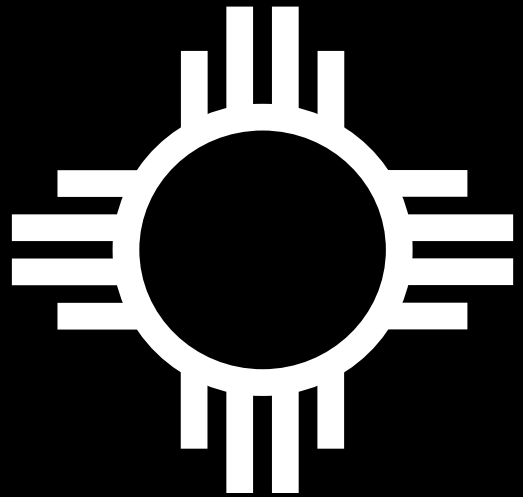


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REGISTER**

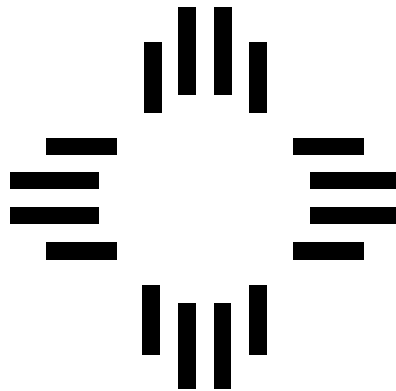


Volume XIV  
Issue Number 21  
November 13, 2003



# **New Mexico Register**

**Volume XIV, Issue Number 21**  
**November 13, 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 21

November 13, 2003

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

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

## Notices of Rulemaking and Proposed Rules

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

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

**NOTICE OF CANCELLATION OF  
PUBLIC HEARING**

The public hearing at the  
New Mexico Museum of Natural History  
and Science  
A Division of the Department of Cultural  
Affairs  
State of New Mexico

that had been scheduled in the  
MUSEUM CONFERENCE ROOM  
1801 Mountain Road NW  
Albuquerque, New Mexico 87104  
(505) 841-2823

**on 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  
**has been cancelled.**

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION**

**New Mexico Department of Finance and  
Administration  
Notice of Hearing and Proposed  
Amendments to Rule 2.42.2 NMAC  
The Regulations Governing the Per Diem  
and Mileage Act**

The Department of Finance and  
Administration (DFA) hereby gives notice  
that DFA will conduct a public hearing at  
Mabry Hall, Department of Education  
Building, 300 Don Gaspar Ave., Santa Fe,  
New Mexico, 87501, on December 16,  
2003 at 10:30 a.m. concerning the proposed  
amendments to Rule 2.42.2 NMAC, the  
Regulations Governing the Per Diem and  
Mileage Act. The amendments are con-

tained in Sections 8 and 9 and increase the  
per diem rates for in-state and out-of-state  
travel, increase the partial day per diem  
rates, delete out-of-state special areas and  
increase the reimbursement of actual  
expenses for meals in accordance with the  
amendments to the Per Diem and Mileage  
Act, Sections 10-8-1 through 10-8-8 NMSA  
1978, effective July 1, 2003. Except for  
these amendments, Rule 2.42.2 NMAC  
remains unchanged. Interested individuals  
may testify at the public hearing or submit  
written comments no later than 5:00 p.m.,  
December 11, 2003, to the Office of the  
Secretary, DFA, Bataan Memorial Building,  
Room 180, Santa Fe, New Mexico, 87501.  
All written and oral testimony will be con-  
sidered prior to adoption of the amend-  
ments. Copies of the text of the proposed  
rules are available from Ms. Sharon Rivera,  
Room 180, Bataan Memorial Building,  
Santa Fe, New Mexico, 87504 or at 505-  
827-4985 or from the DFA internet website  
[http://www.state.nm.us/clients/dfa/DFASE  
cr.htm](http://www.state.nm.us/clients/dfa/DFASEcr.htm). If you are an individual with a dis-  
ability who needs auxiliary aid or service in  
order to attend or participate in the hearing,  
please contact Ms. Sharon Rivera, DFA at  
505-827-4985 or writing to the above  
address or through the New Mexico Relay  
Network, 1-800-659-1779. DFA requests at  
least 10 days advance notice to provide  
requested alternative formats and special  
accommodations.

**2.42.2.8 PER DIEM RATES  
PRORATION:**

A. **Applicability:** Per  
diem rates shall be paid to public officers  
and employees only in accordance with the  
provisions of this section. Per diem rates  
shall be paid without regard to whether  
expenses are actually incurred. Where  
lodging and/or meals are provided or paid  
for by the agency, the governing body, or  
another entity, the public officer or employ-  
ee is entitled to reimbursement only for  
actual expenses under 2.42.2.9 NMAC.

B. **Per diem rate compu-  
tation:** Except as provided in Subsections  
C through I of this Section, per diem rates  
for travel by public officers and employees  
shall be computed as follows:

(1) **Partial day per diem rate:**  
Public officers or employees who occasion-  
ally and irregularly travel shall be reim-  
bursed for travel which does not require  
overnight lodging, but extends beyond a  
normal work day as follows:

(a) for less than 2 hours of travel  
beyond normal work day, none;

(b) for 2 hours, but less than 6  
hours beyond the normal work day, [~~\$8.00~~]  
\$12.00;

(c) for 6 six hours, but less than  
12 hours beyond the normal work day,  
[~~\$16.00~~] 20.00;

(d) for 12 hours or more beyond  
the normal work day, [~~\$22.50~~] \$30.00;

(e) "Occasionally and irregularly"  
means not on a regular basis and infre-  
quently as determined by the agency. For  
example, an employee is not entitled to per  
diem rates under this subparagraph if the  
employee either travels once a week or trav-  
els every fourth Thursday of the month.  
However, the employee is entitled to per  
diem rates under this subparagraph if the  
employee either travels once a month with  
irregular destinations and at irregular times  
or travels four times in one month and then  
does not travel again in the next two  
months, so long as this is not a regular pat-  
tern.

(f) "Normal work day" means 8  
hours within a nine-hour period for all pub-  
lic officers and employees both salaried and  
nonsalaried, regardless of the officers' or  
employees' regular work schedule.

(2) **Overnight travel:**  
Regardless of the number of hours traveled,  
travel for public officers and employees  
where overnight lodging is required shall be  
reimbursed as follows:

(a) in state areas [~~\$65.00~~]  
\$85.00

(b) in state special areas [~~\$75.00~~]  
\$135.00

(c) out of state areas [~~\$75.00~~]  
\$115.00

[~~(d) out of state special areas~~]  
\$95.00;

(e) (d) or actual lodging and  
meal expenses under 2.42.2.9 NMAC.

(3) **Return from overnight trav-  
el:** On the last day of travel when overnight  
lodging is no longer required, partial day  
reimbursement shall be made. To calculate  
the number of hours in the partial day, begin  
with the time the traveler initially departed.  
Divide the number of hours traveled by 24.  
The hours remaining constitute the partial  
day which shall be reimbursed as follows:

(a) for less than 2 hours, none;

(b) for 2 hours, but less than 6  
hours, [~~\$8.00~~] \$12.00;

(c) for 6 hours or more, but less  
than 12 hours, [~~\$16.00~~] \$20.00;

(d) for 12 hours or more, [~~\$22.50~~]  
\$30.00.

(4) **Special area designations:**  
For all officers and employees, the in state  
special area shall be Santa Fe. [~~The out of  
state special areas shall be the areas of New  
York City, Washington, D.C., Chicago, Los  
Angeles, San Francisco, Palm Springs, San  
Diego, Atlanta, Boston, Las Vegas, Atlantic  
City, Philadelphia and Dallas/Fort Worth~~]

~~designated as metropolitan by the most recent edition of the Rand McNally road atlas, and areas outside of the continental United States including Alaska and Hawaii.]~~

**C. Board, commission and committee members:** Nonsalaried public officers may receive per diem as follows:

(1) **Official board, commission and committee meetings:**

(a) **State nonsalaried public officers:** Nonsalaried public officers of the state may elect to receive either:

(i) [~~\$75.00~~] \$95.00 per meeting day for attending each board or committee meeting; or

(ii) per diem rates in accordance with Subsection B of this Section.

(b) **Local nonsalaried public officers:** Nonsalaried public officers of local public bodies may elect to receive either:

(i) [~~\$75.00~~] \$95.00 per meeting day for attending each board or committee meeting day; or

(ii) per diem rates in accordance with subsection B of this Section provided that the local governing body has not established a lesser rate.

(c) **Municipal nonsalaried public officers:** Nonsalaried public officers of municipalities may elect to receive either:

(i) [~~\$75.00~~] \$95.00 per meeting day for attending each board or committee meeting; or

(ii) per diem rates in accordance with Subsection B of this Section, provided that the board or commission meeting is held outside of the municipal boundaries.

(2) **Other official meetings:** Nonsalaried public officers may receive per diem rates for travel on official business that does not constitute a board, advisory board, committee or commission meeting only in accordance with Subsection B of this Section.

(3) **Members serving in dual capacities:** Nonsalaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, nonsalaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem rates by employees or officers of local public bodies who also serve on boards or

commissions subject to this rule.

**D. Temporary assignment:** Public officers and employees may be reassigned temporarily to another duty station.

(1) **Routine reassignment:** Public officers and employees subject to periodic reassignment of duty stations or districts as a normal requirement of their employment will not be eligible for per diem rates after the time of arrival at the new duty station or district.

(2) **Nonroutine reassignment:** Public officers or employees not normally subject to periodic reassignments who are temporarily assigned to another office of a state agency away from home will receive per diem for the first 30 calendar days of their assignment only, unless approval of the secretary is given to extend per diem payments upon showing that the assignment is necessary and temporary. Except in such extraordinary circumstances, after 30 calendar days, the place where the employee or officer is assigned will be regarded as the designated post of duty.

**E. State highway and transportation department:** The state highway and transportation department may adopt special policies pertaining to payment of per diem rates for temporary assignments. Such policies shall be subject to the annual approval of the secretary.

**F. Department of public safety:** The department of public safety may adopt special policies pertaining to payment of per diem rates, mileage and subsistence allowances authorized by law for commissioned officers. Such policies shall be subject to the annual approval of the secretary.

**G. Travel for educational purposes:** A public officer or employee shall not be reimbursed for more than 30 calendar days of per diem in any fiscal year for attending educational or training programs unless approval has been obtained from the secretary.

**H. Per diem in conjunction with other leave:** While traveling, if a public officer or employee takes sick, annual or authorized leave without pay for more than four hours of the normal work day, per diem shall not be allowed for that day unless authorized in writing by the agency head.

**I. Illness or emergency:** Agency heads may grant permission, in writing, to pay per diem rates and travel reimbursement to an employee or public officer who becomes ill or is notified of a family emergency while traveling on official business and must either remain away from home or discontinue the official business to return home.

[2.42.2.8 NMAC - Rn, DFA Rule 95-1,

Section 3, 07/01/03; A. 01/01/04]

#### 2.42.2.9 REIMBURSEMENT OF ACTUAL EXPENSES IN LIEU OF PER DIEM RATES:

**A. Applicability:** Upon written request of a public officer or an employee, agency heads may grant written approval for a public officer or employee of that agency or local public body to be reimbursed actual expenses in lieu of the per diem rate where overnight travel is required.

**B. Overnight travel:** For overnight travel for state officers and employees where overnight lodging is required, the public officer or employee will be reimbursed as follows:

(1) **Actual reimbursement for lodging:** A public officer or an employee may elect to be reimbursed actual expenses for lodging not exceeding the single occupancy room charge (including tax) in lieu of the per diem rate set forth in this Section. Whenever possible, public officers and employees should stay in hotels which offer government rates. Agencies, public officers or employees who incur lodging expenses in excess of [~~\$200~~] \$215.00 per night must obtain the signature of the agency head or chairperson of the governing board on the travel voucher prior to requesting reimbursement and on the encumbering document at the time of encumbering the expenditure.

(2) **Actual reimbursement for meals:** Actual expenses for meals are limited by Section 10-8-4(K)(2) NMSA 1978 (1995 Repl. Pamp.) to a maximum of [~~\$22.50~~] \$30.00 for in-state travel and \$45.00 for out-of state travel for a 24-hour period.

(3) **Receipts required:** The public officer or employee must submit receipts for the actual meal and lodging expenses incurred. Under circumstances where the loss of receipts would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board. See Appendix B for a sample affidavit.

**C. Return from overnight travel:** On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. To calculate the number of hours in the partial day, begin with the time the traveler initially departed on the travel. Divide the total number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as follows:

- (1) for less than 2 hours, none;
- (2) for 2 hours but less than 6



hours, [~~\$8.00~~] \$12.00;

(3) for 6 hours or more, but less than 12 hours, [~~\$16.00~~] \$20.00;

(4) for 12 hours or more, [~~\$22.50~~] \$30.00;

(5) no reimbursement for actual expenses will be granted in lieu of partial day per diem rates.

[2.42.2.9 NMAC - Rn, DFA Rule 95-1, Section 4, 07/01/03; A, 01/01/04]

James C. Jimenez  
Cabinet Secretary

**NEW MEXICO  
DEPARTMENT OF HEALTH**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health will hold a public hearing on 7.29.2 NMAC "Primary and Rural Health Care Services, New Mexico Health Service Corps". The hearing will be held at 2:00 p.m. on December 15, 2003, in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

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

A draft of the proposed regulation can be obtained from:

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

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

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

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

accommodations.

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

**NOTICE**

The New Mexico Human Services Department (HSD) will hold a public hearing 9:30 a.m., on December 11, 2003, in the State Personnel building, First Floor, Room 103, at 2600 Cerrillos Road, Santa Fe, New Mexico. The subject of the hearing will be Indian Health Services.

Currently, the Medicaid program does not have written policy for the Indian Health Service (IHS). The Human Services Department has developed proposed regulations to communicate in writing Medicaid's policies regarding eligible providers, provider responsibilities, covered services and limitations, definition of an encounter, offsite services, and non-covered services relating specifically to IHS.

Interested persons may submit written comments no later than 5:00 p.m., December 11, 2003, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

**NEW MEXICO LIVESTOCK  
BOARD**

**NOTICE OF RULE MAKING  
HEARING AND REGULAR BOARD  
MEETING**

**NOTICE IS HEREBY GIVEN** that a

regular Board meeting will be held on Thursday December 4, 2003, at Hilton Hotel, 1901 University Blvd. N.E., Albuquerque New Mexico, at 9:00 a.m. The Board will cover matters of general business.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

**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,  
PRESCRIPTION DRUG  
INFORMATION CARDS DOCKET  
NO. 03-00400-IN**

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

The purpose of this hearing is to obtain input on a new rule, 13.10.18 NMAC, Prescription Drug Information Cards.

**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 a new rule, 13.10.18 NMAC, Prescription Drug Information Cards. The Superintendent requests written and oral comments from all interested persons and entities on the proposed rule.

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 contained 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 December 10, 2003, at 1:30 p.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 December 5, 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 prior to the hearing with the Docketing Office, Public Regulation Commission, 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](mailto: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 staff of the Superintendent of Insurance's Office shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*, both on or before November 13, 2003. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the 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](mailto: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 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, Sections 2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking 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 him 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 Ms. Ann Echols, on or before December 3, 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 30th day of October 2003.

NEW MEXICO PUBLIC REGULATION  
COMMISSION  
INSURANCE DIVISION

ERIC P. SERNA, Superintendent of  
Insurance

**NEW MEXICO  
DEPARTMENT OF  
PUBLIC SAFETY  
TRAINING AND RECRUITING  
DIVISION**  
Law Enforcement Academy

#### NOTICE NM LAW ENFORCEMENT ACADEMY WORK SESSION AND BOARD MEETING

The New Mexico Law Enforcement Academy Board will hold a Work Session on Thursday, December 4th, at 9:00 a.m., at the Roger A. Hoisington APD Training Academy located at 5412 Second St., Albuquerque, New Mexico, Classroom A. In conjunction with the Work Session the New Mexico Law Enforcement Academy will hold its next regular scheduled Board Meeting, followed by a Public Hearing regarding the following rules:

Public Safety Telecommunicator  
Administrative Rules (10.29.10 NMAC)

10.29.7.8 NMAC (2004-2005  
Training Cycle)

Copies of proposed plans, standards, requirements, or rules may be obtained by calling (505) 827-9210. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Major Ted Branch, (505) 827-9249, as soon as possible. Public documents can be provided in various accessible formats.

Please contact Major Ted Branch, if additional information is needed.

#### NEW MEXICO RACING COMMISSION

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

**NOTICE IS HEREBY GIVEN** that a rulemaking and public hearing will be held in the Salon III Room, Double Tree Hotel, 201 Marquette NW, Albuquerque, New Mexico, commencing in executive session at 8:00 o'clock a.m. on Tuesday, November 18, 2003. The public session will begin at 9:00 o'clock a.m. on Tuesday, November 18, 2003. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.2.9 NMAC (regarding gaming) and other matters of general business.

Copies of these proposed rules may be obtained from India Hatch, Agency

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

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

India Hatch  
Agency Director

Dated: October 30, 2003

**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 amendments to the following rules:

Title 14.5. Parts 1-5; Title 14.7. Parts 1-4; Chapter 8, Chapter 9, Chapter 10. In general, these amendments will address the adoption of new construction codes, will reorganize the affected rules and will make technical corrections respecting grammar, formatting and internal consistency

\* **Santa Fe, NM** – December 15, 2003, 9:00 a.m. – 12:00 Noon  
RLD Conference Room, 725 St. Michael's Drive

\* **Albuquerque, NM** – December 15, 2003, 9:00 a.m. – 12:00 Noon  
Bradbury and Stamm  
Construction Company Conference Room,  
3701 Paseo del Norte

\* **Las Cruces, NM** – December 15, 2003, 9:00 a.m. – 12:00 Noon  
CID Conference Room, 505 S. Main, Suite 150

\* **Farmington, NM** – December 16, 2003, 9:00 a.m. – 12:00 Noon  
Civic Center, 200 W. Arrington

\* **Roswell, NM** – December 16,

2003, 1:00 p.m. – 4:00 p.m.  
City Council Chambers, 425  
North Richardson

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 General Construction Bureau, Construction Industries Division, 725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 827-7030. FAX (505) 827-7045. All comments must be received no later than 5:00 p.m., December 17, 2003.

Copies of the draft rules will be available at the Construction Industries Division Offices beginning November 17, 2003.

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

**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION  
AVIATION DIVISION**

**STATE OF NEW MEXICO  
NEW MEXICO DEPARTMENT OF  
TRANSPORTATION  
AVIATION DIVISION  
NOTICE OF PUBLIC HEARING**

A Public Meeting to receive comments regarding the adoption of requirements for the salvage of abandoned aircraft will be held in Santa Fe, NM on December 17, 2003, 9:00 a.m. - 12:00 Noon at the offices of the Aviation Division, 1550 Pacheco Street.

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 NMDOT -Aviation Division, 1550 Pacheco Street, Santa Fe, New Mexico 87505. Telephone (505) 476-0930. FAX (505) 476-0942. All comments must be received no later than 5:00 p.m., December 16, 2003.

Copies of the draft regulations are available at the Aviation Division Offices.

**If you require special accommodations, please notify the Division of such needs no later than December 10, 2003.**

**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION  
AVIATION DIVISION**

**STATE OF NEW MEXICO  
NEW MEXICO DEPARTMENT OF  
TRANSPORTATION  
AVIATION DIVISION  
NOTICE OF PUBLIC HEARING**

A Public Meeting to receive comments regarding the adoption of regulations governing the approval of grants will be held in Santa Fe, NM on December 17, 2003, 2:00 p.m. to 4:00 p.m. at the offices of the Aviation Division, 1550 Pacheco Street.

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 NMDOT - Aviation Division, 1550 Pacheco Street, Santa Fe, New Mexico 87505. Telephone (505) 476-0930. FAX (505) 476-0942. All comments must be received no later than 5:00 p.m., December 16, 2003.

Copies of the draft regulations are available at the Aviation Division Offices.

**If you require special accommodations, please notify the Division of such needs no later than December 10, 2003.**

**End of Notices and  
Proposed Rules Section**

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## Adopted Rules and Regulations

### ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.1.5 NMAC. The U. S. Environmental Protection Agency requires that any regulations associated with the submission of the *Section 309 regional haze state implementation plan element: for Albuquerque / Bernalillo County, NM*, have an effective date of December 31, 2003. Therefore, in order to comply with federally imposed deadlines the language stipulating that all regulations become effective on 'the first day of the month' has been stricken.

**20.11.1.5 EFFECTIVE DATE:** The effective date of [~~this Part, or amendment to, and those following is the first day of the month after the Part or amendment has been filed with the State Records Center plus 30 days as required by the New Mexico Air Quality Control Act,~~] Part 1 is December 1, 1995, unless a later date is cited at the end of a section. The effective date of specific sections [~~are~~] is located at the end of each section within the historical brackets. As required by the New Mexico Air Quality Control Act, Chapter 74, Article 2, Section 6 NMSA 1978, no regulation or emission control requirement or amendment thereto, or repeal thereof, shall become effective until 30 days after its filing under the State Rules Act, Chapter 14, Article 4 NMSA 1978. [12/1/95. . . 8/1/96; 20.11.1.5 NMAC - Rn, 20 NMAC 11.01.1.5 & A, 10/1/02; A, 12/1/03]

### NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

The New Mexico Arts Division is repealing 4.12.1 NMAC (filed 7-12-00), named General Provisions and replacing with 4.12.1 NMAC named General Provisions, effective 11-13-03.

