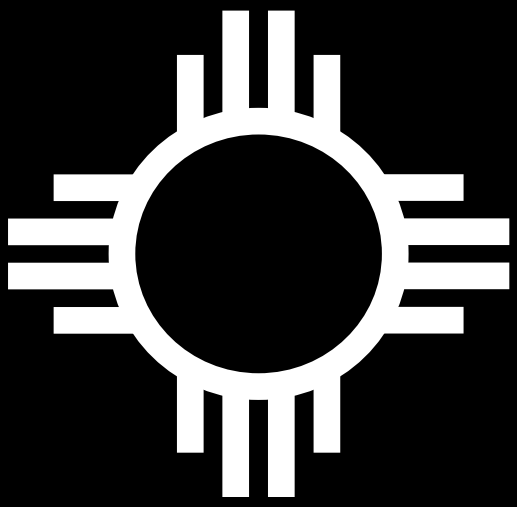
NEW MEXICO REGISTER



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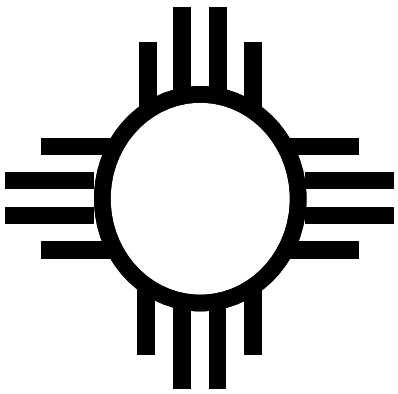

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2008

New Mexico Register

Volume XIX, Number 1
January 15, 2008

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Effective Date and Validity of Rule Filings

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

A=*Amended*, E=*Emergency*, N=*New*, R=*Repealed*, Rn=*Renumbered*

Other Material Related to Administrative Law

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On February 13, 2008, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a combined public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The purpose of the combined hearing is to receive testimony regarding:

* Proposal to amend **20.11.20 NMAC, *Fugitive Dust Control***.
* Proposal to incorporate a newly-amended 20.11.20 NMAC into the New Mexico State Implementation Plan for air quality (SIP).

These proposed amendments were developed in response to the requirement of 20.11.20.2(C) NMAC, which states:

"20.11.20.2 SCOPE:

C. Exempt for three years: The following eight sources of fugitive dust in Bernalillo County shall be exempt from the requirements of this part for three years from the effective date of this part. Before the three-year exemption expires, the board shall hold a hearing that includes a review of an emissions inventory of the eight sources and other significant sources of fugitive dust in Bernalillo County and decide if the exemptions shall be continued. If one or more of the three-year exemptions expire, the board shall also review the fugitive dust control fees to determine if they are adequate to support the fugitive dust control program.
(1) Areas zoned for agriculture and used for growing a crop; and
(2) bicycle trails, hiking paths, and pedestrian paths, horse trails or similar paths used exclusively for purposes other than travel by motor vehicles; and
(3) unpaved roadways serving six residential dwellings or fewer; and
(4) unpaved roadways less than one-quarter mile in length that are not short-cuts; and
(5) unpaved roadways on private easements serving residential uses that are in existence at the time this part becomes effective; and
(6) unpaved roadways on United States department of agriculture forest service or United States department of interior park service lands if the roadways are more than one-quarter of a mile from an occupied residence; and
(7) lots occupied by dwellings used solely for residential purposes or solely for non-commercial livestock operations smaller than three quarters of an acre, not including lots smaller than three-quarters of acre used for other purposes; and
(8) unpaved roadways within properties used for ranching and unpaved roadways within properties owned or controlled by the United States department of energy or department of defense. However, this exemption only applies if the public does not have motor vehicle access to the roadways".

The Air Quality Control Board has extended their deadline to hold a hearing and reach a decision on whether or not to continue the aforementioned exemptions. The time extension also allowed the AQD to submit additional proposed amendments to 20.11.20 NMAC, *Fugitive Dust Control*. A summary of all proposed amendments to 20.11.20 NMAC, *Fugitive Dust Control*, follow:

Major Proposed Changes

* Changing the eight, three-year exemptions to six "conditionally exempt sources" which would only be subject to 20.11.20 NMAC if the Department determines the fugitive dust emitted may adversely and significantly affect human health within Bernalillo county. Unpaved roads serving six or fewer residential dwellings and unpaved roads less than ¼ mile in length that are not short cuts – would no longer be exempt.
* All lots smaller than ¾ acre used for any purpose would be conditionally exempt.
* New conditions available for claiming a high wind affirmative defense.
* Mandatory perimeter fencing specifications and entry/exit apron device as control measures for all fugitive dust control construction permits.

Proposed New Definitions

* "Business Day"
* "Greenwaste"
* "Stockpile"
* "Transfer of Permit"

Proposed Modifications to Current Definitions

* "Dust suppressant" (removing the word 'water' from the definition)
* "Fugitive Dust Control Permit" to "Fugitive Dust Control Construction Permit"
* "High Wind Event" (removing the 5 minute – 30 mph average and adding new language with input from staff meteorologist)
* "Paved" or "paving" or "paved roadway" (adding routinely-maintained asphalt millings)
* "Silt" (New ASTM citation from city testing lab document)
* "Stabilized" (include tie-in to an exceedance of a standard, not just violation)
* "Visible Fugitive Dust" (replacing anthropogenic with airborne)
* "Visible Fugitive Dust Detection Method" (correction for section citation)

Proposed Clarification to Current Definitions

* "Disturbed Surface Area"
* "Earth Moving Activity"
* "Fugitive Dust"
* "Fugitive Dust Control Plan"
* "Large Area Disturbance"
* "Permittee"
* "Programmatic Permit"
* "Reasonably Available Control Measures"
* "Responsible Person"
* "Short Cut"
* "Track-Out"

Proposed Repeal of Definitions

* "High Wind Event Threshold Level" (no longer applicable to high wind event situation)

Proposed Elimination of Language No Longer Applicable or Redundant

* Fugitive dust control permits in existence prior to March 2004
* Large Scale Interim Status Permits
* Observer breaks during visible fugitive dust detection method
* Repetitive statements concerning >3/4 acre to 25 acres ; and >25 acre requirements for permits
* 'Hearing before the Board' language removed because the Board has recently adopted 20.11.81 NMAC, *Adjudicatory Procedures – Air Quality*

Control Board

* Method for determining soil moisture content in the field for high wind event affirmative defense
* Requirement for providing universal property code (UPC), latitude and longitude, or UTM coordinates

Proposed New Language

* Stockpile RACM
* Non-Refundable filing and review fees
* Project signs for all permits issued
* Filing and review fee requirement for demolition greater than 75,000 cubic feet
* Greenwaste control instead of mechanical leaf blower control
* Re-application or other control for long term native grass seeding that fails
* Specify manager, supervisor, scientist, field operations officer or health specialist as signature authorities for permits issued in lieu of authorized Department representative
* Requirements for active operations during an announced high wind event
* Soil moisture standards for high wind event affirmative defense
* Use of local regulation, 20.11.7 NMAC, *Variance Procedure* in lieu of State Act variance procedure.
* Immediate attempt to contact of a responsible person by an observer during a visual determination of fugitive dust if danger to health or safety is evident.

