

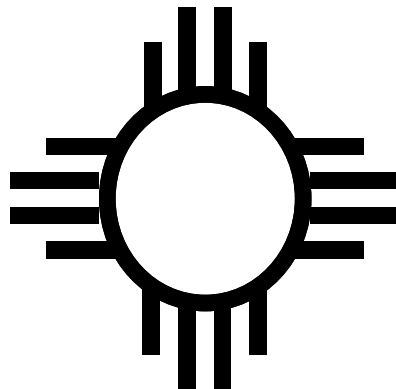
**NEW
MEXICO
REGISTER**



Volume XIX
Issue Number 5
March 14, 2008

New Mexico Register

Volume XIX, Issue Number 5
March 14, 2008



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
2008

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New Mexico Register

Volume XIX, Number 5

March 14, 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.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF DENTAL HEALTH CARE

Legal Notice

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing to amend, replace and repeal:

Title 16, Chapter 5, Part 1 General Provisions; 16.5.2 Impaired Practitioner Program; 16.5.3 Mandatory Reporting Requirements; 16.5.4 Emergency Licensure Provisions; 16.5.5 Dentists Fees; 16.5.6 Dentist Licensure By Examination; 16.5.7 Dentists Temporary License; 16.5.8 Dentist Licensure by Credentials; 16.5.9 Non-Dentist Owners; 16.5.10 Dentist Continuing Education Requirements; 16.5.11 Dentist License Expiration and Renewal; 16.5.12 Dentist Retirement, Inactive and Reinstatement; 16.5.13 Dentists License Revocation for Non Renewal; 16.5.15 Dentists, Anesthesia Administration; 16.5.16 Dentist Disciplinary Procedures; 16.5.17 Dentists and Dental Hygienists, Collaborative Practice; 16.5.18 Dental Hygienist Fees; 16.5.19 Dental Hygienist Licensure By Examination; 15.5.20 Dental Hygienist Licensure by Credentials; 16.5.21 Dental Hygienist Temporary License; 16.5.23 Dental Hygienist Continuing Education Requirements; 16.5.25 DH Requirements Inactive & Reinstatement; 16.5.26 DH License Revocation for Non Renewal; 16.5.28 DH Local Anesthesia Certification; 16.5.29 Dental Hygienist Practice; 16.5.30 DH Disciplinary Proceedings; 16.5.32 Dental Assistants Fees; 16.5.33 Dental Assistants Requirements For Certification; 16.5.35 DA Certificate Expiration and Renewal; 16.5.36 DA Continuing Education Requirements; 16.5.37 DA Certificate Revocation for Non Renewal; 16.5.39 Dental Assistant Practice and Supervision; 16.5.40 Dental Assistants Disciplinary Proceedings

This Hearing will be held at the Toney Anaya Building in the Rio Grande Conference Room located at 2550 Cerrillos Road, Santa Fe, NM starting at 8:30 a.m.

Following the Rule Hearing the Dental Hygienists Committee will convene a regular meeting. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on April, 25, 2008.

Copies of the proposed rules are available on the Dental Board's Website:

www.rld.state.nm.us/b&c/dental or by sending a request to the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or by phone (505) 476-4680.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by April 4, 2008 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE & ADMINISTRATIVE CENTER

NOTICE OF MEETING AND PUBLIC HEARING ON AMENDMENT OF RULES

Tuesday April 1, 2008, 11:00 AM, Criminalistics Conference Room, Metropolitan Forensic Science Center, 5350 2nd Street NW, Albuquerque, NM 87107

To comment on, or for additional information including a copy of the agenda and proposed amendments, or if you have a disability and you require special assistance to participate in this meeting contact John Krebsbach, Chairperson at (505) 823-4630 by Monday March 31, 2008.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.37.2 NMAC "Certification of Cigar Bars". The Hearing will be held on April 30, 2008 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to establish standards for the application and issuance of certificates for cigar bar status under the Dee Johnson Clean Indoor Air Act.

A copy of the proposed regulation can be obtained from:

Larry Elmore
Tobacco Use Prevention and Control Program
5301 Central Ave. NE, #800
Albuquerque, NM 87108
(505) 222-8618

Please submit any written comments regarding the proposed regulation to:

Larry Elmore
Tobacco Use Prevention and Control Program
5301 Central Ave. NE, #800
Albuquerque, NM 87108
(505) 222-8618

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Larry Elmore by telephone at (505) 222-8618. 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 4 separate public hearings on April 11, 2008, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico.

From 9:00-10:00 a.m. the subject of the

hearing will be Assertive Community Treatment Services. The Human Services Department, Medical Assistance Division, is proposing amendments to 8.315.5 NMAC, Assertive Community Treatment (ACT) Services rules of minor revisions to clarify regulatory language and accuracy with existing regulations and provider participation agreements and opening up the type of providers that can render services. Specific policy changes are:

* Inserting specific licensing requirements, such as inserting on 8.315.5.10 (E)(1) at "least one (1) **'board certified or board eligible'** psychiatrist";

* Inserting "**at least one**" in 8.315.5.10.E (3-6) in ACT team composition to assure that ten to twelve members comprise the team; and

* The most significant change to language is allowing non-political subdivisions of the state of New Mexico to apply for reimbursement of services through Medicaid. Emphasis was made to tie policy to the ACT fidelity model as a way to ensure that SCT, as an evidence-based practice, was used instead of a hybrid ACT model.

From 10:00-11:00 a.m. the subject of the hearing will be General Program Description. The Human Services Department, Medical Assistance Division, is proposing amendments to 8.300.1 NMAC, *General Program Description*; 8.300.2 NMAC, *Health Insurance Portability and Accountability Act of 1996*, and 8.300.11 NMAC, *Confidentiality*, 8.301.2 NMAC, *General Benefit Description* and 8.302.1 NMAC, *General Provider Rules* to clarify regulatory language and accuracy with existing rules and provider participation agreements.

From 11:00 a.m.-12:00 p.m. the subject of the hearing will be Out-of-State Providers. The Human Services Department, Medical Assistance Division, is proposing amendments to *MAD 704, Out-of-State Providers* to clarify regulatory language and accuracy with existing rules and provider participation agreements.

From 1:00-4:00 p.m. the subject of the hearing will be State Coverage Insurance (SCI). New Mexico Human Services Department is proposing regulation updates to the State Coverage Insurance (SCI) Program regarding the following: to simplify the financial eligibility determination for self-employed individuals; to incorporate relevant updates that were effective with the Managed Care regulation updates effective 7/1/07, and to effect various other minor revisions to clarify regulatory language.

Interested persons may submit written com-

ments no later than 5:00 p.m., April 11, 2008, 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/register.html . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on April 14, 2008, in Hearing Room 1 of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico. The subject of the hearing will be Mental Health Professional Services

The Human Services Department, Medical Assistance Division, is proposing changes to 8.310.8 Mental Health Professional Services rules that include (a) revisions to clarify regulatory language, accuracy, and provider participation; (b) changing the phrase "mental health" to "behavioral health" to match state language usage for mental and substance abuse services, (c) expanding adult substance abuse services to eligible MAD recipients, and (d) adding Licensed Alcohol and Drug Abuse Counselors (LADACs) to providers who can bill through various agencies for providing services to adult eligible MAD recipients.

More specifically, changes for 8.310.8 include:

* Replacing the phrase "*mental health*" with "*behavioral health*" which is defined to include both mental health and

substance abuse treatment

* Extending coverage of Licensed Alcohol and Drug Abuse Counselors when working within an agency to eligible recipients 21-years of age and older

* Including Core Service Agencies as allowable agencies to bill MAD directly

* Updating provider responsibilities and enrollment information

* Making numerous grammatical and format changes

* Removing the 12-session limit on substance abuse coverage to adult MAD eligible recipients

* Removing "*supervised*" from 8.310.8.10C and deferring to the State's various licensing boards to define what type of supervision, if any, is needed for each license

* Removing Registered Independent Mental Health Counselors as eligible providers because there is no longer this type of registration provided by the licensing boards

* Removing schools from this rule because schools have their own specific rules with regard to services and providers.

Interested persons may submit written comments no later than 5:00 p.m., January 15, 2008, 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/register.html . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO BOARD OF NURSING

LEGAL NOTICE

Public Rules Hearing

The New Mexico Board of Nursing will hold a Rules Hearing on April 24, 2008. The Rules Hearing will begin at 1:30 p.m. The rules hearing will be held at the Marriott Pyramid, 5151 San Francisco Rd NE, Albuquerque NM, 87109.

The purpose of the rules hearing is to hear public testimony and comments regarding the proposed amendments to the Board's rules and regulations: 16.12 NMAC: Part 1 General Provisions, Part 2 Nurse Licensure, Part 4 Certification of Hemodialysis Technicians and Training Programs, Part 5 Medication Aides.

Persons desiring to present their views on the proposed amendments to the rules may write to request draft copies of the rules from the Board office at 6301 Indian School Rd NE, Suite 710, Albuquerque, NM, 87110, call (505) 841-8340 or download them from www.bon.state.nm.us after March 8, 2008. In order for the Board members to review the comments prior to the hearing, persons wishing to submit written comments regarding the proposed rules should submit them to the Board office in writing no later than April 3, 2008. Persons wishing to present written comments at the hearing are asked to provide (10) copies of any comments or proposed changes for distribution to the Board and staff. In addition, persons may present their comments orally at the hearing.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, please call the Board office at (505) 841-8340 at least two weeks prior to the hearing or as soon as possible.

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Psychologist Examiners Board will hold a Rule Hearing on April 25, 2008. Following the Rule Hearing the New Mexico Psychologist Examiners Board will convene a regular meeting to adopt the rules

and take care of regular business. The Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Courtyard by Marriott, Journal Center, Santo Domingo Conference Room, 5151 Journal Center Blvd., Albuquerque, NM 87109.

The purpose of the rule hearing is to hear public testimony and comments regarding the proposed amendments to the Board's rules and regulations: 16.22 NMAC: Part 1 General Provisions, Part 2 Code of Conduct, Part 4 Psychologist: Education Requirements, Part 5 Psychologists: Application Requirements; Procedures, Part 6 Psychologist: Predoctoral and Postdoctoral Supervised Experience, Part 7 Examination Requirements, Part 9 Continuing Professional Education Requirements, Part 10 Inactive Status and Reinstatement, Part 12 Psychologist Associates: Education Requirements and Conditions of Practice, Part 13 Fees, Part 23 Requirements for Education and Conditional Prescribing Certificate, and Part 24, Application Procedures: Two-year Supervised Practice.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87501, or call (505) 476-4960 after March 15, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than April 18, 2008. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4960 at least two weeks prior to the meeting or as soon as possible.

Velma Rodriguez, Executive Assistant
PO Box 25101, Santa Fe, New Mexico 87504

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 Boardroom, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing at 09:30 a.m. on Thursday, March 20, 2008. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No.15.2.3.8 (Horse Identifier), 15.2.5.11 (Identification), 15.2.5.12 (Horses Ineligible), and 15.2.6.9 (Medication Restriction).

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested parties may submit their views on the agenda items 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.

Julian Luna
Agency Director

Dated: March 3, 2008

NEW MEXICO REAL ESTATE APPRAISERS BOARD

Rule Hearing and Regular Board Meeting

The New Mexico Real Estate Appraiser Board will hold a Rule Hearing on April 17, 2008 and will convene at 9:00 a.m. Following the Rule Hearing the New Mexico Real Estate Appraiser Board will convene a regular board meeting to adopt the rules and take care of regular business. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd floor hearing room #2 Santa Fe, NM.

If you would like a copy of the proposed changes you may access the website at www.rld.state.nm.us after March 14, 2008

to get a draft copy. In order for Board members to review the comments in their meeting packets prior to the meeting, public comments must be received in writing no later than March 28, 2008. Persons wishing to present their comments at the hearing will need to bring (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4639 at least two weeks prior to the meeting or as soon as possible.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
PRIVATE INVESTIGATIONS
ADVISORY BOARD**

The New Mexico Private Investigations Advisory Board will hold a Rule Hearing on April 16, 2008 and will convene at 9:30 am. Following the Rule Hearing the New Mexico Private Investigations Advisory Board will convene a regular board meeting to adopt the rules and take care of regular business. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2nd floor, Rio Grande Room, Santa Fe, NM.

If you would like a copy of the proposed changes you may access the website at www.rld.state.nm.us after March 14, 2008 to get a draft copy. In order for Board members to review the comments in their meeting packets prior to the meeting, public comments must be received in writing no later than March 28, 2008. Persons wishing to present their comments at the hearing will need to bring (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4639 at least two weeks prior to the meeting or as soon as possible.

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The New Mexico Taxation and Revenue Department proposes to amend the following regulation:

Gross Receipts and Compensating Tax Act

3.2.234.8 NMAC Section 7-9-73.2 NMSA 1978

(Packaging and Storage Containers)

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

Gross Receipts and Compensating Tax Act

3.2.234.10 NMAC Section 7-9-73.2 NMSA 1978

(Items That Are Not Prescription Drugs)

3.2.248.8 NMAC Section 7-9-109 NMSA 1978

(Written Statement of Farming or Ranching)

These proposals were placed on file in the Office of the Secretary on March 3, 2008. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about May 15, 2008.

A public hearing will be held on the proposals on Wednesday, April 23, 2008, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before April 23, 2008.

3.2.234.8 **[“INJECTIBLES”:]
PACKAGING AND STORAGE CON-
TAINERS**

A. “INJECTIBLES”:

Injectibles are a combination of tangible personal property sold as a unit for a single price in which a prescription drug is pre-loaded by the manufacturer into a device, such as a syringe, to administer the pre-

scription drug. Receipts from selling the device, such as a syringe, by itself are not deductible under Section 7-9-73.2 NMSA 1978. When sold as part of an injectible, however, the device will be considered simply an elaborate form of packaging incidental to the sale of the prescription drug. Receipts from selling injectibles may be deducted from gross receipts under Section 7-9-73.2 NMSA 1978.

B. The receipts of an oxygen service provider from the lease of oxygen canisters or similar storage containers to recipients of oxygen services are deductible pursuant to Section 7-9-73.2 NMSA 1978 if the oxygen service provider sells the entire package, including the lease of the canisters, as part of the oxygen service they provide.