The New Mexico Arts Division is repealing the following parts effective 11-13-03: 4.12.3 NMAC named Application Process for Community Arts Development filed 7/12/2000, 4.12.4 NMAC named Application Process for Local Arts Councils filed 7/12/2000, 4.12.5 NMAC named Application Process for Arts Projects filed 7/12/2000, 4.12.6 NMAC named Application Process For Arts Education

Projects and Arts and Residencies filed 7/12/2000, 4.12.7 NMAC named Application Process for Traditional Folk Arts Projects filed 7/12/2000, 4.12.8 NMAC named Application Process for Partnerships/Arts Enterprise Projects filed 7/12/2000, 4.12.12 NMAC named Cultural Corridors: Public Art on Scenic Highways filed 4/17/2000, 4.12.13 NMAC named Application Process for Arts in Social Service filed 7/12/2000.

The New Mexico Arts Division is repealing 4.12.10 NMAC (filed 7-12-2000), named Application Process For Folk Arts Apprenticeship and replacing with 4.12.10 NMAC, Application Process For Folk Arts Apprenticeship, effective 11-13-03.

The New Mexico Arts Division is repealing 4.12.11 NMAC (filed 7-12-2000) named Art in Public Places Program and replacing with 4.12.11 NMAC named Art in Public Places Program, effective 11-13-03.

### NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

#### TITLE 4 C U L T U R A L RESOURCES CHAPTER 12 COMMUNITY ART RESOURCES PART 1 GENERAL PROVI- SIONS

**4.12.1.1 ISSUING AGENCY:** Department of Cultural Affairs, New Mexico Arts Division. [4.12.1.1 NMAC - Rp 4 12.1.1 NMAC, 11-13-2003]

**4.12.1.2 SCOPE:** Members of the public, artists, or organizations, public or private, who are interested in receiving funding administered by the New Mexico arts division, and members of the New Mexico arts commission. [4.12.1.2 NMAC - Rp 4 12.1.2 NMAC, 11-13-2003]

**4.12.1.3 S T A T U T O R Y AUTHORITY:** Sections 18-5-7(F) NMSA 1978 authorizes the director to make rules and regulations necessary to administer the division and carry out the state statutory duties of the division. [4.12.1.3 NMAC - Rp 4 12.1.3 NMAC, 11-13-2003]

**4.12.1.4 D U R A T I O N :** Permanent.

[4.12.1.4 NMAC - Rp 4 12.1.4 NMAC, 11-13-2003]

**4.12.1.5 EFFECTIVE DATE:** November 13, 2003, unless a later date is cited at the end of a section.

[4.12.1.5 NMAC - Rp 4 12.1.5 NMAC, 11-13-2003]

**4.12.1.6 OBJECTIVE:** The purpose of general provisions implementation regulations is to serve the public, employees, and the commission as a guide to the operations and policies of the New Mexico arts commission and New Mexico arts division and carry out of the purpose of the Arts Division Act.

[4.12.1.6 NMAC - Rp 4 12.1.6 NMAC, 11-13-2003]

**4.12.1.7 DEFINITIONS:**  
**A. "Acceptable postmarks"** means a legible dated postmark or receipt with the date of mailing stamped by the US postal service.

**B. "Advisory panel"** means a panel comprised of members of the public who are residents of New Mexico and other states composed of artists, arts administrators and knowledgeable community arts supporters (lay people both committed to and involved in the arts activities of their community) to serve on advisory panels. The arts commission approves advisory panel members from a panelist roster based on areas of expertise, geographic location, gender and ethnicity.

**C. "Advisory panel review"** means the process in which all applications for funding are reviewed by the staff and determined to be complete and are then reviewed by the appropriate advisory panel. Staff selects up to nine panelists from the arts commission approved advisory panelist roster, taking into consideration panelists' areas of expertise, geographic location, gender and ethnicity. Members of the public may attend the advisory panel meetings, which are moderated by arts commissioners. Advisory panels are designed to provide objective evaluations of applications submitted to the NMA, rate all applications based on criteria specific to each program area, and provide application rankings to the planning and budget committee. The planning and budget committee uses the panel ratings, rankings and comments to make funding recommendations to the arts commission.

**D. "Appeals committee"** means the designate committee of the NMA commission which reviews and makes a determination regarding an appeal brought forward by a prospective applicant after the

funding recommendation has been acted on by the arts commission.

**E. "Appeals process"** means the appeal process whereby applicants that are reviewed by a panel and have met all eligibility requirements may appeal a decision or recommendation of an advisory panel. If an applicant believes there are grounds for an appeal following the panel review of their application, a formal letter to the executive director stating the grounds for appeal is required within thirty (30) days of receipt of funding notification if the applicant can demonstrate that the review of the application was based on criteria other than those appearing in NMA regulations or the decision was influenced by an advisory panel member or commissioner with an undisclosed conflict or interest.

**F. "Application"** means the written formal request for funds from NMA. An eligible application is one which is determined to be complete by staff review and is based on whether the applicant followed the published regulations, and submitted his application form and materials by the stated deadline.

**G. "Art education"** means a specific education program which promotes the arts as an integral component of basic education and community life and involves cooperative planning among artists, educators, community leaders, and other to develop quality arts experiences in a variety of settings. Arts education programs incorporate the state standards and benchmarks in the arts disciplines.

**H. "Arts education projects"** means arts education projects that empower teachers to use the arts in the classroom. Projects in this category involve artist/teacher teams working with either an entire grade level of teachers or a team of teachers to familiarize teachers, principals and possibly artists/arts organizations with arts integration methods and art skills. The artist/teacher team will lead fellow teachers, administrators and possibly artists/arts organizations in the creation of arts integrated lesson plans. These plans will be implemented in the classroom and evaluated through pre- and post-testing of the affected classroom and a control group to determine effectiveness of arts integration on learning and school reform.

**I. "Arts in social service"** means arts organizations or social service organizations for arts-based projects that focus on addressing social issues with a primary purpose of reaching specific populations (people who are incarcerated, homeless, abused, ill, etc.) or fosters artistic activity that encourages civic dialogues on important social issues (the environment, crime, etc.).

**J. "Arts in public**

**places/one percent for art program"** means the program which is designed to administer the "Art in Public Places Act", Section 13-4A-1 NMSA 1978, which requires that one percent of construction and renovation costs of certain public buildings be spent on the acquisition of art for those buildings; and to develop, document and promote a statewide public art collection which reflects the cultural, ethnic, and artistic diversity of New Mexico, the region and the nation. Artwork acquired through the arts in public places program are acquired for installation and display in public buildings throughout New Mexico which reflect the tastes and attitudes of the users of the buildings as well as local communities. Regulations established by NMA require that a five to eleven member committee comprised of local community members determine the type of art it wants and develop a prospectus (a call for artists). All prospectuses are published in the quarterly NMA newsletter Artspeak and are open to all artists. Works of art selected by the art selection committee must be on public display and be accessible to the general public during regular business hours.

**K. "Artistic example"** means a high-quality example of artistic work that is submitted with an application.

**L. "Artist residency"** means creating programs that promote learning in and through the arts for school and community settings. Artist residencies may occur in schools or community settings. In the schools, artist residencies support artist/teacher teams educating teachers, administrators and artists in methods which provide hands-on involvement in the creative process for students based on state arts education standards and which evaluate the results of the classroom activities. Residencies should be considered supplemental to a school's regular arts education program. Preference will be given to underserved schools. In communities, an artist residency should stimulate a dialogue about the importance of art within a community. Community-based residencies provide hands-on involvement in the creative process for residents of all ages and should include an artist working with civic and business leaders, service clubs, members of the educational system, and other community leaders.

**M. "Arts commission"** means same as New Mexico arts commission or commission.

**N. "Arts projects A and B"** means short-term one-year arts projects or an organizations season. Arts projects "A" are organizations with an actual last fiscal year income of three hundred thousand dollars (\$300,000) to seven hundred forty nine thousand nine hundred ninety nine dol-

lars (\$749,999), excluding in-kind contributions. Arts projects "B" are organizations with an actual last fiscal year income of one hundred thousand dollars (\$100,000) to two hundred ninety nine thousand nine hundred ninety nine dollars (\$299,999), excluding in-kind contributions.

**O. "Budget size"** means actual last fiscal years income minus in-kind of the applicant organization/institution.

**P. "Cash match"** means the cash funds (as opposed to in-kind; pledged or other unrealized income) required by the applicant organization in order to receive an award from NMA. Cash match requirement is a fifty percent (50%) match by the applicant organization; at least half of the match must be cash. Organizations with an actual last fiscal year income of seven hundred fifty thousand dollars (\$750,000) or higher, excluding in-kind contributions are required to have hundred percent matches; at least half of the match must be cash.

**Q. "Colleges, universities, and government entities"** means the funding category which supports colleges, universities, local and county governments, and Indian tribal entities for arts activities for an entire season of specific arts related projects. These organizations have an actual last fiscal year income of seven hundred fifty thousand dollars (\$750,000) or higher, excluding in-kind contributions.

**R. "Community arts development A & B"** means community arts development "A" are organizations with an actual last fiscal year income of forty thousand dollars (\$40,000) to ninety nine thousand nine hundred ninety nine dollars (\$99,999), excluding in-kind contributions. Community arts development "B" are organizations with an actual last fiscal year income of up to thirty nine thousand nine hundred ninety nine dollars (\$39,999), excluding in-kind contributions.

**S. "Conflict of interest policy"** means the arts commission conflict of interest policy based on the Governmental Conduct Act, Section 10-16-1 through 10-16-16, NMSA 1978.

**T. "Contract"** means the contract between NMA and an artist, or other award recipient. NMA reserves the right to monitor all funding recipients to ensure that the terms and conditions of the contract are met.

**U. "Deadline"** mean the latest date and time as specified in regulations or application by which application will be accepted by NMA as being timely submitted.

**V. "Eligibility"** means tax-exempt nonprofit organizations, units of government, schools, universities, colleges

or organizations with Indian tribal government designation in New Mexico are eligible to apply. Organizations without tax-exempt nonprofit or tribal designation, or that are not units of local government may enter into a limited two-year fiscal sponsorship using a fiscal agent to apply. These organizations are eligible to apply once per fiscal year. Funding from NMA cannot be used for any organization or activities that have received funding through another NMA application in the same fiscal year. See guidelines for other eligibility requirements.

**W. "Evaluation criteria"** means the criteria used to evaluate and rate all applications by the advisory panels. Evaluation criteria and sub-criteria are stated in the regulations for each category.

**X. "Final reports"** means a final descriptive and financial report which must be submitted by all award recipients or their fiscal sponsors within thirty (30) days after the ending date stipulated in the contract. Final report instructions are included in the award contract packet. The project director prepares the report and the authorizing official reviews the report before submission. The NMA keeps twenty percent (20%) of all funds awarded until satisfactory final reports are submitted. Funding is on a reimbursement basis. Award recipients or their fiscal sponsors who fail to submit the required final report on time can result in loss of twenty percent (20%) of the contracted amount. Non-receipt of required reports may jeopardize future funding from New Mexico arts.

**Y. "Fiscal agent"** means tax-exempt non profit organizations that act as fiscal agent on behalf of an applicant.

**Z. "Folk arts apprenticeships"** means one-on-one intensive learning experiences for artists engaged in preserving traditional art forms. The master artist must demonstrate excellence in the traditional art form, and the apprentice must show a commitment to learning and carrying on the art form. A separate set of guidelines for the folk arts apprenticeship is issued.

**AA. "Folk arts projects"** means projects which preserve and perpetuate the traditional arts as practiced by various cultures in New Mexico. Folk arts are the traditional functional and expressive arts of people passed down informally by word of mouth or by cultural groups, family, community, occupational, ethnic or religious. Folk arts reflect the values and world views of the groups that make them.

**BB. "Funding acknowledgments"** means all forms of publicity, printed programs, posters, handbills, and announcements, that must prominently state: Funding is provided in part by New

Mexico arts and the national endowment for the arts. Abbreviations (for example, NMA, NEA) are not acceptable. Any changes in or deviation from this wording must be approved in advance by the director of the NMA. Failure to provide this information may jeopardize present and future funding from the NMA.

**CC. "Governor's awards for excellence in the arts or governor's arts awards"** means the awards established in 1974 which recognize the important role that artists, crafts people, and supporters of the arts play in our state. People who receive the awards are chosen for their lifetime artistic excellence and accomplishments. Corporations and major contributors are also honored for outstanding and generous support of the arts. The commission chair appoints a selection committee who make recommendations to the governor's office which are then approved by the commission.

**DD. "Guidelines or request for proposals or regulations"** means the stated requirements including forms which must be completed in order for an application to qualify as complete. Guidelines or request for proposals are published yearly which provide the established priorities of the commission, the full application process, the evaluation criteria, appeals process and the deadlines for submission and acceptable postmarks.

**EE. "In-kind"** means a service or goods provided to an organization at no charge, which has a cash value. In-kind volunteer hours are calculated at current market wages, at least federal minimum wage unless the volunteer is donating professional services, which are calculated at professional rates and should be listed as "business support".

**FF. "Legal compliance requirements"** means terms, conditions, and restrictions with which funding recipients are required to comply depending on the source of funding. Such requirements consist of the following, without limitations:

(1) comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and, where applicable, Title IX of the Education Amendments of 1972; Drug-Free Workplace Act of 1988; Native American Graves and Repatriation Act; OMB circular A-122, Audits of States, local Governments and non-profit organizations; the Anti-Lobbying provisions of 18 U.S.C. Sec. 1913 and 31 U.S.C. Sec. 1352; and the Debarment and Suspension provisions of 45 CFR, Part 1154; Cost Principles for Nonprofit Organizations; OMB Circular A-

133;

(2) compensate professional performers and related or supporting personnel at no less than prevailing minimum wage as defined by the U.S. Secretary of Labor and assure that no part of a support project will be performed or engaged in under working conditions that are unsanitary, hazardous, or dangerous to the health and safety of the employees involved;

(3) complete and sign and assurance of compliance form and a 504 compliance and ethnic participation form;

(4) submit at time of contract an IRS letter showing tax-exempt non-profit status, except governmental schools, colleges, universities or Indian tribal government entities.

**GG. "Local arts councils"** means a community organization that is a tax-exempt organization or an agency of government or Indian tribe that provides services to artists, arts organizations, or in the field of arts education. It may also present cultural programs for its community. NMA follows the Americans for the arts definition of local arts councils to be "a community organizations or an agency of local government that supports cultural organizations, provides services to artists and arts organizations and presents arts programming to the public".

**HH. "Major cultural organizations"** means organizations with an actual last fiscal year income of seven hundred fifty thousand dollars (\$750,000) or higher, excluding in-kind contributions

**II. "New Mexico arts commission or commission or arts commission"** means the fifteen (15) member body appointed by the governor pursuant to Section 18-5-4 NMSA 1998. The mission of the commission, in conjunction with NMA, is to stimulate opportunities for artists, arts organizations, and other groups for activities or projects to provide artistic or cultural services to the state, to maintain and encourage artistic excellence, and to promote awareness of and access to the arts for all of the people of New Mexico.

**JJ. "New Mexico arts or NMA"** means the division that is within the department of cultural affairs, a state agency. The New Mexico state legislature created the NMA and the arts commission because "the general welfare of the people of this state will be promoted by giving further recognition to the arts as a vital part of our culture and heritage and as an important means of expanding the scope of our educational program".

**KK. "Panel evaluation criteria"** means the factors or standards used by the NMA commission to make all funding decisions and distribute all funds fairly and equitably among art forms and across

the geographic and ethnic dimensions of New Mexico. NMA expects all applicants that receive its financial assistance to represent and encourage the highest possible standards of artistic and administrative excellence. There are separate criteria for local arts councils and statewide service organizations, and partnerships. The NMA advisory panelists evaluate eligible applications according to the criteria in the current regulations.

**LL. "Partnership"** means partnerships/arts enterprise projects are designed to initiate and strengthen community based economic development through three-year public/private arts partnerships that benefit underserved rural or inner city communities. Such enterprises train artist and either employ or market the work for artisans in an ongoing economic development enterprise. Projects must promote wide participation and bring attention to the community's or region's cultural resources with a goal of income generation for arts organizations, artist and the general community.

**MM. "Planning and budget committee"** means the committee of the commission which reviews comments, ratings and resulting rankings of the applications by advisory panels. The planning and budget committee convenes a public meeting to consider the recommendations of the advisory panels. The committee makes funding and other recommendations to the arts commission.

**NN. "Rural"** means outside Las Cruces city limits, or more than thirty highway miles from Albuquerque or Santa Fe.

**OO. "Statewide service organizations"** means an organization with a membership or constituency that spans the state; that offers service to artists, arts organizations or in the field of arts education; that promotes the arts through advocacy efforts or provides arts information services to the public. Organizations with a statewide membership or constituency that provide presenting activities and are not primarily service organizations should apply in another category.

**PP. "Strategic plan"** means the strategic plan completed every three years by the NMA resulting from extensive surveys, meetings and previous studies. Based on the strategic plan, the arts commission establishes priorities such as culturally diverse arts, folk arts, local arts councils, and rural arts, as well as arts in education and community partnerships for the arts. Available upon request from NMA.

**QQ. "Staff review"** means the review by NMA staff of advanced review and final applications submitted by

organizations requesting funding, for eligibility, and completeness. Staff administrative notes on financial sections will be noted, as needed. Applications must be complete and typed. Incomplete applications are returned to the applicant and are not sent to advisory panels.

**RR. "Technical assistance"** means services for arts organizations, local arts councils, schools, local and tribal government wishing to improve the effectiveness of their organization, management, programs or services.

**SS. "Traditional folk arts and folk arts apprenticeships"** means those programs designed: to encourage folk arts projects; to preserve and perpetuate the traditional and contemporary arts as practiced by the state's various cultures; and to recognize and increase awareness of culturally specific and multicultural arts in New Mexico. Folk arts are the traditional functional and expressive arts passed down informally by people through word of mouth or by imitation within a specific cultural group.

[4.12.1.7 NMAC - Rp 4 12.1.7 NMAC, 11-13-2003]

**4.12.1.8 THE COMMISSION:** The name of the organization shall be the New Mexico arts commission, hereinafter referred to as "commission." The commission shall function according to Section 18-5-5 NMSA 1978 as an advisory body to New Mexico arts, herein after referred to as "NMA or New Mexico arts".

[4.12.1.8 NMAC - Rp 4 12.1.8 NMAC, 11-13-2003]

**4.12.1.9 MISSION:** The mission of the commission, in conjunction with the NMA, is to stimulate opportunities for artists, arts organizations, and other groups for activities or projects to provide artistic or cultural services to the state, to maintain and encourage artistic excellence, and to promote awareness of and access to the arts for all of the people of New Mexico.

[4.12.1.9 NMAC - Rp 4 12.1.9 NMAC, 11-13-2003]

**4.12.1.10 MEMBERSHIP:** The commission shall have fifteen (15) members appointed by the governor pursuant to Section 18-5-3 NMSA 1978.

**A.** Members shall be appointed for terms as follows: five members shall be appointed for terms of one year, five members shall be appointed for terms of two years and five members shall be appointed for terms of three years. The first members of the commission shall be appointed on or before September 1, 1965, with the date of office of all these members to commence on the same day. After the

expiration of the initial terms, all members shall be appointed for terms of three years. Vacancies resulting from the death or resignation of a member shall be filled by appointment for the un-expired portion of the term of the member creating the vacancy.

**B.** With the approval of a two thirds majority of a quorum present at any scheduled meeting of the commission, the chair may recommend to the governor the removal of any commissioner for chronic absenteeism or improper conduct. Chronic absenteeism shall normally consist of missing a total of three regularly scheduled commission meetings in any one calendar year.

**C.** Commissioners shall receive reimbursement for travel and per diem expenses in accordance with the Mileage and Per Diem Act, Section 10-8-1 NMSA 1978. Commissioners may use facilities of the NMA office only for official business of the commission and shall keep such use to a minimum to avoid interference with NMA staff.

[4.12.1.10 NMAC - Rp 4 12.1.10 NMAC, 11-13-2003]

**4.12.1.11 DUTIES:** The commission is advisory to the director of the NMA, to the department of cultural affairs secretary and to state government in general where not in conflict with other statutory agencies. The governor will receive general counsel on the arts from the commission and from the NMA.

**A.** The commission will advise the director on all NMA policies, and the director shall provide the commission with all information requisite to such advice.

**B.** The commission shall be consulted by the director before he approves, disapproves or modifies the distribution of federal and state program funds. The director shall provide the commission with all information requisite to such consultation.

**C.** The director shall keep the commission informed of the fiscal affairs of the NMA, including budget requests, appropriations and disbursements.