Proposed Rewording of General Language (Clarification and Modification)

* Consolidate operator under owner (will mainly be specific in the permit application to eliminate an extra signature section)
* Separate sections for programmatic permits and construction permits
* High wind event
* Continuance or re-initiation of active operations during a declared high wind event
* Requirements for staff to be certified for visual determination of fugitive dust (by Method 9 ground school at a minimum)
* Scope, Objective, and General Provisions
* Enforcement terminology
* Re-align paragraphs for permits, permit application processing, and enforcement under each appropriate heading
* Streamlined and clarified minimum application requirements for fugitive dust control construction permits
* Informal review meeting possible during permit application process
* Informal review meeting possible upon issuance of an administrative compliance order
* Public outreach & Training

Proposed Additional Requirements Necessary

* Amend 20.11.2 NMAC, *Fees*, in order to correct fugitive dust programmatic fee charges, and to add a demolition fee charge on facilities larger than 75,000 cubic feet that require a fugitive dust construction permit
* Develop new application forms for fugitive dust control permits

Following the combined hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adoption of the proposed regulation amendments and incorporating the newly-amended regulation into the SIP.

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

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

Anyone intending to present technical testimony is asked to submit a written Notice Of Intent (NOI) before 5:00pm on Tuesday, January 29, 2008 to: Attn: February Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The NOI shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on February 6, 2008. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660. Alternatively, interested persons may also download the Public Review Draft from the Air Quality Division website, http://www.cabq.gov/airquality/

NOTICE FOR PERSON WITH DISABILITIES: Notice to persons with disabilities: If you have a disability and require special assistance to participate in a Board meeting please call: 311 (Voice) or 1-800-659-8331 (TTY).

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

Notice of Hearing of New Rule 2.2.3 NMAC Budget Certification of Local Public Bodies

New Mexico Department of Finance and Administration

The Department of Finance and Administration, Local Government Division ("DFA") hereby gives notice that DFA will conduct a public hearing in Mabry Hall 300 Don Gaspar, Santa Fe, New Mexico, 87501, on February 18, 2008 at 10:00a.m. concerning a new rule: 2.2.3 NMAC, Budget Certification of Local Public Bodies, (hereinafter referred to as the "Budget Certification Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5 p.m. on February 14, 2008, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico 87501. All written and oral testimony will be considered prior to the adoption of the rule. Copies of the text of the proposed Budget Certification Rule are available from Ms. Sandra Ortega, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico 87501 or at 505-827-8051 or from the DFA internet website http://fmb.nmdfa.state.nm.us.

IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A

READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AID OR SERVICES TO ATTEND OR PARTICIPATE IN THE HEARING, PLEASE CONTACT OUR OFFICES ONE WEEK PRIOR TO THE MEETING, OR AS SOON AS POSSIBLE.

TITLE 2 PUBLIC FINANCE
CHAPTER 2 GOVERNMENTAL ENTITIES
PART 3 BUDGET CERTIFICATION OF LOCAL PUBLIC BODIES

2.2.3.1 ISSUING AGENCY: State of New Mexico department of finance and administration, local government division.
[2.2.3.1 NMAC - N, 6/1/2008]

2.2.3.2 SCOPE: All local public bodies required to obtain budget approval from the local government division.
[2.2.3.2 NMAC - N, 6/1/2008]

2.2.3.3 STATUTORY AUTHORITY: Sections 6-6-1 through 6-6-19 NMSA 1978 and Section 9-6-5 E. NMSA 1978.
[2.2.3.3 NMAC - N, 6/1/2008]

2.2.3.4 DURATION: Permanent
[2.2.3.4 NMAC - N, 6/1/2008]

2.2.3.5 EFFECTIVE DATE: June 1, 2008 unless a later date is cited at the end of a section.
[2.2.3.5 NMAC - N, 6/1/2008]

2.2.3.6 OBJECTIVE: 2.2.3 NMAC codifies required budgetary and financial reporting by local public bodies to the local government division supported by timely audits. The intended result is to promote submission of budgets and reports to the local government division by local public bodies with documentation that provides assurance that the financial statements and position of the local public body have been audited in accordance with requirements of the New Mexico state auditor found in 2.2.2.1 through 2.2.2.14 NMAC, the requirements for contracting and conducting audits of agencies, ("the audit rule").
[2.2.3.6 NMAC - N, 6/1/2008]

2.2.3.7 DEFINITIONS:

A. "Account" means a double entry bookkeeping of assets, liabilities, income and expenses with debit and credit entries on ledger pages or other media which are posted to record a change(s) in value.

B. "Deficit" means any fund where its annual or quarterly reports reflect more expenditures than revenues available to legally pay for them.

C. "Fund" means a group of related accounts that are self balancing within their group as defined by the government accounting standards board (GASB). A fund is not an account.

D. "Local government division" (LGD) is the division of the state of New Mexico department of finance and administration with budgetary and fiscal oversight responsibilities and authority over local public bodies.

E. "Local government division official" means any employee or public officer of the local government division of the New Mexico department of finance and administration.

F. "Local public body" means every political subdivision of the state which expends public money from whatever source derived, including but not limited to any county, incorporated municipality, or special district, land grants registered with the New Mexico Secretary of State's Office. Also, if required by the audit rule (2.2.2.1 through 2.2.2.14 NMAC), included in this definition are mutual domestic water associations, soil and water conservation districts, water and sanitation districts, watersheds, draws, medical clinics, hospitals, hospital districts, regional transportation districts, flood control authorities, natural gas associations, public improvement districts, and rural housing authority districts.
[2.2.3.7 NMAC - N, 6/1/2008]

2.2.3.8 CAUSE FOR CERTIFICATION WITHHELD ON BUDGETS OF LOCAL PUBLIC BODIES.

A. When budgets are submitted by the local public body without a copy of the required annual audits that were conducted and submitted for review and publication by the New Mexico state auditor, the local government division, by letter to the local public body, shall inform the governing body of the local public body and other state public officers, elected and appointed, of the need for corrective action by the local public body.

B. The local government division shall identify and report to appropriate state public officers a list of local public bodies that have failed to contract with an independent public auditor for its annual audit. The identification shall include reasons why the local public body has failed to obtain an audit contract. The identification shall also report on whether or not a line item of the amount in the preliminary and final executed budgets have been included for the cost of the annual audit of the local public body.

C. When the cause of the delay is due to the independent public auditor's inability to complete the audit, the local public body shall communicate this in writing to the local government division and to the state auditor.

D. When the cause of the delay is due to the inability of the local public body to make progress payments on the contract between the local public body and the independent public auditor, the local public body shall communicate this by letter to the local government division and to the state auditor. The local public body shall explain why progress payments have not been made, when they will be made and whether a shortage of funds exists.

