply with E & T work requirements. The purpose of the work program is to assist household members participating in the FSP to gain skills, training, work, or work experience that will increase an individual's ability to obtain and/or keep employment.

**(1) Work registrant responsibilities:** Each household member who must be registered for work is required to:

**(a)** register at the time of initial application and every 12 months thereafter;

**(b)** participate in the E & T work program to the extent required by ISD;

**(c)** respond to any request from ISD or its designee for sufficient information to determine employment status or availability for work;

**(d)** report to an employer if referred by ISD or its designee;

**(e)** accept an offer of employment, at a site or plant not subject to a strike or lockout, at a wage not less than the higher of:

**(i)** the applicable federal or state minimum wage; or

**(ii)** 80% of the wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment.

**(2) [ISS] HSD responsibilities:** [An-ISS] HSD is responsible for:

**(a)** screening each household

member to determine work registration status;

**(b)** registering mandatory participants;

**(c)** explaining to each applicant FSP work requirements, rights and responsibilities and consequences for failure or refusal to comply. Such information must be provided at application, at recertification, and when a previously exempt or new household member must be registered.

**(d)** acting on any notice of non-compliance.

**(i)** Within 10 days of [being notified] receiving notification that a mandatory [registrant] work participant is in noncompliance with a work requirement [-The ISS] the caseworker will determine if good cause exists for the individual's failure to comply.

**(ii) [H] Upon a finding** that good cause does not exist, a notice of adverse action will be issued, advising the household of the individual's disqualification.

**(iii)** The reduced benefit amount resulting from the disqualification will be reported to the E & T work program.

**(e)** disqualifying non-compliant individuals, and reinstating individuals whose penalty expires, or who are subsequently determined to meet an exemption in Paragraph 2 of Subsection D of 8.139.410.12 NMAC.

**(3) Reporting changes to the E & T work program:** The following changes will be reported to the E & T work program:

**(a)** [Registrants] work participants who become exempt from work registration;

**(b)** [Registrants] work participants who are no longer certified for participation;

**(c)** [Registrants] work participants who move from the project area; and

**(d)** voluntary [registrants] work participants who are deregistered.

**(e)** In most cases, the changes listed above are reported by entering the appropriate information into the household's computer file. In some cases, a manual form is used to report new information to the work program.

**(4) Work program responsibilities:**

**(a) Scheduling and conducting assessment sessions:** The work program will inform each registrant or participant of:

**(i)** E & T work program requirements, including rights and responsibilities.

**(ii)** services, benefits, and consequences of failure to comply.

**(b) Placing a participant in a**

**[component] work activity:** A participant may be placed in any [component] work activity deemed appropriate by the work program. The work program has the discretion to exempt a [registrant] work participant from participation based on the guidelines in the state plan for the work program.

**(c)** authorizing reimbursements up to the regulatory monthly limit for reasonable and necessary costs directly related to work program participation.

**(d)** reporting voluntary [registrants] work participants who wish to re-register;

**(e)** reporting within 10 days of the date a determination is made [of an individual's failure or refusal to comply] that an individual has failed or refused to comply with E & T work requirements.

**F. Voluntary quit/reduced work hours:** When a household reports a loss of income or reduction in work hours, a determination must be made whether any member has voluntarily quit a job or reduced work hours without good cause.

**(1) Period for establishing voluntary quit or a reduction in work hours:** A determination of voluntary quit or reduction in work hours shall be made within the 60 day period prior to the household's application date, or any time after filing an application, or any time during the household's certification period.

**(2) Verification requirements:** Verification of the circumstances surrounding the quit or reduction in work hours is required. Verification is mandatory for all individuals participating in the food stamp program. Benefits may not be conditionally granted pending verification of voluntary quit or reduction in work hours, except when verification cannot be obtained prior to the expedited service time limit.

**(H) (3) Providing verification:** The primary responsibility for providing verification of the circumstances surrounding a quit or reduction in work hours rests with the household.

**(a)** Acceptable sources of verification include, but are not limited to: the employer at the time of quit, employee associations, union representatives, grievance committees or organizations.

**(b)** If documentary evidence cannot be obtained, a collateral contact may be used. The ISS will obtain verification from acceptable collateral contacts provided by the household.

**(c)** If the household and ISS are unable to obtain requested verification because the reason for the quit or reduction in work hours resulted from circumstances that cannot be verified for good cause, the ISS will use the best source of information available. The household will not be denied access to the FSP.

(d) Circumstances which cannot be verified for good cause may include a refusal by an employer to provide information, discriminatory practices or unreasonable demands by an employer, or an inability to locate the employer.

**(4) Applicant households:** In the case of an applicant household, if any household member subject to food stamp E & T work requirements voluntarily quit a job or reduced work effort, that individual shall be disqualified according to Paragraph 1 of Subsection H of this Section. The disqualification is effective upon a determination of eligibility for the remaining household members.

**(5) Participating households:** In the case of a participating household, if a household member is determined to have voluntarily quit a job or reduced work effort without good cause, that individual shall be disqualified according to Paragraph 1 of Subsection H of this Section. The disqualification is effective the first month following the expiration of the notice of adverse action time limit.

**G. Suitability and good cause:** The ISS must make a determination whether there was good cause for the voluntary quit or reduction in work hours. Individuals determined to have good cause will be registered for work and must comply with E & T work requirements, unless an exemption in Paragraph 2 of Subsection D of 8.139.410.12 NMAC is met. For purposes of determining suitability of employment and good cause for noncompliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the following considerations may be evaluated.

**(1) Unsuitable employment:** In addition to any suitability requirements established under the E & T work program, employment is not considered suitable if:

(a) the wage offered is less than the higher of:

(i) the applicable federal or state minimum wage; or

(ii) 80% of the federal minimum wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 been applicable to the offer of employment.

(b) the employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in (a).

(c) the household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(d) the work offered is at a site subject to a strike or lockout at the time of

the offer, unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act [29 U.S.C. 178] commonly known as the Taft-Hartley Act, or unless an injunction has been issued under Section 10 of the Railway Labor Act [45 U.S.C. 160];

(e) the degree of risk to health and safety is unreasonable;

(f) the member is physically or mentally unfit to perform the job duties, as documented by medical evidence or by reliable information from other sources;

(g) the employment offered within the first thirty (30) days is not in the member's major field of experience;

(h) the distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment is not considered suitable if daily commuting exceeds two (2) hours per day, not including transporting a child to and from a child care facility. Nor is employment considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site;

(i) the working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs. For Example, a Sabbatarian may refuse to work on the Sabbath.

**(2) Good cause for noncompliance with E & T work requirements:** The work program will report registrants or participants who fail or refuse to comply with E & T work requirements. The ~~ISS~~ HSD has the primary responsibility to determine whether good cause exists for a failure or refusal to comply.

(a) Good cause is determined by considering the facts and circumstances involved, including information submitted by the household member and employer.

(b) Good cause includes circumstances beyond an individual's control, such as, but not limited to:

(i) registrant or participant household member's illness;

(ii) illness of another household member requiring the presence of the registered or participating member;

(iii) household emergency;

(iv) problems caused by registrant's or participant's inability to speak or read English.

(v) unavailability of transportation; or

(vi) lack of adequate child care for children who have reached age six but are under age 12.

**(3) Good cause for voluntary quit/reducing work hours:** Good cause

includes the following and must be evaluated on a case by case basis:

(a) circumstances beyond the individual's control, such as those that prevent compliance with E & T work requirements as described in Paragraph 2 of Subsection G of 8.139.410.12 NMAC.

(b) resigning from a job that does not meet the criteria used to establish suitable employment in Paragraph 1 of Subsection G of 8.139.410.12 NMAC.

(c) discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs.

(d) work demands or conditions that make continued employment unreasonable, such as working without being paid on schedule.