C. Receipts from the sale or lease of machines or equipment that produce oxygen or filter the air are not receipts from the sale of oxygen or from providing oxygen services and therefore not deductible under Section 7-9-73.2 NMSA 1978.

[10/29/99; 3.2.234.8 NMAC - Rn, 3 NMAC 2.73.3.8 & A, 6/14/01; A, XXX]

3.2.234.10 **ITEMS THAT ARE NOT PRESCRIPTION DRUGS:**

Tangible personal property that may be sold or dispensed for human consumption or administered to a human without a prescription of a person, such as a medical doctor, licensed to prescribe the property's use or to administer it are not "prescription drugs". Items that do not require a prescription, such as medical equipment, [oxygen,] vitamins and aspirin are not "prescription drugs" even if prescribed by a licensed medical doctor. Tangible personal property sold or dispensed for non-human consumption or administered to a non-human are not "prescription drugs" unless a veterinarian is required to prescribe the use of or to administer the property.

[3.2.234.10 NMAC - N, 10/31/2000; A, XXX]

**TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS
TAXES**

**PART 248: DEDUCTION -
GROSS RECEIPTS TAX - MEDICAL
TREATMENT OF CATTLE**

3.2.248.1 **ISSUING AGENCY:**

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.248.1 NMAC - N, XXX]

3.2.248.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.

[3.2.248.2 NMAC - N, XXX]

3.2.248.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.

[3.2.248.3 NMAC - N, XXX]

3.2.248.4 **DURATION:** Permanent.

[3.2.248.4 NMAC - N, XXX]

3.2.248.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.248.5 NMAC - N, XXX]

3.2.248.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.248.6 NMAC - N, XXX]

3.2.248.7 **DEFINITIONS:** [Reserved.]

3.2.248.8 **WRITTEN STATEMENT OF FARMING OR RANCHING**

A. Receipts from providing veterinary medical services or from selling medicine or medical supplies used in the medical treatment of cattle to a person who states in writing that they are regularly engaged in the business of ranching or farming may be deducted from the seller's gross receipts pursuant to Laws 2007, Chapter 172, Section 11. The written statement must be accepted in good faith by the seller in order for the seller to take the deduction authorized by Laws 2007, Chapter 172, Section 11. The good faith acceptance requirement applies to each transaction intended to be covered by the written statement.

B. The following is an example of a statement that will be accepted by the department as conclusive evidence that receipts from selling enumerated items to persons signing the statement may be deducted from the seller's gross receipts pursuant to Laws 2007, Chapter 172, Section 11 if the seller accepted such a statement in good faith. "I swear or affirm that I am regularly engaged in the business of farming or ranching. This declaration is made for the purpose of allowing receipts from selling veterinary medical services, medicine and medical supplies used in the medical treatment of cattle to be deducted from the gross receipts of the seller pursuant to Laws 2007, Chapter 172, Section 11."

C. Receipts from selling any of the items mentioned in Laws 2007, Chapter 172, Section 11 to a person engaged in the farming or ranching business

may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.248.8 NMAC

D. For the purposes of Laws 2007, Chapter 172, Section 11 it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

E. When the seller accepts in good faith a person's written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the receipts from the transaction with the person having made the statement are deductible from the seller's gross receipts under Laws 2007, Chapter 172, Section 11. [3.2.248.8 NMAC - N, XXX]

NEW MEXICO WATER TRUST BOARD

NEW MEXICO WATER TRUST BOARD

NOTICE OF PUBLIC HEARINGS TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATIONS FOR REVIEW AND ELIGIBILITY OF PROPOSED WATER PROJECTS, 19.25.10 NMAC

The New Mexico Water Trust Board (the "Board") will hold a series of public hearings to consider proposed amendments to 19.25.10 NMAC, Review and Eligibility of Proposed Water Projects. The Board is the proponent of the proposed amendments.

The proposed amendments relate to the review and eligibility of applications to the Water Trust Board for grants and loans to fund proposed water projects under the Water Project Finance Act, Section 72-4A-1 et seq., NMSA 1978.

The proposed amendments to the regulations may be reviewed during regular business hours at the office of the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501. Copies of the proposed amendments may be obtained by contacting Marquita Russel at (505) 984-1454 or 1-877-ASK-NMFA, or by e-mail to mrussel@nmfa.net.

Hearings will be conducted at the following times and locations:

April 14, 2008, from 10:00 a.m. to 1:00 p.m. at the City of Gallup Council Chambers, City Hall, 110 W. Aztec, Gallup, New Mexico.

April 15, 2008, from 9:00 a.m. to 12:00

noon at the Munson Senior Center, 975 S. Mesquite Street, Las Cruces, New Mexico.

April 16, 2008, from 8:00 a.m. to 11:00 a.m. at the City of Roswell Council Chambers, City Hall, 425 N. Richardson, Third Floor, Roswell, New Mexico.

April 16, 2008, from 2:00 p.m. to 5:00 p.m. at the Bert Cabiness City Government Center, Assembly Room, 321 Connelly Street, Clovis, New Mexico.

April 17, 2008, from 1:00 p.m. to 4:00 p.m. at the Town Council Chambers, 120 Civic Plaza Drive, Taos, New Mexico.

April 18, 2008, from 9:00 a.m. to 12:00 noon at Apodaca Hall, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

All interested persons are invited to attend any of the hearings and will be given reasonable opportunity to submit relevant evidence, data, views and comments, orally or in writing, and to introduce exhibits and examine witnesses. Any person who wishes to submit a written statement for the record in lieu of oral testimony must file such statement no later than 12:00 noon, MDT, on Friday, April 18, 2008. Written statements for the record should be submitted to:

Marquita Russel
Chief of Programs
New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501

If you are an individual with a disability and you require assistance or an auxiliary aid, such as a sign language interpreter, to participate in any of the hearings, please contact Marquita Russel at the New Mexico Finance Authority so that appropriate arrangements can be made. Marquita Russel can be reached at 207 Shelby Street, Santa Fe, New Mexico 87501, (505) 984-1454 or 1-877-ASK-NMFA, or by e-mail to mrussel@nmfa.net TDD or TDY users may access these numbers via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779).

The New Mexico Water Trust Board will consider and take formal action on the proposed amendments at a duly called regular or special meeting following the conclusion of the hearings, taking into account the testimony, evidence and other materials presented during the hearing process.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

**TITLE 21 AGRICULTURE
AND RANCHING
CHAPTER 16 AGRICULTURAL
WEIGHTS AND MEASURES
PART 11 APPLYING ADMIN-
ISTRATIVE PENALTIES: WEIGHTS
AND MEASURES LAW**

21.16.11.1 ISSUING AGENCY:
New Mexico State University, New Mexico
Department of Agriculture, MSC 3189, P.
O. Box 30005, Las Cruces, New Mexico
88003-8005 Telephone: (505) 646-3007
[21.16.11.1 NMAC - N, 3/14/2008]

21.16.11.2 SCOPE: All parties
regulated under the Weights and Measures
Law.
[21.16.11.2 NMAC - N, 3/14/2008]

**21.16.11.3 S T A T U T O R Y
AUTHORITY:** Granted to the board of
regents of New Mexico state university
under the Weights and Measures Law,
Chapter 57, Article 17, Sections 1 through
19, New Mexico Statutes Annotated, 1978
Compilation.
[21.16.11.3 NMAC - N, 3/14/2008]

21.16.11.4 D U R A T I O N :
Permanent
[21.16.11.4 NMAC - N, 3/14/2008]

21.16.11.5 EFFECTIVE DATE:
March 14, 2008, unless a later date is cited
at the end of a section.
[21.16.11.5 NMAC - N, 3/14/2008]

21.16.11.6 OBJECTIVE: This
part provides for assessment of administra-
tive penalties for violations of the Weights
and Measures Law or rules adopted under
the act and specifies the appeal process.
[21.16.11.6 NMAC - N, 3/14/2008]

21.16.11.7 DEFINITIONS:
A. "Department" means
the New Mexico department of agriculture.
B. "Director" means the
director/secretary of the New Mexico
department of agriculture.
C. "Division director"
means the director of the division of stan-
dards and consumer services within the
New Mexico department of agriculture.
D. "Inspector" means an
individual employed by the New Mexico
department of agriculture who, under the
direction of the director, is granted the same

authority as the director for the administra-
tion of the Weights and Measures Law and
associated rules.

E. "Violation /offense"
means disregard of field enforcement
actions or the law.

F. "Routine inspection"
means inspections conducted within the
prescribed guidelines for frequency.

G. "Testing and inspection
procedures" means procedures adopted
from various handbooks, rules and refer-
ence materials which include, but are not
limited, to the following: *the national insti-
tute of standards and technology (NIST)
handbook 44, specifications, tolerances,
and other technical requirements for weigh-
ing and measuring devices; NIST handbook
133, checking the net contents of packaged
goods; NIST handbook 112, examination
procedure outlines for commercial weigh-
ing and measuring devices a manual for
weights and measures officials; the New
Mexico department of agriculture, exami-
nation procedure for price verification.*
[21.16.11.7 NMAC - N, 3/14/2008]

21.16.11.8 [RESERVED]

**21.16.11.9 ASSESSING PENAL-
TIES:** The assessment of administrative
penalties will be used as intermediate step
between field enforcement actions and court
action, or when stop sale orders are not
appropriate or have proven to be ineffective
in resolving a problem, and not as a daily
punitive enforcement tool. All monies
derived from administrative penalties to be
deposited in the state general fund after all
expenses. When a duly authorized agent of
the director finds, in his judgment, that a
person has violated a provision of law or
rules adopted pursuant to law, with concu-
rrence of the supervisor, he shall notify the
person in writing that the department
intends to assess a penalty in accordance
with the provisions of this rule. Such pen-
alty may be in addition to or in lieu of admin-
istrative actions, such as stop sale orders.
The department also reserves the right to
file criminal charges according to the provi-
sions of the laws administered by the
department.

A. The inspector shall
notify his division director, through his
immediate supervisor, of the proposed
penalty. The division director shall review
the facts in the case, and may request addi-
tional information. If the division director
determines there should be no penalty
assessed, the alleged violator shall be noti-
fied in writing.

B. If the division director,
after careful review and consideration deter-

mines there should be a penalty assessed, he
shall make recommendation to the director
as to the amount and nature of the penalty.
The director shall review the facts in the
case, and may request additional informa-
tion. If the director determines there should
be no penalty, the alleged violator shall be
notified in writing by the division director.
If the director determines a penalty is war-
ranted by the facts in the case, he shall noti-
fy the alleged violator of the amount and
nature of the penalty. Violations/offenses
are per business location not per company
and will be based on offenses per routine
inspection. All inspections will be based on
adopted testing and inspection procedures.
In making his determination as to the nature
and amount of penalty, the director shall be
guided by Sections 10, 11, 12, and 14 of this
part.

[21.16.11.9 NMAC - N, 3/14/2008]

**21.16.11.10 GRAVITY OF VIO-
LATION:**

A. Factors: Any one or all
of the following factors may be considered
in determining the gravity of a violation.

(1) Potential monetary conse-
quences.

(2) Degree of inconvenience or
deception to a buyer or prospective buyer.

(3) Degree of disregard for the
law.

B. COLUMN A: Minimal
gravity — When the violation has a mini-
mal gravity, the penalty shall be determined
from Column A, Section 14.

C. COLUMN B:
Moderate gravity — When the violation has
a moderate gravity, the penalty shall be
determined from Column B, Section 14.

D. COLUMN C: Great
gravity — When the violation has a great
gravity, the penalty shall be determined
from Column C, Section 14.

[21.16.11.10 NMAC - N, 3/14/2008]

**21.16.11.11 FREQUENCY OF
VIOLATION:** The more frequently a per-
son commits the same violation, the greater
the penalty shall be, as provided by the table
in Section 14.

A. When a person com-
mits the same violation three (3) or more
times in a twelve (12) month period, double
the penalty for the third violation shall be
assessed.

B. The period of time in
determining frequency of violations shall be
a twelve (12) month period. If a person has
not committed the same offense in a twelve
(12) month period, the next offense shall be
considered as a first offense.

C. A person who has com-

mitted the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[21.16.11.11 NMAC - N, 3/14/2008]

21.16.11.12 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty.

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.16.11.12 NMAC - N, 3/14/2008]

21.16.11.13 PAYMENT OF PENALTY: If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.16.11.13 NMAC - N, 3/14/2008]

21.16.11.14 PENALTY TABLE:

TABLE I

Gravity	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
	\$250.	\$1000.	\$1500.	\$2000.	\$2500.	\$3000.	\$3500.	\$4000.	\$5000.

[21.16.11.14 NMAC - N, 3/14/2008]

HISTORY OF 21.16.11 NMAC: [RESERVED]

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

**TITLE 21 AGRICULTURE
AND RANCHING
CHAPTER 16 AGRICULTURAL
WEIGHTS AND MEASURES
PART 12 APPLYING ADMIN-
ISTRATIVE PENALTIES: WEIGH-
MASTER ACT**

21.16.12.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture, MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone: (505) 646-3007

[21.16.12.1 NMAC - N, 3/14/2008]

21.16.12.2 SCOPE: All parties regulated under the Weighmaster Act.

[21.16.12.2 NMAC - N, 3/14/2008]

21.16.12.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weighmaster Act, Chapter 57, Article 18, Sections 1 through 26, New Mexico Statutes Annotated, 1978 Compilation as amended by Chapter 80, Laws of 1979.

[21.16.12.3 NMAC - N, 3/14/2008]

21.16.12.4 DURATION:

Permanent

[21.16.12.4 NMAC - N, 3/14/2008]

21.16.12.5 EFFECTIVE DATE:

March 14, 2008, unless a later date is cited at the end of a section.

[21.16.12.5 NMAC - N, 3/14/2008]

21.16.12.6 OBJECTIVE:

This part provides for assessment of administrative penalties for violations of the Weighmaster Act or rules adopted under the act and specifies the appeal process.

[21.16.12.6 NMAC - N, 3/14/2008]

21.16.12.7 DEFINITIONS:

A. "Department" means the New Mexico department of agriculture.

B. "Director" means the director/secretary of the New Mexico department of agriculture.

C. "Division director" means the director of the division of standards and consumer services within the New Mexico department of agriculture.

D. "Inspector" means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the director for the administration of the Weighmaster Act and associated rules.