E. Any necessary corrective action shall begin with one initial meeting and one follow up meeting if needed, between public officials of the local public body and representatives of the local government division and the state auditor's office. The meeting(s) shall address the reason(s) why the required annual audit has not been conducted and completed. A plan for corrective actions shall be developed and agreed to in writing by officials of the local public body, the local government division and the state auditor's office, and signed by all the parties. The local public body shall report monthly to the local government division and to the state auditor's office on the progress of the corrective action plan, until the required annual audit is completed, in accordance with the corrective action plan.

F. The local public body shall communicate in writing to the local government division and to the state auditor when it has completed its required audit(s). Unless there are other issues or deficits in the budget, the local government division shall certify the local public body's interim and final budgets upon confirmation by the state auditor's office that the required audit has been submitted to the state auditor's office for review and publication.
[2.2.3.8 NMAC - N, 6/1/2008]

2.2.3.9 BUDGET CERTIFICATION AND FUNDING WITHHELD: Budget certification and local government division funding for a local public body funding from appropriations, grant applications, emergency fund applications and other sources shall be withheld or delayed if the local public body does not comply with this rule, does not cooperate with the local government division and its officer(s), and the state auditor's office and its officer(s) and all appropriate state public officers to bring its annual audit(s) current.
[2.2.3.9 NMAC - N, 6/1/2008]

HISTORY OF 2.2.3 NMAC: [Reserved]

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Adopted Rules

NEW MEXICO HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 7 TUITION AND FINANCIAL AID
PART 32 NURSE EDUCATOR LOAN-FOR-SERVICE PROGRAM

5.7.32.1 ISSUING AGENCY: State of New Mexico Higher Education Department.
[5.7.32.1 NMAC - N, 1/15/2008]

5.7.32.2 SCOPE: Provisions of 5.7.32 NMAC apply to New Mexico residents that are selected to participate in Nurse Educator loan-for-service program described in this rule.
[5.7.32.2 NMAC - N, 1/15/2008]

5.7.32.3 STATUTORY AUTHORITY: Sections 21-1-27.7, NMSA 1978.
[5.7.32.3 NMAC - N, 1/15/2008]

5.7.32.4 DURATION: Permanent.
[5.7.32.4 NMAC - N, 1/15/2008]

5.7.32.5 EFFECTIVE DATE: January 15, 2008, unless a later date is cited at the end of a section.
[5.7.32.5 NMAC - N, 1/15/2008]

5.7.32.6 OBJECTIVE: The objective and purpose of the New Mexico nurse educator loan-for-service program is to enhance the ability of college- and university-employed nursing educators to obtain bachelor's of science, master's of science and doctoral philosophy degrees.
[5.7.32.6 NMAC - N, 1/15/2008]

5.7.32.7 DEFINITIONS:

A. **"Department"** means the New Mexico higher education department.

B. **"Committee"** means the health professions advisory committee of the department.

C. **"Loan"** means a grant of funds to defray the costs incidental to a nursing education, under a contract between the department and a student, requiring repayment with services or repayment of principal and interest and any fees.

D. **"Student"** means an individual who is a resident of New Mexico and is degree seeking and enrolled in at least three (3) credit hours in a nurse education program at a New Mexico public college or university.

E. **"Service"** means employment in a nurse faculty position at a New Mexico college or university.

F. **"Extenuating circumstances"** means circumstances not within the control of the recipient.

G. **"Eligible institution"** means any New Mexico public, post-secondary institution.
[5.7.32.7 NMAC - N, 1/15/2008]

5.7.32.8 HEALTH PROFESSION ADVISORY COMMITTEE. The health profession advisory committee is created to advise the department on matters relating to the administration of the nurse educator loan-for-service program.

A. The committee shall be appointed by the department pursuant to policies and procedures of the department and shall be composed of:

(1) a representative of the department of health;

(2) a representative of the New Mexico health policy commission;

(3) representatives of public post-secondary health and medical training programs;

(4) representatives of recruiting and placement organizations;

(5) representatives of professional health and medical associations; and

(6) other representatives as appointed by the department.

B. The responsibilities of the committee shall include:

(1) make recommendations to the department on applicants for the nurse educator loan-for-service program; and

(2) give advice or other assistance to the department as requested.
[5.7.32.8 NMAC - N, 1/15/2008]

5.7.32.9 STUDENT ELIGIBILITY. To be eligible for this program, a student must:

A. be a New Mexico resident;

B. be a citizen of the United States, or a permanent eligible non-citizen;

C. be accepted by a public post-secondary institution into a degree granting, nursing education program necessary to enhance or gain employment in a nursing faculty position at a New Mexico public post-secondary institution;

D. be enrolled in at least three (3) credit hours at the time the loan is awarded and disbursed; and

E. be currently practicing or declare an intent to practice as a nurse educator at an eligible institution.
[5.7.32.9 NMAC - N, 1/15/2008]

5.7.32.10 SELECTION OF LOAN RECIPIENTS. Selection shall be based on the following considerations and preferences:

A. the ability, character, and qualifications of each applicant including a review of the individual's complete application; and

B. the demonstrated interest of the applicant in serving in a nursing faculty position.
[5.7.32.10 NMAC - N, 1/15/2008]

5.7.32.11 RESPONSIBILITIES OF THE DEPARTMENT: The department shall be responsible for:

A. developing program guidelines;

B. advertising the program;

C. processing applications, and presenting a list of eligible candidates to the committee;

D. administering the loans, including:

(1) disbursing funds;

(2) keeping records on borrowers and processing of contracts;

(3) administration of and record keeping of loan repayments;

(4) record keeping of location and time of service of student loan recipients; and

(5) verification of qualification for forgiveness for service.
[5.7.32.11 NMAC - N, 1/15/2008]

5.7.32.12 LOANS. Loans can be made to students to defray expenses incurred while obtaining eligible degree under the following conditions and limitations:

A. The amount may not exceed five thousand dollars ($5,000) per academic year. The department may set lower maximum award amounts based on the level of degree being obtained and other considerations.

B. Upon approval of the loan, a contract shall be drawn between the student and the department and signed by the student (for additional contract details see 5.7.32.14 NMAC)
[5.7.32.12 NMAC - N, 1/15/2008]

5.7.32.13 LOAN REPAYMENT AND FORGIVENESS. All loans shall be repaid to the state together with interest or forgiven according to the following.

A. If a loan recipient fails to fulfill or is unable to commence their

service obligation, the loan shall become due with interest at seven percent (7%) per year. The department, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

B. Interest will only begin to accrue if loan recipient ceases employment or fails to complete the degree program as a nurse educator prior to completing their service obligation.

C. If the borrower teaches as a nursing faculty at an eligible institution, loan principal may be forgiven according to the following formula.