(e) enrollment of an individual at least half-time in a recognized school, training program, or institution of higher education which requires the individual to leave employment, or which requires the household to move to another county or political subdivision.

(f) resignations by individuals under age sixty (60) which are recognized by the employer as retirement.

(g) acceptance of a bona fide offer of employment of more than twenty (20) hours per week in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours, which because of circumstances beyond the control of the individual, subsequently either does not materialize or results in employment of less than twenty (20) hours per week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours.

(h) leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm workers or construction workers. Even though work at the new site has not actually begun, quitting previous employment is considered to be for good cause if it is part of the pattern of that type of employment.

**H. Disqualification for noncompliance:** No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the food stamp program if the individual fails or refuses, without good cause, to comply with work requirements in Subsection C of 8.139.410.12 NMAC.

**(1) Individual disqualification:** Any individual who is required to comply with E & T work requirements, and fails or refuses ~~[, without good cause,]~~ to comply with the work requirements, or who voluntarily quits a job, or reduces work hours without good cause will be disqualified as follows:

**(a) First occurrence:** until ~~the individual complies~~ compliance or for three (3) months, whichever is later.

**(b) Second occurrence:** until ~~the individual complies~~ compliance or for six (6) months, whichever is later.

**(c) Third occurrence:** ~~Disqualified until the individual complies~~ until compliance or for one (1) year, whichever is later.

**(2) Treatment of income and resources:**

**(a)** All the income and resources of an individual disqualified for noncompliance with work requirements will be counted to determine the household's income and resource maximum levels, and benefit amount (see Subsection ~~[D]~~ C of 8.139.520.10 NMAC).

**(b)** In the case of an applicant household, where there has been a determination of voluntary quit or reduction in work hours without good cause within 60 days prior to the application date, the earned income lost as a result of the quit or reduction in hours shall not be counted.

**(c)** When a determination is made that a household member has voluntarily quit or reduced work hours without good cause after an application is filed, but before approval, the earned income of the disqualified individual that would have been countable at application shall be calculated and used to determine the eligibility and benefit amount of the remaining household members.

**(d)** In the case of a participating household, where there has been a determination of voluntary quit or reduction in work hours without good cause, the department shall ensure that, as a result of the individual disqualification:

**(i)** the household's food stamp benefits do not increase for the length of the disqualification period;

**(ii)** the household's food stamp benefit amount for the length of the disqualification period is calculated by using the disqualified individual's income prior to the quit or reduction; and

**(iii)** the household will be issued the lesser of the food stamp benefit amount the household is eligible for prospectively or the food stamp benefit amount the household was receiving prior to the individual's disqualification.

**(e)** Any reported change that does not relate to the individual disqualification shall be processed after the appropriate determination in (a), (b) or (c) or (d) above is made. Food stamp benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC.

**(3) Determining the disqualification period:**

**(a) At application:** An individual who is a member in an applicant household, and who is in a prior disqualification period, will be denied food stamp benefits beginning with the month of application.

**(b) During participation:** An individual who has failed or refused to comply with work requirements while participating in the FSP will be ineligible to participate beginning with the month following the month in which the notice of adverse action time limit expires.

**(c) Quarterly reporting households:** An individual who has failed or refused to comply with work requirements during a quarterly reporting period, shall be ineligible to participate beginning with the month following the month the notice of adverse action time limit expires. If the adverse action time limit will expire in the month after the notice would have been sent, the caseworker must wait until the first day of the following month to send the notice of adverse action.

**(4) Disqualification in the last month of certification:** For all participating households, including households subject to quarterly reporting:

**(a)** if a notice of noncompliance is received in the last month of the certification period, an adverse action notice will be sent to the household. The disqualification period begins the first month following the month the adverse action time limit expires, whether or not the household reapplies for food stamp benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

**(b)** if the adverse action time limit expires in the last month of the household's certification period, the disqualification penalty will begin the following month, whether or not the household reapplies for food stamp benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

**(5) Lifting the disqualification:** An individual who has been disqualified may resume participation during the disqualification period by becoming exempt from E & T work requirements listed in Paragraph 2 of Subsection D of 8.139.410.12 NMAC, if otherwise eligible.

**I. Head of household provisions:**

**(1) Designation:** The household may designate any adult parent of a child in the household as the head of household, if all adult household members making application agree to the selection. A household

may designate the head of household each time the household is certified for participation in the FSP but may not change the designation during a certification period, unless there is a change in household composition.

**(2) Compliance with E & T work requirements:** For purposes of determining compliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the head of household will be considered as an individual household member. The head of household will be disqualified in accordance with the disqualification penalties in Paragraph 1 of Subsection H of 8.139.410.12 NMAC.

**(a)** If the head of household leaves the household during a period of ineligibility, the disqualification follows the individual. The remaining household members, if otherwise eligible, continue to be eligible to participate in the FSP.

**(b)** If the head of household becomes the head of another household, the individual disqualification continues to apply. The other household members continue to be eligible to participate in the FSP.

**J. Work requirement for able bodied adults without children (ABAWDs):**

~~[An individual is not eligible for inclusion in the food stamp household if the individual received food stamp benefits but did not work or participate in a work program for more than three months during the 36 month period preceding the month for which eligibility is being determined. To meet the work requirement, the individual must work or participate in a work program for at least 20 hours per week, averaged over the month.]~~ An applicant or recipient who is a mandatory work participant in the food stamp E & T program shall be considered for compliance with the 20-hour-a-week work requirement for ABAWDs. Unless determined exempt, any individual who is a mandatory ABAWD shall be required to comply with the 20-hour-a-week work requirement to maintain eligibility for food stamp benefits.

**(1) Exemptions:** Certain individuals are exempt from the ABAWD 20-hour-a-week work requirement:

**(a)** an individual determined to be exempt from work requirements of the Food Stamp E & T program set forth at Subsection D of this section.

~~(a)~~ **(b)** ~~[Persons]~~ an individual under age 18 or ~~over~~ age 50 or older;

~~(b)~~ **(c)** ~~[Persons]~~ an individual medically certified as physically or mentally unfit for employment;

~~(c)~~ **(d)** ~~[Pregnant women during their last trimester of pregnancy;]~~ a pregnant woman;

~~(d)~~ **(e)** ~~[Individuals in a food stamp household which includes one or more dependent children under the age of~~

18] an individual residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits;

~~(e) Persons exempted from participation in the Food Stamp E&T program under provisions set forth at Subsection D of 8.139.410.12 NMAC.]~~

~~(f) a natural, adoptive or step-parent residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits.~~

~~(2) Regaining Eligibility: Individuals who have become ineligible due to failure to meet the work requirement can regain eligibility by working or participating in an approved work program for at least 80 hours during any 30 consecutive day period following the date of ineligibility:~~

~~(a) An individual who regains eligibility is eligible, with respect to the work requirement, on an ongoing basis provided he or she continues to meet the work requirement.~~

~~(b) An individual who has regained eligibility who fails to meet the work requirement in any month nonetheless remains eligible for a fixed three consecutive month period, starting with the month the work requirement is not met, provided that eligibility otherwise exists. Upon expiration of the three months, the individual becomes ineligible for a period of 36 months starting with the month in which eligibility was regained. The period of ineligibility is fixed regardless of whether the person subsequently returns to work or would otherwise be exempt from the work requirement. If the 30 day period overlaps months, the month in which the 30 day period ends comes the month in which eligibility is regained and for which food stamp benefits may be issued. An individual is eligible to regain eligibility only once during the 36 month period.]~~

~~(2) Medical reports: To determine an exemption from the 20-hour-a-week work requirement on the basis of pregnancy or physical or mental unfitness, the individual must provide a written report by a medical practitioner such as a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist or social worker.~~

~~(a) In the case of a pregnancy, the report must verify the pregnancy and identify the expected date of delivery.~~

~~(b) A claim of physical or mental unfitness must be substantiated by a written report identifying the physical or mental condition and certifying that the person is unfit for employment.~~