[4.12.1.11 NMAC - Rp 4 12.1.11 NMAC, 11-13-2003]

**4.12.1.12 CONFLICT OF INTEREST:** The arts commission has established a conflict of interest policy based on the Governmental Conduct Act, 10-16-1 through 10-16-18 NMSA 1978. Commission members shall not engage in any action that could be interpreted as use of position on the commission to further his own interest or the interest of any organization with which the commissioner has an



influential role. Commissioners shall be familiar with and shall abide by the Governmental Conduct Act, Section 10-16-1 through 10-16-18, NMSA 1978. The policy is no commissioner or member of a commissioner's immediate family may:

**A.** submit an application for funds;

**B.** receive personal payment or benefit from NMA funds;

**C.** be employed by an organization requesting NMA funds;

**D.** submit a report or endorsement on behalf of an application with which the commissioner or a member of the commissioner's immediate family is affiliated;

**E.** hold a financial interest in excess of \$1,000 in a business or organization doing business with the NMA;

**F.** self declarations: other conflicts of interest may be resolved if the commissioner declares the conflict and abstains from discussion or voting on any application or any funding category in which a real or perceived conflict exists;

**G.** within one year of leaving the commission, no former commissioner may submit an application to the NMA or be employed by an applicant organization;

**H.** some conflicts involving commissioners or former commissioners are irreconcilable and shall be resolved either by withdrawing the application or affiliation causing the conflict or by resignation from the commission; failure to comply shall cause the chair to ask for a two-thirds consensus of the commission to recommend removal of the conflicted commissioner.

[4.12.1.12 NMAC - Rp 4 12.1.12 NMAC, 11-13-2003]

**4.12.1.13 OFFICERS:** The officers of the commission shall be a chair, who shall serve at the pleasure of the governor, and a vice-chairman and a secretary, who shall be elected at the annual meeting in November by a majority vote of the commission members present.

**A.** The vice-chair and secretary shall take office at the annual meeting at which they are elected.

**B.** The chair shall preside at all meetings and shall appoint the chairs and members of all committees including the planning and budget committee, subject to ratification by a majority of the commissioners present at the next regular meeting of the commission following such appointment. The chair shall also perform all procedural duties as guided by parliamentary procedure.

**C.** The vice-chair shall, in the event of the absence or incapacity of the chair, exercise all powers and duties of the

chair during such absence or incapacity.

**D.** The secretary shall, with the assistance of the NMA staff, call the roll at each commission meeting and shall cause the minutes of each meeting to be kept.

**E.** The commission may, by a two-thirds majority of the commissioners present at a regular meeting of the commission, recommend to the governor that the commission chair be removed from office when, in the judgment of such two-thirds majority, the chair has committed nonfeasance (failure to act when there is a duty), misfeasance (negligence), or malfeasance (performance that was improper or illegal).

**F.** The commission may, by a two-thirds majority vote at any regular meeting, remove the vice-chair or secretary from that office where such action is, in its judgment, in the best interests of the commission.

**G.** The chair may fill a vacancy in the office of vice-chair or secretary by appointment until the next regular meeting of the commission.

[4.12.1.13 NMAC - Rp 4 12.1.13 NMAC, 11-13-2003]

**4.12.1.14 PLANNING AND BUDGET COMMITTEE:** The commission shall have a planning and budget committee, whose members shall be assigned by the chair.

**A.** If any assigned member of the planning and budget committee is unable to attend a meeting of that committee, the commission chair may appoint another commissioner to serve for that meeting.

**B.** The commission chair shall serve as chair of the planning and budget committee.

**C.** Meetings of the planning and budget committee shall be called by the chair with fourteen days written notice of the meeting, to all planning and budget committee members, and to all commissioners.

**D.** The planning and budget committee shall regularly exercise responsibility for budget oversight, long-range planning, and initial review of all grants panel recommendations, and shall make recommendations in these areas to the commission.

**E.** Minutes of all meetings of the planning and budget committee shall be distributed to all commissioners prior to the next commission meeting.

[4.12.1.14 NMAC - Rp 4 12.1.14 NMAC, 11-13-2003]

**4.12.1.15 OTHER COMMITTEES AND MEETINGS:** There shall be

various standing operations committees, corresponding to the major operations areas of the commission's responsibilities.

**A.** Appeals committee, has responsibility for hearing and making recommendations on all appeals submitted by the NMA director.

**B.** There shall be a nominating committee also referred to as the executive committee, with responsibility to present annually or when appropriate, for consideration and nomination, candidates for vacancies in the positions of vice-chair and secretary. Nominations may also come from the floor. Terms of office shall commence immediately.

**C.** There shall be an arts award committee, with responsibility for making recommendations directly to the Governor concerning recipients of the Governor's awards for excellence in the arts.

**D.** The commission may establish such other committees from time to time, as it deems appropriate.

**E.** The annual meeting of the commission shall take place in November. The commission shall hold at least four meetings a year usually in February, June, August and November. Fourteen days written notice of the exact date, and time and location of each meeting of the commission shall be given by the NMA director or the commission chair to all commissioners and to the public. Any meeting date may be changed by approval of a majority of a quorum of the commissioners present at any regularly scheduled commission meeting, subject to the requirements of the commission's open meeting resolution.

**F.** Special meetings may be called either by the commission chair or by petition of a majority of the sitting commissioners. Fourteen days notice shall be given to commissioners and the public of such special meetings. Upon receipt of a petition for a special meeting, the chair shall schedule the special meeting.

**G.** The commission may designate any location within New Mexico as the place of its meeting.

**H.** A quorum at any meeting of the commission shall be constituted by a majority of the commissioners. If, due to vacancies, there are fewer than 15 commissioners, a quorum shall consist of a majority of the commissioners actually holding office.

**I.** Commissioners must be physically present to vote at all meetings of the commission. Voting by proxy is prohibited.

**J.** The proposed agenda items for each meeting of the commission meeting shall be prepared by the NMA

director in consultation with the commission chair and distributed not less than fourteen days prior to each meeting of the commission. Commissioners wishing to place an item on the proposed agenda must notify the NMA director not less than three weeks prior to the meeting. In accordance with the Open Meetings Act, commissioners may add or delete items from the agenda at the commission meeting.

**K.** The commission shall follow all procedural duties using a manual of parliamentary procedure as guidance and in conformity with these regulations and the Arts Division Act.

**L.** These regulations may be amended or repealed by a majority and new regulations shall be given to all commissioners. Written notice of any proposed amendments shall be given twenty-one days in advance and shall include the full text of the provision to be changed as well as the new provision.

**M.** The principal office of the commission shall be the office of the NMA in Santa Fe, New Mexico.  
[4.12.1.15 NMAC - Rp 4 12.1.15 NMAC, 11-13-2003]

**4.12.1.16 NEW MEXICO ARTS FUNDING REGULATIONS:** The most recent publication of the "New Mexico Arts Funding Guidelines" is hereby incorporated into this rule by reference. The New Mexico arts funding guidelines describe the policies and requirements for art and art-related educational projects advertised and administered by NMA and the commission. The guidelines are applicable to all projects advertised and contracts executed after the date this rule is promulgated by NMA and filed with the state records center.  
[4.12.1.16 NMAC - Rp 4 12.1.16 NMAC, 11-13-2003]

**NEW MEXICO  
DEPARTMENT OF  
CULTURAL AFFAIRS  
ARTS DIVISION**

**TITLE 4 C U L T U R A L  
RESOURCES  
CHAPTER 12 COMMUNITY ART  
RESOURCES  
PART 10 APPLICATION  
PROCESS FOR FOLK ARTS APPREN-  
TICESHIP**

**4.12.10.1 ISSUING AGENCY:** Department of Cultural Affairs, New Mexico Arts Division.  
[4.12.10.1 NMAC - Rp 4.12.10.1 NMAC, 11-13-2003]

**4.12.10.2 SCOPE:** Artists and

master folk artists, and artists and individuals seeking an apprenticeship.

[4.12.10.2 NMAC - Rp 4.12.10.2 NMAC, 11-13-2003]

**4.12.10.3 S T A T U T O R Y**

**AUTHORITY:** Provisions pertaining to the New Mexico Arts Commission and Arts Division Act, Sections 18-5-1 to 18-5-9 NMSA 1978.

[4.12.10.3 NMAC - Rp 4.12.10.3 NMAC, 11-13-2003]

**4.12.10.4 D U R A T I O N :**

Permanent.  
[4.12.10.4 NMAC - Rp 4.12.10.4 NMAC, 11-13-2003]

**4.12.10.5 E F F E C T I V E D A T E:**

November 13, 2003 unless a later date is cited at the end of a section.  
[4.12.10.5 NMAC - Rp 4.12.10.5 NMAC, 11-13-2003]

**4.12.10.6 O B J E C T I V E:**

To provide for the application process necessary to participate in the folk arts apprenticeship program. The purpose of the folk arts apprenticeship category is to keep alive the traditional folk arts practiced in New Mexico by contracting with master folk artists to teach their art forms to dedicated apprentices. Folk arts are the traditional functional and expressive arts of people passed down informally by word of mouth or by imitation within a cultural group. Common types of cultural groups are: family, community, occupational, ethnic, or religious. Folk arts reflect the values and worldviews of the groups that make them, and are a rich and valuable heritage for all New Mexicans.

[4.12.10.6 NMAC - Rp 4.12.10 6 NMAC, 11-13-2003]

**4.12.10.7 D E F I N I T I O N S :**

Those stated in 4.12.1.7 NMAC.  
[4.12.10.7 NMAC - Rp 4.12.10.7 NMAC, 11-13-2003]

**4.12.10.8 E L I G I B I L I T Y C R I -**

**T E R I A:** The most recent publication of the "New Mexico Arts Folk Arts Apprenticeship Application Guidelines" is hereby incorporated into this rule by reference. The New Mexico arts folk arts apprenticeship guidelines describe the policies and requirements for folk art projects advertised and administered by NMA and the commission. The guidelines are applicable to all projects advertised and contracts executed after the date this rule is promulgated by NMA and filed with the state records center.

[4.12.10.8 NMAC - Rp 4.12.10.8 NMAC, 11-13-2003]

**NEW MEXICO  
DEPARTMENT OF  
CULTURAL AFFAIRS  
ARTS DIVISION**

**TITLE 4 C U L T U R A L  
RESOURCES  
CHAPTER 12 COMMUNITY ART  
RESOURCES  
PART 11 ART IN PUBLIC  
PLACES PROGRAM**

**4.12.11.1 ISSUING AGENCY:**

Department of Cultural Affairs, New Mexico Arts Division, Art in Public Places Program.

[4.12.11.1 NMAC - Rp 4.12.11.1 NMAC, 11-13-2003]

**4.12.11.2 SCOPE:**

Departments, agencies, boards, councils, institutions, commissions of the State of New Mexico who are eligible according to the Art in Public Places Act, Section 13-4A-3 NMSA 1978.

[4.12.11.2 NMAC - Rp 4.12.11.2 NMAC, 11-13-2003]

**4.12.11.3 S T A T U T O R Y**

**AUTHORITY:** The New Mexico Arts Commission Sections 13-4A-2 NMSA 1978, and the Art in Public Places Act, Section 13-4A-1 NMSA 1978. State agencies are required to allocate 1% of all capital expenditure funds pursuant to Act 1%. All state appropriated capital improvement or new construction projects exceeding one hundred thousand dollars (\$100,000) are subject to the 1% Art in Public Places Act.

[4.12.11.3 NMAC - Rp 4.12.11.3 NMAC, 11-13-2003]

**4.12.11.4 D U R A T I O N :**

Permanent.  
[4.12.11.4 NMAC - Rp 4.12.11.4 NMAC, 11-13-2003]

**4.12.11.5 E F F E C T I V E D A T E:**

November 13, 2003 unless a later date is cited at the end of a section.

[4.12.11.5 NMAC - Rp 4.12.11.5 NMAC, 11-13-2003]

**4.12.11.6 O B J E C T I V E:**

The funds derived from the Art in Public Places act shall be administered by NM arts, art in public places program and be used to contract with living artists to place public art at those sites identified as eligible. The art in public places program shall aggregate one percent for art funds when appropriate for a more significant public art project. Public artworks may be an integral part of the building, attached to the building, detached within or outside the structure or placed on

public lands, part of a temporary exhibit or loaned or exhibited by the agency in other public facilities. The selection of artists for the commissioning and purchase of artwork, the selection of artwork for purchase, the execution, placement and acceptance of public artwork shall comply with the rules and regulations of New Mexico arts/art in public places program policies and procedures. These procedures must be in compliance with the state purchasing regulations and shall be a fair and open competition. The art in public places program acquires works of art for installation and display in public buildings throughout New Mexico, which reflect cultural, ethnic and artistic diversity of New Mexico, the region and the nation. Guidelines established by New Mexico arts require that commission projects shall have a five to eleven member local selection committee that may include other knowledgeable visual art professionals, who determine the type of art and develop a prospectus (a call for artists). The art in public places program shall issue a prospectus for several state facilities wishing to purchase existing artwork. After a review of the artwork by the statewide review committee, the regional buying committee shall make the selection of the purchased artwork. The permanent art collection shall be selected by a committee of artists and arts professionals and shall be loaned to other public entities that have not received 1% for art funds. All prospectuses are published in the quarterly New Mexico arts newsletter, *artspeak*, and online at [www.nmarts.org](http://www.nmarts.org), and are open to all artists. Works of art selected by an art selection committee shall be on public display and be accessible to the general public during business hours.

[4.12.11.6 NMAC - Rp 4.12.11.6 NMAC, 11-13-2003]

#### 4.12.11.7 DEFINITIONS:

Those stated in 4.12.1.7 NMAC and used in this rule the following definition applies.

**A. "Artist submission"** means a high-quality example of artistic work and supporting written information that fulfills the required material for submission stated in the prospectus. These materials shall be submitted by the artist or his designee to NM arts by the receipt deadline in order for the submission to be considered by the art selection committee.

**B. "Art selection committee"** means the committee that selects the artwork and the artist for a commission or purchase project. The following are types of art selection committees.

(1) **"Local selection committee or LSC"** means the committee of five to eleven members excluding the AIPP staff, chaired by a project director, who are pri-

marily from the local community. The LSC selects a site, develops the prospectus and select an artist for each site.

(2) **"Statewide review committee or SRC"** means the committee comprised of a minimum of five members who are artists or arts professionals that shall review art submissions for purchase projects and make recommendations to the arts division, following a set of criteria, for the selection of a manageable number of artworks to be viewed by regional buying committee and purchased by state agencies.

(3) **"Regional buying committee or RBC"** means the two to three local representatives of each public building or site that shall receive 1% for art funds for the purchase of artwork. The RBC is responsible for the selection of artwork for their site.

**C. "Commission or public art commission"** means a work of art designed and created by an artist for a specific building or site that incorporates select information relevant to a the particular project. Commission projects range in budget from thirty thousand dollars (\$30,000) to two hundred thousand dollars (\$200,000).

**D. "Public art purchase or purchase"** means an artwork that has previously been created by an artist and is selected by the RBC for their site. All project amounts through thirty thousand dollars (\$30,000), are purchase projects. NMA shall determine the maximum number of artworks a site may purchase.

**E. "Project director"** means the delegated individual who is responsible for working with the AIPP program coordinator or contractor to ensure the selection process occurs for a commission project. The project director is usually a representative of the group actually using the particular building under construction or renovation, or may be a representative of the owner of the building or any other designee.

**F. "Prospectus"** means the call for artist document issued by the arts division for the purpose of publicly stating the criteria for the specific project. The prospectus is made available to all artists who are interested in applying and are created for each commission project. One or two prospectuses may be issued per call for purchasing artwork.

**G. "Art selection process"** means an open and fair process of selection is instituted to place artwork in public buildings/property. The public process requires that representatives of the local community participate in the selection process of the artist or artwork through an art selection committee. Variations may be incorporated into the art selection process that require modification to these procedures. The public art manager shall approve

the variations. Public art also identifies public funds as the source for expenses incurred to place art in the public eye.

**H. "Site"** means the place where the public artwork shall be located.

**I. "Selection criteria"** means a varying list of qualifications included in the prospectus, which an artist's submission must meet to be considered by an art selection committee for a public art project.

**J. "Permanent collection"** means a collection of artwork created by renown, established artists that has been acquired by the NM arts division for the purpose of loaning artwork to other public entities that have not received 1% for art funds.

**K. "Deaccession"** means an artwork in the state's public art collection is permanently removed from the collection following the deaccession regulation.

**L. "Art in public places program, or AIPP program or 1% for art program"** means the public art program of NM arts that administers all aspects of the program and the public art selection process.

**M. "AIPP staff"** means the project coordinator or contractor with the AIPP program who is assigned to facilitate the public art selection process.

**N. "New Mexico arts or NMA"** means the division that is within the department of cultural affairs, a state agency. The New Mexico state legislature created NMA and the NM arts commission because "the general welfare of the people of this state will be promoted by giving further recognition to the arts as a vital part of our culture and heritage and as an important means of expanding the scope of our educational program".

**O. "Arts commission"** means same as NMA commission.

**P. "Site specific"** means artwork that is created for, and tailored to a particular site and community. Pre-existing artwork does not qualify as site specific.

**Q. "Maquette"** means a finalist's scale model of the proposed artwork.

**R. "Finalist"** means the individuals or artist teams selected by the LSC to present maquettes, drawings and other required material relating to their proposals, for consideration as the selected artist for a commission project. No more than five finalists shall be selected for each site.

[4.12.11.7 NMAC - Rp 4.12.11.7 NMAC, 11-13-2003]

#### 4.12.11.8 DISPLAY OF PUBLIC ART

**A.** All artwork purchased

with AIPP funds shall be displayed in places accessible to the public.

**B.** Artwork may not be displayed in private offices or conference rooms that are inaccessible to the public. [4.12.11.8 NMAC - Rp 4.12.11.8 NMAC, 11-13-2003]

#### **4.12.11.9 GENERAL COMMISSION PROCEDURES**

##### **A. Project Director**

(1) Each AIPP project shall delegate a project director, who is responsible for making the selection process occur. The AIPP staff works with the project director and assists them in guiding the selection process.

(2) The project director is usually a representative of the group actually using the particular building under construction, or may be a representative of the owner of the building, or any other designee.

(3) A description of the project director's responsibilities is available from the AIPP office.

##### **B. The Local Selection Committee**

(1) The most integral component of the AIPP program is that local community members are responsible for the selection of the artwork for their community.

(2) Local participation in decision-making is a major concern of the NMA commission.

**C. Membership Appointment:** The LSC members are appointed by the user of the public building, or his designee, or the AIPP staff.

##### **D. Membership Composition**

(1) The LSC is composed of five to eleven members excluding the AIPP staff.

(2) Most of the individuals on this committee shall be residents of the community in which the project shall take place.

(3) The membership of the committee shall reflect the cultural diversity of the community involved.

##### **E. Committee Members shall include the following.**

(1) A representative of the residents or users of the building.

(2) The owner representative or his designee, of the public building.

(3) An architect, preferably the architect of the construction project (or engineer or other appropriate design or construction professional, associated with the building if possible).

(4) One arts professional or community art representative.

(5) One artist who agrees to abstain from consideration for the project and works in similar media or style of artwork requested in the prospectus.

(6) All five key members listed above shall be present for a meeting to occur.

(7) Up to two community or student representatives or a member of the board of regents for a college or university shall serve as non-voting members in an advisory capacity.

##### **F. LSC Responsibilities**

(1) The LSC is responsible for the selection of art for the identified public building, using a public selection process and adhering to the procedures developed by NMA.

(2) Each 1% for art project has a defined amount of state money available for the commission of art.

(3) The LSC may raise additional funds through other sources to supplement the state funding or secure the donation of in-kind services to assist the selected artist in the creation of his artwork.

(4) The LSC shall collaborate with the AIPP staff to develop the specific criteria for the project to be included in the prospectus. The AIPP staff develops the prospectus and the LSC approves of the document prior to its circulation to the public.

(5) The LSC shall select the artist for the project based on the prospectus and specific criteria included in a written and tangible proposal for the proposed artwork.

(6) A two-thirds (2/3) majority vote is required for an artist to be selected as the final artist. [4.12.11.9 NMAC - Rp 4.12.11.9 NMAC, 11-13-2003]

#### **4.12.11.10 GENERAL PURCHASE PROCEDURES**

**A.** NMA shall develop and advertise a prospectus that invites artists meeting specific criteria outlined in the prospectus, to apply with previously created artwork, in slide format, for review to be selected by sites having 1% project amounts through thirty thousand dollars (\$30,000).

**B.** The SRC may review the artist submissions based on criteria specific to the prospectus and determine which artworks may precede to the RBC for selection of artwork for a site.

**C.** The RBC representatives from a site receiving 1% for art funds shall review and select artwork for their specific site.

**D.** It is desired that a visual art professional or artist participate in the RBC art selection process to serve as a resource person.

[4.12.11.10 NMAC - N, 11-13-2003]

#### **4.12.11.11 OVERVIEW OF ART SELECTION PROCESS**

**A.** An AIPP staff member

shall guide the art selection committee through the art selection process.

**B.** Meetings of the LSC shall be held at the building site or any other suitable location. RBC meetings shall take place at a central public location within each region.

**C.** There shall be a minimum number of meetings for the RBC to purchase artwork, although the LSC may meet numerous times for a commission project.

**D.** After a prospectus is developed and advertised, artists may submit for the project according to the terms of the prospectus.