(1) Loan terms less than one (1) academic year shall require one (1) academic year of practice as a nurse educator. Upon completion of first year of service, one hundred percent (100%) of the principal shall be forgiven.

(2) Loan terms of one (1) academic year shall require two (2) academic years of practice as a nurse educator at an eligible institution. Upon completion of the first year of service, fifty percent (50%) of the principal shall be forgiven. Upon completion of the second year of service, the remainder of the principal shall be forgiven.

(3) Loan terms of two (2) academic years or more shall require three (3) years of practice as a nurse educator at an eligible institution. Forty percent (40%) of the principal shall be forgiven upon completion of the first year of service as a nurse educator, thirty percent (30%) of the principal shall be forgiven upon completion of the second year of service, and the remainder of the principal shall be forgiven upon completion of the third year of service.

D. Recipients must serve a complete academic year of service in order to receive credit for that year. Service as a nurse educator while attending college courses will be credited toward the service obligation.

E. Subject to applicable statutory limitations, the department may extend or modify the foregoing repayment periods for good cause.

F. In the event it becomes necessary, the department may suspend or defer loan payments using the following provisions. The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower, and any other information as requested.

(1) If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance for a period not to exceed six (6) months. Interest will accrue during this period.

(2) The borrower may request deferment of payment obligation for a period not to exceed three (3) years for any purpose deemed acceptable by the department.

G. Loans may be prepaid at any time. Payment on a loan not in repayment status may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

H. Authorized charges and fees:

(1) Late charges: Borrower may be charged a late charge in the amount of five percent (5%) of the installment payment or five dollars ($5.00), whichever is less, on any payment made later than ten (10) days after it is due.

(2) Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

I. Borrower has the responsibility to notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note.

[5.7.32.13 NMAC - N, 1/15/2008]

5.7.32.14 CONTRACTS. A contract shall be drawn between each student receiving a loan and the department on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the department of a specified sum as determined in 5.7.32.13 NMAC;

B. state that interest will only begin to accrue if loan recipient ceases employment as a nurse educator prior to fulfilling service obligation;

C. state the conditions of repayment or forgiveness as detailed in 5.7.32.13 NMAC;

D. state the legal responsibilities of the borrower and that delinquent loans shall be referred to the department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

E. state that the borrower's obligations of the contract with the department shall be binding on borrower's estate;

F. state that the department may cancel any contract on thirty (30) days written notice for any reasonable and sufficient cause;

G. state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the department, become immediately due and payable; and

H. state that jurisdiction and venue shall be proper in Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[5.7.32.14 NMAC - N, 1/15/2008]

HISTORY OF 5.7.32 NMAC: [Reserved]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC Section 9, effective 01/15/08.

16.19.4.9 DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:

A. Preamble: In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

B. Professional conduct may be defined as complying with all the laws and regulations that apply to a given professional activity.

C. Definition: Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not 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 pharmacist to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep his pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of his professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) 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.

(9) 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.

(10) The solicitation of prescription business by providing prescribers with

prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

(12) Failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.19.4.12 NMAC.

(13) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

(14) 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.

(15) 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.

(16) Dispensing a prescription for a dangerous drug to a patient without an established practitioner-patient relationship:

(a) except for the provision of treatment of partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health;

(b) except for on-call practitioners providing services for a patient's established practitioner;

(c) except for delivery of dangerous drug therapies to patients ordered by a New Mexico department of health physician as part of a declared public health emergency;

(d) except for dispensing a presciption for the dangerous drug naloxone to a person for administration to another as authorized in public health law 24-23 administration of opioid antagonist;

(e) except for the prescribing or dispensing and administering for immunizations programs.

[03-01-93; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 03-30-02; A, 07-15-02; A, 01-15-08]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC Section 11, effective 01/15/08.

16.19.6.11 MINIMUM EQUIPMENT AND ACCESSORY STANDARDS:

A. The pharmacy shall have the necessary equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparations of drugs and parenteral products appropriate to the scope of pharmaceutical services provided. The following items shall be in the pharmacy:

(1) An updated reference source, appropriate to each practice site, either electronic or paper version;

(2) One copy of the most recently published New Mexico pharmacy laws, rules and regulations and available revisions, either electronic or paper version

B. PARENTERAL PHARMACEUTICALS

(1) Purpose: To ensure that the citizens of New Mexico receive routine safe and competent delivery of parenteral products and nutritional support throughout the state. To establish guidelines for licensure and inspection of such facilities by the state board of pharmacy.

(2) Definitions

(a) "Parenteral products pharmacy" is a retail pharmacy which prepares and distributes prescriptions for sterile products intended for parenteral administration to patients either at home or in or out of an institution licensed by the state.

(b) "Parenteral product" means any preparation administered by injection through one or more layers of skin tissue.

(c) "Sterile" means a preparation that has undergone a valid sterilization process and is devoid of all living microorganisms, packaged in such a way to ensure the retention of this characteristic.

(d) "Preparation" means a sterile product which has been subjected to manipulation by a pharmacist under aseptic conditions to render the product suitable for administration.

(e) "Aseptic conditions" means a cabinet or facility capable of obtaining ISO class 5 clean air as defined by the federal standards 209E and which is certified by a testing agency at least every six months.

(f) "Aseptic technique" means proper manipulation of articles within a ISO class 5 clean air room or station to maintain sterility.

(g) "Disinfectant" means a chemical compound used to kill and or control microbial growth within a ISO class 5 area or its surroundings and is approved for such use by the environmental protection agency.

(h) "Antimicrobial soap" means soap containing an active ingredient that is active both in vitro and vivo against skin microorganisms.

(i) "Surgical hand scrub" means an antimicrobial containing preparation which significantly decreases the number of microorganisms on intact skin.

(j) "SOP" means standard operating procedures. These are written standards for performance for tasks and operations within a facility.

(k) "Quality control" means procedures performed on preparations to assess their sterility and/or freedom from other contamination.

(l) "Quality assurance" means the procedures involved to maintain standards of goods and services.

(m) "ISO class 5 environment" means having less than 100 particles 0.5 microns or larger per cubic foot.

(n) "ISO class 8 environment" means having less than 100,000 particles 0.5 microns or larger per cubic foot.

(o) "Critical area" means any area in the controlled area where products or containers are exposed to the environment.

(p) "Process validation" means documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(q) "Positive pressure controlled area" means the clean room is to have a positive pressure differential relative to the adjacent pharmacy.

(r) "Barrier isolator" is an enclosed containment device which provides a controlled ISO class 5 environment. The device has four components; the stainless steel shell, HEPA filtration of entering and exiting air flows, glove ports for people interaction and an air lock for moving products into and out of the controlled environment.

(s) "Plan of care" means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

(i) a description of actual or potential drug therapy problems and their proposed solutions;

(ii) a description of desired outcomes of drug therapy provided;

(iii) a proposal for patient education and counseling; and

(iv) a plan specifying proactive objective and subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and non compliance) and the fre-

quency with which monitoring is to occur.