~~(3) Definitions: Time limited~~

~~eligibility for ABAWDs: An ABAWD who is determined mandatory to comply with the 20-hour-a-week work requirement shall not be eligible to participate in the food stamp program as a member of any household if the individual received food stamp benefits but failed to comply with the 20-hour-a-week work requirement for three countable months in a 36-month period.~~

~~(a) 36 month period: The 36 month period is a [rolling] fixed calendar month period beginning on December 1, 2002. The period ends [with the month prior to the month for which eligibility is being determined] on November 30, 2005. [The period starts with the 36th month prior to the month for which eligibility is being determined except that the period does not include:~~

~~(i) Any month prior to December 1996;~~

~~(ii) Any month prior to the individual's 18 birthday;~~

~~(iii) Any month prior to the very first month for which an individual receives food stamp benefits. The period includes months for which full, partial, prorated, or retroactive food stamp benefits are issued.~~

~~(b) Work: Work includes any activity for which the individual is reimbursed for his time and effort. It includes subsidized and unsubsidized employment, self-employment and on the job training. In the case of self-employment income, gross monthly earnings, as determined under Paragraph 2 of Subsection E of 8.139.520.10 NMAC, are divided by the minimum wage to determine the number of hours which are countable in meeting the work requirement.~~

~~(c) Work Program: Allowable work program activities include those performed under JTPA, or Section 236 of the Trade Adjustment Act of 1974, or under the department's food stamp E&T program, as well as activities performed under any other state or local program which is recognized by the department as meeting food stamp E&T program requirements. NOTE: Unless carried out under the JTPA program, job search and job search training activities are not allowable activities under the Food Stamp Program work requirement provisions.~~

~~(4) Reporting: It is the responsibility of the individual subject to the work requirement to report whether or not that individual has worked or participated in a work program and the number of hours worked.~~

~~(5) Medical Reports: To be exempt from the requirement on the basis of pregnancy or physical or mental inability, the individual must provide a written report by a medical practitioner. In the case of a~~

~~pregnancy report, the report must identify the expected date of delivery. A claim of physical or mental unfitness, must be substantiated by a written report by a physician (M.D. or D.O.) identifying the physical or mental condition and certifying that the person is unfit for employment.]~~

~~(b) Countable months in the 36-month time limit: Within the fixed 36-month period, an ABAWD shall have a month counted toward the three-month time limit if the 20-hour-a-week work requirement is not met and the household received a full month's benefits.~~

~~(i) In no event shall a month be counted toward the three-month time limit if the individual has not attained the age of 18.~~

~~(ii) A month that an ABAWD has used without fulfilling the work requirement in another state shall be counted toward the three-month time limit as long as the other state verifies the month has been used as a non-work month.~~

~~(4) Fulfilling the 20-hour-a-week work requirement:~~

~~(a) Working: For purposes of determining the activities that count towards the 20-hour-a-week work requirement, the time spent working in exchange for money, or working in exchange for goods or services, or unpaid work, or any combination of these activities shall be considered as employment and credited toward the 20-hour-a-week work requirement.~~

~~(b) Work activities: Allowable work activities that count towards the 20-hour-a-week work requirement include:~~

~~(i) employment for at least 20 hours a week averaged monthly or 80 hours a month, but not unreported employment. In the case of self-employment income, gross monthly earnings, as determined under Paragraph 2 of Subsection E of 8.139.520.10 NMAC, are divided by the minimum wage to determine the number of hours that are countable in meeting the work requirement;~~

~~(ii) participation in and compliance with the requirements of a work program at least 20 hours a week;~~

~~(iii) any combination of employment and participation in a work program for at least 20 hours a week;~~

~~(iv) job search or job search training activities that are incorporated into the department's a work program or another state or local program that meets food stamp E & T requirements as long as the job search or job search training activities equal less than half the work requirement.~~

~~(v) participation in and compliance with a workfare program.~~

~~(c) Work program: Allowable activities in a work program include those~~

performed under:

(i) the Workforce Investment Act (Public Law 105-220);

(ii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(iii) the department's food stamp E&T program;

(iv) any other state or local program which is recognized by the department as meeting food stamp E&T program requirements.

**(5) Reporting and verifying work participation:**

(a) It is the responsibility of the individual subject to the work requirement to report:

(i) whether or not that individual has worked or participated in a work program;

(ii) the number of hours spent in work or work program activities;

(iii) how the work requirement was fulfilled; and

(iv) when the individual's work hours fall below 20 hours a week, averaged monthly, or 80 hours a month.

(b) Verification of the time spent working is mandatory in order to receive credit toward the work requirement. It is the responsibility of the individual subject to the work requirement to provide verification of participation in work activities by the fifth calendar day of each month following the month of participation in work activities.

(6) Good cause for failure to meet the work requirement: An ABAWD may establish good cause for failure to meet the 20-hour-a-week work requirement if the absence from work is temporary and the individual retains employment, or if participation in work activities resulted from a temporary absence due to circumstances beyond the individual's control. Good cause reasons include, but are not limited to, illness, illness of another household member requiring the presence of the ABAWD, a household emergency, or the unavailability of transportation. Good cause is established on an individual basis.

(7) Regaining eligibility: An individual who becomes ineligible due to failure to meet the work requirement for three months can regain eligibility by working or participating in an approved work program for at least 80 hours during any 30 consecutive day period following the date of ineligibility.

(a) An individual who regains eligibility is eligible on an ongoing basis provided he or she continues to meet the 20-hour-a-week work requirement.

(b) There is no limit to the number of times an individual may regain eligi-

bility during the 36-month period.

**(8) Failure to meet the work requirement after regaining eligibility:** An individual who has regained eligibility and who subsequently fails to meet the 20-hour-a-week work requirement in any month left in the 36-month period shall be eligible to receive food stamp benefits for a three consecutive month period.

(a) The three-month period begins with the month the work requirement was not met, provided the individual is otherwise eligible.

(b) Upon expiration of the three months, the individual becomes ineligible for the remainder of the fixed 36-month period.

(c) The individual may re-establish eligibility by either regaining eligibility or because a determination is made that the individual becomes exempt from the 20-hour-a-week work requirement.

~~(6)~~ **(9) Costs:** Except for costs assumed by HSD pursuant to an approved food stamp E&T supportive services plan, HSD has no financial responsibility for any costs or liabilities incurred by persons electing to participate in a work program in order to meet the food stamp work requirement. [02/01/95, 07/01/98; 8.139.410.12 NMAC - Rn, 8 NMAC 3.FSP.415, 05/15/2001; A, 10/15/2003]

## NEW MEXICO MINING COMMISSION

The following are amendments to Subsection D of 19.10.12.1201 NMAC; Subsection A of 19.10.12.1203 NMAC; Subsection A of 19.10.12.1205 NMAC; and Subsections C, D, E, F and G of 19.10.12.1208 NMAC.

### 19.10.12.1201 REQUIREMENT TO FILE FINANCIAL ASSURANCE:

**A.** Except for existing mining operations without new units and minimal impact explorations, the applicant for a permit shall provide a financial assurance proposal to the director following the director's determination that the permit application is approvable, but prior to the permit issuance. The permit shall not be issued until receipt of the approved financial assurance by the director.

**B.** The permittee of an existing mining operation shall provide a financial assurance proposal in an amount adequate to complete the proposed closeout plan as soon as practicable after the permittee receives notice from the director that the closeout plan is approvable. The permittee shall provide the approved financial assurance prior to the director's approval of the closeout plan.

**C.** Financial assurance shall be payable to the state of New Mexico and conditioned upon the performance of all the requirements of the act, 19.10 NMAC, the permit, and the reclamation plan or closeout plan.

**D.** Financial assurance proposals submitted by applicants or permittees may be required to be reviewed by a third party contractor as ordered by the director. All costs for such review shall be paid by the applicant or permittee.