**E.** The art selection committee shall evaluate the artist submissions and select an artist or artwork for the project.

**F.** Each of these steps may vary in length of time and number of meetings necessary for the acquisition or commissioning of the artwork to be accomplished.

[4.12.11.11 NMAC - Rp 4.12.11.11 NMAC, 11-13-2003]

#### **4.12.11.12 DEVELOPMENT OF THE PROSPECTUS**

**A.** There are two types of prospectus.

(1) Purchase prospectus - criteria usually created by AIPP staff and includes several sites having budgets up to thirty thousand dollars (\$30,000). Each site's RBC selects artwork for its facility.

(2) Commission prospectus - created in collaboration with the LSC and includes sites having budgets beyond thirty thousand dollars. These are site-specific works created exclusively for a location.

**B.** For a commission, the LSC shall consider various criteria in order to identify what type of art it is looking for.

**C.** The criteria are written into a prospectus.

**D.** LSC members have a responsibility to determine as much about what they want as possible and to include that information in the prospectus, in order not to waste their own time reviewing needless submissions, or the time of artists in preparing inappropriate submissions.

**E.** Factors to be considered for the prospectus include the following.

(1) Location - Interior, exterior and any other particular locations should be considered. When possible, AIPP encourages the art selection committee to select artwork that can be an integral part of the structure.

(2) Medium - Determination of suitable materials composing the artwork, size/scale of the artwork, two or three

dimensional artwork, maintenance and 1% for art funds available in relation to the scope of the project and potential sites.

(3) Style - The style an artist uses to express his ideas. For example, traditional, folk-art, abstract, non-objective, figurative, representational, etc.

(4) Purchase - All projects with 1% for art amounts through thirty thousand dollars (\$30,000). A maximum number of artworks to be purchased by sites shall be determined by AIPP.

(5) Eligibility - all competitions are open to New Mexico artists. Depending on the scope of a project, competition shall be open to artists who are United States' citizens and reside in the United States to achieve a larger pool of artists from which to select.

(6) Receipt deadline - the designated date on the prospectus when artist submissions shall be received by NMA. The art selection committee shall not review late submissions and incomplete artist submissions.

(7) Art selection process - all AIPP projects must be open and fair competitions. The competition is open to all eligible artists.

(8) Submission materials - the artist must submit specific required materials that are included in the prospectus under the section entitled submission form and submission checklist.

(9) Questions - contact information shall be included in the prospectus.

**F.** Distribution of the prospectus - The prospectus shall be advertised and distributed in such a way as to reach artists who are eligible.

(1) NMA newsletter and the NMA website - the AIPP staff shall publish the availability of prospectuses in its quarterly newsletter, which is mailed to artists and galleries throughout the United States. The current prospectuses are posted on the NMA website at [www.nmarts.org](http://www.nmarts.org).

(2) Public service announcements - The AIPP staff shall send public service announcements to appropriate media, including newspapers, arts publications, and radio stations, locally, statewide and nationally.

(3) Press advertisements - The art selection committee may designate one member who shall make sure the project is advertised in the local media.

(4) Other Information Outlets - Traditional media outlets are often insufficient to generate the participation of certain artists. If an art selection committee is interested in a particular constituency group, the art selection committee members shall make an effort to make whatever contact possible with members of that group and enlist their help in spreading the word.

(5) Invitational competition. - In addition to having a competition open to all eligible artists, prospectuses may be distributed to targeted artists to encourage them to apply.

[4.12.11.12 NMAC - Rp 4.12.11.12 NMAC, 11-13-2003]

#### **4.12.11.13 REVIEW OF ARTIST SUBMISSIONS**

**A.** The art selection committee shall review the submissions of the artists who have responded to the prospectus.

**B.** At a commission review meeting, the LSC might reach a final selection of an artist or an artwork. At a purchase review meeting, the SRC shall determine the artwork that will travel to the purchase sites.

**C.** For most commission projects, a number of finalists shall be identified, who are then requested to submit additional materials, a site-specific tangible (both written and created) proposal for the artwork and a presentation to the LSC.

[4.12.11.13 NMAC - Rp 4.12.11.13 NMAC, 11-13-2003]

#### **14.12.11.14 FINAL SELECTION**

**A.** The final selection of an artist and artwork for a commission shall be formally approved by majority vote of the LSC, duly moved and seconded. The selection of the artwork for a purchase shall be decided by the site's RBC representatives.

**B.** The AIPP staff member must notify the selected artist in writing, addressing any follow-up information requested by the art committee.

**C.** In the notification letter the AIPP staff member must clarify that although the artist has been selected, no binding agreement is final until a contract is signed by the artist, the owner, and NMA.

**D.** Notice shall also be provided by the AIPP staff member to those artists who submitted but were not selected for the project.

[4.12.11.14 NMAC - Rp 4.12.11.14 NMAC, 11-13-2003]

#### **4.12.11.15 VARIATIONS TO PROCEDURES**

**A.** NMA has established these procedures as guidelines to be followed in the selection process.

**B.** Opportunities may be identified during the art selection process that require modification to these procedures.

**C.** Variations may be incorporated into the process with the approval of the AIPP program manager.

[4.12.11.15 NMAC - Rp 4.12.11.15

NMAC, 11-13-2003]

#### **4.12.11.16 CONTRACT DEVELOPMENT**

**A.** NMA has established these procedures as guidelines to be followed in the selection process.

**B.** All responsibilities involved in the execution, delivery and installation of the work of art must be delineated in the contract.

**C.** No contract shall be considered final until all the required signatures on the contract have been obtained. The contract shall be signed by the artist, the owner agency, NMA and any other state agency as may be required by state law.

**D.** After all signatures required on the contract have been obtained, the work of art may be either delivered or created.

[4.12.11.16 NMAC - Rp 4.12.11.16 NMAC, 11-13-2003]

#### **4.12.11.17 NOTES TO ENHANCING THE IMPACT OF PUBLIC ART**

**A.** The basic framework for any public art program, including the state of New Mexico's AIPP program, is the process by which public art is acquired or commissioned when utilizing public money. Within this framework many opportunities and objectives may be identified that can broaden the scope of creating or acquiring public artwork.

**B.** The following suggestions offer opportunities for enhancing the impact of public artwork in the community by encouraging greater public participation, stimulating greater media coverage of the project, and to inform and provide educational experiences for constituents, students and other community groups about the public art in their communities.

**C.** To provide leadership and tourism opportunities through publicity providing for the economic development of New Mexico and of New Mexico's arts industry by recognizing New Mexico's artists and the nations' leading public artists who continue to participate in creating the stellar caliber of artwork in the state's collection.

**D.** To develop a statewide public art collection which reflects the cultural, ethnic and artistic diversity of New Mexico, the region and the nation.

[4.12.11.17 NMAC - Rp 4.12.11.17 NMAC, 11-13-2003]

#### **4.12.11.18 PUBLIC ART LOAN AGREEMENT:** The current loan agreement used by the agency.

[4.12.11.1 NMAC - N, 11-13-2003]

**4.12.11.19 PROFESSIONAL SERVICES CONTRACT:** The current professional services contract used by the agency.

[4.12.11.19 NMAC - Rp 4.12.11.19 NMAC, 11-13-2003]

**4.12.11.20 PURCHASE CONTRACT:** The current purchase contract used by the agency.

[4.12.11.1 NMAC - Rp 4.12.11.20 NMAC, 11-13-2003]

**NEW MEXICO  
ENVIRONMENT  
DEPARTMENT**

**ENVIRONMENTAL PROTECTION  
DIVISION**

Petroleum Storage Tank Bureau

20.5.17 NMAC, Petroleum Storage Tanks, Corrective Action Fund Administration, filed May 29, 2002, with the State Records Center and Archives, is repealed effective November 13, 2003, and re-promulgated as 20.5.17 NMAC, Petroleum Storage Tanks, Corrective Action Fund Administration, effective November 13, 2003.

**NEW MEXICO  
ENVIRONMENT  
DEPARTMENT**

**ENVIRONMENTAL PROTECTION  
DIVISION**

Petroleum Storage Tank Bureau

**TITLE 20 ENVIRONMENTAL  
PROTECTION  
CHAPTER 5 PETROLEUM  
STORAGE TANKS  
PART 17 CORRECTIVE  
ACTION FUND ADMINISTRATION**

20.5.17.1 ISSUING AGENCY:  
New Mexico Environment Department.

[20.5.17.1 NMAC - Rp, 20.5.17.1 NMAC, 11/13/03]

20.5.17.2 SCOPE: This part applies to owners and operators of storage tanks as governed by 20.5.1 through 20.5.16 NMAC and as provided in 20.5.1 NMAC and to all payments made by the department to or on behalf of storage tank owners and operators under the Ground Water Protection Act. If the owner and operator are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.17.2 NMAC - Rp, 20.5.17.2 NMAC, 11/13/03]

20.5.17.3 S T A T U T O R Y

AUTHORITY: 20.5.17 NMAC is adopted by the Secretary of Environment pursuant to the provisions of the Department of Environment Act, NMSA 1978, Section 9-7A-1 to Section 9-7A-14, and the Ground Water Protection Act, NMSA 1978, Section 74-6B-1 to Section 74-6B-14.

[20.5.17.3 NMAC - Rp, 20.5.17.3 NMAC, 11/13/03]

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

[20.5.17.4 NMAC - Rp, 20.5.17.4 NMAC, 11/13/03]

20.5.17.5 EFFECTIVE DATE:  
November 13, 2003, unless a later date is indicated in the rule history note at the end of a section.

[20.5.17.5 NMAC - Rp, 20.5.17.5 NMAC, 11/13/03]

20.5.17.6 OBJECTIVE: The purpose of 20.5.17 NMAC is to establish the procedures for administering and making payments from the corrective action fund (fund) created by the Ground Water Protection Act (Act), NMSA 1978, Section 74-6B-1 to 74-6B-14, including procedures for:

A. payment of the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000), or in excess of lesser amounts as permitted by the Act;

B. payment of the costs of corrective action other than the minimum site assessment;

C. determinations of compliance with the Act;

D. determinations of eligibility of costs for payment;

E. competitive bidding for corrective action work; and

F. disposition of remediation equipment acquired through the fund.

[20.5.17.6 NMAC - Rp, 20.5.17.6 NMAC, 11/13/03]

20.5.17.7 DEFINITIONS:

A. Terms used in these regulations shall have the meanings given to them in the Ground Water Protection Act and 20.5.1 NMAC except as provided in Subsection B of this section.

B. As used in 20.5.17 NMAC:

(1) "cost-effectiveness" means completing tasks in a manner that is economical in terms of goods or services received for the money spent;

(2) "deductible" means the first ten thousand dollars (\$10,000) of minimum site assessment costs, or any lesser amount determined in accordance with 20.5.17.401 NMAC;

(3) "director" means the director

of the environmental protection division of the New Mexico environment department;

(4) "facility" means a property location that contains storage tanks;

(5) "incurred" means billed to the owner or operator;

(6) "major remediation equipment" means any transportable unit or system which has been acquired specifically for remediation using fund monies and which the department must inventory pursuant to NMSA 1978, Section 12-6-10;

(7) "pay for performance" means payment of a previously determined amount based on completion or achievement of previously determined criteria including but not limited to a given task or set of tasks, specified reductions in contaminant levels for a given price, or achievement of other measurable milestones, as approved by the department;

(8) "phase of corrective action" means generally any one of the following activities, as required under 20.5.12 or 20.5.13 NMAC:

(a) the minimum site assessment, as defined in 20.5.1.7 NMAC;

(b) the secondary investigation and report, tier two evaluation and report, or tier three evaluation and report;

(c) interim removal of non-aqueous phase liquid or contaminated soil;

(d) development of a conceptual and final remediation plan or a monitored natural attenuation plan;

(e) implementation of the remediation plan; or

(f) operating, monitoring, maintaining and reporting under the implemented remediation plan or monitoring and reporting under the approved monitored natural attenuation plan;

(9) "proposal" means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site or for a state-lead site;

(10) "resident business" means:

(a) a business enterprise which is authorized to do and is doing business under the laws of New Mexico and which maintains its principal place of business in New Mexico, or has staffed an office and has paid applicable New Mexico taxes for two years prior to the awarding of the proposal and has five or more employees who are residents of New Mexico, or is an affiliate of a business which meets either of these two requirements. As used in this paragraph, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity; or

(b) a business enterprise, includ-

ing a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods, commodities or services that are substantially manufactured, produced or assembled in New York state, or, in the case of construction services, has its principal place of business in New York state;

(11) "responsible party-lead site" means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes correction action;

(12) "small business" means a business which receives less than two hundred thirty-five thousand dollars (\$235,000) in gross annual receipts from the facility where the tank is or was located, based upon the average annual gross receipts for the following period:

(a) if the business has been in operation for five or more fiscal years on the date the release is discovered, the five fiscal years immediately preceding the date on which the release was discovered; or

(b) if the business has been in operation for less than five fiscal years on the date the release is discovered, the total number of years the business has been in operation;

(13) "specifications" means a detailed written statement of particulars prescribing corrective action to be taken, conditions to be met, materials to be used, or standards of workmanship to which something is to be built, installed, or operated, which is provided to prospective contractors on responsible party-lead sites and state-lead sites;

(14) "technical merit" means those characteristics of a proposal including but not limited to strategies, expertise, methods, materials and procedures meeting the specifications included in a request for proposals.

[20.5.17.7 NMAC - Rp, 20.5.17.7 NMAC, 11/13/03]

20.5.17.8 to 20.5.17.106 [RESERVED]

20.5.17.107 CONSTRUCTION: This part shall be liberally construed to effectuate the purposes of the Ground Water Protection Act and shall be construed, to the extent possible, so as not to conflict with the Hazardous Waste Act or 20.5.1 through 20.5.14 NMAC.

[20.5.17.107 NMAC - Rp, 20.5.17.107 NMAC, 11/13/03]

20.5.17.108 SEVERABILITY: If any section or application of this part 20.5.17 NMAC is held invalid, the remainder of this part 20.5.17 NMAC or its application to other persons or situations shall

not be affected.

[20.5.17.108 NMAC - Rp, 20.5.17.108 NMAC, 11/13/03]

20.5.17.109 EFFECT ON OTHER REGULATIONS: This part does not relieve any owner or operator of the obligation to comply with any federal or state laws or regulations, including 20.5 NMAC.

[20.5.17.109 NMAC - Rp, 20.5.17.109 NMAC, 11/13/03]

20.5.17.110 to 20.5.17.199 [RESERVED]

20.5.17.200 COMPLIANCE DETERMINATIONS: The department shall make compliance determinations in the following circumstances:

A. Minimum site assessments. When, pursuant to NMSA 1978, Section 74-6B-13, an owner or operator applies to the department for payment of minimum site assessment costs exceeding the deductible, the department shall determine prior to payment that the work performed meets the definition of a minimum site assessment provided in 20.5.1.7 NMAC. No payment shall be made unless the department determines that the owner or operator meets the requirements of NMSA 1978, Section 74-6B-13, and this part.

B. Corrective action by owner or operator. When, pursuant to NMSA 1978, Section 74-6B-13, an owner or operator applies to the department for payment of corrective action costs other than those costs associated with a minimum site assessment, the department shall determine, prior to payment, whether the owner or operator is in compliance with the requirements of Subsection B of NMSA 1978, Section 74-6B-8, as outlined in 20.5.17.201 NMAC during the owner or operator's term of ownership or operation for all storage tanks owned or operated at the site where the corrective action was or is being taken. Compliance for USTs shall be determined for the period from March 7, 1990 and every day continuously thereafter to the date the written application for a compliance determination, submitted by the owner or operator, is received by the department. Compliance for ASTs shall be determined for the period from July 1, 2001 and every day continuously thereafter to the date the written application for a compliance determination, submitted by the owner or operator, is received by the department. No payment shall be made unless the department determines that the owner or operator meets the requirements of NMSA 1978, Section 74-6B-8, and this part.

C. Corrective action by the department. Prior to the time the department brings an action in district court against an owner or operator to recover expenditures

from the fund incurred by the department to take corrective action at a site, the department shall determine, in accordance with 20.5.17.201 NMAC, whether the owner or operator has complied with the requirements of Subsection B of NMSA 1978, Section 74-6B-8, during his term of ownership or operation for all storage tanks owned and/or operated at the site. Compliance for USTs shall be determined for the period from March 7, 1990 and every day continuously thereafter. Compliance for ASTs shall be determined for the period from July 1, 2001 and every day continuously thereafter.

[20.5.17.200 NMAC - Rp, 20.5.17.200 NMAC, 11/13/03]

20.5.17.201 DETERMINATION OF COMPLIANCE UNDER NMSA 1978, SECTION 74-6B-8:

A. For sites where all underground storage tanks (USTs) were removed or properly abandoned prior to March 7, 1990, and for sites where all above ground storage tanks (ASTs) were removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.17.200 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by NMSA 1978, Section 74-4-4.4, and, for all storage tanks removed or properly abandoned prior to March 7, 1990, a two hundred (\$200) fee per site;

(2) conducted a minimum site assessment as defined in 20.5.1.7 NMAC; and

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring.

B. For sites where USTs were not removed or properly abandoned prior to March 7, 1990, or where ASTs were not removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.17.200 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by NMSA 1978, Sections 74-4-4.4 and 74-6B-9;

(2) conducted a minimum site assessment as defined in 20.5.1.7 NMAC and, if contamination is found, taken action to prevent continuing contamination;

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring; and

(4) substantially complied with all of the requirements and provisions of regulations adopted by the EIB under Subsection C of NMSA 1978, Section 74-4-

4 listed as (a) through (f) below, for storage tanks at the site for which payment is sought. In determining whether the owner or operator has substantially complied with the regulations referenced in this subsection, the department may consider, among other things, the severity of the non-compliance, the period of non-compliance, the actions taken by the owner or operator to come into compliance, and the timeliness of the owner or operator's actions in coming into compliance:

(a) installation, upgrade, operation and maintenance of storage tanks in accordance with 20.5.4 NMAC and 20.5.5 NMAC;

(b) release detection in accordance with 20.5.6 NMAC;

(c) for any storage tanks which have been abandoned or closed at the site proper closure in accordance with 20.5.8 NMAC;

(d) reporting, investigating, confirming and remediating the release in accordance with 20.5.7 NMAC, 20.5.12 NMAC and 20.5.13 NMAC;

(e) proof of financial responsibility in accordance with 20.5.9 NMAC; and

(f) record keeping in accordance with the record keeping provisions of 20.5.1 through 20.5.13 NMAC.

[20.5.17.201 NMAC - Rp, 20.5.17.201 NMAC, 11/13/03]

#### 20.5.17.202 PROCEDURES FOR DETERMINING COMPLIANCE:

A. The owner or operator shall submit a written request for a compliance determination to the department.

B. The department shall review all written submissions in the order received and shall, within 30 days of receipt, notify the owner or operator in writing of any inadequacies in the submittal. The owner or operator may then correct any inadequacies and resubmit the application. Submissions shall be determined "complete" by the department when the submissions are adequately documented or inadequacies identified by the department have been corrected.

C. The owner or operator seeking a determination of compliance has the burden of establishing each point of fact relevant to such a determination. For such purpose, the request shall state specific facts which demonstrate compliance with Subsection B of 20.5.17.201 NMAC.

D. The department shall make a compliance determination within 30 days following the department's determination of the submission as "completed."

E. The department may make a separate compliance determination for one or more phases of corrective action, other than a minimum site assessment, for

which payment is requested. If the department finds an owner or operator to be out of compliance for one or more phases, the department shall state the manner in which the owner or operator has failed to comply with 20.5.17.201 NMAC.

[The department provides a form that may be used to request a compliance determination.]

[20.5.17.202 NMAC - Rp, 20.5.17.202 NMAC, 11/13/03]

20.5.17.203 to 20.5.17.299 [RESERVED]

#### 20.5.17.300 COMPETITIVE CONTRACTOR SELECTION FOR REMEDIATION:

A. Payments made from the fund shall be made in accordance with 20.5.17.302 NMAC and only for work performed by contractors that were selected using a competitive procedure based upon technical merit and cost-effectiveness, as defined in this part except as provided in Subsections D and E of this section. The solicitation and evaluation of proposals are required prior to workplan approval.

B. At a minimum, the department shall obtain proposals and select contractors competitively for remediation activities under 20.5.12.1227 through 20.5.12.1232 NMAC and under 20.5.13.1319 through 20.5.13.1324 NMAC, including conceptual and final remediation plans, design, construction, installation, operation and maintenance, and monitoring.

C. Either an owner or operator may request and the department approve, or the department may require, that competitive proposals be obtained for specific remediation activities covered in a proposal in Subsection B of 20.5.17.301 NMAC if the contractor fails, in the department's opinion, to achieve technical merit or cost effectiveness standards as set forth in a workplan, proposal or contract. The department shall state the basis for obtaining the new proposals in writing to the owner or operator and the contractor.