(t) USP/NF standards means USP/NF Chapter 797 titled "pharmacy compounding - sterile products".

(u) "Cytotoxic drugs" shall be defined in the most current American hospital formulary service (AHFS).

(3) Pharmacist-in-Charge: In order to obtain a license, all parenteral product pharmacies must designate a pharmacist in charge of operations who is:

(a) licensed to practice pharmacy in the state of New Mexico;

(b) responsible for the development, implementation and continuing review of written SOP's consistent with USP/NF standards which are used by the operation in their daily operation;

(c) pharmacist on staff who is available for twenty-four hour seven-day-a-week services;

(d) responsible for establishing a system to assure that the products prepared by the establishment are administered by licensed personnel or properly trained and instructed patients;

(e) responsible for developing an appropriate and individualized plan of care in collaboration with patient or caregiver and other healthcare providers for each patient receiving parenteral products in a home setting.

(4) Physical Requirements:

(a) The parenteral products pharmacy must have sufficient floor space to assure that the products are properly prepared and stored to prevent contamination or deterioration prior to administration to the patient and meet the following:

(i) be separated physically from other pharmacy activities and enclosed on all sides except for doors and/or windows for the passage of materials;

(ii) the minimum size of a retail pharmacy must be 240 square feet; a retail pharmacy with preparation of sterile products capabilities must have 340 square feet; the stand alone parenteral product pharmacy must have a minimum of 240 square feet;

(iii) addition of a parenteral area in existing pharmacies will require submission of plans for remodeling to the board office for approval and inspection prior to licensure;

(iv) a new parenteral pharmacy must comply with Sections 8, 9, 10 and 11 of the regulations.

(b) Equipment and materials. The parenteral products pharmacy has sufficient equipment and physical facilities to safely compound and store such products and includes the following:

(i) either a ISO class 5 clean air work station or a room which meets ISO class 5 conditions;

(ii) refrigeration capacity for proper storage of prepared parenterals at 2C to 8C after preparation and until prescriptions are received by the patient or their agent;

(iii) if bulk reconstitution of antibiotics is performed the facility has a freezer capable of freezing and storing the product at -20C for periods not to exceed the manufacturer's recommendations;

(c) References. Parenteral products pharmacies maintain in their library at least one current edition reference book from each category listed below in addition to other required references:

(i) drug monograph reference, i.e., USP-DI, AHFS: drug information service, martindale's extra pharmacopoeia, or other suitable reference;

(ii) stability and incompatibility reference; i.e., trissell's handbook of parenteral medications, king/cutter IV incompatibilities, or other suitable reference;

(iii) reference on pharmaceutical technology and compounding; i.e., remington's pharmaceutical sciences, block's disinfection sterilization and preservation, or other suitable reference;

(iv) periodicals, i.e., American journal of hospital pharmacy, ASHP's clinical pharmacy, American journal of parenteral and enteral nutrition, or other suitable periodical.

(5) Documentation Requirements for Parenteral Product Pharmacies: Written policies and procedures must be available for inspection and review by authorized agents of the board of pharmacy. Written policies and procedures must be submitted to the state board of pharmacy prior to the issuance of any license. These records must include but are not limited to:

(a) cleaning, disinfection, evaluation and maintenance of the preparation area;

(b) regular recertification of the clean air unit or units by independent testing agencies;

(c) surveillance of parenteral solutions for microbiological contamination;

(d) surveillance of parenteral solutions for particulate contamination;

(e) personnel qualifications, training and performance guidelines;

(f) facility and equipment guidelines and standards;

(g) SOP's for dispensing all solutions and medications;

(h) SOP's for disposal of physical, chemical and infectious waste;

(i) quality control guidelines and standards;

(j) quality assurance guidelines and standards;

(k) SOP's for determination of stability, incompatibilities or drug interactions.

(6) Record keeping and Patient Profile: The parenteral products pharmacy is required to maintain complete records of each patient's medications which include but are not limited to the following:

(a) prescription records including the original Rx, refill authorization, alterations in the original Rx, and interruptions in therapy due to hospitalization;

(b) patient's history including pertinent information regarding allergy or adverse drug reactions experienced by the patients;

(c) patients receiving parenteral products in a home setting are contacted at a frequency appropriate to the complexity of the patient's health problems and drug therapy as documented on patient specific plan of care and with each new prescription, change in therapy or condition;

(d) documentation that the patient receiving parenteral products in a home setting or their agent has received a written copy of their plan of care and training in the safe administration of their medication.

C. STERILE PHARMACEUTICAL PREPARATION

(1) Pharmacies compounding sterile pharmaceuticals shall prepare products in an appropriate aseptic environment which meets ISO class 5 requirements. Devices used to maintain a ISO class 5 environment will:

(a) be certified in the course of normal operation by an independent contractor according to Federal Standard 209E et seq. for operational efficiency at least every 6 months and when moved, certification records will be maintained for 3 years;

(b) have pre-filters which are inspected periodically and inspection/replacement date documented according to written policy; and

(c) have a positive pressure controlled area that is certified as at least a ISO class 8 which is functionally separate from other areas of the pharmacy and which minimizes the opportunity for particulate and microbial contamination; this area shall:

(i) have a controlled aseptic environment or contain a device which maintains an aseptic environment;

(ii) be clean, lighted, and at an average of 80-150 foot candles;

(iii) be a minimum of 100 sq. ft to support sterile compounding activities;

(iv) be used only for the compounding of sterile pharmaceuticals using appropriate aseptic technique including gowning and gloving;

(v) be designed to avoid

outside traffic and airflow;

(vi) be ventilated in a manner which does not interfere with aseptic environment control conditions;

(vii) have non-porous, washable floor coverings, hard cleanable walls and ceilings (which may include acoustical ceiling tiles coated with an acrylic paint) to enable regular disinfection; (contain only compounding medication and supplies and not be used for bulk storage;

(viii) a self contained, ISO class 5 barrier isolator not located in the clean room is acceptable; the barrier isolator may only be located in an area which is maintained under sanitary conditions and traveled only by persons engaged in sterile product preparation. Such barrier isolators must be certified by an independent certification contractor according to ISO class 5 conditions, as defined by federal standard 209E et seq. prior to use and at six-month intervals; certification records will be maintained for 3 years;

(d) store medications and supplies on shelves above the floor;

(e) develop and implement a disposal process for packaging materials, used supplies, containers, syringes, and needles; this process shall be performed to enhance sanitation and avoid accumulation in the controlled area;

(f) prohibit particle generating activities in the controlled area:

(i) removal of medications or supplies from cardboard boxes shall not be done in the controlled area;

(ii) cardboard boxes or other packaging/ shipping material which generate an unacceptable amount of particles shall not be permitted. The removal of immediate packaging designed to retain sterility or stability will be allowed;

(g) cytotoxic drugs shall:

(i) be prepared in a vertical flow biological safety cabinet, microbiological isolation chamber or equivalent containment device;

(ii) be prepared in a cabinet thoroughly cleaned prior to use for preparation of other products; said cleaning will be documented;

(iii) be prepared in a cabinet located in a controlled area as described in 11.C.(1).(c);

(iv) be disposed of according to written policies and procedures maintained at the facility;

(h) maintain a library of specialty references appropriate for the scope of services provided; reference material may be hard copy or computerized.