E. "Violation /offense" means disregard of field enforcement actions or the law.

F. "Routine inspection" means inspections conducted within the prescribed guidelines for frequency.

G. "Testing and inspection procedures" means procedures adopted

from various handbooks, rules and reference materials which include, but are not limited, to the following: *the national institute of standards and technology (NIST) handbook 44, specifications, tolerances, and other technical requirements for weighing and measuring devices; NIST handbook 112, examination procedure outlines for commercial weighing and measuring devices a manual for weights and measures officials.*

[21.16.12.7 NMAC - N, 3/14/2008]

21.16.12.8 [RESERVED]

21.16.12.9 ASSESSING PENALTIES:

The assessment of administrative penalties will be used as an intermediate step between field enforcement actions and court action, or when out of orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. All monies derived from administrative penalties to be deposited in the state general fund after all expenses. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, with concurrence of the supervisor, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions. The department also reserves the right to file criminal charges according to the provisions of the laws

administered by the department.

A. The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no penalty, the alleged violator shall be notified in writing by the division director. If the director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. Violations/offenses are per business location not per company and will be based on offenses per routine inspection. All inspections will be based on adopted testing and inspection procedures. In making his determination as to the nature and amount of penalty, the director shall be guided by Sections 10, 11, 12, and 14 of this part.

[21.16.12.9 NMAC - N, 3/14/2008]

21.16.12.10 GRAVITY OF VIOLATION:

A. Factors: Any one or all of the following factors may be considered in determining the gravity of a violation.

- (1) Potential monetary consequences.
- (2) Degree of inconvenience or deception to the user or prospective user.
- (3) Degree of disregard for the law.

B. COLUMN A: Minimal gravity — When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 14.

C. COLUMN B: Moderate gravity — When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 14.

D. COLUMN C: Great gravity — When the violation has a great gravity, the penalty shall be determined from Column C, Section 14.

[21.16.12.10 NMAC - N, 3/14/2008]

21.16.12.11 FREQUENCY OF VIOLATION: The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the table in Section 14.

A. When a person commits the same violation more than three (3) times in a twelve (12) month period, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be a twelve (12) month period. If a person has not committed the same offense in a twelve (12) month period, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[21.16.12.11 NMAC - N, 3/14/2008]

21.16.12.12 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.16.12.12 NMAC - N, 3/14/2008]

21.16.12.13 PAYMENT OF PENALTY: If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.16.12.13 NMAC - N, 3/14/2008]

21.16.12.14 PENALTY TABLE:

TABLE I

Gravity	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
	\$250.	\$1000.	\$1500.	\$2000.	\$2500.	\$3000.	\$3500.	\$4000.	\$5000.

[21.16.12.14 NMAC - N, 3/14/2008]

HISTORY OF 21.16.12 NMAC: [RESERVED]

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

**TITLE 21 AGRICULTURE
AND RANCHING
CHAPTER 34 DAIRY AND EGG
PRODUCERS
PART 13 APPLYING ADMIN-
ISTRATIVE PENALTIES: EGG GRAD-
ING ACT**

21.34.13.1 ISSUING AGENCY:
New Mexico State University, New Mexico
Department of Agriculture, MSC 3189, P.
O. Box 30005, Las Cruces, New Mexico
88003-8005 Telephone: (505) 646-3007.
[21.34.13.1 NMAC - N, 3/14/2008]

21.34.13.2 SCOPE: All parties
regulated under the Egg Grading Act.
[21.34.13.2 NMAC - N, 3/14/2008]

**21.34.13.3 STATUTORY
AUTHORITY:** Granted to the board of
regents of New Mexico state university
under the Egg Grading Act, Chapter 25,
Article 6, Sections 1 through 16, New
Mexico Statutes Annotated, 1978
Compilation.
[21.34.13.3 NMAC - N, 3/14/2008]

21.34.13.4 DURATION:
Permanent
[21.34.13.4 NMAC - N, 3/14/2008]

21.34.13.5 EFFECTIVE DATE:
March 14, 2008, unless a later date is cited
at the end of a section.
[21.34.13.5 NMAC - N, 3/14/2008]

21.34.13.6 OBJECTIVE: This
part provides for assessment of administra-
tive penalties for violations of the Egg
Grading Act or rules adopted under the act
and specifies the appeal process.
[21.34.13.6 NMAC - N, 3/14/2008]

21.34.13.7 DEFINITIONS:
A. "Department" means
the New Mexico department of agriculture.
B. "Director" means the
director/secretary of the New Mexico
department of agriculture.
C. "Division director"
means the director of the division of stan-
dards and consumer services within the
New Mexico department of agriculture.
D. "Inspector" means an
individual employed by the New Mexico
department of agriculture who, under the
direction of the director, is granted the same
authority as the director for the administra-
tion of the Egg Grading Act and associated
rules.

E. "Violation /offense"
means disregard of field enforcement
actions or the law.

F. "Routine inspection"
means inspections conducted within the
prescribed guidelines for frequency.

G. "Testing and inspection
procedures" means procedures adopted
from various handbooks, rules and refer-
ence materials which include, but are not
limited, to the following: *the United States
department of agriculture standards for
consumer grades of shell eggs, excepting
those sold as ungraded.*
[21.34.13.7 NMAC - N, 3/14/2008]

21.34.13.8 [RESERVED]

**21.34.13.9 ASSESSING PENAL-
TIES:** The assessment of administrative
penalties will be used as an intermediate
step between field enforcement actions and
court action, or when stop sale orders are
not appropriate or have proven to be inef-
fective in resolving a problem, and not as a
daily punitive enforcement tool. All monies
derived from administrative penalties to be
deposited in the state general fund after all
expenses. When a duly authorized agent of
the director finds, in his judgment, that a
person has violated a provision of law or
rules adopted pursuant to law, with concu-
rrence of the supervisor, he shall notify the
person in writing that the department
intends to assess a penalty in accordance
with the provisions of this rule. Such pen-
alty may be in addition to or in lieu of admin-
istrative actions, such as stop sale orders.
The department also reserves the right to
file criminal charges according to the provi-
sions of the laws administered by the
department.

A. The inspector shall
notify his division director, through his
immediate supervisor, of the proposed
penalty. The division director shall review
the facts in the case, and may request addi-
tional information. If the division director
determines there should be no penalty
assessed, the alleged violator shall be noti-
fied in writing.

B. If the division director,
after careful review and consideration deter-
mines there should be a penalty assessed, he
shall make recommendation to the director
as to the amount and nature of the penalty.
The director shall review the facts in the
case, and may request additional informa-
tion. If the director determines there should
be no penalty, the alleged violator shall be
notified in writing by the division director.
If the director determines a penalty is war-
ranted by the facts in the case, he shall noti-
fy the alleged violator of the amount and
nature of the penalty. Violations/offenses
are per business location not per company

and will be based on offenses per routine
inspection. All inspections will be based on
adopted testing and inspection procedures.
In making his determination as to the nature
and amount of penalty, the director shall be
guided by Sections 10, 11, 12, and 14 of this
part.

[21.34.13.9 NMAC - N, 3/14/2008]

**21.34.13.10 GRAVITY OF VIO-
LATION:**

A. Factors: Any one or all
of the following factors may be considered
in determining the gravity of a violation.

(1) Potential monetary conse-
quences.

(2) Degree of inconvenience or
deception to a buyer or prospective buyer.

(3) Degree of disregard for the
law.

B. COLUMN A: Minimal
gravity — When the violation has a mini-
mal gravity, the penalty shall be determined
from Column A, Section 14.

C. COLUMN B: Moderate
gravity — When the violation has a moder-
ate gravity, the penalty shall be determined
from Column B, Section 14.

D. COLUMN C: Great
gravity — When the violation has a great
gravity, the penalty shall be determined
from Column C, Section 14.

[21.34.13.10 NMAC - N, 3/14/2008]

**21.34.13.11 FREQUENCY OF
VIOLATION:** The more frequently a per-
son commits the same violation, the greater
the penalty shall be, as provided by the table
in Section 14.

A. When a person com-
mits the same violation more than three (3)
times in a twelve (12) month period, double
the penalty for the third violation shall be
assessed.

B. The period of time in
determining frequency of violations shall be
twelve a (12) month period. If a person has
not committed the same offense in a twelve
(12) month period, the next offense shall be
considered as a first offense.

C. A person who has com-
mitted the same offense three times in five
(5) years shall not be protected by the
twelve (12) month limitation and shall be
subject to the penalty for the third offense.

[21.34.13.11 NMAC - N, 3/14/2008]

21.34.13.12 APPEALS:

A. Any person accused of
a violation for which a penalty has been
assessed may request a hearing before the
director to contest the amount of the pen-
alty or whether the violation occurred or both.

B. A request for a hearing
before the director must be in writing and
must be submitted within fifteen (15) days

of notification of penalty

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.34.13.12 NMAC - N, 3/14/2008]

21.34.13.13 PAYMENT OF PENALTY: If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.34.13.13 NMAC - N, 3/14/2008]

**21.34.13.14 PENALTY TABLE:
TABLE I**

Gravity	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
	\$250	\$1000.	\$1500.	\$2000.	\$2500.	\$3000.	\$3500.	\$4000.	\$5000.

[21.34.13.14 NMAC - N, 3/14/2008]

HISTORY OF 21.34.13 NMAC: [RESERVED]

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

**TITLE 21 AGRICULTURE
AND RANCHING
CHAPTER 34 DAIRY AND EGG
PRODUCERS
PART 14 APPLYING ADMIN-
ISTRATIVE PENALTIES: DAIRY ACT**

21.34.14.1 ISSUING AGENCY:
New Mexico State University, New Mexico
Department of Agriculture, MSC 3189, P.
O. Box 30005, Las Cruces, New Mexico
88003-8005 Telephone: (505) 646-3007
[21.34.14.1 NMAC - N, 3/14/2008]

21.34.14.2 SCOPE: All parties
regulated under the Dairy Act.
[21.34.14.2 NMAC - N, 3/14/2008]

**21.34.14.3 STATUTORY
AUTHORITY:** Granted to the board of
regents of New Mexico state university
under the Dairy Act, Chapter 25, Article 7,
Sections 1 through 8, New Mexico Statutes
Annotated, 1978 Compilation.
[21.34.14.3 NMAC - N, 3/14/2008]

21.34.14.4 DURATION :
Permanent
[21.34.14.4 NMAC - N, 3/14/2008]

21.34.14.5 EFFECTIVE DATE:
March 14, 2008, unless a later date is cited
at the end of a section.
[21.34.14.5 NMAC - N, 3/14/2008]

21.34.14.6 OBJECTIVE: This
part provides for assessment of administra-
tive penalties for violations of the Dairy Act
or rules adopted under the act and specifies
the appeal process.
[21.34.14.6 NMAC - N, 3/14/2008]

21.34.14.7 DEFINITIONS:
A. "Department" means
the New Mexico department of agriculture.
B. "Director" means the
director/secretary of the New Mexico
department of agriculture.
C. "Division director"
means the director of the division of stan-
dards and consumer services and/or the
director of the dairy division within the
New Mexico department of agriculture.
D. "Inspector" means an
individual employed by the New Mexico
department of agriculture who, under the
direction of the director, is granted the same
authority as the director for the administra-
tion of the Dairy Act and associated rules.
E. "Violation /offense"
means disregard of field enforcement
actions or the law.
F. "Routine inspection"
means inspections conducted within the
prescribed guidelines for frequency.
G. "Testing and inspection
procedures" means procedures adopted
from various handbooks, rules and refer-
ence materials which include, but are not
limited, to the following: *NIST handbook
133, checking the net contents of packaged
goods.*
[21.34.14.7 NMAC - N, 3/14/2008]

21.34.14.8 [RESERVED]

**21.34.14.9 ASSESSING PENAL-
TIES:** The assessment of administrative
penalties will be used as an intermediate
step between field enforcement actions and
court action, or when Stop Sale orders are
not appropriate or have proven to be ineff-
ective in resolving a problem, and not as a
daily punitive enforcement tool. All monies
derived from administrative penalties to be
deposited in the state general fund after all
expenses. When a duly authorized agent of
the director finds, in his judgment, that a

person has violated a provision of law or
rules adopted pursuant to law, with con-
currence of the supervisor, he shall notify
the person in writing that the department
intends to assess a penalty in accordance
with the provisions of this rule. Such
penalty may be in addition to or in lieu of
administrative actions, such as stop sale
orders. The department also reserves the
right to file criminal charges according to
the provisions of the laws administered by
the department.

A. The inspector shall
notify his division director, through his
immediate supervisor, of the proposed
penalty. The division director shall review
the facts in the case, and may request addi-
tional information. If the division director
determines there should be no penalty
assessed, the alleged violator shall be noti-
fied in writing.

B. If the division direc-
tor, after careful review and consideration
determines there should be a penalty
assessed, he shall make recommendation
to the director as to the amount and nature
of the penalty. The director shall review
the facts in the case, and may request addi-
tional information. If the director deter-
mines there should be no penalty, the
alleged violator shall be notified in writing
by the division director. If the director
determines a penalty is warranted by the
facts in the case, he shall notify the alleged
violator of the amount and nature of the
penalty. Violations/offenses are per busi-
ness location not per company and will be
based on offenses per routine inspection.
All inspections will be based on adopted
testing and inspection procedures. In mak-
ing his determination as to the nature and
amount of penalty, the director shall be
guided by Sections 10, 11, 12, and 14 of
this part.

[21.34.14.9 NMAC - N, 3/14/2008]

21.34.14.10 GRAVITY OF VIOLATION:

- A. Factors: Any one or all of the following factors may be considered in determining the gravity of a violation.
 - (1) Potential monetary consequences.
 - (2) Degree of inconvenience or deception to a buyer or prospective buyer.
 - (3) Degree of disregard for the law.

B. COLUMN A: Minimal gravity — When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 14.

C. COLUMN B: Moderate gravity — When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 14.

D. COLUMN C: Great gravity — When the violation has a great gravity, the penalty shall be determined from Column C, Section 14.

[21.34.14.10 NMAC - N, 3/14/2008]

21.34.14.11 FREQUENCY OF VIOLATION: The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the table in Section 14.

A. When a person commits the same violation three (3) or more times in a twelve (12) month period, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be a twelve (12) month period. If a person has not committed the same offense in a twelve (12) month period, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[21.34.14.11 NMAC - N, 3/14/2008]

21.34.14.12 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty.