D. Competitive contractor selection is not required for the following activities:

(1) initial abatement or emergency response under 20.5.12.1203 and 20.5.12.1204 or 20.5.13.1302 and 20.5.13.1303 NMAC;

(2) 72 hour and 14 day reports under 20.5.12.1205 or 20.5.13.1304 NMAC;

(3) interim removal of non-aqueous phase liquid (NAPL), directed or approved by the department under 20.5.12.1207 or 20.5.13.1306 NMAC;

(4) interim removal of contaminated soil, directed or approved by the department under 20.5.12.1208 or

20.5.13.1307 NMAC;

(5) investigation activities under 20.5.7.703 NMAC and 20.5.12.1209 through 20.5.12.1218 NMAC or 20.5.13.1308 through 20.5.13.1311 NMAC;

(6) development of and monitoring and reporting under a monitored natural attenuation plan under 20.5.12.1220 through 20.5.12.1226 NMAC or 20.5.13.1312 through 20.5.13.1318 NMAC;

(7) work at sites for which the owner or operator is not seeking payment, including but not limited to federal facilities and sites determined to be out of compliance pursuant to 20.5.17.201 NMAC; or

(8) work at sites under contract as described in Subsection E of this section.

E. Work at sites with releases from USTs where the owner or operator and a contractor entered into a contract approved by the department and initiated remediation prior to October 1, 1995, shall be exempt from competitive contractor selection requirements. Work at sites with releases from ASTs at which the owner or operator and a contractor entered into a contract for and initiated remediation prior to June 14, 2002, shall be exempt from competitive contractor selection requirements. The owner or operator shall obtain a contractor for any subsequent site through the competitive contractor selection process in accordance with the requirements of 20.5.17.300 through 20.5.17.302 NMAC.

[20.5.17.300 NMAC - Rp, 20.5.17.300 NMAC, 11/13/03]

#### 20.5.17.301 PROCEDURES AND REQUIREMENTS FOR REMEDIATION CONTRACTOR SELECTION:

A. Within two weeks of written notification from the department that remediation is required, the owner or operator shall provide in writing to the department a minimum of five names of consultants, from which the department shall solicit proposals for remediation. The department shall follow the procedures outlined in Subsections B through F of 20.5.17.301 NMAC.

##### B. Specifications.—

(1) The department shall develop specifications for remediation, which shall state which sections of 20.5.12 or 20.5.13 NMAC the work is intended to fulfill.

(2) The department may require that specifications including primary responsibility for operation or maintenance of remediation systems with electrical or mechanical components contain the requirement that winning proposals shall include pay-for-performance criteria as defined in this part.

(3) Proposals shall meet all requirements outlined in the specifications, and shall include the costs for all tasks out-



lined in the specifications. Costs shall be provided under separate sealed cover from the technical portion of the proposal.

C. Solicitation of proposals.

(1) The department shall mail the specifications to the contractors provided by the owner or operator. However, if the owner or operator fails to provide the department with five contractors, or with the written approval of the owner or operator, the department may make the specifications available to any interested contractor upon the contractor's request.

(2) Any questions concerning the solicitation, including any requests for clarification of the specifications, shall be submitted in writing to the department, within two weeks prior to the deadline for submission of proposals. Any response provided by the department shall be provided in writing, and promptly to all contractors to whom the solicitation was sent. Each proposal shall contain a notarized affidavit signed by the contractor certifying under oath that the contractor has participated and will continue to participate in the competitive contractor selection process as described in this section and NMSA 1978, Section 74-6B-7C without misrepresentation and without collusion with other contractors during the entire solicitation, evaluation and selection process.

D. Evaluation of proposals and contractor selection.

(1) Once the department and the owner or operator have received a proposal, there shall be no further communication or discussion regarding the solicitation or any proposal received in response to the solicitation, among department staff, the owner or operator, and anyone who submitted a proposal.

(2) The department shall, and the owner or operator may, first evaluate proposals based on technical merit as defined in this part. The technical merit score shall be based on an understanding of site-specific conditions and the appropriateness of proposed remediation technology. No cost information shall be opened or evaluated during the technical merit scoring.

(a) Within 30 days of the deadline for submitting proposals, a team shall evaluate the proposals. Each team member shall independently score each proposal for technical merit. The team shall consist of the project manager for the site, one senior technical staff member, one other project manager, and the owner or operator. After discussion the team shall select the preliminary technical merit score for each proposal.

(b) The team shall prepare a short list of proposals for further consideration consisting of the proposals with the highest

preliminary technical merit scores.

(c) The team shall present the short list of proposals to a department task force for discussion to ensure consistency among team evaluation and scoring. The task force shall consist of senior department technical staff. After discussion with the task force, the team shall assign the technical merit scores.

(3) The firms whose proposals have been selected for the short list shall conduct an oral presentation outlining their proposals for the task force and the team. The department shall provide reasonable notice of the oral presentations to the owner or operator, who may attend. During the oral presentations, members of the task force and the team, may ask questions. Only the team shall assign the scores to each proposal on the short list.

(a) Any firm that does not conduct an oral presentation, after at least one week's advance notice, shall be eliminated from the short list.

(b) 24 hours prior to the oral presentations, the task force and the team shall open and review the sealed cost information submitted for each proposal on the short list.

(c) Prior to or during the oral presentations, contractors on the short list may withdraw the original cost submission and substitute a best and final offer for the cost portion of the proposal.

(4) Based on the oral presentations, the team may adjust the technical merit score, based on demonstrated general expertise, site-specific knowledge and application, or information clarified or provided.

(5) At any point in the evaluation process, if, in the team's opinion, a proposal does not substantially meet the technical merit or cost effectiveness standards set forth in the solicitation, the team may reject the proposal as non-responsive.

(6) The team shall assign a final score for each proposal on the short list, which shall be the cost effectiveness score plus the technical merit score.

(a) The technical merit score, with a maximum of 700 points shall be assigned pursuant to the procedure described in this subsection.

(b) The cost effectiveness score is the technical weight factor times the cost weight factor times 300, where the technical weight factor is the proposal's technical merit score divided by the highest technical merit score of proposals on the short list; the cost weight factor is the lowest cost of proposals on the short list divided by the proposal's cost; and 300 is the maximum cost effectiveness score.

(7) The department shall notify the owner or operator of the highest scoring

proposal within seven days of the oral presentations, and shall make available to the owner, operator, contractors and the public, all proposals submitted and their scores. The owner or operator shall enter into a contract with the selected contractor within 30 days of this notification. In order for the work to qualify for payment from the fund, the owner or operator shall use the contractor selected in accordance with this part.

(8) An owner or operator aggrieved by the department's selection may request administrative review pursuant to 20.5.17.600 NMAC within 15 days of the notification. Contractors and others are not eligible to request administrative review.

(9) If fewer than three responsive proposals are obtained by the deadline in the solicitation, and after consultation with the owner or operator, the department shall solicit additional proposals pursuant to Subsection A or Paragraph (1) of Subsection C of this section.

(10) If fewer than three responsive proposals are obtained after two attempts, the department may select a proposal following the procedures in this section, provided the costs are reasonable and the technical merit is acceptable for the proposed work. A responsive proposal means that the firm has responded in writing to each element of the specifications and the firm has provided a cost estimate for the proposal that meets the proposal specifications.

(11) For purposes of owner and operator participation in the process set forth in this subsection, the owner or operator may appoint a representative who is not affiliated with anyone who submitted a proposal. Owner or operator participation in the process is optional and at the owner or operator's discretion. Any owner or operator representative may not later work for the contractor, the owner, or the operator on any work generated by the proposal.

E. When proposals are received from nonresident businesses and resident businesses, and the proposal with the highest evaluation is from a nonresident business, the contract shall be awarded to the resident business whose technical merit is comparable and whose cost is nearest to the cost of the high scoring nonresident business proposal if the cost of the resident proposal is made lower than the cost of the nonresident business when multiplied by a factor of 0.95.

F. Cost of proposal preparation may be eligible for payment from the fund if included in the proposal and first workplan prepared pursuant to the selected proposal and approved by the department. [20.5.17.301 NMAC - Rp, 20.5.17.301 NMAC, 11/13/03]

20.5.17.302 W O R K P L A N  
APPROVAL AND CHANGE ORDERS  
FOR CORRECTIVE ACTION:

A. Except as provided in Subsection C of 20.5.17.400 NMAC, a written workplan and budget to complete any phase of corrective action shall be approved in writing by the department prior to any corrective action work being done in order for that work to be eligible for payment under this part.

B. The owner or operator shall submit the corrective action workplan and budget in a fixed-fee format unless the department determines that a time-and-materials format is appropriate. If the department approves a time-and-materials format, any increase in approved amounts for specific tasks, categories or subcategories or any reallocation of an amount from one task to another task, one category to another category or within categories must be approved in advance by the department in writing.

C. If required by Paragraph (2) of Subsection B of 20.5.17.301 NMAC, a workplan including the operation and maintenance of a remediation system that includes mechanical or electrical installations shall list the performance criteria required for payment and amount of payment.

D. If a workplan is rejected after two attempts to receive approval by the department, the department may select the contractor who received the second highest evaluation, repeat the contractor selection process in accordance with Subsection B of 20.5.17.301 NMAC, or, in the case of activities which do not require competitive contractor selection under Subsection D of 20.5.17.300 NMAC, require the owner or operator to submit a workplan from a different consultant.

E. Changes to the technical approach or increases in costs beyond the approved budget shall be approved in writing by the department prior to implementation in order to be eligible for payment. Such changes may be approved if based upon a demonstration of unforeseen field conditions or other justifiable reasons.

F. The department may increase or reduce payments for work based on pay-for-performance criteria because of *force majeure* or unforeseen changes in site conditions.

[20.5.17.302 NMAC - Rp, 20.5.17.302 NMAC, 11/13/03]

20.5.17.303 to 20.5.17.399 [RESERVED]

20.5.17.400 C O R R E C T I V E  
ACTION ELIGIBLE AND INELIGIBLE  
COSTS AND EXPENDITURES:

A. Payments shall be

made only for corrective action conducted by firms qualified under 20.5.16 NMAC or in accordance with Subsection G of 20.5.12.1200 NMAC.

B. No expenditures from the fund shall be paid to or on behalf of owners or operators for corrective action, other than the minimum site assessment or any sampling done for purposes of Paragraph (3) of Subsection A of 20.5.12.1226 or 20.5.12.1233 NMAC or Paragraph (2) of Subsection A of 20.5.13.1318 or 20.5.13.1325 NMAC, where the corrective action was conducted by firms or entities that are subsidiaries, parents or otherwise affiliate firms or entities of the owner or operator.

C. For USTs, payment shall not be made for corrective action performed on or after September 22, 1992, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.12.1203 or 20.5.12.1204 NMAC or 20.5.13.1302 or 20.5.13.1303 NMAC. For ASTs, payment shall not be made for corrective action performed on or after June 14, 2002, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.12.1203 or 20.5.12.1204 NMAC.

D. Costs eligible for payment from the fund are all costs except those excluded by Subsections H and I of this section, and that are reasonable and necessary to confirm releases in accordance with 20.5.7 NMAC, to complete the minimum site assessment in excess of the deductible, and to complete corrective action beyond the minimum site assessment, in accordance with 20.5.12 NMAC or 20.5.13 NMAC, the department's fee schedule, and any workplan required by 20.5.17.302 NMAC and approved by the department.

E. Before making payments, the department shall determine that the owner or operator has reimbursed the department for all federal LUST trust funds expended for contractual services at the site.

F. Unpaid invoices are eligible for payment on an assignment basis from the applicant to the party who rendered the invoiced services or goods, or the party who actually made payment. Invoices resulting from assignments as described in this subsection are not contractual between the department and the party who rendered the service or the party who actually made payment. Payments of such invoices are made pursuant to provisions of NMSA

1978, Section 74-6B-13, including being subject to the availability of funds in the corrective action fund.

G. Before applying to the corrective action fund for payment, if the owner or operator has an insurance policy or insurance policies as described in 20.5.17.502, the owner or operator shall file a claim and report any proceeds paid. The owner or operator shall also submit copies of the policy or policies to the department if copies have not yet been submitted under 20.5.17.502 NMAC. If the owner and operator have separate insurance policies, both must file claims against their policy or policies, report any proceeds paid, and submit to the department copies of the policy or policies. If neither the owner nor the operator has an insurance policy or insurance policies as described in 20.5.17.502, the owner and operator shall so certify to the department before either the owner or the operator applies to the fund for payment.

H. For USTs, costs ineligible for payment include, but are not limited to, the following:

(1) costs incurred prior to March 7, 1990;

(2) costs incurred on or after September 22, 1992, that exceed those in the department fee schedule in effect at the time the work was performed;

(3) costs paid or reimbursed by insurance companies or any other third party as described in 20.5.17.502 NMAC;

(4) unpaid invoices, unless allowed under Subsection F of this section;

(5) cost of removing, repairing, retrofitting or replacing any USTs;

(6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare or the environment, as determined by the department;

(7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare or the environment, as determined by the department;

(8) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;

(9) attorneys' fees or other legal costs;

(10) costs of monitoring a contractor and the owner's, operator's and designated representative's participation in the contractor selection process;

(11) costs associated with real estate transactions;

(12) rush charges for laboratory or other services, unless required by the department;

(13) payment made to property owners for property access to install or

place monitoring wells or other investigation-related or remediation-related equipment;

(14) economic losses and liability to third parties; and

(15) costs associated with corrective action that fails to conform with the preapproved workplan or with the requirements of 20.5.12 NMAC or 20.5.13 NMAC.

I. For ASTs, costs ineligible for payment include but are not limited to the following:

(1) costs incurred prior to July 1, 2001;

(2) costs incurred that exceed those in the department fee schedule in effect at the time the work was performed;

(3) costs paid or reimbursed by insurance companies or any other third party described in 20.5.17.502 NMAC;

(4) unpaid invoices, unless allowed under Subsection F of this section;

(5) costs of removing, repairing, retrofitting or replacing any ASTs;

(6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare or the environment, as determined by the department;

(7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare or the environment, as determined by the department;

(8) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;

(9) attorneys' fees or other legal costs;

(10) costs of monitoring a contractor and the owner's, operator's or designated representative's participation in the contractor selection process;

(11) costs associated with real estate transactions;

(12) rush charges for laboratory or other services, unless required by the department;

(13) payment made to property owners for property access to install or place monitoring wells or other investigation-related or remediation-related equipment;

(14) economic losses and liability to third parties; and

(15) costs associated with corrective action that fails to conform with the pre-approved workplan or with the requirements of 20.5.12 NMAC.

[20.5.17.400 NMAC - Rp 20.5.17.400 NMAC, 11/13/03]

20.5.17.401 MEANS TEST TO DETERMINE DEDUCTIBLE:

A. An owner or operator otherwise responsible for paying the first ten thousand dollars (\$10,000) of minimum site assessment costs under NMSA 1978, Section 74-6B-13 may request that the first ten thousand dollars (\$10,000) be paid from the fund (a "zero deductible") if the owner or operator has proven to the department that:

(1) the owner or operator owns or operates no more than one facility and has four or fewer storage tanks at that facility;

(2) the facility dispenses less than 20,000 gallons of product monthly, averaged over the last two years of operation; and

(3) the primary purpose of the facility is or was resale of petroleum products.

B. An owner or operator otherwise responsible for a ten thousand dollar (\$10,000) deductible is allowed a five thousand dollars (\$5,000) deductible if the owner or operator has proven to the department that:

(1) the owner or operator owns or operates two or fewer facilities, with four or fewer storage tanks at each facility;

(2) the facility dispenses less than 40,000 gallons of product monthly from both facilities combined, averaged over the last two years of operation; and

(3) the primary purpose of the two facilities is or was resale of petroleum products.

C. The owner or operator shall submit an application for a reduced deductible within one year of completion of the minimum site assessment. The department shall not grant extensions of this deadline. The application shall include the following:

(1) records documenting the quantity of product dispensed during the appropriate period of time in accordance with Subsections A and B of this section; or

(2) if such documents are unavailable, a notarized affidavit under oath attesting, to the best of the owner or operator's knowledge, the quantity of product dispensed during the appropriate period of time in accordance with Subsections A and B of this section.

D. Notwithstanding the provisions of Subsections A and B of this section, an owner or operator otherwise responsible for paying a deductible shall be allowed a zero deductible if the owner or operator has proven to the department that the owner or operator is a municipality or county.

E. The department may grant variances only to Paragraphs (1) and (3) of Subsection A and Paragraphs (1) and (3) of Subsection B of this section and only for good cause shown. Good cause shall, in

most cases, be documentation verifying that the owner or operator qualifies as a small business as defined in 20.5.17.7 NMAC.

[20.5.17.401 NMAC - Rp 20.5.17.401 NMAC, 11/13/03]

20.5.17.402 OWNERSHIP AND DISPOSITION OF MAJOR REMEDIATION EQUIPMENT:

A. The department shall be the owner of all major remediation equipment paid for by the fund, and shall be responsible for disposition of all major remediation equipment. No owner or operator of storage tanks shall dispose of any major remediation equipment without the written permission of the department. Disposition by the department shall be in accordance with all applicable laws and regulations, and by any of the following means:

(1) relocation to another fund remediation site, as provided in Subsections C through E of this section;

(2) interim rental to a non-fund remediation site, subject to Subsection F of this section;

(3) sale or salvage, subject to Subsection G of this section; or

(4) when options in Paragraphs (1) through (3) of this subsection are not available, any other form of disposal consistent with federal and state law.

B. Any major remediation equipment shall be installed, maintained and disposed of in accordance with Subsections A through G of this section.

C. An owner or operator requiring the use of major remediation equipment for corrective action paid for with fund money shall use equipment on the department's reuse list, if available and provided such equipment can be refurbished to the manufacturer's operating specifications for a cost not to exceed the original cost of the equipment.

D. For all major remediation equipment, new or used, the owner or operator shall enter into a written installation and maintenance agreement with a company qualified to install and maintain the equipment and shall furnish a copy of the agreement, executed by the company, to the department. Installation and maintenance shall be performed by factory authorized personnel or a contractor specified by the manufacturer, or as otherwise approved by the department. Complete and proper installation must be verified by both the manufacturer, or its designated representative, and the installation personnel or company. Installation and maintenance contract costs shall be stated together with the purchase price of the equipment quoted to the department in proposals, workplans and applications for payment from the fund.

E. For all new major remediation equipment and for all used major remediation equipment under warranty when acquired, the owner or operator shall also furnish a copy of the manufacturer's warranty to the department.

F. If major remediation equipment is rented to a non-fund remediation site, a reasonable rental fee shall be paid into the fund. The department shall determine the reasonable rental fee based on the lowest price quote from three equipment renters.

G. Major remediation equipment shall be depreciated over its useful life and have a salvage value, method and schedule as approved by the department. If the equipment is sold or salvaged, the proceeds from the sale or salvage value shall be paid into the fund. Gain or loss shall be calculated based on the net book value or salvage value in accordance with generally accepted accounting principles.

H. The department shall remove all major remediation equipment from a site within 90 days after issuing a "no further action" letter for that site. [20.5.17.402 NMAC - Rp, 20.5.17.402 NMAC, 11/13/03]

20.5.17.403 to 20.5.17.499 [RESERVED]

20.5.17.500 FUND APPLICATION, PAYMENT AND SUBROGATION:

A. Nothing in 20.5.17 NMAC establishes or creates any liability or responsibility on the part of the department or the state to pay corrective action costs from any source other than the fund, nor shall the department or the state have any liability or responsibility to make any payments of corrective action costs if the balance in the fund is insufficient to cover those costs.

B. Payment shall be made only for work that has been performed in accordance with 20.5.7, 20.5.12 or 20.5.13 NMAC and 20.5.17 NMAC, subject to the provisions of 20.5.15.1504 NMAC. [20.5.17.500 NMAC - Rp 20.5.17.500 NMAC, 11/13/03]

20.5.17.501 APPLICATION AND PAYMENT PROCESS:

A. The owner or operator shall submit an application for payment to the department. The application shall include:

- (1) copies of or references to all investigation reports and documents submitted to the department for the site, in accordance with 20.5.12 or 20.5.13 NMAC;
- (2) copies of or references to the department's compliance determination under 20.5.17.200 NMAC;
- (3) copies of invoices showing

the work performed for the minimum site assessment or other required corrective action for which payment is sought as well as the documentation required in Subsection B of this section;

(4) a copy of the letter from the department stating the applicant's status regarding eligibility for a reduced deductible, if applicable, as determined in accordance with 20.5.17.401 NMAC, or an application which meets the requirements of 20.5.17.401 NMAC, if applicable and timely;

(5) copies of information submitted in accordance with 20.5.17.502 NMAC and copies of information about any payments received from insurance companies for costs of corrective action;

(6) the disclosure statements for verifying compliance with Subsection B of 20.5.17.400 NMAC. The owner or operator shall submit a signed and notarized original disclosure form with the first application for payment for corrective action for each release at each facility. Thereafter, anyone who has previously submitted this form and received a payment need not resubmit this form, unless the information provided earlier has changed;

(7) a statement that requirements to use a qualified firm in accordance with 20.5.16 NMAC have been met; and

(8) a copy of any and all workplan approval letters covering work for which payment is requested.

B. All applications for payment shall contain the name, address and telephone number of the contractor; the contractor's project manager for the site; the workplan identification number; the workplan approval date, the site number and the facility number; and,

(1) when work is performed on a fixed fee basis, the owner or operator shall submit the following:

- (a) a description of the deliverable, if any, and the date delivered;
- (b) verification that any performance criteria required for payment were achieved; and
- (c) any other requirements of the workplan approval.