(2) Requirements for training.

(a) All pharmacists prior to compounding sterile pharmaceuticals, or supervising pharmacy personnel compounding sterile pharmaceuticals, all shall have completed a minimum of 20 contact hours of didactic, experiential training and competency evaluation through demonstration and testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedures or training manual. Such training shall be evidenced by completion of a recognized course in an accredited college of pharmacy or an ACPE approved course which shall include instruction and hands-on experience in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) facilities;

(v) equipment and supplies;

(vi) sterile pharmaceutical calculations and terminology;

(vii) sterile pharmaceutical compounding documentation;

(viii) quality assurance procedures;

(ix) proper gowning and gloving technique;

(x) the handling of cytotoxic and hazardous drugs; and

(xi) general conduct in the controlled area.

(b) All pharmacist interns prior to compounding sterile pharmaceuticals shall have completed a minimum of 40 hours of instruction and experience in the areas listed in paragraph 1. Such training will be obtained through the:

(i) completion of a structured on-the-job didactic and experiential training program at this pharmacy (not transferable to another pharmacy); or

(ii) completion of a course sponsored by an ACPE approved provider.

(c) All pharmacy technicians who compound sterile pharmaceuticals shall have a high school or equivalent education and be a certified pharmacy technician, and complete a minimum of 40 hours of instruction and experience in the areas listed in paragraph 1. Such training will be obtained through the:

(i) completion of a structured on-the-job didactic and experiential training program at this pharmacy (not transferable to another pharmacy) which provides 40 hours of instruction and experience in the areas listed in paragraph 1; or

(ii) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instructions and experience in the areas listed in paragraph 1.

(d) All pharmacists compounding sterile chemotherapy drugs or supervising pharmacy interns or technicians compounding sterile chemotherapy drugs shall, effective December 31, [~~2007~~] **2008**, have completed a board approved training program in chemotherapy drug preparation. All pharmacy interns and technicians must complete this training prior to preparing sterile chemotherapy drug products.

(e) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(i) name of person receiving the training or completing the testing or process validation;

(ii) date(s) of the training, testing, or process validation;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of person supervising the training, testing, or process validation;

(v) signature of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

(f) No product intended for patient uses shall be compounded by an individual until the process validation test indicates that the individual can competently perform aseptic procedures.

(g) On an annual basis the pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. A written record of such training will be maintained for 3 years.

(3) Patient or Caregiver Training for Home Sterile Products.

(a) The pharmacist shall maintain documentation that the patient has received training consistent with regulation 16.19.4.17.5 NMAC.

(b) The facility shall provide a 24-hour toll free telephone number for use by patients of the pharmacy.

(c) There shall be a documented, ongoing quality assurance program that monitors patient care and pharmaceutical care outcomes, including the following:

(i) routine performance of prospective drug use review and patient monitoring functions by a pharmacist;

(ii) patient monitoring plans that include written outcome measures and systems for routine patient assessment;

(iii) documentation of patient training; and

(4) Quality Assurance/compounding and preparation of sterile pharmaceuticals.

(a) There shall be a documented, ongoing performance improvement control program that monitors personnel performance, equipment, and facilities:

(i) all aspects of sterile product preparation, storage, and distribution, including details such as the choice of cleaning materials and disinfectants and monitoring of equipment accuracy shall be addressed in policy and procedures;

(ii) if bulk compounding of parenteral solutions is performed using non-sterile chemicals, appropriate end product testing must be documented prior to the release of the product from quarantine; the test must include appropriate tests for particulate matter and pyrogens;

(iii) there shall be documentation of quality assurance audits at regular, planned intervals, including infection control and sterile technique audits; a plan for corrective action of problems identified by quality assurance audits shall be developed which includes procedures for documentation of identified problems and action taken; a periodic evaluation as stated in the policy and procedures of the effectiveness of the quality assurance activities shall be completed and documented;

(iv) the label of each sterile compounded product shall contain: patient name; if batch filling, lot or control number; solution, ingredient names, amounts; expiration date and time, when applicable; directions for use (only if the patient is the end user; not in a hospital setting), including infusion rates, specific times scheduled when appropriate; name or initials of person preparing the product and , if prepared by supportive personnel, the name or identifying initials and the name or initials of the pharmacist that completed the final check; when appropriate, ancillary instructions such as storage instructions or cautionary systems, including cytotoxic warning labels and containment bags; 8 device instructions when needed.

(b) There shall be a mechanism for tracking and retrieving products which have been recalled.

(c) Automated compounding devices shall:

(i) have accuracy verified on a routine basis at least every thirty days per manufacturer's specifications;

(ii) be observed every thirty days by the operator during the mixing process to ensure the device is working properly;

(iii) have data entry verified by a pharmacist prior to compounding; and

(iv) have accuracy of delivery of the end product verified according to written policies and procedures.

(d) If batch preparation of sterile products is being performed, a worksheet (log) must be maintained for each batch. This worksheet shall consist of formula, components, compounding directions or procedures, a sample label and evaluation and testing requirements, if applicable, and shall be used to document the following:

(i) all solutions and ingredients and their corresponding amounts, concentrations and volumes;

(ii) component manufacturer and lot number;

(iii) lot or control number assigned to batch;

(iv) date of preparation;

(v) expiration date of batch prepared products;

(vi) identity of personnel in preparation and pharmacist responsible for final check;

(vii) comparison of actual yield to anticipated yield, when appropriate.

(5) Application of Regulation: Pharmacies licensed by the board prior to adoption of this regulation shall comply with the controlled area standards defined in section 11.C.(1).(c). by December 31, 2002. When these pharmacies change ownership, remodel the pharmacy, or relocate the pharmacy after the effective date of this regulation, Section 11(2)A.3. shall apply. All other portions of this regulation apply on the effective date.

[16.19.6.11 NMAC - Rp, 16 NMAC 19.6.11, 03-30-02; A, 01-15-2005; A, 01-15-2008]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC Section, 42, 65, 66, 67, effective 01/15/08.

16.19.20.42 PRESCRIPTION REQUIREMENTS:

A. Prescriptions for controlled substances shall be dated and signed as of the date of issue, and shall contain the full name and address of the patient, the name, address and federal registration number of the prescribing practitioner. Prescriptions for controlled substances listed in schedule II shall be written in ink, indelible pencil, or typewritten and manually signed by the practitioner.