[7-12-94, 2-15-96; 19.10.12.1201 NMAC - Rn, 19 NMAC 10.2.12.1201, 05-15-2001; A, 10-15-03]

### 19.10.12.1203 FORM OF FINANCIAL ASSURANCE:

**A.** The director may accept the following forms of financial assurance:

(1) cash;

(2) trusts;

~~(2)~~(3) surety bonds;

~~(3)~~(4) letters of credit;

~~(4)~~(5) collateral bonds;

~~(5)~~(6) third party

~~guaranties~~ guarantees; ~~(6)~~

(7) insurance; or

~~(6)~~(8) a combination of any of

the above.

**B.** The director shall not accept any type or variety of self-guarantee or self-insurance for the required financial assurance.

[7-12-94, 2-15-96; 19.10.12.1203 NMAC - Rn, 19 NMAC 10.2.12.1203, 05-15-2001; A, 10-15-03]

### 19.10.12.1205 DETERMINATION OF FINANCIAL ASSURANCE AMOUNT:

**A.** The amount of the financial assurance shall be determined by the director and take into account, but not be limited to, the estimated cost submitted by the permittee or the applicant. This estimated cost should include at a minimum the following costs: contract administration; mobilization; demobilization; engineering redesign; profit and overhead; procurement costs; reclamation or closeout plan management; and contingencies. Credit for salvage value of building materials or abandoned equipment and supplies shall not be allowed. Equipment normally available to a third party contractor should be used in determining the estimated cost;

(1) reflect the probable difficulty of reclamation or closure, giving consideration to such factors as topography, geology, hydrology, revegetation potential and approved post-mining land use;

(2) depend on the requirements of the approved permit;

(3) not duplicate any federal or



state financial requirements for the same area so long as those entities' financial assurance requirements are at least as stringent as this part; and

(4) not be less comprehensive than the federal requirements, if any.

**B.** The amount of the financial assurance shall be sufficient to assure the completion of the reclamation plan or closeout plan if the work has to be performed by the state of New Mexico or a contractor with the state in the event of forfeiture.

**C.** The amount of financial assurance for a minimal impact existing and new mining operations shall be as provided for in Subsection F of 19.10.3.303 NMAC and Subsection E of 19.10.3.304 NMAC, respectively.

[7-12-94, 2-15-96; 19.10.12.1205 NMAC - Rn, 19 NMAC 10.2.12.1205, 05-15-2001; A, 10-15-03]

#### **19.10.12.1208 FINANCIAL ASSURANCE MECHANISMS:**

##### **A. Surety Bonds**

(1) A surety bond shall be executed by the applicant or the permittee and a corporate surety licensed to do business in the state of New Mexico.

(2) Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior written consent of the director. The director shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(3) Surety bond terms shall be established for a minimum of 5 years. One hundred and twenty (120) days prior to the expiration of the term, the operator must provide the director with evidence that the current surety bond will be continued, another surety company is to provide a financial assurance, or another form of financial assurance will replace the surety bond. Upon receiving notification, the director shall respond to the permittee within 30 days, in writing, indicating whether or not the proposed form and amount of financial assurance will be acceptable. If adequate financial assurance is not provided 30 days prior to the expiration of the term of the original surety bond, the permittee shall cease operations and shall forfeit the existing surety bond. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided. If an acceptable financial assurance is provided within a time frame specified by the director, not to exceed 180 days, the forfeited funds, less any costs associated with the forfeiture, will be refunded to the surety company. If adequate financial assurance is not provided

within the specified time frame, the director will authorize reclamation of the mining operation using the forfeited funds.

##### **B. Letters of Credit**

(1) The letter of credit must be issued by a bank organized or authorized to do business in the United States. The director may require an independent rating of the proposed bank and the cost of any such rating shall be paid by the applicant or permittee.

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous financial assurance coverage shall be forfeited and shall be collected by the state of New Mexico if not replaced by other suitable financial assurance or letter of credit at least 30 days before its expiration date.

(3) Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided. If an acceptable financial assurance is provided within a time frame specified by the director, not to exceed 180 days, the payment amount, less any costs associated with the demand for payment, will be refunded to the bank. If financial assurance is not provided within the specified time frame, the director will authorize reclamation of the mining operation using the payment from the letter of credit.

(4) The letter of credit shall be payable to the state of New Mexico upon demand, in part or in full, upon receipt from the director of a notice of forfeiture issued in accordance with 19.10.12.1211 NMAC.

##### **C. Collateral Bonds**

###### **(1) Valuation of Collateral**

(a) If the nature of the collateral proposed to be given as security for financial assurance is subject to fluctuations in value over time, the director shall require that such collateral have a fair market value at the time of permit approval in excess of the financial assurance amount by a reasonable margin. The amount of such margin shall reflect changes in value anticipated over a period of five years, including depreciation, appreciation, marketability and market fluctuation. In any event, the director shall require a margin for legal fees and costs of disposition of the collateral in the event of forfeiture.

(b) The annual report filed by the permittee must indicate the current market value of any collateral accepted by the director pursuant to this part.

(c) The financial assurance value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, as necessary, its amount increased or decreased. In no case shall the value attributed to the collateral exceed its market value.

(2) Collateral bonds, except for

cash accounts and real property, shall be subject to the following conditions:

(a) The director must have custody of collateral deposited by the applicant or permittee until authorized for release or replacement as provided in this part.

(b) The director shall value collateral at its current market value, not at face value.

(c) The director shall not accept as collateral shares of stock issued by the following: applicant or permittee; an entity that owns or controls the applicant or permittee; or an entity owned or controlled by the applicant or permittee.

(d) The director shall require that certificates of deposit be made payable to or assigned to the state of New Mexico, both in writing and upon the records of the bank issuing the certificates. If assigned, the director shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates prior to the director's acceptance.

(e) The director shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

(3) Real property provided as a collateral bond shall meet the following conditions:

(a) The real property must be located in the state of New Mexico. The real property cannot be within the permit or affected area of a mining operation.

(b) The permittee shall grant the state of New Mexico a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with state law or otherwise dispose of the property in the event of forfeiture under 19.10.12.1211 NMAC.

(c) For the director to evaluate the adequacy of the real property, the permittee must submit the following information for the real property, unless the director, for good cause, waives any of the requirements:

(i) a description of the property, which shall include a site improvement survey plat to verify legal descriptions of the property and to identify the existence of recorded easements;

(ii) the fair market value as determined by a current appraisal conducted by an independent qualified appraiser, previously approved by the director; ~~and~~

(iii) proof of ownership and title to the real property[-];

(iv) a current title binder which provides evidence of clear title containing no exceptions, or containing only exceptions acceptable to the director;

and

(v) phase I environmental assessment.

(d) In the event the permittee pledges water rights, the permittee shall provide such additional information as may be required by the director to meet any additional conditions prescribed by him for accepting water rights as collateral.

(4) Persons with an interest in collateral provided as financial assurance who desire notification of actions affecting the collateral shall request the notification in writing to the director at the time collateral is offered.

~~(4)~~D. Cash accounts shall be subject to the following conditions:

~~(4)~~(1) The director may authorize the applicant or permittee to meet its financial assurance obligations through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the state of New Mexico.

~~(4)~~(2) Any interest paid on a cash account must be retained in the account and applied to the account unless the director has approved the payment of interest to the permittee.

~~(4)~~(3) Certificates of deposit may be substituted for a cash account with the approval of the director.

~~(4)~~(4) The director shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation, unless the cash account has been deposited with the state of New Mexico.

~~(5) Persons with an interest in collateral provided as financial assurance who desire notification of actions affecting the collateral shall request the notification in writing to the director at the time collateral is offered.]~~

E. Trusts shall be subject to the following conditions

(1) The director may approve the use of a trust to hold and manage funds for the purpose of implementing reclamation as prescribed in the closeout plan. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency and which has been approved by the director. The director must be notified of any change of trustee and any successor trustees must be approved by the director.