(2) When work is performed on a time-and-materials basis, the owner or operator shall submit the following:

- (a) detailed billings of labor and equipment for each task performed. Contractor staff must be identified by name and hourly rate; equipment must be identified as owned or rented, with the hourly or daily rate; laboratory and subcontractor charges must be clearly explained;
- (b) timesheets, invoices, or statements with staff name, labor category, and description and date of work performed;
- (c) copies of receipts for all

equipment and supplies;

- (d) travel and expense logs;
- (e) invoices for all subcontractors;

(f) if work is billed on an hourly basis, timesheets, invoices or statements which include the hourly rate and number of hours billed to the nearest one-quarter hour; and

(g) any other requirements of the workplan approval.

(3) The owner or operator also shall include a certification of the truthfulness of all of the matters and facts contained in the application and stating that the invoices reflect actual costs paid or otherwise incurred. Such certification shall be made on oath or affirmation in accordance with NMSA 1978, Sections 14-3-1 and 14-13-2.

(4) No more than one application for payment shall be submitted in each quarter. The owner or operator shall not submit costs of any portion of a minimum site assessment in the same application for payment as costs for other required corrective action. An owner or operator may apply in writing for permission to submit more than one application for payment in a quarter if good cause is shown to the department.

(5) All applications for payment to the party that paid for the corrective action shall be received by the department within 24 months of the most recent date on the back of a cancelled check for payment included in the application. For applications submitted under the provision for assignment of payment in Subsection F of 20.5.17.400 NMAC, the application for payment shall be received by the department within 24 months of the date of the last invoice in the application for payment. Extensions of deadlines in this subsection shall not be granted.

C. Applications for payment shall be sent to the environmental protection division, corrective action fund, office of finance and budget, New Mexico environment department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

D. The department shall review all written submissions in the order received and shall, within 30 days of receipt, notify the owner or operator in writing of any inadequacies in the submittal. The owner or operator may correct any inadequacies and resubmit the application within 30 days of the date of the notice of inadequacies.

E. Payment for eligible costs shall occur not later than 60 days, or in accordance with 20.5.15.1504 NMAC, after the department determines the submittal complete, which includes approval for tech-

nical adequacy by the department. The department shall mail the check for payment to the person designated as payee in the application.

F. Payment under this section shall not foreclose the department's right to recover excessive or illegal payments.

[20.5.17.501 NMAC - Rp 20.5.17.501 NMAC, 11/13/03]

[The department provides forms that may be used to comply with Subsection A and Paragraph (3) of Subsection B of this section.]

20.5.17.502 SUBROGATION:

A. The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy, pursuant to Subsection D of NMSA 1978, Section 74-6B-8. The department's subrogation rights are limited to the extent of the department's expenditures from the corrective action fund or other sources. The owner or operator shall include with the report of the minimum site assessment a copy of any insurance policies which were in effect on the date of the report, as well as any policies which were in existence at the time the release may have occurred and which may insure the owner or operator against all or part of the costs of taking corrective action. The owner or operator shall also report to the department any claims filed against any policy identified in accordance with this section or Subsection G of 20.5.17.400 NMAC.

B. The department has a right of subrogation against any third party who caused or also contributed to the release, pursuant to Subsection D of NMSA 1978, Section 74-6B-8. This right of subrogation shall apply regardless of any applications for payment the owner or operator may have made or intends to make for payment from the fund. The owner or operator shall report to the department the identity of any third party against whom a claim is filed and provide a copy of any claim filed against that party.

[20.5.17.502 NMAC - Rp, 20.5.17.503 NMAC, 11/13/03]

20.5.17.503 to 20.5.17.599 [RESERVED]

20.5.17.600 ADMINISTRATIVE REVIEW: An owner or operator of a storage tank aggrieved by a decision made by the department under 20.5 NMAC, with the exception of compliance determinations under 20.5.17.200 through 20.5.17.202 NMAC and cost eligibility determinations under 20.5.17.400 through 20.5.17.401 NMAC, may obtain review of the decision

using the procedures and subject to the limitations set forth in 20.5.10 NMAC, which shall be considered incorporated in this section by reference. Compliance and cost eligibility determinations shall be appealed as provided in 20.5.17.601 and 20.5.17.602 NMAC.

[20.5.17.600 NMAC - Rp, 20.5.17.600 NMAC, 11/13/03]

20.5.17.601 REVIEW OF DETERMINATIONS OF COMPLIANCE AND COST ELIGIBILITY:

A. Any owner or operator aggrieved by a decision made by the department regarding determinations of compliance or cost eligibility under 20.5.17.200 through 20.5.17.202 NMAC or 20.5.17.400 through 20.5.17.401 NMAC may appeal the decision by submitting a request for reconsideration of the decision to the director. Any owner or operator aggrieved by a decision made under these regulations by the director may appeal the decision by submitting a request for reconsideration to the director. The reconsideration will be based on written submittals. Any such request for reconsideration must be in writing and must specify the grounds upon which the petitioner objects to the decision being appealed. The request shall be accompanied by any and all written material and argument which the owner or operator wishes the director to consider upon reconsideration. The request for reconsideration shall be postmarked within 15 days of the date of the determination.

B. Department staff shall respond to the request for reconsideration within 15 days of receipt of the complete submittal of the owner or operator's request for reconsideration. The response of the department staff shall be sent to both the director and the owner or operator and shall be accompanied by any and all written materials and argument in support of the position of the staff on the issues raised by the owner or operator.

C. For good cause shown, the director may permit either party additional time in which to submit the supporting written materials or argument for which Subsections A and B of this section provide. Any request for additional time and all evidence for good cause shall be submitted in writing prior to the end of the 15-day period described in Subsection A of this section. The department shall act on the request for additional time within a reasonable period of time.

D. The director's action on the request for reconsideration shall be based on the written materials and argument submitted pursuant to this section unless the director, in the director's discretion, schedules a conference on the request for recon-

sideration.

E. The director's action on the request for reconsideration shall be by written decision and shall state the reason therefor. The director shall send a copy of the decision to the owner or operator and furnish a copy to department staff promptly after the decision is rendered.

F. The owner or operator may appeal the decision of the director made under Subsection E of this section by requesting a hearing in accordance with 20.5.17.602 NMAC.

[20.5.17.601 NMAC - Rp, 20.5.17.601 NMAC, 11/13/03]

20.5.17.602 REQUEST FOR HEARING ON DETERMINATIONS OF COMPLIANCE AND COST ELIGIBILITY:

A. An owner or operator may obtain review by the secretary of a decision by the director made pursuant to Subsection E of 20.5.17.601 NMAC by filing a written request for a hearing as provided in the environment department adjudicatory procedures, 20.1.5 NMAC, within 30 days after the date the owner or operator receives the director's decision pursuant to Subsection E of 20.5.17.601 NMAC. The procedures set forth in the environment department adjudicatory procedures, 20.1.5 NMAC, shall govern the proceeding.

B. Cost eligibility determinations shall be considered compliance determinations for purposes of the environment department adjudicatory procedures, 20.1.5 NMAC, and all of the provisions of that part which apply to compliance determinations shall apply to cost eligibility determinations.

C. The complainant shall attach to the request for hearing a copy of the determination for which review is sought.

D. With the request for hearing, the complainant shall file a reply to the determination. The reply shall address each of the findings in the determination, including any facts which support the complainant's position that the complainant has complied with the requirements of Subsection B of NMSA 1978, Section 74-6B-8.

E. The secretary shall schedule the hearing for no later than 90 days after service of the notice of docketing. [20.5.17.602 NMAC - Rp, 20.5.17.602 NMAC, 11/13/03]

20.5.17.603 EFFECT OF APPEAL ON PAYMENT, ENFORCEMENT: A request for hearing or other administrative review shall not delay payment for any phase of corrective action, other than that which is being contested. A request for

hearing shall not affect the secretary's authority to issue compliance orders or otherwise seek enforcement of 20.5 NMAC under the provisions of the Hazardous Waste Act or relieve an owner or operator of any responsibility under 20.5 NMAC.

[20.5.17.603 NMAC - Rp, 20.5.17.603 NMAC 11/13/03]

20.5.17.604 CONTRACTOR FEE SCHEDULE:

A.

Professional services	Hourly rate
Principal scientist	\$ 137.50
Senior scientist	\$ 104.50
Project scientist/engineer-manager	\$ 82.50
Staff scientist/engineer	\$ 66.00
Field technician	\$ 63.25
Draftsperson	\$ 51.75
Administrator	\$ 63.25
Secretary	\$ 34.50
Clerk	\$ 28.75

B.

Field equipment	Cost per day
Carbon monoxide, sulphur dioxide oxide and oxygen meters	\$ 50.00
Water quality meter	\$ 50.00
Dissolved oxygen meter (water)	\$ 35.00
Electroconductivity meter	\$ 45.00
Explosimeter	\$ 40.00
Fluid field detector	\$ 25.00
Interface probe	\$ 65.00
Organic vapor meter	\$ 65.00
Photionization detector	\$ 65.00
Flame ionization detector	\$ 65.00
pH Meter	\$ 20.00
Other Costs shall be pre-approved by the department. The department may require justification	

C. Per diem will be paid in accordance with the current state allowance.

D. Earth-moving equipment. Costs shall be pre-approved by the department. The department may require justification.

(1) Backhoe, light duty (12 feet-19 feet).

(2) Backhoe, medium duty (14 feet-19 feet).

(3) Trackhoe, light duty.

(4) Trackhoe, medium duty.

(5) Trackhoe, heavy duty.

(6) Other. Costs shall be pre-approved by the department. The department may require justification.

E. Well Supplies. Costs shall be pre-approved by the department. The department may require justification.

(1) Two-inch blank.

(2) Four-inch blank.

(3) Two- inch screen PVC 10 feet.

(4) Four-inch screen PVC 10 feet.

(5) Filter pack, per 100 pounds.

(6) Bentonite pellets, per 50 pounds.

(7) Bentonite chips, per 50 pounds.

(8) Bentonite gel, per 100 pounds.

(9) Grout, per 50 pounds.

(10) Eight-inch manhole.

(11) 12-inch manhole.

(12) Other. Costs shall be pre-approved by the department. The department may require justification.

F. Drilling. Costs shall be pre-approved by the department. The department may require justification.

(1) Mobilization/demobilization.

(2) Hollow stem auger.

(3) Air rotary.

(4) Sonic drilling.

(5) Other drilling methods.

(6) Plug and abandon.

(7) Other. Costs shall be pre-approved by the department. The department may require justification.

G. Lab services. Costs shall be pre-approved by the department. The department may require justification.

- (1) EPA methods.
  - (a) 8310.
  - (b) 601/8010, 602/8020.
  - (c) Modified 8015.
  - (d) 418.1.
  - (e) 610/8100.
  - (f) 624/8240.
  - (g) 625/8270.
  - (h) 8260.
  - (i) RCRA 8 metals.
- (2) Benzene, toluene, ethyl benzene, and xylenes; methyl tertiary-butyl ether.
- (3) pH.
- (4) Total organic carbon.
- (5) Geotechnical soil analyses.
  - (a) Sieve analysis.
  - (b) Soil moisture.
  - (c) Density.
  - (d) Porosity.
  - (e) Fraction organic carbon.
- (6) Other. Costs shall be pre-approved by the department. The department may require justification. [20.5.17.604 NMAC – Rp, 20.5.17.604 NMAC, 11/13/03]

#### HISTORY OF 20.5.17 NMAC:

##### Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records – state records and archives: NMED 92-1, Ground Water Protection Act Corrective Action Fund Regulations, filed 9/24/92; NMED 94-1, Corrective Action Fund Payment And Reimbursement Regulations, filed 2/4/94.

##### History of Repealed Material:

20 NMAC 5.17 Underground Storage Tanks, Corrective Action Fund Payment and Reimbursement, filed 10/6/95 - Repealed, effective 1/31/00.

20 NMAC 5.17 Underground Storage Tanks, Corrective Action Fund Administration, filed 1/18/00 - Repealed, effective 6/14/02.

20.5.17 NMAC Petroleum Storage Tanks, Corrective Action Fund Administration, filed 5/29/02, - Repealed, effective 11/13/03.

Other History: NMED 94-1, Corrective Action Fund Payment And Reimbursement Regulations, filed 2/4/94 was renumbered, reformatted and replaced by 20 NMAC 5.17, Underground Storage Tanks, Corrective Action Fund Administration, effective 1/31/00.

20 NMAC 5.17, Underground Storage Tanks, Corrective Action Fund Administration, filed 1/18/00, was replaced by 20.5.17 NMAC, Petroleum Storage Tanks, Corrective Action Fund Administration, effective 6/14/02.

20.5.17 NMAC, Petroleum Storage Tanks, Corrective Action Fund Administration, filed 5/29/02, was replaced by 20.5.17 NMAC, Petroleum Storage Tanks, Corrective Action Fund Administration, effective 11/13/03.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.75 NMAC, Sections 5, 7, 10, and 11 effective on 12/01/03.

**20.2.75.5 EFFECTIVE DATE:** March 2, 2001 except where a later date is cited at the end of a section.

**A.** For applications received prior to the effective date of this regulation, the provisions in 20.2.75 NMAC, as effective as of the date of the receipt of the application, remain effective, and fees shall be so determined.

**B.** For applications received following the effective date of this regulation, fees shall be based on the current regulation.

**20.2.75.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC (definitions) or 20.2.72 NMAC (construction permits), as used in this Part:

**A. "air toxics review"** means the required review of a permit application for the potential emission of an air toxic regulated by 20.2.72.400 NMAC - 20.2.72.499 NMAC. As used in this Part, a level I air toxics review consists of modeling to determine whether one one-hundredth (1/100) of the occupational exposure limit, as defined in 20.2.72.401 NMAC, is met; a level II air toxics review consists of either a health assessment or best available control technology (BACT) determination, whichever is required by 20.2.72.400 NMAC - 20.2.72.499 NMAC.

**B. "applicable regulations"**, for the purpose of assessing permit fee points, mean those regulations that are applicable to the source and not the review to determine whether the regulation is applicable. Applicable regulations do not include 20.2.1 NMAC (general provisions), 20.2.2 NMAC (definitions), 20.2.3 NMAC (ambient air quality standards), 20.2.5 NMAC (source surveillance), 20.2.7 NMAC (excess emissions during malfunctions, startup, shutdown, or scheduled maintenance), 20.2.8 NMAC (emissions leaving New Mexico), 20.2.60 NMAC (open burning), 20.2.70 NMAC (operating permits), 20.2.71 NMAC (operating permit emission fees), 20.2.72 NMAC (construction permits), 20.2.73 NMAC (notice of intent and

emission inventory requirements), 20.2.74 NMAC (prevention of significant deterioration (PSD)), 20.2.75 NMAC (construction permit fees), 20.2.77 NMAC (new source performance standards), 20.2.78 NMAC (emission standards for hazardous air pollutants), 20.2.79 NMAC (permits - nonattainment areas), 20.2.80 NMAC (stack heights), and 20.2.82 NMAC (maximum achievable control technology standards for source categories of hazardous air pollutants). All other Title 20, Chapter 2 NMAC Parts and all new source performance standards (excluding Subpart A) and national emission standards for hazardous air pollutants/maximum achievable control technology (NESHAP/MACT) (excluding 40 CFR Part 61 Subparts A and M and 40 CFR Part 63 Subpart A) regulations that are applicable to the source shall be counted and shall result in additional points for permit fees purposes, in accordance with the permit fee schedule in this Part.

**C. "fee unit"** means any equipment or process which generates, creates, or is the source of a regulated air contaminant, which is listed or identified in a construction permit application or application to revise a permit and which requires review and evaluation against state and federal regulations and standards. This definition does not include sources which are exempt under 20.2.72.202 NMAC or sources for which no applicable requirements are identified in the permit. In the case of a permit modification, revision or technical review of an existing permit, the requirements of Subsection A of ~~[20.2.75.110]~~ 20.2.75.11 NMAC apply only to the equipment or process involved in such modification, revision or review.

**D. "fugitive emissions fee unit"** means sources of fugitive emissions for which applicable requirements are identified in the permit. A maximum of one fugitive emissions fee unit shall be applied to any given application.

**E. "revision"** means any change requested by an applicant to any term or condition of a permit including but not limited to emission limitations, control technology, operating conditions and monitoring requirements. For the purposes of this regulation, revision does not include administrative revision as used in 20.2.72 NMAC.

**F. "small business"** means, for the purposes of this Part, a company that employs no more than ten (10) employees at any time during the calendar year. Employees include part-time, temporary, or limited service workers. For new sources, the responsible company official shall certify that the source does not expect to employ any more than ten (10) employees in the first year of operations. In addi-

tion, "small business" does not include (1) any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and (2) any major source for hazardous air pollutants under 20.2.70 NMAC.

**G. "technical review of an existing permit"** means the department's technical review of new information submitted by a permittee as required by an existing permit condition and in conjunction with proposed changes at the source that do not involve any changes to the existing permit. The review must be necessary to demonstrate that all applicable state and federal regulations and standards will continue to be met and that the existing permit will continue to be valid. This does not include required periodic reports.

**20.2.75.10 FILING FEE:**

**A.** A filing fee of five hundred dollars (\$500) shall be submitted with each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit. The filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC.

**B.** For applications submitted under 20.2.72.221 NMAC, accelerated review, an accelerated review filing fee of one thousand dollars (\$1,000) shall be submitted in lieu of any other filing fees under this section. One-half of the accelerated review filing fee shall be applied to the cost of the accelerated review submitted by the qualified outside firm. In the event that:

(1) There are no qualified outside firms on contract with the department, or if all of the qualified outside firms have a conflict of interest, the entire filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

(2) No qualified outside firm submits a proposal for the accelerated permit review, one-half of this filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

(3) One or more qualified outside firms submit a proposal but all such proposals are rejected by the applicant, the accelerated review filing fee shall be forfeited and retained by the department; or

(4) The applicant withdraws the application for any reason, the accelerated review filing fee shall be forfeited and retained by the department.

**20.2.75.11 PERMIT FEE:**

**A.** The permit fee shall be based on the following point-based fee schedule.

<b>ACTION</b>	<b># OF POINTS</b>
<b>1. CONSTRUCTION PERMIT/TECHNICAL REVIEW OF EXISTING PERMIT</b>	
Technical Complexity	
1-5 Fee Units	5
6-15 Fee Units	1 point per fee unit
>15 Fee Units	15
Fugitive Emissions Fee Unit	5
<u>Portable Source Relocation</u>	<u>1</u>
<u>(Paragraph 3 of Subsection D of 20.2.72.202 NMAC)</u>	
Non-Attainment Area (20.2.79 NMAC)	75
Modeling Review	15
Air Toxics Review (20.2.72.400 NMAC - 20.2.72.499 NMAC)	
Level I	8
Level II	
Best Available Control Technology (BACT) Analysis	60
Health Assessment	100
Applicable Regulations	
20.2.X NMAC (per each)	3
NSPS (per each)	5
NESHAP/MACT (per each)	5
Case-by-Case MACT (20.2.83 NMAC)	100
PSD netting only (no additional PSD analysis is required)	20
PSD review (including netting) (20.2.74 NMAC)	75
<b>2. OTHER PERMITTING ACTIONS</b>	
General Permits (20.2.72.220 NMAC)	10
Streamline (each site) (20.2.72.300 NMAC- 20.2.72.399 NMAC)	10



**B.** The fee shall be the sum of all of the points that are applicable to the permitting action, multiplied by three hundred fifteen dollars (\$315).

**C.** For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.75.7 NMAC, the permit fee determined by Subsections B and E of 20.2.75.11 NMAC shall be divided by two.

**D.** For applications processed under 20.2.72.221 NMAC, Accelerated Review, the permit fee determined by Subsection B of 20.2.75.11 NMAC shall be divided by two, and shall be in addition to the cost of the accelerated review bid, as described in 20.2.72.221 NMAC.

**E.** Sources that have been issued a construction permit under 20.2.72 NMAC shall be assessed an annual ~~enforcement/compliance fee of two hundred twenty dollars (\$220)~~ fee of one thousand five hundred dollars (\$1,500). This fee shall not apply to sources which are assessed an annual fee in accordance with 20.2.71 NMAC.

**F.** Beginning in 2005, the cost per point in Subsection B of this section and the annual fee in Subsection E of this section shall be adjusted each year on January 1 to reflect the increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the year 2004. The amount of the change in the fee shall be determined by multiplying the existing fee by the change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all-urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August 31 of that year.

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.4 NMAC, Section 11.

### 19.30.4.11 OTHER DESIGNATED AREAS

**A. Valle Vidal area**, as used herein, shall mean the Valle Vidal unit of the Carson national forest and the Greenwood area of the Vermejo Park Ranch, Inc. in GMU 55.

**B. Florida mountains**, as used herein, shall mean the main Florida mountain range and Little Floridas, consisting of that portion of GMU 25 bounded by Interstate 10 on the north, the Luna-Dona

Ana county line on the east, the Mexico-New Mexico line on the south and NM highway 11 on the west.

**C. Sugarite canyon state park**, as used herein, shall mean the Sugarite canyon property owned by the city of Raton and administered by the New Mexico state parks department in GMU 57.