B. A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in Subsections C and D of 16.19.20.41 NMAC and Subsection E of 16.19.20.42 NMAC. The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

C. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the parenteral products pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

D. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

E. A prescription prepared in accordance with Subsection A of 16.19.20.41 NMAC written for a schedule II narcotic substance for a patient enrolled in a hospice program certified by medicare under title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

F. A pharmacist may dispense directly a controlled substance listed in schedule III or IV, which is a prescription drug as determined under the New Mexico Drugs and Cosmetics Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner.

G. A pharmacy employee must verify the identity of the patient or the patient's representative before a new prescription for a controlled substance

listed in schedule II, III, or IV, is delivered. Acceptable identification means a state issued driver's license, including photo, or other government issued photo identification. The identification number of the government issued identification and the name imprinted on that identification must be recorded in a manner to be determined by a written policy developed by the pharmacist-in-charge. Exceptions are, a new controlled substance prescription filled for a patient known to the pharmacist or pharmacist intern, whose identification has already been documented in a manner determined by a written policy developed by the pharmacist-in-charge; a controlled substance prescription filled for home delivery; or a controlled substance prescription filled for and delivered to a licensed facility.

[16.19.20.42 NMAC - Rp 16 NMAC 19.20(1), 07-15-02; A, 01-15-08]

16.19.20.65 SCHEDULE I:

A. NMSA 1978 Section 30-31-6 schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIATES**, unless specifically exempt or unless listed in another schedule, any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(1) Acetylmethadol
(2) Allyl prodine
(3) Alphacetylmethadol
(4) Alphameprodine
(5) Alphamethadol
(6) Alpha-methyl fentanyl
(7) Benzethidine
(8) Betacetylmethadol
(9) Betameprodine
(10) Betamethadol
(11) Betaprodine
(12) Clonitazene
(13) Dextromoramide
(14) Diampromide
(15) Diethylthiambutene
(16) Dimethylthiambutene
(17) Difenoxin
(18) Dimenoxadol
(19) Dimepheptanol
(20) Dimethylthiambutene
(21) Dioxaphetyl Butyrate
(22) Dipipanone
(23) Ethylmethylthiambutene
(24) Etonitazene
(25) Etoxeridine
(26) Furethidine
(27) Hydroxypethidine
(28) Ketobemidone
(29) Levomoramide
(30) Levophenacylmorphan
(31) Morpheridine
(32) Noracymethadol
(33) Norlevorphanol
(34) Normethadone
(35) Norpipanone
(36) Phenadoxone
(37) Phenampromide
(38) Phenomorphan
(39) Phenoperidine
(40) Piritramide
(41) Proheptazine
(42) Properidine
(43) Propiram
(44) Racemoramide
(45) Tilidine
(46) Trimeperidine

B. OPIUM DERIVATIVES: Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Acetorphine
(2) Acetyl dihydrocodeine
(3) Benzyl morphine
(4) Codeine methylbromide
(5) Codeine-N-Oxide
(6) Cyprenorphine
(7) Desomorphine
(8) Dehydro morphine
(9) Etorphine
(10) Heroin
(11) Hydromorphinol
(12) Methyldesorphine
(13) Methyldihydromorphine
(14) Morphine methylbromide
(15) Morphine methylsulfonate
(16) Morphine-N-Oxide
(17) Myrophine
(18) Nicocodeine
(19) Nicomorphine
(20) Normorphine
(21) Pholcodine
(22) Thebacon
(23) Drotebanol
(24) Beta-Hydroxy-3-Methylfentanyl
(25) 3-Methylthiofentanyl
(26) Acetyl-Alpha-Methyl fentanyl
(27) Alpha-Methylthiofentanyl
(28) Beta-hydroxfentanyl
(29) Para-Fluoro fentanyl
(30) Thiofentanyl

C. HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical position, and geometric isomers).

(1) 3,4 -methylenedioxy amphetamine
(2) 5 - methoxy - 3, 4-methylenedioxy amphetamine
(3) 3,4,5 -trimethoxy amphetamine
(4) Bufotenine
(5) Diethyltryptamine; DET
(6) Dimethyltryptamine; DMT
(7) 4-methyl-2, 5-dimethoxyamphetamine; DOM or STP
(8) Lysergic acid diethylamide
(9) Lysergic acid diethylamide
(10) Marijuana
(11) Mescaline
(12) Peyote
(13) N-ethyl-3-piperidyl benzilate
(14) N-methyl-3-piperidyl benzilate
(15) Psilocybin
(16) Psilocyn
(17) Tetrahydrocannabinols
(18) Parahexyl (synthetic analog of delta9tetrahydrocannabinol (THC) an active ingredient of cannabis)
(19) Hashish
(20) 2, 5 -dimethoxyamphetamine; 2, 5-DMA
(21) 4-bromo-2, 5-dimethoxyamphetamine; 2,5-DMA
(22) 4-methoxyamphetamine; PMA
(23) Ethylamine N-ethyl-1-phenylcyclohexylamine (PCE)
(24) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine
(25) Thiophene (analog of phencyclidine) TCP or TPCP
(26) Alpha-ethyltryptamine
(27) 2, 5-dimethoxy-4-ethylamphet-amine
(29) Ibogaine

D. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone
(2) Methaqualone
(3) Benzodiazepines
(a) bromazepam
(b) camazepam
(c) clobazam
(d) cloxazolam

(e) delorazepam
(f) ethyl loflazepate
(g) fludiazepam
(h) flunitrazepam
(i) haloxazolam
(j) ketazolam
(k) loprazolam
(l) lormetazepam
(m) medazepam
(n) nimetazepam
(o) nitrazepam
(p) nordiazepam
(q) oxazolam
(r) pinazepam
(s) tetrazepam

(4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB.

(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB.

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB.

E. S T I M U L A N T S: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its' salts, isomers, and salts of isomers.

(1) Fenethylline
(2) N-ethylamphetamine
(3) cis-4-methylaminorex
(4) N, N-dimethylamphetamine

F. Any material, compound, mixture of preparation which contains any quantity of the following substances.

(1) 3-Methylfentanyl (N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its' optical and geometric isomers, salts and salts of isomers.

(2) 3, 4-methylenedioxymethamphetamine (MDMA), its' optical, positional and geometric isomers, salts and salts of isomers.

(3) 1-methyl-4-phenyl-4-proprionoxypiperidine (MPPP), its' optical isomers, salts, and salts of isomers.

(4) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its' optical isomers, salts and salts of isomers.

(5) Cathinone.

(6) Methcathinone.

[16.19.20.65 NMAC - Rp 16 NMAC 19.20.28, 07-15-02; A, 06-30-05; A, 01-15-08]

16.19.20.66 SCHEDULE II:

A. Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Substance, vegetable origin or chemical synthesis. Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) Opium and opiate, and any salts, compound, derivative, or preparation of opium or opiate excluding naloxone, dextrorphan, nalbuphine, naltrexone and apomorphine but including the following:

(a) raw opium
(b) opium extracts
(c) opium fluid extracts
(d) powdered opium
(e) granulated opium
(f) tincture of opium
(g) codeine
(h) ethylmorphine
(i) etorphine hydrochloride
(j) hydrocodone
(k) hydromorphone
(l) metopon
(m) morphine
(n) oxycodone
(o) oxymorphone
(p) thebaine
(q) alfentanil

(2) Any salt, compound derivative, or preparation thereof, which is chemically equivalent or identical with any of the substances referred to in 16.19.20.66.A.(1) NMAC, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include de-cocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

B. OPIATES: Unless specifically excepted or unless in another schedule any of the following opiates, including its' isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation except dextrose and levopropoxyphene.