(2) The trust fund is also subject to the following conditions:

(a) The initial payment into the trust must be made by the date established by the director.

(b) The trust shall be funded in accordance with the terms of the permit.

(c) Investments of the trust shall be reviewed and approved by the director and may include fixed income investments such as U.S. treasury obligations, state issued securities, time deposits and other investments of similar risk as approved by the director.

(d) Income accrued on trust funds shall be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust.

(e) The trustee may be compensated under terms defined by the director, upon approval of the director.

(f) The trust may be terminated by the permittee only if the permittee substitutes, with the approval of the director, alternate financial assurance as specified in this section or the permittee has completed reclamation in accordance with Subsection E of 19.10.12.1210 NMAC.

(g) A copy of the trust agreement, as well as quarterly and annual reports of the trustee on the trust fund balance shall be provided to the director upon request.

(h) Any disbursement of funds from the trust shall be approved by the director in writing.

#### F. Insurance

(1) The insurer must be authorized to transact the business of insurance in the state of New Mexico and a licensed carrier or a registered carrier of surplus lines of insurance or reinsurance and authorized to transact business of insurance in the state of New Mexico, and have an AM BEST rating of not less than A- or the equivalent rating of other recognized rating companies.

(2) The insurance policy shall be issued for the amount equal to the closeout plan cost estimate as approved by the director or for a lesser amount if used in conjunction with other forms of financial assurance and approved by the director.

(3) The insurance policy shall guarantee that funds will be available for reclamation in accordance with the closeout plan and that the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction of the director. Actual payments by the insurer will not change the face amount, although the insurer's future liability may be reduced by the amount of the payments, during the policy period.

(4) The permittee must maintain the policy in full force and effect until the director approves termination or replacement of insurance with another form of financial assurance acceptable to the director.

#### ~~D-G.~~ Third party guarantee

~~(1) The guarantor must document and certify its authorization and capacity to~~

~~enter into the guarantee.]~~

(1) The director may accept third party guarantees so long as they do not constitute any form of self-guarantee or self insurance. The director shall determine whether relationship of guarantor to permittee would result in a self-guarantee by reviewing the following:

(a) financial information submitted by permittee to identify fiscal and operational relationships;

(b) the percentage of the corporation's business which relies on the permittee's activities; and

(c) any other information deemed relevant by the director.

(2) The permittee or applicant shall submit financial information as requested by the director unless doing so would place guarantor in violation of an applicable legal requirement.

~~(2)~~(3) The third party guarantee shall be signed by an authorized representative, and legal counsel of the guarantor shall certify that the guarantor can legally engage in the guarantee and shall certify the amounts and names of beneficiaries of all other guarantees for which the guarantor is obligated.

~~(3)~~(4) If the guarantor is a corporation, the authorization documentation will include a board of directors' resolution or shareholder's vote or similar verification and proof that the corporation can validly execute a guarantee under the laws of the state or country of its incorporation, and its bylaws and articles of incorporation.

~~(4)~~(5) If the guarantor is a partnership, joint venture, syndicate, or other business entity, each party or an authorized representative for the party with the beneficial interest, direct or indirect, shall sign the agreement.

~~(5)~~(6) The guarantor's financial statements shall be audited by an independent certified public accountant and the accountant's certification provided to the director. All costs and fees for such audit and certification shall be paid by the applicant or permittee. If the accountant gives an adverse opinion of the financial statements, the guarantor cannot qualify for the third party guarantee. The permittee shall also pay for any evaluation and analysis by an independent reviewer selected by the director to evaluate and analyze for the director any information regarding the guarantor provided to the director or requested by the director to evaluate the guarantor's financial ability to provide a guarantee.

~~(6)~~(7) The guarantor as well as its successors and assignees agree to remain bound jointly and severally liable for all litigation costs incurred in any successful effort to enforce the third party guarantee against the guarantor.

~~(7)~~(8) The guarantor must demonstrate financial soundness by meeting either alternative I or alternative II soundness tests:

(a) Alternative I financial soundness test

(i) Guarantor has a tangible net worth of at least \$10 million dollars;

(ii) Guarantor's tangible net worth and working capital are each equal to or greater than six (6) times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated;

(iii) Guarantor's assets located in the United States amount to at least ninety percent (90%) of its total assets or its total assets in the United States are at least six (6) times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated; and

(iv) Guarantor meets at least two of the following three financial ratios: The ratio of total liabilities to net worth is less than 2:1; The ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities is greater than 0.1:1; The ratio of current assets to current liabilities is greater than 1.5:1.

(b) Alternative II financial soundness test

(i) Guarantor's most recently issued senior credit obligation are rated "BBB" or higher by standard and poor's corporation, or "Baa" or higher by Moody's investors service, inc.;

(ii) The guarantor has a tangible net worth of at least \$10 million dollars and is greater than six (6) times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated; and

(iii) Guarantor's assets located in the United States amount to at least ninety percent (90%) of its total assets or its total assets in the United States are at least six (6) times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated.

~~(8)~~(9) The director may require monitoring of the guarantor's financial condition by a contractor with the state during the time that a third party guarantee is used for financial assurance. The costs of such monitoring shall be paid by the permittee. The frequency of such monitoring shall be determined by the director.

~~(9)~~(10) At any time that the guarantor's financial condition is such that the guarantor no longer qualifies pursuant to this part, the permittee shall be deemed

without financial assurance coverage. The director shall specify to the permittee in writing a reasonable period, not to exceed 90 days, to replace the financial assurance coverage. If adequate financial assurance is not provided by the end of the period allowed, the permittee shall cease mining and shall immediately begin to conduct reclamation or closeout measures in accordance with the reclamation or closeout plan. The director may, for good cause shown, grant up to two 30-day extensions. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided.

[7-12-94, 2-15-96, 12-14-96, 6-30-98, 12-29-2000; 19.10.12.1208 NMAC - Rn, 19 NMAC 10.2.12.1208, 05-15-2001; A, 10-15-03]

**NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

**TITLE 3: TAXATION  
CHAPTER 3: PERSONAL INCOME TAXES  
PART 5: OIL AND GAS PROCEEDS WITHHOLDING**

3.3.5.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.3.5.1 NMAC - N, 10/15/03]

3.3.5.2 **SCOPE:** This part applies to all remitters of oil and gas proceeds from New Mexico wells.

[3.3.5.2 NMAC - N, 10/15/03]

3.3.5.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.

[3.3.5.3 NMAC - N, 10/15/03]

3.3.5.4 **DURATION:** Permanent.

[3.3.5.4 NMAC - N, 10/15/03]

3.3.5.5 **EFFECTIVE DATE:** 10/15/03, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.3.5.5 NMAC - N, 10/15/03]

3.3.5.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Oil and Gas Proceeds Withholding Tax Act.

[3.3.5.6 NMAC - N, 10/15/03]

3.3.5.7 **DEFINITIONS:** For

the purposes of Section 3.3.5.7 NMAC: "Gross amounts" subject to withholding includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, non-employee compensation.

[3.3.5.7 NMAC - N, 10/15/03]

**3.3.5.8 EFFECTIVE DATE OF OIL AND GAS PROCEEDS WITHHOLDING REQUIREMENTS:**

The withholding requirements imposed by Section 7-3A-3 NMSA 1978 apply to payments made on or after October 1, 2003, regardless of production date.

[3.3.5.8 NMAC - N, 10/15/03]

**3.3.5.9 OIL AND GAS PROCEEDS**

A. The following are not oil and gas proceeds for the purposes of the Oil and Gas Proceeds Withholding Tax Act and are not subject to the withholding tax imposed by that Act, when payment is not offset against a share of future production: advance royalty payments, bonus payments, minimum royalty payments, shut-in payments and rental payments.

B. If the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to "oil and gas production from any well located in New Mexico" may be derived through the allocation methodology set out in the agreement.