**D. White Sands missile range hunting areas**, as used herein, are those portions of White Sands missile range as documented as stallion range, small missile range, red canyon, Tularosa gate, and Rhodes canyon hunt areas as documented on maps and descriptions provided to hunters.

**E. Organ mountain hunt area:** beginning at the intersection of I-25 and US 70, then south along I-25 to its intersection with I-10, then south along I-10 to its intersection with the New Mexico/Texas state line, then east along the New Mexico/Texas state line to its intersection with Ft. Bliss military reservation boundary, then northeast, then west and then north along the Ft. Bliss military reservation boundary to its junction with the White Sands missile range boundary, then north, west and north along the White Sands missile range boundary to its intersection with US 70, then west along US 70 to its junction with I-25.

**F. Cougar zones** as used herein, shall define hunt areas consisting of one or more GMU's and are described as follows:

- (1) Zone A, GMU's 2 and 7.
- (2) Zone B, GMU's 5, 50, and 51.
- (3) Zone C, GMU's 43, 44, 45, 46, 48, and 49.
- (4) Zone D, GMU's 41, 42, and 47.
- (5) Zone E, GMU's 9 and 10.
- (6) Zone F, GMU's 6 and 8.
- (7) Zone G, GMU's 13, 14, and 17.
- (8) Zone H, GMU's 19, 20, 28, and 29.
- (9) Zone I, GMU's 18, 30, 34, 36, 37, and 38.
- (10) Zone J, GMU's 15, 16, 21 and 25.
- (11) Zone K, GMU's 22, 23, and 24.
- (12) Zone L, GMU's 26 and 27.
- (13) Zone M, GMU's 31, 32, 33, 39, and 40.
- (14) Zone N, GMU's 4 and 52.
- (15) Zone O, GMU 12.
- (16) Zone P GMU's 56, 57, and 58.

**G. Bighorn sheep ranges**, open to yearlong cougar hunting shall be described as: that portion of GMU 13 including Mesa Sarca, the entire Ladron

mountain range, including the area along the Rio Salado west of the Sevilleta national wildlife refuge (nwr) border to Riley road to include the area 3 miles north of the Rio Salado and 1 mile south of the Rio Salado; and an area south of the Sevilleta nwr to include Polvadera mountain and Socorro mountain in a line directly south of the southwest corner of the Sevilleta nwr to NM highway 60 and east on NM highway 60 to Interstate 25 and north on Interstate 25 to the southeast corner of the Sevilleta nwr and then west along the south border of the Sevilleta nwr to the southwest corner of the Sevilleta nwr, Sevilleta national wildlife refuge and New Mexico tech property is closed to all cougar hunting; that portion of the Manzano mountains in GMU 14 from Comanche canyon south to US 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; that portion of GMU 19 beginning at the intersection of US 70 and interstate 25 (I-25) running south along I-25 to its intersection with I-10, thence south along I-10 to its intersection with the Texas/New Mexico state line, thence east along the state line to its intersection with NM 213, thence north along NM 213, which in turn becomes White Sands missile range (WSMR) range road 1 to its intersections with US 70, thence east along US 70 to its intersection with WSMR range road 7, thence north along WSMR range road 7 to its intersection with WSMR range road 306 (Hembrillo canyon), thence west along WSMR range road 306 to its intersection with the western boundary of WSMR, thence south along the WSMR boundary to its intersection with US 70, then west along US 70 to its intersection with I-25; all of GMU's 22A and 22B; that portion of GMU 23 that is south of the Apache and Gila national forest boundary and north of NM 78; that portion of GMU 24 that is west of NM 15; and all of GMU's 26 and 27.

**H. Bear zones as used herein, shall define hunt areas consisting of one or more GMU's and are described as follows:**

- (1) Zone 1, GMU's 4, 5, 6, 7, 51, and 52.
- (2) Zone 2, GMU's 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, and 58.
- (3) Zone 3, GMU's 9, and 10.
- (4) Zone 4, GMU's 8, and 14.
- (5) Zone 5, GMU's 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27.
- (6) Zone 6, GMU's 34, 36, 37, and 38.

[4-1-95,3-14-98; 4-30-99; 19.30.4.11 NMAC - Rn, 19 NMAC 30.4.11, 2-14-2001, A, 3-31-2003; A, 7-15-2003; A, 11-13-2003]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.31.7 NMAC, Section 10.

**19.31.7.10 DEER ENHANCEMENT PROGRAM:**

**A.** The director of the department shall collect all proceeds generated through the auction and lottery of special deer permits, and such monies shall be deposited in the game protection fund. These monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit deer and for direct costs appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of deer.

**B. REQUIREMENTS FOR ISSUANCE OF SPECIAL DEER PERMITS:**

(1) The state game commission shall authorize the director of the department to issue not more than two special deer permits in any one license year to take one fork-antlered deer per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing of a lottery ticket by an incorporated, nonprofit organization dedicated to the conversation of deer.

(2) Proposals for auctioning one special deer permit and the sale of lottery tickets to obtain one special deer permit through a random drawing shall be submitted to the director of the department prior to January 31, preceding the license year when the permit may be legally use.

(3) The proposals for auctioning special deer permit and the sale of lottery tickets and subsequent selection of a recipient for a second permit through a random draw shall each contain and identify: (a) the name of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal; (b) the estimated amount of money to be raised and the rationale for that estimate; and (c) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasures, or

their equivalents.

(4) The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform with the requirements of this section. In selecting a marketing organization, the director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organization's previous involvement with deer management and its conservation objectives. The director may accept any proposals when it is in the best interest of deer to do so.

(5) After a proposal has been approved, the state game commission shall establish open season dates, open areas, and license requirements.

(6) The marketing organization must agree in writing to the following: (a) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and (b) to provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special deer permits are issued.

(7) The department and the marketing organization must agree to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

(8) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special deer lottery permit.

(9) The special deer permits issued through auction and lottery may be transferred through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(10) Special deer permits granted through auction an /or lottery, as described above, shall not be considered a 'once-in-a-lifetime' permits.

[19.31.7.10 NMAC - N, 11-13-2003]

**NEW MEXICO BOARD OF  
PHARMACY**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 19 PHARMACISTS  
PART 27 DISHONORABLE  
CONDUCT**

**16.19.27.1 ISSUING AGENCY:**  
Regulation and Licensing Department -  
Board of Pharmacy, Albuquerque, NM  
87102, (505) 841-9102.

[16.19.27.1 NMAC - N, 12-01-2003]

**16.19.27.2 SCOPE:** Pharmacist interns, pharmacy technicians and businesses licensed pursuant to the New Mexico Pharmacy Act.

[16.19.27.2 NMAC - N, 12-01-2003]

**16.19.27.3 STATUTORY AUTHORITY:** Section 61-11-20 NMSA 1978, Uniform Licensing Act authorizes the board of pharmacy to deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant: (1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board; (17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act.

[16.19.27.3 NMAC - N, 12-01-2003]

**16.19.27.4 DURATION:** Permanent.

[16.19.27.4 NMAC - N, 12-01-2003]

**16.19.27.5 EFFECTIVE DATE:** December 1, 2003, unless a later date is cited at the end of a section.

[16.19.27.5 NMAC - N, 12-01-2003]

**16.19.27.6 OBJECTIVE:** The objective of Part 27 of Chapter 19 is to protect the health and safety of New Mexico citizens by regulating the conduct of pharmacist interns, pharmacy technicians and facilities licensed pursuant to the New Mexico Pharmacy Act.

[16.19.27.6 NMAC - N, 12-01-2003]

**16.19.27.7 DEFINITIONS:** Dishonorable conduct by a pharmacist intern licensed pursuant to NMSA 61-11-6, or pharmacy technician registered pursuant to NMSA 61-11-6.

**A.** Dishonorable conduct by a pharmacist intern or pharmacy technician shall mean, among other things, but not to be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock

from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(11) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(12) suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

**B.** Dishonorable conduct by a facility (business) shall mean, among other things, but not to be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or wel-

fare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(11) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(12) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;

(13) failure to correct written deficiencies, documented by drug inspectors during routine inspections;

(14) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC).

[16.19.27.7 NMAC - N, 12-01-2003]

**History of 16.19.27 NMAC:**  
[RESERVED]

## NEW MEXICO BOARD OF PHARMACY

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 28 SELLER OR DISPENSER OF CONTACT LENSES (EXCLUDING LICENSED OPTOMETRISTS and PHYSICIANS)

**16.19.28.1 ISSUING AGENCY:** Regulation and Licensing Department - Board of Pharmacy. Albuquerque, NM 87102, (505) 841-9102.  
[16.19.28.1 NMAC - N, 12-01-2003]

**16.19.28.2 SCOPE:** All persons or entities selling or dispensing contact lenses pursuant to a valid prescription to patients in New Mexico.  
[16.19.28.2 NMAC - N, 12-01-2003]

**16.19.28.3 STATUTORY AUTHORITY:** The board of pharmacy is authorized pursuant to the Optometry Act, Section 61-2-1 through Section 61-2-18 NMSA 1978 (1997 Repl. Pamp.) to register sellers or dispensers of contact lenses and collect a fee for registration.  
[16.19.28.3 NMAC - N, 12-01-2003]

**16.19.28.4 DURATION:** Permanent  
[16.19.28.4 NMAC - N, 12-01-2003]

**16.19.28.5 EFFECTIVE DATE:** December 1, 2003, unless a different date is cited at the end of a section.  
[16.19.28.5 NMAC - N, 12-01-2003]

**16.19.28.6 OBJECTIVE:** The objective of Part 28 of Chapter 19 is to establish the registration of sellers or dispensers of contact lenses.  
[16.19.28.6 NMAC - N, 12-01-2003]

**16.19.28.7 DEFINITIONS:**  
A. "Board" means the New Mexico board of pharmacy, herein referred to as the board.

B. "Optometry Act" means NMSA 1978 Sections 61-2-1 through 61-2-18 (1995 Repl. Pamp.), herein referred to as the Optometry Act or Section 61-2-1 et seq.

C. "Contact lens prescription" means a prescription that shall explicitly state that it is for contact lenses; specify the lens type; include all specifications for the ordering and fabrication of the lenses; include the date of issue, the name and address of the patient and the name and address of the prescriber; and indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interests of the patient.

D. "Replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses that have already been properly fitted.

[16.19.28.7 NMAC - N, 12-01-2003]

**16.19.28.8 REGISTRATION:**  
A. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy.

B. Pharmacies, hospitals and clinics licensed by the board are exempt from this regulation.

C. Registration will be submitted on forms provided by the board with the appropriate fee attached as a check or money order.

D. Fees for registration are listed in 16.19.12 NMAC.

E. Period of registration is for two years with renewals due by the last day of the expiration month listed on the registration.

[16.19.28.8 NMAC - N, 12-01-2003]

#### 16.19.28.9 POLICY MANUAL:

A policy manual containing at a minimum the information listed below shall be submitted with the registration application.

A. A contact lens may not be sold, dispensed or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

B. The prescription contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

(1) lens manufacturer;

(2) type of lens;

(3) power of the lens;

(4) base curve;

(5) lens size;

(6) name of the patient;

(7) date the prescription was given to the patient;

(8) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and

(9) expiration date of the replacement contact lens prescription.

C. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five years.

[16.19.28.9 NMAC - N, 12-01-2003]

#### 16.19.28.10 REGISTRATION LIST:

The board shall maintain a current list of all registered sellers and dispensers of contact lenses.

[16.19.28.10 NMAC - N, 12-01-2003]

#### HISTORY OF 16.19.28 NMAC: [RESERVED]

### NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.8.7 NMAC, 16.19.8.8 NMAC, 16.19.8.9 NMAC and 16.19.8.13 NMAC effective 12-01-2003.

#### 16.19.8.7 DEFINITIONS:

A. "Blood" means the whole blood collected from a single donor

and processed either for transfusion or further manufacturing.

B. "Blood component" means that part of blood separated by physical or mechanical means.

C. "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

D. "Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.

E. "Prescription drug" means any human drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

F. "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(1) intracompany sales, defined as any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control;

(2) the purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in Section 501(C)(3) of the U.S. Internal Revenue Code of 1954 to a non-profit affiliate of the organization to the extent otherwise permitted by law;

(4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(5) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

~~[(7) The distribution of drug samples by manufacturers' representatives or distributors' representatives; or~~

~~[(8)](7) the sale, purchase or trade of blood and blood components intended for transfusion;~~

~~[(9)](8) any entity exempted by this regulation must keep specific records of purchase, sale, or any manner of distribution of any prescription drug in accordance with Subsection H of 16.19.13 NMAC.~~

G. "Wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution.

[06-14-92; 16.19.8.7 NMAC - Rn, 16 NMAC 19.8.7, 03-30-02; A, 12-01-2003]

#### 16.19.8.8 WHOLESALE DRUG DISTRIBUTOR LICENSING REQUIREMENTS:

A. Every wholesale drug distributor, wherever located, who engages in wholesale distribution into, out of, or within this state must be licensed by the board in accordance with the laws and regulations of this state before engaging in wholesale distribution of prescription drugs.

B. Common or contract carriers or warehousemen, or an employee thereof, whose involvement in the wholesale distribution of prescription drugs occurs in the usual course of his business or employment shall not be required to obtain a wholesale drug distributor license from the board.

C. Wholesale distributors who distribute professional samples of dangerous drugs, not intended for sale, must be licensed by the board. Manufacturers' representatives, employed by wholesale distributors to possess and distribute professional samples of dangerous drugs within this state, must be registered by the board.

[06-14-92; 16.19.8.8 NMAC - Rn, 16 NMAC 19.8.8, 03-30-02; A, 12-01-2003]

#### 16.19.8.9 MINIMUM REQUIRED INFORMATION FOR LICENSURE:

Each wholesale drug distributor shall provide the board with the following minimum information as part of the license described in Section 8 and as part of any renewal of such license on a form provided by the board:

A. the name, full business address, and telephone number of the licensee;

**B.** all trade or business names used by the licensee;

**C.** addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, record keeping, and distribution of prescription drugs; manufacturers' representatives must disclose the location (street address) where all dangerous drugs will be stored; manufacturers' representatives' dangerous drug storage will not be considered "public records";

**D.** the type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and

**E.** the name(s) of the owner and/or operator of the licensee, including:

(1) if a person, the name of the person;

(2) if a partnership, the name of each partner, and the name of the partnership;

(3) if a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;

(4) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity.

**F.** changes in any information in 16.19.8.9.A NMAC through 16.19.8.9.E NMAC shall be submitted to the board, in writing, within 30 days;

**G.** if it is desired to operate or maintain a business at more than one location, a separate license shall be obtained for each location.

[06-14-92; 16.19.8.9 NMAC - Rn, 16 NMAC 19.8.9, 03-30-02; A, 12-01-2003]

**16.19.8.13 MINIMUM REQUIREMENTS FOR THE STORAGE AND HANDLING OF PRESCRIPTION DRUGS, AND FOR THE ESTABLISHMENT AND MAINTENANCE OF PRESCRIPTION DRUG DISTRIBUTION RECORDS BY WHOLESALE DRUG DISTRIBUTORS AND THEIR OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES:**

**A. Facilities:** All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded

or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(4) be maintained in a clean and orderly condition; and

(5) be free from infestation by insects, rodents, birds, or vermin of any kind.

**B. Security:** All facilities used for wholesale drug distribution shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) The outside perimeter of the premises shall be well-lighted.

(3) Entry into areas where prescription drugs are held shall be limited to authorized personnel.

(4) All facilities shall be equipped with an alarm system to detect entry after hours.

(5) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

**C. Storage:** All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(1) If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.

(2) Appropriate manual, electro-mechanical, or electronic temperature and humidity recording equipment, devices and/or logs shall be utilized to document proper storage of prescription drugs.

(3) The record keeping requirements in Subsection **[H] F** of 16.19.13 NMAC of this section shall be followed for all stored drugs.

**D. Examination of Materials:**

(1) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment shall

be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

(3) The record keeping requirements in Subsection **[H] F** of 16.19.13 NMAC of this section shall be followed for all incoming and outgoing prescription drugs.

**E. Returned, damaged, and outdated prescription drugs:**

(1) Prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs until they are destroyed or returned to their supplier.

(2) Any prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs until they are either destroyed or returned to the supplier.

(3) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(4) The record keeping requirements in Subsection **[H] F** of 16.19.13 NMAC of this section shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs.

**F. Record keeping:**

(1) Wholesale drug distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records shall include the following information:

(a) the source(s) or pedigree of the drugs, including the name(s) and principal address of ~~the~~ all seller(s) or transferor(s), and the address(es) of the location(s) from which the drugs were shipped;

(b) the identity and quantity of the drugs received and distributed or disposed of; and

(c) the dates of receipt and distribution or other disposition of the drugs.

(d) the name, address (street and mailing) and professional license number of the business, licensed by the board of pharmacy to possess dangerous drugs, or the licensed practitioner.

(e) manufacturers' representatives must maintain receipt and distribution records for all dangerous drugs; the manufacturers' representative's distribution records must include the name and address of the licensed clinic where dangerous drugs are distributed to the practitioners employed by that clinic.

(2) Inventories and records shall be made available for inspection and photocopying by authorized inspectors employed by the board and authorized federal, state or local law enforcement agency officials for a period of 3 years following disposition of the drugs.

(3) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection, at the licensed location, during the retention period. ~~Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within 2 working days of a request by authorized Board personnel or officials of a Federal, State, or local law enforcement agency.~~ Registrants must petition the board for a waiver in order to store the required records at a central location. The registrant must provide the board, in writing, of the address (mailing and street), telephone number, and the name and title of the person designated by the registrant as the custodian of the records. Any changes of custodian or location of records must be reported in writing to the board within 15 actual days. Any records approved by waiver to be stored at a central location must be available within 2 working days of a request by authorized board personnel or officials of a federal, state, or local law enforcement agency.

**G. Written policies and procedures:** wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories; wholesale drug distributors shall include in their written policies and procedures the following:

(1) a procedure whereby the oldest approved stock of a prescription drug product is distributed first; the procedure may permit deviation from this require-

ment, if such deviation is temporary and appropriate;

(2) a procedure to be followed for handling recalls and withdrawals of prescription drugs; such procedure shall be adequate to deal with recalls and withdrawals due to;

(a) any action initiated at the request of the Food and Drug Administration or other federal, state, or local law enforcement or other government agency, including the state licensing agency;

(b) any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(c) any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design;

(3) a procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

(4) a procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed; this procedure shall provide for written documentation of the disposition of outdated prescription drugs; this documentation shall be maintained for 3 years after disposition of the outdated drugs.

**H. Responsible persons:** Wholesale drug distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

**I. Compliance with federal, state, and local law:** Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(1) Wholesale drug distributors shall permit board authorized personnel and authorized federal, state and local law enforcement officials, to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

(2) Wholesale drug distributors that deal in controlled substances shall register with the board and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local

and DEA regulations.

(3) A licensed wholesale drug distributor may distribute only to persons who are licensed to possess dangerous drugs.

**J. Salvaging and reprocessing:** Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing including 16.19.8.13 G NMAC of this regulation. [06-14-92; 16.19.8.13 NMAC - Rn, 16 NMAC 19.8.13, 03-30-02; A, 12-01-2003]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.9.9 NMAC effective 12-01-2003.

**16.19.9.9 LICENSURE OR REGISTRATION:** Wholesale distributor and manufacturer distributor or manufacturer.

**A.** No manufacturer shipping dangerous drugs into New Mexico or who sells or distributes dangerous drugs in this state through any person or media, other than a wholesaler who has obtained a license, shall conduct the business of selling or distributing dangerous drugs without obtaining an out-of-state drug license from the Board.

**B.** Applications for an out-of-state drug distributor's license under this section shall be made on a form furnished by the Board of Pharmacy. The Board may require such information as it deems is reasonably necessary to carry out the purposes of this section. This requirement does not include the licensure of a parent corporation of a corporation or division.

**C.** The license fee shall be as specified in 16.19.12 NMAC, Fees, and shall be renewed annually before the last day of December each year.

**D.** No person acting as principal or agent (detail man) for any out-of-state manufacturer, wholesaler or distributor who has not obtained a license from the Board shall conduct the business of selling or distributing dangerous drugs within the state.

**E.** Any person acting as principal or agent for any manufacturer, wholesaler or distributor who is licensed by the Board and who possesses or distributes dangerous drugs, shall register as principal or agent for the licensed manufacturer, wholesaler or distributor. ~~There shall be no fee for registration of such agent.~~

**F.** Registration of persons under this section shall be made on a form furnished by the Board. The Board may require such information as it deems is reasonably necessary to carry out the purpose

of this section, including, but not limited to, the name and address of the registrant and the name and address of the manufacturer whose drugs he is selling or distributing.

**G.** The Board may deny, revoke or suspend such person's registration for any violation of the State Drug Laws. [03-07-80...08-27-90; Rn, 16.19.9.10.7, 03-14-98; 16.19.9.9 NMAC – Rn, 16 NMAC 19.9.9, 03-30-02; A, 12-01-2003]

**NEW MEXICO BOARD OF PHARMACY**

This is an amendment to 16.19.21.35 NMAC effective 12-01-2003.