(1) Alphaprodine
(2) Anileridine
(3) Bezitramide
(4) Diphenoxylate
(5) Dihydrocodeine
(6) Dextropropoxyphene (bulk) non-dosage form
(7) Fentanyl
(8) Isomethadone
(9) Levomethorphan
(10) Levorphanol
(11) Metazocine
(12) Methadone
(13) Methadone-Intermediate
(14) Monamide-Intermediate
(15) Pethidine
(16) Pethidine-Intermediate A
(17) Pethidine-Intermediate B
(18) Pethidine-Intermediate C
(19) Phenazocine
(20) Piminodine
(21) Racemethorphan
(22) Racemorphan
(23) Sufentanil
(24) Carfentanil
(25) Levo-alphacetylmethadol (LAAM)

C. S T I M U L A N T S: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system. **(See 16.19.21 NMAC-Drug Precursors)**

(1) Amphetamine, its' salts, optical isomers and salts of its' optical isomers.

(2) Methamphetamine, its' salts, isomers and salts of isomers.

(3) Phenmetrazine and its' salts.

(4) Methylphenidate.

[~~**(5) Immediate Precursors.**~~]

[~~**(6) Phenylacetone**~~]

D. D E P R E S S A N T S: Unless specifically exempt or unless listed in another schedule any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its' salts, isomers and salts of isomers is possible within the specific chemical designation.

(1) Amobarbital
(2) Secobarbital
(3) Pentobarbital
(4) Phencyclidine
(5) Dronabinol (synthetic) - in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. Food and Drug Administration
(6) Glutethimide
(7) 1-phenylcyclohexylamine
(8) 1-piperidinocyclohexanecarbonitrile

E. HALLUCINOGENIC SUBSTANCES: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its' salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomers" includes the optical position, and geometric isomers): Nabilone

F. MISCELLANEOUS:

(1) Dihydroetorphine

(2) Bulk dextropropoxyphene

(3) Remifentanil

[16.19.20.66 NMAC - Rp 16 NMAC 19.20.28(1), 07-15-02; A, 06-30-05; A, 01-15-08]

16.19.20.67 SCHEDULE III: Shall Consist of Drugs and Other Substances, By Whatever Official Name, Common or Usual Name Designated Listed in This Section.

A. STIMULANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system.

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant, amphetamine, phenmetrazine or methamphetamine previously exempt, for which the exemption was revoked by FDA Regulation Title 21, Part 308.13, and any other drug of the quantitative composition shown in that regulation for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine.

(3) Phendimetrazine.

(4) Chlorphentermine.

(5) Clortermine.

B. DEPRESSANTS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system.

(1) Any compound, mixture or preparation containing:

(a) amobarbital;

(b) secobarbital;

(c) pentobarbital;

(d) butalbital; or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(a) amobarbital;

(b) secobarbital;

(c) pentobarbital; or any salt of any of these drugs approved by the FDA for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid.

(4) Chlorhexadol

(5) Lysergic Acid

(6) Lysergic Acid Amide

(7) Methyprylon

(8) Sulfondiethylmethane

(9) Sulfonethylmethane

(10) Sulfonmethane

(11) Tiletamine/zolazepam (Telazol)

(12) Ketamine Hydrochloride

(13) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug and Cosmetic Act.

C. Nalorphine (a narcotic drug).

D. Buprenorphine.

E. NARCOTIC DRUGS: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of the following narcotic drugs, or any salts thereof.

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

F. ANABOLIC STEROIDS: The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances listed in this section:

(1) boldenone

(2) chloro testosterone

(3) clostebol

(4) dehydrochlormethyltestosterone

(5) dihydrotestosterone

(6) drostanolone

(7) ethylestrenol

(8) fluoxymesterone

(9) formebolone

(10) mestanolone

[~~**(10)**~~] **11** mesterolone

[~~**(11)**~~] **12** methandienone

[~~**(12)**~~] **13** methandranone

[~~**(13)**~~] **14** methandriol

[~~**(14)**~~] **15** methandrostenolone

[~~**(15)**~~] **16** methenolone

(17) methyltrienolone

[~~**(16)**~~] **18** methyltestosterone

[~~**(17)**~~] **19** mibolerone

[~~**(18)**~~] **20** nandrolone

(21) norbolethone

[~~**(19)**~~] **22** norethandrolone

[~~**(20)**~~] **23** oxandrolone

[~~**(21)**~~] **24** oxymesterone

[~~**(22)**~~] **25** oxymetholone

[~~**(23)**~~] **26** stanolone

[~~**(24)**~~] **27** stanozolol

[~~**(25)**~~] **28** testolactone

[~~**(26)**~~] **29** testosterone

[~~**(27)**~~] **30** trenbolone; and

[~~**(28)**~~] **31** any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

G. Exempt Anabolic Steroids: Compounds, mixtures, or preparations that contain an anabolic steroid that have been exempted by the board from Subsection E of 16.19.20.67 NMAC, schedule III to the same extent that the substance has been exempted from the application of the Federal Controlled Substance Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.

[16.19.20.67 NMAC - Rp 16 NMAC 19.20.28(2), 07-15-02; A, 02-15-03; A, 06-30-05; A, 01-31-07; A, 01-15-08]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for Architects

PO Box 509
Santa Fe, NM
505-982-2869

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 8, 2008. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 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 summary or other type of accessible format is needed.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Model State Administrative Procedure Act Revision Process — Invitation to Participate

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is revising its Model State Administrative Procedure Act (MSAPA). NCCUSL invites organizations and individuals interested in state administrative agency processes to participate in this effort.

NCCUSL is a 117 year old national organization of lawyers, judges and law professors who are appointed to represent their states in drafting and seeking enactment of uniform laws to facilitate commerce and certainty in the law among the states. For more information about NCCUSL, visit http://www.nccusl.org/.

The goal of the MSAPA drafting committee is to make the administrative process more efficient, accessible and fair. The most recent draft of MSAPA is available at http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=234 . The drafting process will not be completed until the spring of 2009. The MSAPA drafting committee invites interested parties to attend committee meetings as an observer and make comments and suggestions at the meetings or by submitting them in writing. To become an observer, please contact Ms. Leang Sou at NCCUSL at (312) 450-6606 or at leang.sou@nccusl.org . Submit written comments about the MSAPA to Commissioner Francis J. Pavetti, 18 The Strand, Goshen Point, Waterford, CT 06385.

End of Other Related Material Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

Volume XIX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
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Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.