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.34.14.12 NMAC - N, 3/14/2008]

21.34.14.13 PAYMENT OF PENALTY: If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.34.14.13 NMAC - N, 3/14/2008]

21.34.14.14 PENALTY TABLE:

TABLE I

Gravity	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
	\$250.	\$1000.	\$1500.	\$2000.	\$2500.	\$3000.	\$3500.	\$4000.	\$5000.

[21.34.14.14 NMAC - N, 3/14/2008]

HISTORY OF 21.34.14 NMAC: [RESERVED]

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

This is an amendment to 21.17.50 NMAC, Sections 7, 8, 9, 13, 18, 19, 20, effective March 14, 2008.

21.17.50.7 DEFINITIONS:

A. "Active ingredient" means any ingredient which will prevent, destroy, repel, control or mitigate a pest or which will act as a regulator, defoliant or desiccant.

B. "Aircraft" means any fixed-wing aerial equipment or helicopter

used to apply pesticides.

C. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.

D. "Bait" means an edible material containing a pesticide attractive to a pest.

E. "Beneficial insect" means any insect which, during its life cycle, is an effective pollinator of plants, is a parasite or predator of pests, or is an insect that provides useful products.

F. "Certified applicator" means any person who has complied with the certification requirements established by the department to use or supervise the use of any pesticide covered by a valid

license issued by the department.

G. "Competent" means properly qualified to perform functions associated with pesticide application and/or use, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

H. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

I. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

J. "Direct supervision"

means verifiable instruction to a competent person as follows:

(1) detailed guidance for applying and/or using the pesticide properly; and

(2) provisions for contacting the certified applicator in the event he is needed; or

(3) actual physical presence of a certified applicator when required by the label.

K. "Disposal" means to abandon, deposit, inter, or otherwise discard of waste as a final action after its use has been achieved or a use is no longer intended.

L. "Fungus" means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts) as, for example, rust, smut, mildew, mold and yeast, except those on or in processed food, beverages, or pharmaceuticals.

M. "Ground equipment" means any equipment used to supply pesticides that is operated on the ground and is self-propelled, or is mounted, drawn, or transported by a tractor, truck or other vehicle, and that is:

(1) gravity fed;

(2) mechanically driven by chain, gears or belts; or

(3) obtains power or pressure from a power-take-off or engine.

N. "Hazardous pesticide waste" means any pesticide waste in a concentration or quantity, or a waste pesticide container which the board declares to be hazardous to the public health and safety, domestic livestock or wildlife or property.

O. "Illegal residue" means the amount of pesticide remaining in or on food or feed crops and crop by-products, or in meat, meat by-products, or in the fat or milk of animals in excess of tolerances established by the U.S. environmental protection agency (EPA).

P. "Inert ingredient" means any ingredient which has no active properties.

Q. "Manual equipment" means any pressurized or electrically operated equipment (excluding hand-sized pressurized containers containing pesticides) used to apply pesticides that is carried or drawn as a complete unit by the person who applies the pesticide.

R. "Open burning" means the combustion of pesticide waste in any fashion other than by incineration in an incinerator approved and permitted by the New Mexico environment department and designed for that waste.

S. "Open dumping" means the placing of pesticide waste in a land site other than a sanitary landfill as defined herein.

T. [~~"Operator, agricultural pilot or serviceman"~~] "Operator technician" means any person who uses any pesticide as an employee of a commercial applicator.

U. "Permit" means a written certificate of authority issued by the department to use or apply pesticides.

V. "Pest" means any living organism injurious to other living organisms (except man and viruses, bacteria, or other microorganisms in or on other living organisms other than plants) that is a vector of a disease, or is a parasite on another organism and includes, but is not limited to, organisms in the phyla, Platyhelminthes (flatworms, flukes, tapeworms), Nematelminthes (roundworms), Mollusca (snails), Annelida (earthworms), Arthropoda (centipedes, millipedes, spiders, mites, ticks, insects) and Chordata (fish, amphibians, reptiles, birds, mammals, excluding man).

W. "Pest control operator" means a commercial applicator certified in one or more of the license classification(s) 7A, 7B, 7C, or 7D of Paragraphs (10) through (13) of Subsection B of 21.17.50.8 NMAC.

X. "Pesticide waste" means any active or inert ingredient, or any combination thereof, of a labeled pesticide in either its packaged concentration or diluted for use which is intended for disposal. The term "pesticide waste" does not include any pesticide packaged in a form suitable for use in the household, or for agricultural use by a farmer or rancher.

Y. "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof but shall not include substances to the extent that they are intended as fertilizers, such as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

Z. "Protective equipment" means clothing, respirators, goggles or other equipment or materials used to shield an applicator against unintended exposure to pesticides.

AA. "Public pest management consultant" means any individual who is employed by a governmental agency or municipality and who offers or supplies technical advice or makes recommendations to a user of restricted-use pesticides.

BB. "Sanitary landfill" means a land site for the disposal of wastes as specified under the environmental improvement board's solid waste management regulations in such a manner so as to preclude hazards to public health and safety, domestic livestock or wildlife, and loss

of property by utilizing the principles of engineering to confine the wastes to the smallest practical area and to cover with soil.

CC. "Service container" means any container utilized to hold, store or transport a pesticide concentrate or a pesticide use-dilution preparation other than 1) the original labeled container provided by the manufacturer or 2) the application equipment. Containers used for waste pesticides are not deemed to be service containers.

DD. "Service vehicle" means any vehicle used to transport pesticide application equipment, or use-dilution preparation to the application site.

EE. "Use-dilution preparation" means a pesticide preparation which is mixed with a diluent and at a rate specified on the label or labeling which produces the concentration of the pesticide provided on the registered label or labeling.

FF. "Waste pesticide container" means any container intended for disposal which formerly held pesticides.

GG. "Water dumping" means the disposal of pesticide waste in or on lakes, ponds, rivers, sewers, arroyos or any watercourse, except properly designed and constructed manmade facilities approved by the New Mexico environmental improvement division.

HH. "Weed" means any plant which grows where not wanted. [7/1/97; 21.17.50.7 NMAC - Rn, 21 NMAC 17.50.7, 11/30/05; A, 3/14/08]

21.17.50.8 LICENSE [CLASSIFICATIONS] CATEGORIES:

A. This section delineates the license [~~classifications~~] categories and the scope of operations which may be performed under each [~~classification~~] category. These license [~~classifications~~] categories represent the certification examinations taken by commercial [~~applicators, public applicators~~], public and non-commercial applicators, pest management consultants and public pest management consultants.

B. License category and code number:

(1) IA — Agricultural pest control — includes the control of insects, mites, plant, diseases, nematodes, and the use of soil fumigants, on agronomic crops.

(2) IB — Agricultural weed control — includes the control of undesirable plants that compete with agricultural crops for water and plant nutrients and includes the use of desiccants, fumigants and defoliant.

(3) IC — Animal pest control — includes spraying, dusting, dipping, or administering pesticides internally to control pests such as lice, mites, bots, fleas and

flies on pets and livestock or treatment of places where animals are confined.

(4) 2— Forest pest control — includes the application of pesticides in forests, forest nurseries and forest seed producing areas.

(5) 3A — Ornamental and turf pest control: insecticides and fungicides — includes the control of insect and disease pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

(6) 3B — Ornamental and turf pest control: herbicides — includes the control of undesirable vegetation in the maintenance and production of ornamental trees, shrubs, flowers and turf.

(7) 4 — Seed treatment — includes the treatment of seeds to control insects, plant diseases and other pests.

(8) 5 — Aquatic pest control — includes the application of a pesticide to standing or running water to control algae, undesirable fish and other aquatic organisms, excluding public health pest control.

(9) 6 — Right-of-way pest control — includes the control of vegetation along public roads, electric powerlines, pipelines, railway rights-of-way, around oil well, storage areas, airports and similar areas.

(10) 7A — Structural pest control — includes the control of household pests, fabric pests and stored product pest.

(11) 7B — Vertebrate animal control — includes the control of rodents, birds, bats and predators of wildlife and domestic animals.

(12) 7C — Fumigation — includes the use of gases such as methyl bromide, hydrogen cyanide and phosphine to control pests in structures, railroad cars, stored grain and similar areas.

(13) 7D — Wood destroying pest control — includes the control of termites, carpenter ants, wood-boring or tunneling beetles, fungi and other organisms which attack lumber in structures or sawed lumber.

(14) 8 — Public health pest control — includes the control of mosquitoes, flies, fleas and other vectors that transmit human or animal diseases.

(15) 9 — Regulatory pest control — includes state, federal or other governmental employees who control regulated and/or quarantined pests.

(16) 10 — Demonstration and research pest control — includes:

(a) individuals who demonstrate to the public the proper use of restricted-use pesticides; or

(b) who conduct field research with pesticides.

(17) 11 — Other — to be assigned by the director.

[7/1/97; 21.17.50.8 NMAC - Rn, 21 NMAC 17.50.8, 11/30/05; A, 3/14/08]

21.17.50.9 EXPIRATION DATE OF LICENSES: The annual registration of pesticides and any licenses or certifications provided for in the Pesticide Control Act shall expire on the dates indicated in this section unless it has been revoked or suspended prior thereto by the director.

A. The annual pesticide or device registration shall expire on December 31 following issuance.

B. The annual pesticide dealer license shall expire on December 31 following issuance.

C. The annual pest management consultant license shall expire on December 31 following issuance.

D. The annual commercial applicator license shall expire on ~~[October]~~ December 31 following issuance.

E. The annual ~~[operator/agricultural pilot/serviceman]~~ operator/technician license shall expire on ~~[October]~~ December 31 following issuance.

F. The annual non-commercial applicator license shall expire on ~~[April 30]~~ December 31 following issuance.

G. The annual public applicator license shall expire on ~~[June 30]~~ December 31 following issuance.

H. The annual public pest management consultant license shall expire on ~~[June 30]~~ December 31 following issuance.

~~[I. The annual private applicator license for M 44 sodium cyanide capsules shall expire on December 31 following issuance.~~

~~[I.]~~ L. The private applicator certification shall expire on December 31 five years following the date of issuance.

[7/1/97; 21.17.50.9 NMAC - Rn, 21 NMAC 17.50.9, 11/30/05; A, 3/14/08]

21.17.50.13 APPLICATION OF PESTICIDES:

A. A licensed certified applicator shall apply only those pesticides registered for use in New Mexico under his license ~~[classification]~~ category(s). Any person applying pesticides shall follow directions, rates and precautions stated on the approved label and labeling. Application or use of a pesticide in a manner inconsistent with the directions on the approved label and labeling shall constitute an illegal use of the pesticide. Restricted-use pesticides shall be applied only by licensed certified applicators or persons under their direct supervision.

B. If a commercial pesticide applicator uses a liability insurance policy as proof of financial responsibility, the applicator shall not apply pesticides exempted in the policy.

[7/1/97; 21.17.50.13 NMAC - Rn, 21 NMAC 17.50.13, 11/30/05; A, 3/14/08]

21.17.50.18 LICENSE APPLICATION AND EXAMINATION: CERTIFICATION AND LICENSING:

A. The applicant may elect to be examined in one or more of the classifications of pest control shown on the application. The examination fee, if applicable, shall be paid prior to administering any examination. If the applicant fails to pass any required examination, he may request ~~[reexamination in that particular classification or section not less than fourteen (14) days after the first examination]~~, to take such failed examination at another date provided an additional examination fee, if applicable, is paid. ~~[Any examination may not be taken more than three (3) times during any six (6) month period.]~~ A grade of seventy (70) shall be passing on all examinations.

B. If an applicant has not completed all license requirements within sixty (60) days from the date of the original application, then said applicant will be subject to the fees and requirements of a new applicant.

C. The director shall not consider any license application by any individual during the effective period of the license suspension or revocation of any license issued under the Pesticide Control Act.

[7/1/97; 21.17.50.18 NMAC - Rn, 21 NMAC 17.50.18, 11/30/05; A, 3/14/08]

21.17.50.19 REVIEW OF CERTIFICATION AND LICENSES:

The director may review any certification, license, or permit to determine if there are grounds for denial, suspension, or revocation action. A review shall be warranted in the case of:

A. violation of some provision of the Pesticide Control Act or regulations promulgated thereunder;

B. criminal conviction under Section 14(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended;

C. a final order imposing civil penalty under Section 14(a) of amended FIFRA;

D. certification obtained by cheating on an examination or providing false information about attendance or completion of required training or continuing education;

E. a license is obtained or utilized for reasons other than the intended purpose of allowing purchase or use of pesticides as required under the New Mexico Pesticide Control Act or regulations promulgated thereunder.

[7/1/97; 21.17.50.19 NMAC - Rn, 21 NMAC 17.50.19, 11/30/05; A, 3/14/08]

21.17.50.20 [TEMPORARY]

**~~OPERATOR PERMITS]~~
~~OPERATOR/TECHNICIAN TRAINING PERMITS:~~ A new employee of a licensed commercial applicator may work up to ~~thirty (30)~~ sixty (60) calendar days under a ~~[temporary operator permit]~~ operator/technician training permit provided another commercial applicator or technician licensed in New Mexico at least 6 months is present on the application site. Prior to expiration of the ~~[temporary operator permit]~~ operator/technician training permit, permittees shall take the required ~~[operator examination]~~ examination(s). The permit shall be issued on the request of a licensed commercial applicator. The operator/technician training permit can not be extended. [7/1/97; 21.17.50.20 NMAC - Rn, 21 NMAC 17.50.20, 11/30/05; A, 3/14/08]**

**NEW MEXICO
EDUCATIONAL
RETIREMENT BOARD**

This is an amendment to 2.82.8 NMAC, Section 8, effective March 14, 2008.

2.82.8.8 INVESTMENT COMMITTEE:

A. The investment committee shall be composed of the ~~[director and]~~ chairman who shall be an ex-officio member, two members of the board who shall be appointed by the chairman and approved by the board for a term of one year, and the director. ~~[The chairman shall be an ex-officio member of the committee.]~~

B. The investment committee shall meet regularly each calendar quarter with additional meetings as required. The committee shall elect a chairman annually who shall call special meetings and preside at all meetings. Three members of the committee shall constitute a quorum.