C. If the amount received by the remitter has had severance taxes or other expenses deducted prior to the time the remitter receives it, then the remitter shall be required to withhold only from the amount it received.

[3.3.5.9 NMAC - N, 10/15/03]

**3.3.5.10 WITHHOLDING RATES:**

For periods beginning on or after January 1, 2005, the rate of withholding shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

[3.3.5.10 NMAC - N, 10/15/03]

**3.3.5.11 WITHHOLDING MINIMUMS:**

No withholding is required if the amount withheld from any payment to a remitee is less than ten dollars (\$10.00), but the remitter may withhold from such payment without creating a right of action by the remitee against the remitter.

[3.3.5.11 NMAC - N, 10/15/03]

3.3.5.12 **REMITTEES WITH A NEW MEXICO ADDRESS:** A remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a remittee's with a New Mexico address. The relevant address for purposes of Section 7-3A-3 NMSA 1978 is the remittee address to which federal Form 1099-MISC is mailed or otherwise transmitted, or the address that is shown on federal form W-9 or similar form. If federal law does not require the remitter to mail a federal Form 1099-MISC to the remittee, and the remitter has not received a federal form W-9 or similar form, the relevant address is the address to which the oil and gas proceeds are mailed or otherwise transmitted.  
[3.3.5.12 NMAC - N, 10/15/03]

3.3.5.13 **REMITTEES WHO ARE 501(C)(3) ORGANIZATIONS:** A remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a remittee granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended. Acceptable proof that a remittee is a 501(c)(3) organization includes a copy of the remittee's federal Form W-9, or a copy of the determination letter from the Internal Revenue Service granting the remittee 501(c)(3) status.  
[3.3.5.13 NMAC - N, 10/15/03]

3.3.5.14 **"REASONABLE CAUSE" FOR NOT WITHHOLDING:** "Reasonable cause" for not withholding includes, but is not limited to:

A. written notification from a remittee that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners;

C. reliance on a New Mexico address supplied by the remittee. The remitter may rely on a New Mexico address supplied by the remittee for up to thirty days after receiving written notice from the remittee of a change in address to an address outside New Mexico; and

D. receipt of written agreement from remittee that the remittee will report and pay tax on amounts remitted. The

agreement must be in a form prescribed by the department. It must be in the remitter's possession at the time it files its annual statement of withholding. The remittee may choose that the agreement remain in effect for a single taxable year, multiple taxable years, or an indefinite term subject to the remittee's revocation.  
[3.3.5.14 NMAC - N, 10/15/03]

### 3.3.5.15 **STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS**

A. Each remitter shall:

(1) provide a federal Form 1099-MISC to each remittee on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the remittee and the state tax withheld;

(2) file an "Annual Summary of Oil and Gas Proceeds Withholding Tax" information return with the department on or before the last day of February of the year following the year for which the statement is made; and

(3) attach to the "Annual Summary of Oil and Gas Proceeds Withholding Tax" information return copies of federal Form 1099-MISC for each remittee of oil and gas proceeds from whom withholding was required. Remitters who submit federal Form 1099-MISC information returns by magnetic media or electronic transfer using the combined federal/state program, with the records coded to be forwarded to New Mexico, are not required to submit paper copies of federal Form 1099-MISC with the annual summary.

B. Remitters who are not required by federal law to file a federal Form 1099-MISC but have a withholding tax obligation pursuant to the Oil and Gas Proceeds Withholding Tax Act must provide New Mexico an "Annual Statement of Withholding of Oil and Gas Proceeds," a pro forma federal form 1099-MISC, or a form containing equivalent information, to each remittee and file a copy with the department to satisfy the filing requirements of the Oil and Gas Proceeds Withholding Tax Act.  
[3.3.5.15 NMAC - N, 10/15/03]

History of 3.3.5 NMAC [Reserved]

## **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

This is an amendment to Section 3.2.212.21 NMAC.

### 3.2.212.21 **GOVERNMENT CREDIT OR PROCUREMENT CARD**

### **PURCHASES:**

A. Receipts from sales of tangible personal property to an agency of the United States government or the state of New Mexico are deductible from the gross receipts of the seller when paid for by a credit or procurement card issued to the United States government or the state of New Mexico. Through November 29, 1998, credit or procurement cards bearing the legends "U S GOVT TAX EXEMPT" and "I.M.P.A.C." are such credit or procurement cards issued to the United States government. On and after November 30, 1998, credit or procurement cards bearing the ~~legend~~ legends "United States of America" and "Tax Exempt I.D. 140001849" are such credit or procurement cards issued to the United States government. On or after June 30, 2003, credit or procurement cards bearing the legend "state of New Mexico" and the state seal are such credit or procurement cards issued to the state of New Mexico.

B. Receipts from ~~any~~ credit or procurement card sales of construction materials or services or receipts from credit or procurement card payments of leases of tangible property are not deductible. Receipts from credit or procurement card sales to employees or representatives of the federal government or the state of New Mexico using a credit or procurement card ~~not~~ other than a card issued to the United States government or the state of New Mexico are not deductible from gross receipts under Section 7-9-54 NMSA 1978.  
[10/24/89, 11/26/90, 11/15/96, 3/31/99; 3.2.212.21 NMAC - Rn & A, 3 NMAC 2.54.21, 5/31/01; A, 10/15/03]

## **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

This is an amendment to Part 3.3.20 NMAC adding a new section.

**3.3.20.9 INFORMATION RETURNS; OIL AND GAS WITHHOLDING:** For annual statements of withholding and information returns to be filed by remitters of oil and gas proceeds see Sections 3.3.5.7 through 3.3.5.15 NMAC promulgated under Section 7-3A-7 NMSA 1978.  
[3.3.20.9 NMAC - N, 10/15/03]

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

**TITLE 11 LABOR AND WORKERS' COMPENSATION  
CHAPTER 4 WORKERS' COM-**

**PENSATION****PART 12 UNINSURED EMPLOYERS' FUND****11.4.12.1 ISSUING AGENCY:**

New Mexico Workers' Compensation Administration  
[11.4.12.1 NMAC - N, 10/15/03]

**11.4.12.2 SCOPE:**

This rule applies to all insurers issuing workers' compensation coverage in the state of New Mexico, all individual self-insured employers, pools of governmental entities, and self-insured groups issuing workers' compensation coverage in the state of New Mexico who are required to pay assessments into the uninsured employers' fund (fund) and all employers in the state of New Mexico who are subject to the Workers' Compensation Act and Occupational Disease and Disablement Law who are required to reimburse the fund.  
[11.4.12.2 NMAC - N, 10/15/03]

**11.4.12.3 STATUTORY**

**AUTHORITY:** Chapter 258, Laws of 2003 and NMSA 1978, Section 52-5-4, authorizes the director to adopt reasonable rules and regulations for effecting the purposes of the Act.  
[11.4.12.3 NMAC - N, 10/15/03]

**11.4.12.4 DURATION :**

Permanent  
[11.4.12.4 NMAC - N, 10/15/03]

**11.4.12.5 EFFECTIVE DATE:**

October 15, 2003  
[11.4.12.5 NMAC - N, 10/15/03]

**11.4.12.6 OBJECTIVE:**

The purpose of this rule is to establish requirements governing the uninsured employers' fund and establishing penalties against uninsured employers pursuant to Chapter 258, Laws of 2003.  
[11.4.12.6 NMAC - N, 10/15/03]

**11.4.12.7 DEFINITIONS:**

A. "Claim" means any allegation of entitlement to benefits under Chapter 258, Laws of 2003, which has been communicated to the uninsured employer's fund or to the fund through the workers' compensation administration.

B. "Eligible" and "eligibility" mean that the claim is properly subject to payment by the fund to the extent that the claim is compensable. The compensability determination is independent of the eligibility determination.