**16.19.21.35 CONTROLLED SUBSTANCE PRECURSORS:** The following substances are designated as immediate precursors used in the manufacture of controlled substances:

- A. phenyl acetone
- B. ephedrine
- C. phenyl-2-propanone
- D. norephedrine
- E. ethyl-1-methyl butyl diethyl malonate
- F. allyl-1-methyl butyl diethyl malonate
- G. hydroxyindole
- H. 3,4,5-trimethoxybenzyl cyanide
- I. 3,4,5-trimethoxybenzyl alcohol
- J. 3,4,5-trimethoxyphenylacetone
- K. 3,4,5-trimethoxybenzoic acid amide
- L. 4-benzyloxyindole
- M. 4-chloro indole
- N. indole
- O. tryptophol
- P. 3-indole glyoxylic acid
- Q. 3-indole glyoxylic acid ethyl ester
- R. lysergic acid
- S. lysergic acid amide
- T. ergotamine tartrate
- U. 1-phenyl cyclohexylamine
- V. 1-piperidinocyclohexanecarbonitrile
- W. pseudoephedrine
- X. methylamine
- Y. methylformamide
- Z. phenylacetic acid

**AA. anhydrous ammonia;**

**(1) a person shall not possess any amount of anhydrous ammonia;**

**(2) the provisions of this section do not apply to a:**

**(i) person who is actively operating land used for agricultural purposes;**

**(ii) retail distributor;**

- (iii) wholesaler;**
- (iv) manufacturer;**
- (v) warehouseman;**
- (vi) common carrier; or**
- (vii) person engaged in the regular course of conducting a lawful business.**

**BB. red phosphorous**

**CC. iodine matrix**

**DD. crystal iodine**

[03-07-80...08-27-90; 16.19.21.35 NMAC - Rn, 16 NMAC 19.21.35, 03-30-02; A, 12-01-03]

**NEW MEXICO REGULATION AND LICENSING DEPARTMENT MANUFACTURED HOUSING DIVISION**

This is an amendment to 14.12.2.15 NMAC; 14.12.2.16 NMAC; 14.12.2.18 NMAC; 14.12.2.23 NMAC; 14.12.2.25 NMAC; 14.12.2.43 NMAC; 14.12.2.57 NMAC; effective 12/1/03:

**14.12.2.15 DEALERS:**

**A.** A dealer's license entitles its holder to engage in the business of selling, exchanging, buying for resale, leasing, offering to or attempting to negotiate sales or exchanges or lease-purchases of new and pre-owned manufactured homes. A dealer may also perform all functions, which a broker is authorized to perform under the Act and these regulations. Any person who in any manner acts as a dealer in the transaction of more than one manufactured home in any consecutive 12-month period is required to be licensed as a dealer.

**B.** Each dealer's location shall have a qualifying party and each location shall have a separate license.

**C.** A dealer shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal business hours by a representative of the Division. A post office box, secretarial service, telephone answering service, or similar entity does not constitute an actual physically established location.

**D.** The following provisions shall govern all transactions in which a dealer is involved in a transfer of a pre-owned manufactured home between a buyer and a seller, other than the dealer.

**(1)** The dealer's role is that of a fiduciary to his principal.

**(2)** In all such transactions which require a transfer of title, the dealer must: determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the Motor Vehicle Division, and

disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

**(3)** All listing agreements entered into by a dealer shall disclose the percentage amount or fee to be received by the dealer upon the completion of a transaction under the terms of the listing agreement.

**(4)** Prior to the closing between the buyer and seller on a transaction, the dealer shall deliver to both the buyer and the seller a closing statement which shall contain, but is not limited to, the following information: the purchase price; all funds paid and to be paid by the buyer; all funds received and to be received by the seller; receipt and disposition of all other funds relevant to the transaction; the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interests in the home.

**E.** Each dealership location must have at least one (1) licensed salesperson per location. For an individual dealer (i.e. non-corporate) the dealer's license shall meet the requirement of a salesman license for the person to whom it is issued. A dealership filing as a corporation must have at least one (1) licensed salesperson. All persons engaged in selling manufactured homes for a dealer must be licensed and bonded with the Division before engaging in the business.

**F.** Each dealer is required at the time of sale of a manufactured home to make a full disclosure to the buyer, concerning the disposition of the wheels, axles and hitch(es). Such disclosure must be signed and approved by the purchaser.

**G.** The Director of the Manufactured Housing Division may grant a temporary display dealer license to a licensed dealership for a time period not to exceed thirty (30) days.

**(1)** The original consumer protection bond will cover the temporary display dealership license.

**(2)** The temporary display dealer's license can only be issued for a display area such as State or County Fairs; shopping malls, flea markets, etc.

**(3)** The cost for temporary display dealer's license is twenty-five dollars (\$25.00).

**(4)** A letter of request and the appropriate license fee must be submitted to the Division and an approval received before the home(s) can be displayed. The letter of request will include the following information how long the home will display at the designated address; the address or location home will be displayed; the names of home(s) and serial number(s).

**H.** If a dealership is open for business prior to receiving the appropriate license to conduct business, the Division

may tag each home with a "Prohibit Sales Notice" and an inspection fee of \$60.00 will be charged to the Dealer for removal of each such tag.

**I. Temporary Sales**

**Locations:** Any licensed dealership may display and offer for sale manufactured homes in a single family residential area specifically designated for manufactured home use.

(1) The dealer shall notify the Manufactured Housing Division in writing, on a form supplied by the Division of the address(es) and location where homes will be displayed and offered for sale.

(2) The fee for a temporary sales location shall be \$50.00 and shall be renewed every six months.

(3) All rules and regulations of the Manufactured Housing Division shall apply to temporary sales locations.

(4) If a dealer discharges a salesperson for any activities in violation of the MHD rules and regulations the dealer must report the discharge to the division to investigate the potential violation.

[14.12.2.15 NMAC - Rp, 14 NMAC 12.2.15, 9-14-00; A, 12-1-03]

**14.12.2.16 BROKERS:**

**A.** A manufactured home broker's license entitles its holder to engage in the functions authorized for brokers in the Act. A manufactured home broker's functions are strictly limited to only pre-owned manufactured homes. Any person who in any manner engages in brokerage activities for more than one manufactured home in any consecutive 12-month period is required to be licensed as a manufactured home ~~broker~~ dealer.

**B.** A manufactured home broker cannot negotiate any transaction involving the sale, exchange, renting or leasing of real estate unless he is licensed under the Real Estate Act of New Mexico.

**C.** Each manufactured home broker shall be individually licensed.

**D.** A manufactured home broker's role is that of a fiduciary to his principal.

**E.** In all transactions which require the transfer of title to a manufactured home and in which a manufactured home broker is involved the manufactured home broker must determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the Motor Vehicle Division, and disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

**F.** A manufactured home broker shall maintain a place of business, which is an actual physically, established

location from which business can be conducted and where accounts and records shall be available for inspection during normal business hours by a representative of the Division. Each branch office shall also maintain copies of adequate records for this same inspection purpose of all transactions handled within the branch office.

**G.** A manufactured home broker shall fully disclose to the consumer any ownership interest of the manufactured home broker, either direct or indirect, in the manufactured home prior to the consumer's entering into any agreement for the purchase of the home.

**H.** All listing agreements entered into by a manufactured home broker shall disclose the percentage amount or fee to be received by the manufactured home broker upon the completion of a transaction under the terms of the listing agreement.

**I.** A manufactured home broker shall not enter into a net listing agreement.

**J.** Upon receipt of a written offer to purchase, a manufactured home broker shall promptly deliver the written offer to purchase to the seller. Upon obtaining written acceptance of the offer to purchase, the manufactured home broker shall promptly deliver true copies to the purchaser and seller. All terms of the transaction must be included in the written offer to purchase.

**K.** Before receiving a customer deposit, a manufactured home broker shall give to a purchaser an itemized statement of all approximate costs relevant to the transaction.

**L.** A manufactured home broker shall initiate the transfer of title on a manufactured home no later than 30 days from the completion of the transaction. A manufactured home broker shall not be responsible for title transfer if it is the responsibility of the purchaser's lienholder.

**M.** Prior to the closing between the buyer and seller, the manufactured home broker shall deliver to both the buyer and seller a closing statement which shall contain, but is not limited to, the following information:

- (1) the purchase price;
- (2) all funds paid and to be paid by the buyer;
- (3) all funds received and to be received by the seller;
- (4) receipt and disposition of all other funds relevant to the transaction;
- (5) the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interest in the home.

**N.** A manufactured home broker shall not operate or provide a lot or other location where manufactured homes

are displayed for consumers.

**O.** Each manufactured home broker branch location shall have as qualifying party, a licensed and bonded associate manufactured home broker.

**P.** A manufactured home broker shall not purchase a manufactured home from a financial institution licensed by the New Mexico financial institutions division or consumer for the purpose of resale.

**Q.** A manufactured home broker will not engage in the business of buying and selling manufactured homes.

**R.** Every manufactured home broker will be audited annually to ensure they are not in the business of buying or selling manufactured homes.

[14.12.2.16 NMAC - Rp, 14 NMAC 12.2.16, 9-14-00; A, 12-13-02; A, 12-1-03]

**14.12.2.18 SALESPERSONS:**

**A.** A salesperson's license entitles its holder to be employed, either directly or indirectly, with or without remuneration or consideration by a dealer or broker to engage in sales or lease-purchases of new and pre-owned manufactured homes through that dealership or brokerage as allowed by employer's license.

**B.** Each salesperson shall be licensed individually.

**C.** Custody of License.

(1) A salesperson's license shall be in the custody of his employer.

(2) Each salesperson shall be issued a wallet card by the Division. The card shall contain the licensee's name, license number and the address of the employer.

**D.** Change of employment.

(1) When any salesperson is discharged or transfers his place of employment, the employer shall return the salesperson's license to the Division within ten (10) days of the date of termination. The Division shall place the license in an inactive status.

(2) Upon employing a salesperson whose license has been returned to the Division, the Division, upon notification from the new employer and the request for transfer, shall transfer the salesperson's license for the remainder of any unexpired term of such license. The Division shall also issue a new wallet card.

**E.** A salesperson or associate broker shall not work for, be employed by or conduct transactions for more than one dealer or broker at the same time.

**F.** All transactions handled by or involving a salesperson must be reviewed and supervised by the employing dealer or broker. All documents prepared by the salesperson, in a transaction, must be



reviewed by the dealer or broker.

**G.** A salesperson shall not act as a salesperson while his license is in the custody of the Division.

**H.** A salesperson may not be licensed while there is an outstanding complaint with the manufactured housing division.

[14.12.2.18 NMAC - Rp, 14 NMAC 12.2.18; A, 3-29-02; A, 12-1-03]

#### 14.12.2.23 AUCTIONS:

**A.** All pre-owned homes to be sold at an auction must meet the requirements as set forth in Section 22 of these regulations.

**B.** All homes to be auctioned will be sold through a bona fide manufactured home dealer licensed by the Manufactured Housing Division.

**C.** All homes to be auctioned must be at the auction location one working day before the auction and the Division must be notified in writing of all homes to be auctioned at least 5 days before the auction.

**D.** All documentation will be ready to transfer ownership at completion of sale.

**E.** The Division will inspect each home and documents on each home to be auctioned.

**F.** All pre-owned homes to be auctioned must have affixed a pre-owned label as referred to in section 25.15 of these regulations.

**G.** Any home not in compliance with these regulations will be posted with "Prohibited Sales Notice". Upon compliance to the regulation a fee of \$60.00 will be paid for removal of notice prohibiting the sale.

**H.** Only licensed manufactured home dealers may purchase manufactured homes at an auction.

[14.12.2.23 NMAC - Rp, 14 NMAC 12.2.23, 9-14-00; A, 12-1-03]

#### 14.12.2.25 FEES:

**A.** Fees shall not be refunded.

**B.** Examination fee is Fifty Dollars (\$50.00).

**C.** Annual license fees:

(1) Manufacturer I: Five Hundred Dollars (\$500.00).

(2) Manufacturer II-Re-furbisher: Four Hundred Dollars (\$400.00).

(3) Dealer: Two Hundred Dollars (\$200.00).

(4) Installer and Repairman: Two Hundred Dollars (\$200.00).

(5) Salesperson: Fifty Dollars (\$50.00).

(6) Broker: Two Hundred Dollars (\$200.00).

(7) Associate Broker: Fifty Dollars (\$50.00).

**D.** Inspection or Re-inspection fee(s): Sixty Five Dollars (\$65.00).

**E.** Permits: Sixty Five Dollars (\$65.00). The permit will be for the installation, permanent foundation and utility connections.

**F.** Transfer of Salesperson's License: Twenty-five Dollars (\$25.00).

**G.** Re-issuance of qualifying party certificate from one business to another: Twenty-five Dollars (\$25.00).

**H.** Manufacturer II-Re-furbisher Inspection Permit: One Hundred and Twenty Dollars (\$120.00).

**I.** Contractors and journeyman licensed by the Construction Industries Division performing work on manufactured homes shall be registered with the Manufactured Housing Division (MHD) and pay an annual registration fee of two hundred dollars (\$200.00) per licensee and post with MHD an installer's or repairman's consumer protection bond, pursuant to Section 14.12.2.31 NMAC.

**J.** Addition of a qualifying party to an existing license: Twenty-five Dollars (\$25.00).

**K.** Bad or returned checks:

(1) An additional charge of \$20.00 shall be made for any check, which fails to clear or is returned for any reason.

(2) Such returned checks shall cause any license issued, renewed or test scheduled as the result of such payment to be immediately suspended until proper payment in full is received.

**L.** Consumer Complaint inspections: Sixty Five Dollars (\$65.00) for each inspection. Inspections shall be paid by the installer/repairman, dealer, manufacturer or broker, as appropriate.

**M.** Temporary Dealer's Display License: Twenty-five Dollars (\$25.00).

**N.** Pre-owned label: Forty Dollars (\$40.00).

**O.** Change of a licensee's name, address or license status: Twenty-five Dollars (\$25.00).

**P.** Inspection Fee for removal of a "Prohibited Sales Notice" by the Division: Sixty Dollars (\$60.00).

**Q.** Requested inspection: Sixty Five Dollars (\$65.00).

**R.** Manufacturer's supervision or compliance monitoring, pursuant to an amount approved by HUD.

[14.12.2.25 NMAC - Rp, 14 NMAC 12.2.25, 9-14-00; A, 8-11-03; A, 12-1-03]

#### 14.12.2.43 SUSPENSION AND REVOCATION:

**A.** Hearings on suspensions or revocations of licenses on grounds enumerated in the Act and these regulations shall be conducted in accordance with the Uniform Licensing Act. (Section 61-1-1 et seq., NMSA 1978, as amended.)

**B.** Following a committee action to suspend or revoke a licensee's license, all homes must be tagged with a "Prohibited Sales Notice." The inspection fee for the removal of a "prohibited Sales Notice" by the Division shall be sixty Dollars (\$60.00), except when waived by the Director of the Division.

**C.** Any person that has had their license suspended or revoked or bond attached that acted as the qualifying party cannot be re-licensed until all outstanding complaints are final and closed. They must also post a consumer protection bond with the division in the amount of \$100,000.00. They cannot be an employee of any licensee of the manufactured housing division until all complaints are final and closed.

[14.12.2.43 NMAC - Rp, 14 NMAC 12.2.43, 9-14-00; A, 12-1-03]

#### 14.12.2.57 PERMANENT FOUNDATION SYSTEM:

**A.** These standards are minimum state requirements and they are applicable to new and used home installations, unless expressly specified otherwise. The Division may approve other permanent foundations when the manufacturer's installation manual does not make a provision for permanent foundations or is not available. Two sets of drawings submitted by a New Mexico licensed engineer or a HUD approved D.A.P.I.A engineer may be submitted to the division for review, and subsequent denial or approval along with a certificate that the engineer has contacted the home's manufacturer. No political subdivision of the State shall regulate the installations or construction standards, of a manufactured home, including foundation systems.

**B.** Perimeter Enclosure:

(1) All materials used for a perimeter enclosure must be approved by the Division.

(2) Materials shall be installed in accordance with the manufacturer's recommended installation instructions or in accordance with the minimum standards accepted by the division.

(3) The manufactured home's perimeter enclosure must be self-ventilating, and no flammable objects may be stored under the manufactured home.

(4) An access or inspection panel shall be installed in the perimeter enclosure and shall be located so that utilities and blocking may be inspected.

(5) All vents and openings shall

be installed to prevent entry of rodents and direct rainfall not to exceed ¼ inch mesh.

(6) All perimeter enclosures in excess of thirty inches (30") in height must be supported vertically at least every four (4') feet or installed according to the enclosure manufacturer's specifications.

**C. New Home Installations:** The manufacturer's installation manual shall be followed for all new homes installed within the State of New Mexico. The person(s) performing the work to install a new home shall be responsible to insure that all necessary installation permits have been obtained by the homeowner, customer or installer, to be determined in writing prior to the delivery of subject home. Compliance with permanent foundation criteria, site preparation, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work.

**D. Installation of Used, Pre-owned or Resold Manufactured Homes:** The installer of a used, pre-owned or resold manufactured home shall be responsible to insure that all necessary installation permits have been obtained by the customer, retailer and or installer to be determined in writing prior to delivery of subject home. Compliance with permanent foundation criteria, site preparation, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work. The manufacturer's manual shall be kept with the subject home at all times. The installer shall use the manufacturer's installation instructions and installation manual when available.

**E. Re-installed Unit's:** The following regulations shall apply to all homes being re-installed where no manufacturer's installation manual is provided.

(1) The lowest point of the frame shall be a minimum of eighteen (18") inches above the ground level under the manufactured home (Also see Section 49).

(2) The slope around the manufactured home shall provide for the control and drainage of surface water and shall be sufficient to prevent the collection of water under the home or around the perimeter of the home. (See Site requirements, Section 53.)

(3) In lieu of an engineered soil report, the soil conditions (relative to the placement of the foundation) at the installation site shall be tested by the installer prior to installing the foundation and shall be an average of at least 1000 psf with no more than 25% variability between readings. The installer shall list the psf measurement on the permanent foundation permit. Testing and recording shall be conducted as fol-

lows:

(a) Test an area adjacent to, or within 10 feet of, the perimeter of the home;

(b) dig down to undisturbed soil a minimum of four (4) inches. Uncover an area of at least one square foot;

(c) using a penetrometer take at least seven readings;

(d) take an average of the middle five readings disregarding the highest and lowest readings. Round the average down to the nearest soil bearing value;

(e) installers shall then record the psf measurement on the permanent foundation permit; and

(f) drive a wooden stake beside the test area so that the inspector will be able to verify the results should the inspector desire to do so.

**F.** A minimum thirty-two inch by thirty-two inch (32"X32") access or inspection panel shall be installed a minimum of three (3") inches above grade and located to allow inspection at any time. The cover on the exterior access inspection panel must be constructed to exclude entry of vermin and water.

**G. Footings and Piers:**

(1) The manufactured home shall be installed on ribbon footings set on the undisturbed ground not less than five and one-half (5 1/2") inches in thickness and sixteen (16") inches in width with two (2) pieces of continuous three-eighth (3/8") inch rebar or a number 10 gauge re-mesh wire installed in the footing. All footings shall be constructed of a minimum of twenty-five hundred (2500) pound concrete. All above grade footings shall be constructed with forms (wood, fiberboard, metal, plastic), used to contain poured concrete while in a plastic state. These forms must be firmly braced to withstand side pressure or settlement and to maintain design dimensions. Finished concrete surface(s) shall be smooth and level to fully accept and support pier installation(s). Forms may be removed upon sufficient hardening of concrete. The home may be placed whenever concrete is properly cured, minimum of seven (7) days.

(2) Piers shall be constructed in accordance with Section 56 of these regulations.

(3) The steel frame must be permanently attached to the footing supporting the structure at least every sixteen (16) feet at a minimum.

**H. Ventilation:**

(1) All manufactured homes shall have one (1) square foot of unrestricted venting area for every one hundred-fifty (150) square feet of enclosed floor space. Vents shall be uniformly distributed on the two (2) opposite long-walls. At least one vent shall be located within four (4) feet of each end-wall.

(2) Vents shall be constructed and installed to exclude entry of vermin and water.

[14.12.2.57 NMAC - Rp, 14 NMAC 12.2.50, 9-14-00; A, 12-1-03]

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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 BOARD OF  
EXAMINERS FOR  
ARCHITECTS**

New Mexico Board of Examiners for  
Architects

PO Box 509  
Santa Fe, NM  
505-827-6375

Regular Meeting

The New Mexico Board of Examiners for  
Architects will hold a regular open meeting  
of the Board in Albuquerque, New Mexico  
on Friday, November 21, 2003.  
Disciplinary matters may also be discussed.  
The meeting will be held at the University  
of New Mexico School of Architecture,  
2414 Central SE at 9:00 a.m. in Room 117.

If you are an individual with a disability  
who is in need of a reader, amplifier, quali-  
fied sign language interpreter, or other form  
of auxiliary aid or service to attend or par-  
ticipate in the meeting, please contact the  
Board Office at 827-6375 at least one week  
prior to the meeting. Public documents,  
including the agenda and minutes can be  
provided in various accessible formats.  
Please contact the Board Office if a summa-  
ry or other type of accessible format is  
needed.

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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
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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
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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

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