C. The investment committee shall have the following responsibilities:

(1) to review all actions taken by the investment division in the management of the fund and recommend to the board specific action with regard to the continuation or change in the investment practices of the investment vision;

(2) to review on a continuing basis the investment philosophy and investment guidelines of the fund, make policy recommendations to the board and generally oversee the investment activities of the fund;

(3) to recommend the employment of the services of an investment advisory firm to assist and advise the board in the management of the fund;

(4) to recommend the employment of the services of investment management firm(s) to manage a portion of the assets of the fund, either through separately managed accounts or through individual, common or collective trust funds;

(5) to establish asset allocation guidelines, which shall define asset allocation targets and ranges, and to annually review/modify these guidelines; as set forth in the ERB investment objectives and guidelines which shall be approved by the investment committee and recommended for board approval.

D. The investment committee may at any time withdraw the authority of the investment division to execute orders on behalf of the fund. Authority cannot be denied retroactively.

E. Investment committee members may attend and participate in any regular or special investment committee meeting by telephone or other electronic device only if:

(1) the member cannot attend the meeting due to an emergency or unforeseen circumstance;

(2) the member's voice can clearly be heard by everyone in attendance of the meetings and the member clearly identifies himself before speaking or participating in a vote;

(3) the member has not attended regular meetings electronically more than four times in a rolling twelve month period;

(4) no more than two members who otherwise qualify for participation under this section may do so at the same meeting; and

(5) the member otherwise complies with the Open Meetings Act. [6-30-99; 2.82.8.8 NMAC - Rn, 2 NMAC 82.8.8, 1-30-2004; A, 3-14-2008]

**NEW MEXICO
EDUCATIONAL
RETIREMENT BOARD**

This is an amendment to 2.82.11 NMAC, Sections 5 and 10, effective March 14, 2008. This rule was also renumbered and reformatted to comply with current NMAC requirements.

2.82.11.5 EFFECTIVE DATE: June 30, 1999, unless a later date is cited at the end of a section ~~[or paragraph]~~. [6/30/99; 2.82.11.5 NMAC - Rn & A, 2 NMAC 82.11.5, 3-14-2008]

2.82.11.10 HEARING PROCEDURES:

A. The hearing shall not be open to the public ~~[but deliberations by the panel may occur in closed session. Notice~~

~~shall be given in the manner required by the Open Meetings Act].~~

B. The rules of evidence do not apply. The medical appeals hearing officer or the medical appeals panel may admit any evidence and may give probative effect to evidence that is of a kind commonly relied upon by reasonably prudent people in the conduct of serious affairs. The medical appeals hearing officer or the medical appeals panel may, in their discretion, exclude incompetent, irrelevant or unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. Physician reports, medical treatises, guidelines established by the social security administration, vocational opinions, guides, books or reports and any other relevant information may be considered.

C. An appellant, either personally and/or by means of a representative, including counsel, may present evidence and state his/her position, present a written summary of his/her case, enter written statements about the facts and law material to his/her case, submit and examine documentary evidence, and present and question witnesses.

D. Appellant's failure to appear at the hearing, either personally or by means of a representative, shall result in the recommendation becoming final.

E. The medical appeals hearing officer and the medical appeals panel have the duty to undertake a full inquiry and to fully and fairly develop the facts on both sides. The medical appeals hearing officer and the medical appeals panel are the only presenters of evidence that is against the appellant. All evidence that is against the appellant must be introduced by the medical appeals hearing officer or the medical appeals panel. If the medical appeals hearing officer or the medical appeals panel know of or require information that will be useful in making a decision, they have a duty to assure that it is received and taken into account.

F. Subpoenas, if necessary for a full presentation of the case and to obtain evidence not otherwise available, may be issued by ERB at the direction of the medical appeals hearing officer or medical appeals panel. Any enforcement must occur through the courts.

G. A record of the proceedings shall be made by either tape recording or by using a court reporter. An appellant must make arrangements with ERB or the court reporter, if applicable, to receive a transcript or duplicate tapes and copies of evidence.

H. The medical appeals hearing officer or the medical appeals panel may continue a hearing to a later date, or may reopen a hearing before a recommend-

ed decision is issued, if additional evidence should be received.
[6/30/99; 2.82.11.10 NMAC - Rn & A, 2 NMAC 82.11.10, 3-14-2008]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an emergency order to 19.31.4 NMAC, Section 24, effective February 25, 2008

19.31.4.24 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2007, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within Oasis Park Pond in Roosevelt county. The extent to which, fish life may be destroyed by draining the pond, potentially causing death to catfish, trout, and other game fish. Bag limits on sport fish will be unlimited. Manner and method regulations will also be suspended. This relaxation will go into effect at 12:00 p.m., February 25, 2008, and will remain in effect through 11:59 p.m., March 3, 2008.
[19.31.4.24 NMAC - N/E, 02-25-08]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.31.4 NMAC, Sections 9, 11, and 16, effective March 14, 2008

19.31.4.9 SEASON DATES:
A. General seasons: All trout and warm waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:
(1) Special waters
(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister lake, upper and lower Charette lakes, Maxwell lakes 13 and 14, and Clayton lake.
(b) All waters in the Valle Vidal (Vermejo tract of the Carson national forest) shall be open from July 1 through December 31.
(c) Bonito lake shall be open from April 1 through November 30.
(d) Laguna del campo at Los Ojos trout hatchery shall be open from May 1 through October 31.
(e) Red River city ponds shall be open from March 1 through November 15.
(f) Black canyon creek in Grant

county upstream from lower Black canyon campground and Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon shall be open from July 1 through ~~September 30~~ October 31.

(2) Waters on national wildlife refuges waters on U. S. national wildlife refuges shall be open for the taking of game fish in accordance with regulations of the U. S. fish and wildlife service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the fish and wildlife service has not regulated season dates.

B. Special Kokanee salmon seasons, dates, and location

(1) The following waters shall be open October 1 through December 31 for the special kokanee salmon season: Abiquiu reservoir, Chama river from El Vado lake upstream to the west boundary of the Rio Chama wildlife and fishing area, Eagle Nest lake, El Vado lake, and Navajo lake.

(2) Heron lake and the Pine river shall be open for the special Kokanee salmon season from the second Friday in November through December 31.

(3) Heron lake, including the Willow creek tributary, and the Pine river shall be closed to Kokanee salmon fishing between October 1 and the second Thursday of November.

[19.31.4.9 NMAC - Rp 19.31.4.9 NMAC, 4-15-02; A, 10-31-02; A/E, 3-31-06; A, 5-1-07; A, 9-14-07; A, 3-14-08]

19.31.4.11 DAILY BAG, POSSESSION LIMITS AND REQUIREMENTS OR CONDITIONS:

A. Trout
(1) Waters with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.
(2) Brown, rainbow, cutthroat, Gila, lake, Brook trout and Kokanee salmon:
(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession, unless otherwise specified in special trout waters, Paragraph (4) of Subsection A of 19.31.4.11 NMAC.
(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A of 19.31.4.11 NMAC (above).
(c) The daily bag limit for lake trout shall be 2 trout and no more than 4 lake trout shall be in possession.
(3) Special Kokanee salmon season: During the special Kokanee salmon

season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through the second Thursday of November).

(4) Special trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached: In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; In Colfax county; the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1-1/2 mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream. In Catron county: Iron creek in the Gila wilderness upstream of the constructed waterfall barrier located in T12SR17WSec16NE. Every person angling for fish on this portion of Iron creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(b) In San Juan county, in a posted portion of the San Juan river, from a point beginning approximately 1/4 mile downstream of Navajo dam and extending downstream 3.5 miles to the east side of section 16: the daily bag limit shall be 1 trout and no more than 1 trout shall be in possession except in the catch-and-release section. The angler must stop fishing in the section defined once the daily bag limit is reached.

(c) On those sections of the following waters every person must comply

with any special requirements listed and no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 1/4 mile; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to its headwaters; In Sandoval county: a posted portion of the San Antonio river from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal (Vermejo tract - Carson national forest); In Grant ~~county~~ and Catron counties; Black canyon creek in Grant county upstream from lower Black canyon campground and Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon. Every person angling for fish on ~~this portion~~ these portions of Black canyon and Mogollon creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(d) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

(e) At Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only.

(f) On those sections of the following waters the daily bag limit shall be 3 trout and no more ~~that~~ than 3 trout shall be

in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters may be used. In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge; In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande; In Taos county: the designated fishing pond at Red River state fish hatchery; In Taos county: the Red River city ponds; In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu; In Rio Arriba county: Laguna del campo at Los Ojos trout hatchery; In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake; In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(g) On those sections of the following waters the daily bag limit shall be 2 Gila trout and no more than 2 Gila trout in possession, and the bag limit and possession limit for brown trout is unlimited. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters must be used. In Catron county: waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks.

B. Warm-water fishes:

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass 3 fish;
- (2) largemouth, smallmouth, and spotted bass 5 fish;
- (3) walleye 5 fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) all other warm-water game species 20 fish.

C. The following exception shall apply:

(1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea

county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; Estancia Park lake (Torrance county); Corona lake (Lincoln county); Grants city pond (Cibola county); and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, all tiger muskie (*Esox lucius x E. masquinongy*) caught must immediately be released.

(4) In Eddy county, the Pecos river beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02; A, 6-25-03; A, 8-13-04; A, 5-13-05; A, 9-15-05; A/E, 01-03-06; A, 1-31-06; A/E, 3-31-06; A/E, 5-31-06; A, 5-1-07; A, 9-14-07; A, 12-14-07; A, 3-14-08]

19.31.4.16 CLOSED WATERS: A. Waters closed to fishing

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.

(2) In Catron county: Little creek from the "barrier" upstream through all tributaries.

(3) In Catron county: Spruce creek.

(4) In Catron and Sierra counties: Main Diamond creek above the point of confluence with east fork of Diamond creek and the south Diamond creek drainage.

(5) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry.

(6) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(7) In Grant county: east fork of Mogollon creek upstream of ~~waterfalls near FS Trail No. 153, including Trail canyon south fork Mogollon, and Woodrow canyon creeks~~ Trail canyon including Woodrow canyon.

(8) In Grant county: McKnight creek.

(9) In Grant county: Sheep corral creek.

(10) In Lincoln county: Pinelodge creek and posted areas of Alto reservoir and Bonito lake near the outlets.

(11) In Catron county: White creek from waterfall near White creek cabin upstream to headwaters.

(12) In Catron county: West fork of the Gila river and all tributaries above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Lilley canyon.

(13) In Sandoval county: Capulin

creek on Bandelier national park and the Dome wilderness.

B. Taking fish from hatchery waters: No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs hatchery, and Laguna del campo at

Los Ojos state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

C. Taking fish from or through the ice: Fish may be taken from or through the ice except on the following waters: Santa Cruz lake, Monastery lake, and Springer lake.

[19.31.4.16 NMAC - Rp 19.31.4.16 NMAC, 4-15-02; A, 6-25-03; A/E, 3-31-06; A/E, 7-18-06; A, 5-1-07; A, 5-15-07; A, 9-14-07; A, 3-14-08]

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

This is an amendment to 8.200.520 NMAC, section 11, which will be effective April 1, 2008.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. **100% of federal poverty:** 100% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$851] \$867 per month*
2	[\$1,141] \$1,167 per month*
3	[\$1,431] \$1,467 per month
4	[\$1,721] \$1,767 per month
5	[\$2,011] \$2,067 per month
6	[\$2,301] \$2,367 per month
7	[\$2,591] \$2,667 per month
8	[\$2,881] \$2,967 per month

Add ~~[\$290]~~ \$300 for each additional person in the assistance unit.

* Use only these two standards for the QMB program.

B. **120% of federal poverty:** This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants/recipients.

<u>Applicant/recipient</u>	<u>Amount</u>
----------------------------	---------------

- Individual At least ~~[\$851]~~ \$867 per month but no more than ~~[\$1,021]~~ \$1,040 per month.
- Couple At least ~~[\$1,141]~~ \$1,167 per month but no more than ~~[\$1,369]~~ \$1,400 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. **133% of federal poverty:** 133% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$1,132] \$1,153 per month
2	[\$1,518] \$1,552 per month
3	[\$1,904] \$1,951 per month
4	[\$2,289] \$2,350 per month
5	[\$2,675] \$2,749 per month
6	[\$3,061] \$3,148 per month
7	[\$3,446] \$3,547 per month
8	[\$3,832] \$3,946 per month

Add ~~[\$386]~~ \$399 for each additional person in the assistance unit.

D. **135% of federal poverty:** This income level is used only in the determination of the maximum income limit for qualified individuals 1 (QI-1) applicants/recipients. The following income levels apply:

<u>Applicant/recipient</u>	<u>Amount</u>
----------------------------	---------------

- Individual At least ~~[\$1,021]~~ \$1,040 per month but no more than ~~[\$1,149]~~ \$1,170 per month.
- Couple At least ~~[\$1,369]~~ \$1,400 per month but no more than ~~[\$1,544]~~ \$1,575 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

E. **150% of federal poverty:** This income level is used only in the determination of the maximum income limit for state coverage insurance (SCI) (category 062) applicants/recipients. The following income levels apply:

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$1,277] \$1,300 per month
2	[\$1,712] \$1,750 per month
3	[\$2,147] \$2,200 per month
4	[\$2,582] \$2,650 per month
5	[\$3,017] \$3,100 per month

	6		[\$3,452]	\$3,550 per month
	7		[\$3,887]	\$4,000 per month
	8		[\$4,322]	\$4,450 per month
	Add [\$435] \$500 for each additional person in the assistance unit.			
F.	185% of federal poverty:			
	<u>Size of assistance unit</u>		<u>Poverty income guidelines</u>	
	1		[\$1,575]	\$1,604 per month
	2		[\$2,111]	\$2,159 per month
	3		[\$2,648]	\$2,714 per month
	4		[\$3,184]	\$3,269 per month
	5		[\$3,721]	\$3,824 per month
	6		[\$4,257]	\$4,379 per month
	7		[\$4,794]	\$4,934 per month
	8		[\$5,330]	\$5,489 per month
	Add [\$536] \$555 for each additional person in the assistance unit.			
G.	200% of federal poverty: 200% of federal poverty income guidelines			
	<u>Size of assistance unit</u>		<u>Poverty income guidelines</u>	
	1		[\$1,702]	\$1,734 per month
	2		[\$2,282]	\$2,334 per month
	3		[\$2,862]	\$2,934 per month
	4		[\$3,442]	\$3,534 per month
	5		[\$4,022]	\$4,134 per month
	6		[\$4,602]	\$4,734 per month
	7		[\$5,182]	\$5,334 per month
	8		[\$5,762]	\$5,934 per month
	Add [\$580] \$600 for each additional person in the assistance unit.			
H.	235% of federal poverty: 235% of federal poverty income guidelines			
	<u>Size of assistance unit</u>		<u>Poverty income guidelines</u>	
	1		[\$2,000]	\$2,037 per month
	2		[\$2,682]	\$2,742 per month
	3		[\$3,363]	\$3,447 per month
	4		[\$4,045]	\$4,152 per month
	5		[\$4,726]	\$4,857 per month
	6		[\$5,408]	\$5,562 per month
	7		[\$6,089]	\$6,267 per month
	8		[\$6,771]	\$6,972 per month
	Add [\$682] \$705 for each additional person in the assistance unit.			
I.	250% of federal poverty: 250% of federal poverty income guidelines			
	<u>Size of assistance unit</u>		<u>Poverty income guidelines</u>	
	1		[\$2,128]	\$2,167 per month
	2		[\$2,853]	\$2,917 per month
	3		[\$3,578]	\$3,667 per month
	4		[\$4,303]	\$4,417 per month
	5		[\$5,028]	\$5,167 per month
	6		[\$5,753]	\$5,917 per month
	7		[\$6,478]	\$6,667 per month
	8		[\$7,203]	\$7,417 per month
	Add [\$725] \$750 for each additional person in the assistance unit.			