C. "Fund" means the uninsured employers' fund established by Chapter 258, Laws of 2003 as administered by the workers' compensation administra-

tion.

D. "Fund administrator" means a designee of the director charged with administering the fund and implementing the provisions of this rule.

E. "Paid losses" are defined as the sum of medical and indemnity payments, exclusive of attorney fees, allocated and unallocated loss adjusting expense, paid during the quarter, for injuries incurred after July 1, 2003, less recoveries by insurers, self insurers, self insured groups or self insured pools of governmental entities under subrogation rights. Payments made by an employer or subject to reimbursement pursuant to a policy deductible or self insured retention shall be included in paid losses.

F. "TRD" means the New Mexico taxation and revenue department.  
[11.4.12.7 NMAC - N, 10/15/03]

**11.4.12.8 PROCEDURES FOR SUBMISSION OF CLAIMS:**

A. Claims may be submitted by any written request for payment addressed to the uninsured employers' fund that states the name, social security number and address of the injured worker, the name and address of the employer for whom the worker was working when the worker was injured or became ill and the date of injury or onset of occupational illness.

(1) If a complaint for benefits is submitted to the clerk and names the fund as a party, the clerk will not accept such complaints for filing or assign the complaint for mediation until an eligibility determination is made and is final, notwithstanding the provisions of any other rule.

(2) The clerk is authorized and directed to transfer any complaint naming the fund to the fund administrator for eligibility determination. The clerk shall date stamp the complaint upon receipt. No further proceedings on the complaint shall take place, until the eligibility determination is made and is final, notwithstanding the provisions of any other rule.

(3) The date of presentation to the fund shall be deemed to be the earliest date shown on the claim or complaint by an official WCA date stamp.

(4) If a claim is presented to the fund administrator prior to the running of the statute of limitations, the date of presentation shall toll the statute of limitations for purposes of filing against the fund.

B. All claims naming the fund as a party shall be submitted to the fund administrator for an eligibility determination.

(1) Only those claims for injuries or illnesses that arose from accidents or exposures occurring on or after June 22, 2003, shall be eligible to make claims

against the fund.

(2) Only claims that would have been subject to the terms of the Workers' Compensation Act or occupational disease disablement law at the time of the injury or exposure shall be eligible to make claims against the fund.

(3) Only claims by workers employed by those employers who, despite the obligation to do so, were not insured pursuant to the Workers' Compensation Act shall be eligible to make claims against the fund.

(4) A worker shall not be eligible to make a claim against the fund if the worker has filed a valid election pursuant to Section 52-1-7 NMSA 1978.

(5) No claim that is eligible for payment by an insurer's guaranty fund, a self-insurer's guaranty fund, or pursuant to the joint and several liability provisions contained in the by-laws or other authorizing documents of a certified group self-insurer shall be eligible to make claims against the fund unless that source of payments is demonstrated by the worker to be insolvent and unable to assume the claim.

(6) A district court determination that the employer of a worker making the claim was not insured at the time of the worker's injury or occupational illness shall be conclusive with respect to the issue of insurance coverage only. In such cases, all other eligibility issues are reserved for the fund.

C. The fund shall notify the parties of the eligibility determination in writing, via certified mail, return receipt requested, at the addresses shown on the claim within fifteen (15) working days of receipt of the notification of the claim against the fund as determined by the earliest date stamp appearing on the face of the claim. If the claim is not eligible, the notice shall inform the worker why the claim is not eligible.

(1) Failure to claim the notice of denial from the post office shall not operate to toll the time limits set herein.

(2) Failure to claim the notice will be treated as actual delivery for purposes of further proceedings upon return of the notice to the WCA by the post office.

D. If a party wants a review of the eligibility determination, a request for review shall be filed with the clerk within thirty (30) days from the date of actual or constructive receipt of the eligibility determination. The request for review shall contain all the information required in rule 11.4.12.8 NMAC and shall specify the reason or reasons that he or she does not agree with the eligibility determination.

(1) The director or his designee shall conduct such hearing without undue

delay.

(a) The director or his designee shall hold a hearing on any request for review of an eligibility determination.

(b) At any hearing on eligibility, the claimant shall have the burden of proving that the claim arose under the Workers' Compensation Act or Occupational Disease Disablement Law and that the employer was uninsured.

(c) At any hearing on eligibility, the records of the WCA shall be rebuttably presumed to establish the insurance status of the employer as of the date of injury.

(d) At any hearing on eligibility the rules of evidence shall be relaxed to the extent necessary to achieve substantial justice.

(e) With respect to any hearing on eligibility, no pre-hearing discovery or motions practice shall be permitted without specific authorization from the director or his designee.

(f) Telephonic and video conferencing appearances shall be permitted, to the extent permitted by law, to facilitate the appearance of the parties.

(2) The director or his designee shall issue an order within 15 working days of the hearing, which order shall be transmitted to the parties via first class US mail at their last known address.

(3) If a party is still aggrieved by the decision of the director or his designee, he or she may file a writ of certiorari to the district court to appeal the decision.

E. After the determination of eligibility is made, if either party wishes to resume resolution of the dispute brought in the complaint, that party shall file a request to resume dispute resolution with the clerk.

F. If a mediator or WCJ determines that it is more likely than not that a complaint before them presents a claim that is eligible for payment by the uninsured employers' fund, the mediator or WCJ shall amend the caption of the complaint to name the fund as a party. Any complaint amended pursuant to this provision shall be forthwith returned to the WCA clerk for further processing pursuant to the provisions of this rule, notwithstanding the provisions of any other rule.

[11.4.12.8 NMAC – N, 10/15/03]

#### 11.4.12.9 CLAIMS ADMINISTRATION:

A. The WCA may contract with a claims administrator or third party administrator for the adjusting of those claims that are determined to be eligible for payment by the fund, purchase a loss portfolio transfer covering some or all of the liabilities of the fund, or may purchase a policy of commercial insurance to cover the lia-

bilities of the fund upon a finding by the director that such purchases are in the best interests of the workers eligible to receive benefits from the fund and the entities paying assessment to support the fund.

(1) The claims administrator, third party administrator or insurer shall pay, or oppose, claims on their merits, and shall be treated for purposes of mediation and adjudication of disputes as a party with all rights and responsibilities applicable under law.

(2) The claims administrator, third party administrator or insurer may engage counsel for representation when necessary.

B. With respect to any complaint filed with the WCA arising from a dispute about the provision of any benefit due on any claim eligible for payment by the fund, the fund and the employer at the time of injury or last injurious exposure shall be named as parties.

C. The claims administrator, third party administrator or insurer shall regularly report to the WCA on expenditures made to and on behalf of workers from the fund.

(1) The claims administrator, third party administrator or insurer shall file the first report of injury or illness (E1.2) with the WCA within 10 days of the eligibility determination and provide a copy of the E1.2 to the worker.

(2) The claims administrator, third party administrator or insurer shall file all payment reports required by law.

(3) The claims administrator, third party administrator or insurer shall maintain records sufficient to allow the WCA director or his designee to audit the administration of claims and shall provide those records upon request to the WCA. The claims administrator, third party administrator or insurer shall be subject to audit by the WCA or its contractor with respect to the administration of claims against the fund.

(4) The claims administrator, third party administrator or insurer shall actively support the WCA in its efforts provide information to the public concerning the fund and to prosecute penalty collection proceedings against an uninsured employer pursuant to this rule.

D. Lump sum payments.

(1) All requests for lump sum payments shall be set for hearing.

(2) The director's office shall be noticed and treated as a party for all lump sum petitions involving payments from the fund.

E. The fund shall have the right to subrogation that would otherwise be available to the payer.

(1) The claims administrator,

third party administrator or insurer shall pursue subrogation rights on behalf of the fund.

(2) The claims administrator, third party administrator or insurer shall be entitled to retain reimbursement for reasonable legal fees and expenses plus 10% of the sum recovered in subrogation net of legal fees and expenses. The remainder of the subrogation recovery shall be paid to the fund.