[1-1-95, 4-1-95, 4-15-96, 4-1-97, 3-31-98, 3-1-99, 4-1-99, 4-1-00; 8.200.520.11 NMAC - Rn, 8 NMAC 4.MAD.520.1-5, & 14, & A, 1-1-01; A, 4-1-01; A, 4-1-02; A, 4-1-03; A, 4-1-04; A, 4-1-05; A, 4-1-06; A, 4-1-07; A, 4-1-08]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.243.500 NMAC, Section 18, which will be effective on March 14, 2008.

8.243.500.18 INCOME STANDARDS: The applicable income standard of countable earned income for this category is less than 250% of the federal poverty level for a household size of one. See Subsection H of 8.200.520.11 NMAC. The applicant/recipient must meet two income

tests to qualify for working disabled individuals. These are as follows:

- A. **TEST 1**
 - (1) Determine applicant's/recipient's gross monthly earnings.
 - (2) Apply a \$20.00 general disregard.
 - (3) Apply a \$65.00 earned income disregard.
 - (4) Disregard ½ of the remainder of income.
 - (5) Disregard work-related expenses for the blind or disabled.
 - (6) If the countable earned income is greater less than 250% of the applicable federal poverty level (FPL) for a

household of one, the individual is not eligible.

(7) If the countable earned income is equal to or less than 250% of the applicable FPL for a household size of one, determine if there is an ineligible spouse and/or children in the household.

B. If applicant/recipient lives with an ineligible spouse, see 8.215.500.21 NMAC to determine if deemed income is applicable.

- C. **TEST 2**
 - (1) Determine applicant's/recipient's gross unearned income.
 - (2) Add ineligible spouse's deemed income, if applicable.

(3) Apply a \$20.00 disregard.

(4) Subtract an amount equal to the current SSI federal benefit rate (FBR) for an individual. See 8.200.520.13 NMAC.

(5) Compare the total countable income to the SSI FBR for an individual or couple, as applicable.

~~[(6) If the total countable income is greater than the applicable SSI FBR, the individual is not eligible.~~

~~(7)~~ (6) If the total countable income is [equal to or] less than the applicable SSI FBR, the individual is eligible.

D. Income exclusions:

Income exclusions for the applicant/recipient are applied before income disregards. Exclusions are not applied to the income of the ineligible spouse from whom income may be deemed.

[8.243.500.18 NMAC - N, 1-1-01; A, 6-1-04; A, 3-14-08]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 16 OPTOMETRIC PRACTITIONERS PART 18 AUTHORIZED MINOR SURGICAL PROCEDURES AND INJECTIONS

16.16.18.1 ISSUING AGENCY: New Mexico Board of Examiners in Optometry. [16.16.18.1 NMAC - N, 03/22/2008]

16.16.18.2 SCOPE: Provisions of Part 18 of Chapter 16 applies to all New Mexico licensed optometric physicians practicing in New Mexico. [16.16.18.2 NMAC - N, 03/22/2008]

16.16.18.3 STATUTORY AUTHORITY: The authority for Part 18 of Chapter 16 is the Optometry Act NMSA 1978 Section 61-2-2.A (3). [16.16.18.3 NMAC - N, 03/22/2008]

16.16.18.4 DURATION: Permanent. [16.16.18.4 NMAC - N, 03/22/2008]

16.16.18.5 EFFECTIVE DATE: March 22, 2008, unless a later date is cited at the end of a section. [16.16.18.5 NMAC - N, 03/22/2008]

16.16.18.6 OBJECTIVE: The objective of Part 18 of Chapter 16 is to convey which in-office minor surgical procedures New Mexico optometric physicians are authorized to perform.

[16.16.18.6 NMAC - N, 03/22/2008]

16.16.18.7 DEFINITIONS:

A. "Board" means the New Mexico board of examiners in optometry herein referred to as the board.

B. "Optometric physician" means an optometrist who has been certified by the board to administer and prescribe oral or topical pharmaceutical medications in the treatment and management of ocular diseases as provided in 16.16.7.11 NMAC. [16.16.18.7 NMAC - N, 03/22/2008]

16.16.18.8 MINOR SURGICAL PROCEDURES: A New Mexico optometric physician can use surgery or injections to correct and relieve the following types of abnormalities of the human eye and its adnexa. The following types of in-office minor surgical procedures are allowed:

A. non-laser removal, destruction or drainage of superficial eyelid lesions and conjunctival cysts;

B. probing, dilation, irrigation or closure of the tear drainage structures or the eyelid; scalpel use is to be applied only for the purpose of use on the skin surrounding the eye;

C. removal of nonperforating foreign bodies from the cornea, conjunctiva and eyelid;

D. non-laser corneal debridement, culture, scrape or anterior puncture, not including removal of pterygium, corneal biopsy or removal of corneal neoplasias; and

E. removal of eyelashes. [16.16.18.8 NMAC - N, 03/22/2008]

HISTORY of 16.16.18 NMAC: [RESERVED]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.1 NMAC Section 7, effective 03/22/08.

16.16.1.7 DEFINITIONS:

A. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, a patient to seek the services of an optometrist.

B. "Advertisement of Health Care Services Act" means NMSA 1978, Sections 57-21-1 to 57-21-3, and herein referred to as the Advertisement of Health Care Services Act.

C. [RESERVED]

D. "Board" means the

New Mexico board of examiners in optometry, herein referred to as the board.

E. "Controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act.

F. "Controlled Substances Act" means NMSA 1978 Sections 30-31-1 to 30-31-41 and herein referred to as the Controlled Substances Act.

G. [RESERVED]

H. "Inspection of Public Records Act" refers to NMSA 1978 Sections 14-2-1 through 14-2-10 (1993 Repl. Pamp.), herein referred to as the Inspection of Public Records Act.

I. "New Mexico Drug, Device and Cosmetic Act" means Sections 26-1-1 to 26-1-26 NMSA 1978 (1987 Repl. Pamp.), herein referred to as the Drug, Device and Cosmetic Act.

J. [RESERVED] "Optometric physician" means an optometrist who has been certified by the board to administer and prescribe oral and topical pharmaceutical medication in the treatment and management of ocular diseases.

K. "Open Meetings Act" means NMSA 1978 Sections 10-15-1 to 10-15-4 (1993 Repl. Pamp.), herein referred to as the Open Meetings Act.

L. "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.

M. [RESERVED]

N. "Parental Responsibility Act" refers to Chapter 25 Laws of 1995, herein referred to as the Parental Responsibility Act or PRA.

O. "Prescription" as defined in Section 26-1-2.I of the Drug, Device and Cosmetic Act means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue.

P. "Public Records Act" refers to NMSA 1978 Sections 14-3-2 through 14-3-25 (1995 Repl. Pamp.) herein referred to as the Public Records Act.

Q. [RESERVED]

R. "State Rules Act" means NMSA 1978 Sections 14-4-1 to 14-4-9 (1995 Repl. Pamp.), herein referred to as the State Rules Act.

S. "Uniform Licensing Act" means NMSA 1978 Sections 61-1-1 to

61-1-33 (1993 Repl. Pamp.), herein referred to as the Uniform Licensing Act or ULA. [10-14-95; 16.16.1.7 NMAC - Rn, 16 NMAC 16.1.7, 03-15-2001; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.3 NMAC Section 9, effective 03/22/2008

16.16.3.9 APPLICATION REQUIREMENTS: In accordance with Section 61-2-8 NMSA 1978, and those qualifications set forth therein, candidates for examination must submit to the board office, at least sixty-five (65) days prior to the announced examination date, a letter of intent applying for the next regularly scheduled board examination accompanied by the required application processing fee. In addition to a completed, board-approved application form, the following documents must be received by the board office no later than forty (40) days prior to the requested examination.

A. A copy of the applicant's birth certificate certified by a notary public to be a true and correct copy of the original.

B. Letters of reference from two currently licensed optometrists actively engaged in the practice of optometry, and not related to the applicant, written on their letterhead stationery.

C. Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

D. A complete official optometry transcript showing the applicant's graduation sent directly to the board by a college of optometry as approved by the American optometric association's council of optometric education.

(1) An applicant expecting to graduate in the spring or summer prior to the board's examination who does not expect completed transcripts to be available before the documentation deadline, must make arrangements for the school to send a letter directly to the board regarding the applicant's expected graduation.

(2) The letter must be postmarked before the forty-day documentation deadline.

(3) The completed, official transcript must be received by the board before the scheduled examination date or the application will be considered incomplete, and the applicant will be denied entrance into the examination.

E. A statement and copy of other state license(s) held by the applicant.

F. A recent, passport-type photograph of the applicant. The applicant must sign the back of the photograph in the presence of the notary who is also witnessing the applicant's signature on the board-approved exam application form.

G. An affidavit from the applicant that the applicant has not engaged in any optometry practice of an illegal or unethical nature as defined in the New Mexico Optometry Act, NMSA 1978, Sections 61-2-1 to 61-21-18 (1995 Repl. Pamp.).

H. Copy of current certification attesting to completion of CPR course.

~~[H]~~ **I.** A complete professional resume' or curriculum vitae.

~~[H]~~ **J.** A verification from an accredited optometry school of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology, as provided in Subsection A of 16.16.7.10 NMAC, and a minimum of twenty (20) post-graduate clock hours in clinical pharmacology as provided in Subsection B of 16.16.7.11 NMAC.

~~[H]~~ **K.** Verification directly from the national board of examiners in optometry (NBEO) that the applicant has successfully passed part I, part II, part III, and the TMOD of the NBEO as provided in Subsection B of 16.16.3.8 NMAC.

(1) If NBEO examination results will not be released by the NBEO prior to the documentation deadline, the applicant must submit to the board a copy of the NBEO letter scheduling the applicant for the NBEO exam(s).

(2) Upon receipt of verification of successful completion of the required NBEO exam(s), and upon having met all other requirements stipulated in this regulation, the approved candidate will be scheduled for the next regularly scheduled board examination.

~~[K]~~ **L.** A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination deadline may disqualify the candidate from the exam.

~~[H]~~ **M.** Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candi-

date's examination records.

[11-17-73; 3-8-86; 3-31-91; 8-21-92; 6-24-94; 9-30-95; 10-14-95; 5-31-96; 2-15-99; 16.16.3.9 NMAC - Rn, 16 NMAC 16.3.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.4 NMAC Section 9, effective 03-22-2008.

16.16.4.9 APPLICATION REQUIREMENTS: At least sixty-five (65) days prior to the next scheduled examination every applicant for licensure by endorsement must submit to the board office the required application-processing fee with a letter of intent stating the date of examination for which he/she wishes to be scheduled. The following items must be received by the board office at least forty (40) days prior to the regularly scheduled board examination for which the applicant wishes to be scheduled.

A. A copy of the applicant's birth certificate certified by a notary public to be a true and correct copy of the original.

B. An affidavit that the applicant has not at any time preceding application been engaged in any optometric practice of an illegal or unethical nature as defined in the Optometry Act.

C. Copy(ies) of any other state license(s) held by the applicant.

D. Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

E. A complete, official optometry transcript showing the applicant's graduation sent directly to the board office by a college of optometry as approved by the American optometric association's council on optometric education.

F. Letters of reference from two currently licensed optometrists in the endorsing state of licensure.

G. Verification of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology from an accredited institution.

H. A complete professional resume or curriculum vitae' to date.

I. Copy of current certification attesting to completion of CPR.

~~[H]~~ **J.** A completed, signed, and notarized board-approved exam application form.

~~[H]~~ **K.** The required application and examination fees (16.16.2.8 NMAC and 16.16.2.9 NMAC).

[K.] L. A recent, passport-type photograph of the applicant which the applicant has signed on the back in the presence of the notary public who is also witnessing the applicant's signature on the application form.

[L.] M. Verifications of licensure status sent directly to the board from all state licensing boards where the applicant is or has ever been licensed. Endorsement candidates will require the following information:

(1) verification that the applicant has been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made to the board office;

(2) verification that the applicant has completed fourteen (14) days, or one hundred twelve (112) hours of continuing education during the immediate seven years prior to the application, providing that at least ~~sixteen (16)~~ twenty-two (22) of those hours were completed within the immediate prior year; and

(3) verification of examination requirements which the applicant met to be licensed to practice in that state (See 16.16.4.8 NMAC).

[M.] N. Verification must be provided for pre-1994-1995 academic year optometry school graduates of successful completion of a minimum twenty (20) hour course in clinical pharmacology as set forth in Subsection B of 16.16.7.11 NMAC.

[N.] O. A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination may disqualify the candidate from the exam.

[O.] P. Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

[11-17-73; 12-6-87; 3-31-91; 8-21-92; 6-24-94; 10-18-94; 10-14-95; 5-31-96; 2-15-99; 16.16.4.9 NMAC - Rn, 16 NMAC 16.4.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.5 NMAC, Section 9, effective 03-22-2008

16.16.5.9 NEW MEXICO LICENSING EXAMINATION:

A. As of January 15, 1995, all candidates for licensure shall be required to take the board's licensing examination, consisting of a jurisprudence exam and a clinical practicum exam.