F. The fund shall be liable only for those benefits that are due under the Workers' Compensation Act or Occupational Disease Disablement Law.

(1) The fund shall be entitled to the protections of the exclusive remedy provisions of the Workers' Compensation Act or Occupational Disease Disablement Law to the same extent it would if it were the insured employer of any worker who is eligible for benefits against the fund.

(2) The fund shall not be subject to claims for payments of a judgment obtained in a third party lawsuit, nor for payment of a judgment obtained in a tort action against an uninsured employer.

G. Duplicate recovery of workers' compensation benefits is strictly prohibited.

(1) The fund shall immediately cease payments to or on behalf of any worker who is receiving workers' compensation payments from another source for the same injury and arising out of the same accident.

(2) The fund shall have the right of first reimbursement for workers' compensation benefit payments made that duplicate any payments received by the injured worker from another source and may offset subsequent payments, institute collection proceedings, request criminal investigation or seek any other lawful remedy to recover duplicate payments of workers' compensation benefits.

H. Payments under the fund shall not constitute payments by the employer for purposes of the exclusive remedy provisions of the Act. The fund shall be entitled to assert all defenses and subrogation rights that would be available to an insured employer.

[11.4.12.9 NMAC – N, 10/15/03]

#### 11.4.12.10 PENALTIES COLLECTED FROM UNINSURED EMPLOYERS:

If the fund determines that an employer was obligated to pay workers' compensation benefits to or on behalf of a worker and has not done so due to its failure to obtain and keep in force a policy of workers' compensation insurance that is valid pursuant to the Workers' Compensation Act, the WCA director or his designee shall seek a penalty from the employer of not less than 115% and not more than 150% of all bene-

fits paid to or on behalf of the worker. The determination of the appropriate percentage of penalty imposed shall be treated as a statutorily authorized discretionary act by a state agency, for purposes of judicial review. This penalty is separate from, and in addition, to any penalty or remedy sought against an uninsured employer pursuant to NMSA 1978, Sections 52-1-61 or 52-1-62 for failure to have insurance when required to do so. This penalty is intended to protect the health, safety and welfare of the citizens of the state of New Mexico and shall be considered a governmental penalty for purposes of the dischargeability provisions of the federal bankruptcy code.

A. The WCA may use any legal process for collecting the penalty, including, but not limited to, reduction of the penalty to judgment in district court, seeking and obtaining writs of garnishment and execution, contempt citations or any other legal process in aid of collection and participating as a party in any bankruptcy action, including filing an involuntary petition in federal bankruptcy court to liquidate personal or business assets for the purpose of enforcing the penalty.

B. For the purposes of these actions, the WCA shall, at all times act pursuant to the commissions of its personnel as special assistant attorneys general. All proceedings before the WCA director for enforcement of the provisions of this section shall be conducted in accordance with 11 NMAC 4.5.

C. The fund may seek reimbursement of the costs of any legal action instituted in a proceeding to determine or collect a penalty pursuant to this subsection, but shall not seek reimbursement of legal fees, provided that the fund may collect reasonable attorneys fees to offset the fees incurred by the retention of outside counsel to collect any penalty.  
[11.4.12.10 NMAC – N, 10/15/03]

**11.4.12.11 ASSESSMENTS:**

A. The fiscal year of the fund coincides with the fiscal year of the state.

B. Reporting of paid losses and payment of assessments based on those paid losses is due on or before the end of the month following each calendar quarter, commencing July 1, 2003, on a form provided for that purpose by the New Mexico taxation and revenue department ("TRD"). All reports and payments shall be delivered directly to TRD.

(1) An insurer has the sole responsibility to report paid losses and pay assessments for all of its policy holders.

(2) A group self-insurer has the sole responsibility to report paid losses and pay assessments for all its members.

(3) An individual self-insurer has the sole responsibility to report its paid losses and pay assessments for it, provided that if the individual self-insurer is a governmental entity, the obligation to pay the assessment shall exist only to the extent permitted by law.

(4) A pool of governmental entities has the sole responsibility to report its paid losses and pay assessments for all members of the pool, provided that the obligation to pay the assessment shall exist only to the extent permitted by law.

C. An assessment payer shall have the right, to the extent permitted by law, to flow assessments through to their policy holders or to the members of their groups.

D. Assessments for group self-insurers may be considered administrative expenses and not claims expenses.

E. Group self-insurers may seek a waiver, on a year-to-year basis, of the percentage allocation of administrative to claims expense, to the extent such allocation is affected by the assessment. The waivers shall be considered upon a showing of need until July 1, 2009. Thereafter, such waiver requests will be discouraged and strictly scrutinized.

F. Reporting of paid losses is required, even if no losses were paid during the quarter.

G. On or before June 1, 2004, and the first day of June of each succeeding year the director shall issue an order that publicly announces the percentage to be applied to paid losses that will form the basis of the assessment for the next calendar year. The order shall be accompanied by an explanation of the rationale and supporting claims and income information used for the determination of the percentage.

(1) In the absence of such an announcement the rate established for the prior year shall remain in force.

(2) The director shall set the rate at the lowest rate that provides sufficient funds to cover all known and anticipated claims and expenses payable by the fund during the next 12 months, taking into account the residual fund balance and liabilities at the time of the determination up to the amount set by law.

(3) The director may contract with an actuary for determination of the assessment necessary to insure fiscal solvency of the fund and pay the expense of the actuarial study from the corpus of the fund.

H. Penalties, pursuant to NMSA 1978, Section 52-1-61 for non-reporting, incorrect reporting or non-payment of assessments due shall accrue on a monthly basis, with each month of noncom-

pliance constituting a separate offense.

(1) Penalties pursuant to this provision shall be in addition to any penalties imposed by the New Mexico department of insurance or the New Mexico taxation and revenue department.

(2) The director may seek any remedy available under law for enforcement of penalties imposed pursuant to this provision.

(3) The respondent shall pay costs incurred to enforce penalties.

[11.4.12.11 NMAC – N, 10/15/03]

**11.4.12.12 MISCELLANEOUS PROVISIONS**

A. The fund may purchase excess insurance from the fund corpus if, in the judgment of the director, it is fiscally prudent to do so.

B. Auditing of the fund by the superintendent of insurance shall occur yearly, commencing thirty (30) days after the close of the fund's fiscal year.

(1) The final report of the audit of the fund (after an opportunity to contest and respond to findings made by the auditor) shall be treated as a public document.

(2) In the event of any audit exceptions in the final report of the audit, the fund will issue a public statement of corrective actions that it will implement to prevent future exceptions.

(3) The fund shall comply with all requirements for the reporting of losses and claims expenditures for statistical purposes that would apply to a self-insured employer.  
[11.4.12.12 NMAC – N, 10/15/03]

HISTORY OF 11.4.12 NMAC:  
[RESERVED].

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**End of Adopted Rules Section**

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**Other Material Related to Administrative Law**

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**NEW MEXICO  
COMMISSION OF  
PUBLIC RECORDS  
HISTORICAL RECORDS  
ADVISORY BOARD****NOTICE OF REGULAR MEETING**

The New Mexico Historical Records Advisory Board will meet on Monday October 27, 2003 at 9:00 A.M. The meeting will be held at the New Mexico State Records Center and Archive in Santa Fe, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Darlene Torres at the New Mexico State Records Center and Archives by October 23, 2003. Public documents, the agenda, and minutes can be provided in various accessible formats. Please contact Darlene Torres at the State Records Center and Archives, 476-7956, if a summary or other type of accessible format is needed. A copy of the proposed agenda may be obtained at the State Records Center and Archives' website at <http://www.nmcpr.state.nm.us/>, or onsite at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

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**End of Other Related  
Material Section**

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**SUBMITTAL DEADLINES AND PUBLICATION DATES****2003**

<b>Volume XIV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

**2004**

<b>Volume XV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
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Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.