B. The board examination shall only be seen by board members, ~~and~~ individuals preparing and administering the examination and by examination candidates while sitting for the examination.

C. As soon as practicable after the board examination is scored, each examination candidate will be notified in writing by certified mail, return receipt requested, of his or her individual scores and pass/fail status.

(1) Successful exam candidates will have ninety (90) days from the date of receipt of the exam results notification to complete the licensure process as provided in 16.16.2.10 or 16.16.2.11 NMAC and 16.16.2.12 NMAC and 16.16.6.8 NMAC.

(2) Candidates who do not complete the licensure process within the time provided in Subsection C, Paragraph (1) of 16.16.5.9 NMAC must reapply for licensure and meet all the requirements of application and examination as set forth in 16 NMAC 16.

D. A score of seventy-five percent (75%) or better is required on each section of the board's examination.

E. Candidates failing to pass the board's examination may re-take a regularly scheduled examination upon approved re-application.

(1) Failed candidates must repeat all portions of the board's examination.

(2) The applicant must complete a new exam application form and submit an updated resume', provide updated license verifications directly from other licensing jurisdictions, and pay the required application processing and examination fees (16.16.2.8 and 16.16.2.9 NMAC).

F. Any candidate detected cheating in any manner during the course of any examination shall automatically fail the entire examination. Cheating on an examination shall be deemed unprofessional conduct, and shall demonstrate that the applicant is not of good moral character. Individuals detected cheating shall be afforded notice and the opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

G. The deadline for chal-

lenging the examination is three (3) months from the date the exam scores are mailed to the candidate by certified mail.

[11-17-73; 12-6-87; 10-14-95; 5-31-96; 2-15-99; A, 6-26-00; 16.16.5.9 NMAC - Rn, 16 NMAC 16.5.9, 03-15-2001; A, 03-10-2005; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.7 NMAC Sections 10, 11 and 13; add new Section 15, effective 03-22-2008.

16.16.7.10 TOPICAL OCULAR THERAPEUTIC CERTIFICATION

A. Postgraduate Education Required ~~by~~ of Currently Licensed Optometrists: In order to be granted a certificate to administer and prescribe topical ocular **therapeutic** pharmaceutical agents, all optometrists currently licensed in New Mexico must provide the following documentation to the board:

(1) Proof of successful completion and examination in a one hundred (100) hour course in general and ocular pharmacology, including therapeutic pharmacology as applied to optometry, with particular emphasis on the application of pharmaceutical agents to the eye for the purpose of examination and analysis of ocular functions and the treatment of visual defects or abnormal conditions of the human eye and its adnexa;

(2) Proof that the course was taught by an institution accredited by the American optometric association's council on optometric education; and

(3) The required fee for a pharmaceutical certificate (16.16.2.12 NMAC).

B. Postgraduate Education Required ~~by Licensure Applicants:~~ of Applicants for Licensure:

(1) All optometry licensure applicants must provide the same documentation required in Subsection A of 16.16.7.10 NMAC before sitting for the board's licensing exam.

(2) After the applicant has met ALL licensure requirements, has successfully passed the board exam, and paid the required license and certificate fees, a license and an ocular therapeutic certificate will be issued to the applicant.

[3-8-86; 10-14-95; 16.16.7.10 NMAC - Rn, 16 NMAC 16.7.10, 03-15-2001; A, 03-22-2008]

16.16.7.11 ORAL PHARMACEUTICAL CERTIFICATION

A. The certificate issued pursuant to the provisions in Section 61-2-

10.2 of the Optometry Act allows the qualified optometrist to administer and prescribe the following classes of **oral** pharmaceutical drugs in the treatment and management of ocular disease:

- (1) anti-infective medications, not including antifungals;
- (2) anti-glaucoma medications, not including osmotic medications;
- (3) anti-allergy medications;
- (4) anti-inflammatory medications, not including oral corticosteroids and immunosuppression agents; and
- (5) analgesic medications, including schedule III through V controlled substances, as provided in the Controlled Substances Act.

B. Requirements for Currently Licensed New Mexico Optometrists. In order for an optometrist currently licensed in the State of New Mexico to be granted certification to use the oral pharmaceutical agents listed in Subsection A of 16.16.7.11 NMAC, the optometrist must first:

(1) be certified in New Mexico in the use of **topical** ocular pharmaceuticals in accordance with 16.16.7.10 NMAC.

(2) provide proof of successful completion and examination in a board-approved course of instruction consisting of at least twenty (20) hours in clinical pharmacology, including systemic pharmacology as applied to optometry with particular emphasis on the administration of oral pharmaceutical agents for the purpose of examination of the human eye, and analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa.

(3) provide proof the course was taught by an institution accredited by the American optometric association's council on optometric education.

C. Postgraduate Education Required [by ~~Licensure Applicants~~] of Applicants for Licensure:

(1) Licensure applicants graduated from optometry school prior to the 1994-1995 academic period must provide the board with the same documentation required in Subsection B of 6.16.7.11 NMAC.

(2) Licensure applicants receiving doctor of optometry degrees in the 1994-1995 academic year and thereafter have obtained the required number of academic hours required for the oral pharmacology course in their optometric program to meet the certification requirement for the administration and prescription of oral pharmaceutical agents in New Mexico.
[10-14-95; A, 6-26-00; 16.16.7.11 NMAC - Rn, 16 NMAC 16.7.11, 03-15-2001; A, 03-22-2008]

16.16.7.13 "OPTOMETRIC PHYSICIAN" TITLE USE: Only those optometrists who have been certified by the board to administer and prescribe oral ~~[or]~~ and topical pharmaceutical medications in the treatment and management of ocular disease, as provided in 16.16.7.11 NMAC may use the title of "optometric physician" in connection with their name.

[10-15-97; 16.16.7.13 NMAC - Rn, 16 NMAC 16.7.13, 03-15-2001; A, 03-22-2008]

16.16.7.15 OPTOMETRIC PHYSICIAN CERTIFICATION REQUIREMENT:

All New Mexico licensed optometrists graduated from optometry school prior to the 1994-1995 academic year, must complete the requirements for certification in the use of oral pharmaceutical agents prior to July 1, 2013, as required in Subsection B of 16.16.7.11 NMAC.

[16.16.7.15 NMAC - N, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.8 NMAC, Sections 1 and 5, effective 03-22-2008

16.16.8.1 ISSUING AGENCY: New Mexico Board of Examiners in Optometry [725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170.] 2550 Cerrillos Road, Santa Fe, New Mexico 87505 (505)476-4945.

[10-14-95; 16.16.8.1 NMAC - Rn, 16 NMAC 16.8.1, 03-15-2001; A, 03-22-2008]

16.16.8.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section ~~[or Paragraph]~~.

[10-14-95; 10-15-97; 16.16.8.5 NMAC - Rn, 16 NMAC 16.8.5, 03-15-2001; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.10, Sections 8, 12 and 13, effective 03-22-2008

16.16.10.8 LICENSE EXPIRATION DATE: All current New Mexico optometry licenses expire on July 1 of ~~[the]~~ every year.

[10-14-95; 16.16.10.8 NMAC - Rn, 16 NMAC 16.10.8, 03-15-2001; A, 03-22-2008]

16.16.10.12 RENEWAL APPLI-

CATION: The required renewal fee and the completed and signed renewal application must be returned to the board accompanied by copies of continuing education attendance certificates as required in 16.16.13.8 NMAC, and beginning July 1, 2009 a copy of current CPR certificate.

[10-14-95; 16.16.10.12 NMAC - Rn, 16 NMAC 16.10.12, 03-15-2001; A, 03-22-2008]

16.16.10.13 APPROVED RENEWAL APPLICATION:

Upon approval of the ~~[licensee's]~~ renewal application, the board will issue a ~~[renewal]~~ new license ~~[to the licensee.]~~ valid for one year.

[10-14-95; 16.16.10.13 NMAC - Rn, 16 NMAC 16.10.13, 03-15-2001; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.11 NMAC, Sections 8, 9, 12 and 13, effective 03-22-2008

16.16.11.8 LICENSE EXPIRATION DUE TO NON-RENEWAL:

Licenses not renewed with a postmark date on or before the expiration date of July 1, as set forth in 16.16.10.8 NMAC, shall be expired on the basis that the renewal application was not duly and properly made as required by board regulations.

[10-14-95; 16.16.11.8 NMAC - Rn, 16 NMAC 16.11.8, 03-15-2001; A, 03-15-2004; A, 03-22-2008]

16.16.11.9 LATE PENALTY FEE:

Expired licenses not renewed with a postmark date on or before the license expiration date of July 1, as set forth in 16.16.10.8 NMAC, shall be subject to the required late penalty fee, as provided in 16.16.2.14 NMAC, in addition to the renewal fee, as provided in 16.16.2.13 NMAC.

[10-14-95; 16.16.11.9 NMAC - Rn, 16 NMAC 16.11.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008]

16.16.11.12 PRACTICE PROHIBITED:

A. ~~[The optometrist may not]~~ An optometrist shall not practice optometry in the state of New Mexico while his or her license is expired following the grace period; or while it is inactive, retired, revoked, suspended, or is otherwise invalid as provided in Section 61-2-14 (A), NMSA 1978.

B. Any person who practices optometry in New Mexico without an

active, current, and valid license is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions in Section 61-31-18-15.A (6), which states, "If a person is convicted of a non-capital felony, the basic sentence of imprisonment is as follows: for a fourth degree felony, eighteen months imprisonment."

C. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed five thousand dollars (\$5,000).

[10-14-95; 10-15-97; 16.16.11.12 NMAC - 16 NMAC 16.11.12, 03-15-2001; A, 03-15-2004; A, 03-22-2008]

16.16.11.13 APPLICATION FOR REACTIVATION OF LICENSE: The licensee whose license is expired due to non-renewal, and who wishes to reactivate the license to active and current status, must apply for, and receive, approval by the board for reactivation of the license. The application for reactivation must be made on a reactivation form received from the board office, and must be accompanied by the following items:

A. proof of completion of a minimum of ~~sixteen (16)~~ twenty-two (22) hours of board-approved continuing education (See ~~16.16.13.9~~ 16.16.13 NMAC) taken for each year the license was expired due to non-renewal, ~~sixteen (16)~~ twenty-two (22) of which must have been taken in the immediate preceding year;

B. verification directly from at least one of the applicant's other licensing jurisdiction(s) certifying that the licensee has been in active practice there during the time the license was in revoked status due to non-renewal in New Mexico, unless the New Mexico license has only been in expired status for less than a year, in which case verification of licensure from another licensing jurisdiction is not necessary;

C. verification directly from the applicant's other licensing jurisdiction(s), as to the status of the license with respect to disciplinary actions if the New Mexico license is in expired status for more than a year, and provided that the licensee is licensed in other jurisdiction(s);

D. a reactivation fee in an amount totaling the renewal fees for each year the license was in expired status due to non-renewal; and

E. a penalty fee in an amount totaling the penalty fees for each year the license was in expired status due to non-renewal.

[10-14-95, 10-15-97; 16.16.11.13 NMAC - Rn, 16 NMAC 16.11.13, 03-15-2001; A, 03-15-2004; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.12, Sections 7 and 11, effective 03-22-2008

16.16.12.7 DEFINITIONS: ["~~Retired status~~" means a license that has been withdrawn from active status at the request of the licensee because the licensee has retired from business and is no longer practicing optometry in any licensing jurisdiction, but which is still subject to the authority of the board for period after the license was placed on retired status] "Retired status" means a license that has been withdrawn from active status at the request of the licensee due to retirement provided the licensee is not practicing optometry in another jurisdiction. Such license is still subject to the board authority for five (5) years from the date the license is placed on retired status as specified in 16.16.12.15 NMAC.

[10-14-95; 16.16.12.7 NMAC - Rn, 16 NMAC 16.12.7, 03-15-2001, A, 03-15-2004; A 03-22-2008]

16.16.12.11 REINSTATEMENT PROCESS: Upon receipt of the written request required in 16.16.12.10 NMAC, the board shall mail the applicant a reinstatement form stipulating the fees and the number of board-approved continuing education hours required for reactivation of his or her license.

A. The reactivation fee shall be the total of the renewal fees for each year the license was in retired status.

B. Continuing education shall be ~~a minimum of sixteen (16) clock hours of board approved~~ at the current requirement of board approved continuing education taken for each year during the retirement period, and the provisions set forth in Subsection A of 16.16.13.8 NMAC related to optometrists holding certification in ocular therapeutics will apply for each year in retired status;

C. ~~Sixteen~~ Twenty-two (22) of those hours shall be taken during the year immediately preceding reactivation of the license.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.11 NMAC - Rn, 16 NMAC 16.12.11, 03-15-2001; A 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.13, Sections 8 and 11, effective 03-22-2008

16.16.13.8 CONTINUING EDUCATION REQUIREMENTS: A minimum of ~~sixteen (16)~~ twenty-two (22) clock hours of optometry related, board approved continuing education or postgraduate programs are required for license renewal each year beginning July 1, 2009.

A. **Ocular therapeutics requirement.** ~~[Optometrists holding certificates in ocular therapeutics must attend a minimum of six (6) hours per year of]~~ For optometrists holding certificates in ocular therapeutics, at least ten (10) of the twenty-two (22) hours of continuing education must be in a board approved program in ocular therapeutic pharmacology. [These six hours are not in addition to the sixteen (16) hour requirement stated above.]

B. **Time requirements within renewal period.** The continuing education must have been taken within the preceding renewal period (i.e. July 2 of one year through June 30 of the next).

C. **Certificates of attendance.** Licensees are required to submit copies of certificates of attendance for the required continuing education.

D. **Certificate submission with renewal.** The copies of the certificates of attendance must accompany the completed and signed renewal application form and renewal fee.

E. **License expiration due to non-renewal for failure to meet the continuing education requirement.** Failure of the licensee to meet the continuing education requirements for renewal the expiration date shall be grounds for expiration of the license on the grounds that the renewal application was not duly and properly made as required by board regulations.

F. **Reactivation of license expired due to non-renewal for failure to meet the continuing education requirement.** The licensee may apply for license reactivation in the same manner as provided in Part 11 of 16.16 NMAC. The continuing education and fees will be calculated based on the number of years the license was expired due to non-renewal for failure to meet the continuing education requirement.

G. **Newly licensed optometrists** who graduated from optometry school within the same year of licensure may submit the completed curriculum of their last year of optometry school to meet their continuing education requirement the first year of renewal.

[11-17-73; 2-6-87; 10-14-95; 10-15-97; 2-15-99; 16.16.13.8 NMAC - Rn, 16 NMAC 16.13.8, 03-15-2001; A, 03-15-2004; A 03-22-2008]

16.16.13.11 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER CONTINUING EDUCATION REQUIREMENT.

A. A licensee has twelve (12) months to complete the ~~sixteen (16)~~ twenty-two (22) hours of continuing education required to renew a license.

B. A licensee may request in writing, at least thirty (30) days prior to the license's expiration, an emergency deferral or waiver of the continuing education requirement should any of the following occur:

(1) licensee experiences prolonged debilitating illness; or

(2) one of licensee's immediate family members suffers prolonged debilitating illness; or

(3) licensee is called to active duty by the national guard, any branch of the United States armed forces, or other recognized public service.

C. The written request for deferral or waiver shall contain an explanation of the underlying circumstance and shall include documentation in support of the request. At its discretion, the board may grant the request.

[16.16.13.11 NMAC - N, 03-10-2005; A, 03-22-2008]

NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.16, Section 8, effective 03-22-2008

16.16.16.8 LOCATION OF PRACTICE

A. In accordance with the provisions of Section 61-2-14.B of the Optometry Act, an optometrist is prohibited from selling prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor.

B. For purposes of this rule, an optometrist may engage in the sale of contact lenses or prescription eyeglasses from a ~~leased or owned~~ space located adjacent to an establishment ~~[which does not derive the majority of its income from the sale of prescription eyeglasses or contact lenses if]~~ as set out in Subsection A provided the space is separated from the commercial establishment by solid, opaque partitions or walls from floor to ceiling. ~~[Railings, curtains, windows and doors are not sufficient to comply with this requirement.]~~

C. The ~~leased or owned~~ space referred to in this rule shall also have a separate ~~patients'~~ entrance ~~[which provides]~~ for patient access to the optometrist's practice from a public street, hall, lobby, corridor or shopping mall, or other public

thoroughfare.

D. Repealed.

E. This rule supersedes all previous rules regarding the location of an optometric practice. Existing facilities operating on June 24, 1994, the effective date of this rule shall be exempted from the provisions of Subsection B of 16.16.16.8 NMAC.

[11-17-73; 12-6-87; 8-21-92; 6-24-94; 10-14-95; 10-15-97; A, 6-26-00; 16.16.16.8 NMAC - Rn, 16 NMAC 16.16.8, 03-15-2001; A, 03-15-2004; A 03-22-2008]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

The New Mexico Public Regulation Commission Insurance Division repeals its rule 13 NMAC 17.3 and entitled Subsequent Injury Fund (filed 05/27/1997), repealed March 31, 2008.

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.10.11 NMAC, Sections 11, 15, 17, 23, 24, 29, 34 and 35, effective March 31, 2008.

13.10.11.11 COMMITTEES:

A. The board shall have the standing committees set forth below. Members of the committees shall be named by and serve at the pleasure of the chair. In addition to the authority specified, the committees shall have such duties and responsibilities as may be delegated to them from time to time by the board.

(1) **Executive committee.** The executive committee shall be comprised of the chair, the vice-chair, and the ~~treasurer~~ secretary, as well as the chairs of the finance and marketing committees and such other members of the board as the chair may designate. The executive committee shall have the authority to act for the board between meetings, subject to ratification by the board, and shall act as the board's audit committee.

(2) **Finance committee.** The finance committee shall be comprised of the chair and such other persons as the chair may designate. The finance committee shall be responsible for oversight of the financial affairs of the **alliance**, and for developing policies and procedures to manage such affairs, subject to approval by the board.

(3) **Marketing committee.** The marketing committee shall be comprised of

at least one member of the board and such other persons as the chair may designate. The marketing committee shall have the authority to approve marketing expenditures within a budget and limits approved by the board.

(4) **Grievance committee.** The grievance committee shall be comprised of members of the board. The committee shall include at least three members, and shall be responsible for hearing and determining grievances in accordance with 13.10.11.17 NMAC and for resolving such other matters as may be delegated to it by the board. The chair may designate alternates to serve in the event a conflict of interest prevents a board member from participating in any grievance procedure.

B. The board may establish such other committees as it may from time to time deem necessary. [13.10.11.11 NMAC - N, 6-1-01; A, 3-31-08]

13.10.11.15 AGENTS: The **alliance** may pay referral or servicing fees or commissions subject to applicable provisions in the Insurance Code, or may require carriers to pay a commission to the insurance agent who refers an applicant to the **alliance** if that applicant is accepted. No agent shall be eligible to receive a commission or referral fee on or in connection with a plan issued through the **alliance** unless the agent has completed a continuing education course sanctioned by the **alliance** and has been certified by the **alliance**. Agents that have not enrolled any individual or group in the **alliance** for a period of two (2) years shall recertify. The **alliance** may decertify an agent for good cause, subject only to review pursuant to the grievance procedures set forth in 13.10.11.17 NMAC. [13.10.11.15 NMAC - N, 6-1-01; A, 3-31-08]

13.10.11.17 COMPLAINT AND GRIEVANCE PROCEDURES: In the event an insured, an agent, a group or a member believes the performance of the **alliance** or a member does not meet its expectations or conform to a policy or plan issued by a member through the **alliance**, that person may bring the matter to the attention of the **alliance** by a complaint or grievance. The **alliance** shall act promptly and impartially when considering all complaints and grievances.

A. **Definitions.** As used in this section:

(1) **complaint** means a relatively minor verbal or written expression of concern which may lend itself to resolution on an informal basis and which relates to the operation or decision of the **alliance** or a member of the **alliance**;

(2) **grievance** means a more seri-

ous written expression of concern or a complaint which had not been resolved to the person's satisfaction; both situations require a thorough investigation and a formal response to the parties;

(3) **group** means a small employer group eligible for coverage or covered by an insurance policy, nonprofit health care plan contract or HMO plan issued through the **alliance** by a member; and

(4) **insured** means a person covered under an insurance policy or a nonprofit health care plan contract, or enrolled in an HMO plan issued through the **alliance** by a member;

B. Handling a complaint.

Complaints should be made to the executive director of the **alliance**. The executive director has the discretionary power to handle complaints on an informal basis. The grievance procedure outlined in Subsection C of 13.10.11.17 NMAC will be followed if the complainant or the responding party wishes to appeal the decision of the executive director, if a determination has already been made by the executive director, or if the executive director decides that the issue at hand needs to be reviewed by the grievance committee of the **alliance**.

C. Grievance procedure.

(1) **Between an insured or group and a member.**

(a) If the grievance is between an insured or a group and a member, the insured or group shall complete all internal complaint and grievance procedures offered by a member prior to filing a grievance with the **alliance**.

(b) An insured or group must submit the grievance in writing to the **alliance** within 30 days following completion of the member's internal complaint or grievance process. If the member has no internal complaint or grievance process, or if the member has failed to respond to the complaint or grievance within 30 days after the insured or the group had made the complaint or grievance, the grievance must be submitted in writing to the **alliance** within 90 days after the incident occurred.

(c) The grievance should accurately describe the incident and must be signed by the insured or group filing the grievance.

(d) Upon receipt of the written grievance, the executive director of the **alliance** shall conduct a thorough review of the grievance and mail a response to the insured or group and to the member. If the parties are satisfied with the solution, the grievance matter shall be considered resolved.

(e) If the insured or group or the member is not satisfied with the solution proposed by the executive director, the grievance may be appealed in writing to the grievance committee of the **alliance**. Such

appeal must be submitted within 30 days of the first grievance response and must include the reason for the appeal.

(2) Against the Alliance.

(a) Any person (including the insured, an agent, a group or a member) filing a grievance against the **alliance** must submit the grievance in writing to the **alliance** within 90 days after the incident occurred or within 90 days after the executive director makes an adverse decision on the complaint.

(b) The grievance should accurately describe the incident and must be signed by the person filing the grievance.

(c) Upon receipt of the written grievance, the executive director shall conduct a thorough review of the grievance and mail a response to the person. If the person is satisfied with the solution, the grievance matter shall be considered resolved.

(d) If the person is not satisfied with the solution proposed by the executive director, the grievance may be appealed in writing to the grievance committee of the **alliance**. Such appeal must be submitted within 30 days of the first grievance response and must include the reasons for the appeal.

D. Grievance committee.

(1) The grievance committee shall be composed of at least three members of the **alliance's** board of directors. Any director who represents a member or insured who is involved in a grievance shall not serve on the committee hearing the grievance.

(2) The committee shall convene 30 days after receipt of the appeal. The person filing the grievance will be invited to appear before the committee, along with any other ~~[partied]~~ parties involved in the grievance, to explain the appeal. After reviewing all previous findings of the plan and the executive director, and such other information as the committee may reasonably request, the committee will render a decision and deliver such in writing to all parties within 60 days after receipt of the appeal, unless good cause exists to extend the time. All decisions of the grievance committee are considered final.

(3) If any party involved is dissatisfied with the decision of the grievance committee, they may contact the New Mexico insurance division or they may pursue other remedies available to them. Prior to the filing of any legal proceedings or suit against the **alliance** or a member of the **alliance**, the complaint and grievance procedure prescribed in 13.10.11.17 NMAC must be utilized by any party alleging a claim.

(4) In adopting and utilizing this procedure to resolve disputes between a group or an insured and a member, the **alliance** and its grievance committee are

providing a forum for alternative dispute resolution. Neither the **alliance** nor its grievance committee shall be a proper party to any dispute or suit between an insured or a group and a member.

[13.10.11.17 NMAC - N, 6-1-01; A, 3-31-08]

13.10.11.23 DOCUMENTATION FOR NEW GROUPS AND EXISTING GROUPS ENROLLING WITH A NEW CARRIER: The **alliance** requires:

A. a completed application;

B. the employer's federal EID and New Mexico gross receipts tax ID numbers [~~as well as~~]; or, for a new business that has not yet obtained tax ID numbers, a current valid business license [if the employer is required to have a business license];

C. a waiver of coverage, in the form specified by the **alliance**, signed by each eligible employee who does not desire coverage. If the employee has other coverage, the name of the carrier, as well as the subscriber and group names must be specified; and

D. for groups that file New Mexico department of labor employer's quarterly wage and contribution report (schedule A - SUTA), the employer's most recent SUTA.

(1) The employer must identify on the SUTA form each employee who is not eligible for coverage and must specify the reason that the employee is ineligible, e.g., on medicare, working less 20 hours per week, etc. For each employee who is not eligible, the employer must specify the employee's date of hire and hours per week worked.

(2) If an employer submits a SUTA but desires to enroll employees who are not identified on that report, the employer must submit the following applicable documentation for each such employee:

(a) for any new employees not yet identified on the most recent SUTA, W-4 forms;

(b) for each working owner, dependent or partner not identified on the SUTA, an affidavit, signed under oath, that the individual is working in the business at least 20 hours per week on a regular basis.

E. If the employer group is required to file a SUTA but has not yet done so because it is a new business (i.e., established within three months prior to the date of application), the employer shall submit an affidavit, signed under oath, that the employer is actively engaged in an ongoing business and reasonably expects to average between two and 50 employees for the next two years, together with a list of current employees. Each individual enrolling as an employee must submit ~~[an affidavit, signed~~

~~under oath,~~ a witnessed affidavit that the individual is working in the business at least 20 hours per week on a regular basis.

F. If the employer group is not required to file a SUTA, the employer must submit ~~[an affidavit, signed under oath,~~ a witnessed affidavit that the employer is actively engaged in an ongoing business, and is working in the business at least 20 hours per week on a regular basis, together with the relevant portion of its latest complete federal income tax filing, as specified below, in order to allow the **alliance** to verify the existence of the business and validate actively working requirements through documented earned income/loss. The following forms, as applicable to the employer's business, are required. NOTE: If wages are reported on any of these forms, the employer must submit either a SUTA or a W-2 form.

(1) 1120 corporate return.

(2) 1120S corporate return.

(3) 1065 and Schedule K-1 for each eligible partner who elects coverage.

(4) Schedule C for business income profit or loss report for sole-proprietors.

(5) Schedule E for real estate or rental income ~~[and/or]~~.

(6) Schedule F for farm income.

[13.10.11.23 NMAC - N, 6-1-01; A, 3-31-08]

13.10.11.24 DOCUMENTATION FOR GROUPS RENEWING WITH THE SAME CARRIER:

A. For groups that file New Mexico department of labor employer's quarterly wage and contribution report (schedule A - SUTA), the employer's most recent SUTA.

(1) The employer must identify on the SUTA form each employee who is not eligible for coverage and must specify the reason that the employee is ineligible, (e.g., on medicare, working part time (i.e., less 20 hours per week), terminated, etc). For each employee who is not eligible, the employer must specify the employee's date of hire and hours per week worked.

(2) The employer must submit an enrollment application for each employee desiring coverage who has not previously submitted an application and a waiver of coverage, in the form specified by the **alliance**, for each eligible employee who does not desire coverage and who has not previously submitted a waiver to the **alliance**. If the employee has other coverage, the name of the carrier, as well as the subscriber and group names must be specified;

(3) If an employer submits a SUTA but desires to enroll employees who are not identified on that report, the employer must submit the following applicable

documentation for each such employee:

(a) for any new employees not yet identified on the most recent SUTA, W-4 forms;

(b) for each owner, working spouse or partner not identified on the SUTA, ~~[an affidavit, signed under oath,~~ a witnessed affidavit that the individual is working in the business at least 20 hours per week on a regular basis.

B. If the employer group is not required to file a SUTA, the employer must submit its current business license, if it is required to have a business license, and ~~[an affidavit, signed under oath]~~ a witnessed affidavit by each individual requesting coverage as a subscriber, that the individual is working in the business at least 20 hours per week on a regular basis.

[13.10.11.24 NMAC - N, 6-1-01; A, 3-31-08]

13.10.11.29 FAMILY COVERAGE:

A. Family coverage must be offered for:

(1) the employee's lawful spouse;

(2) the employee's natural-born

or legally adopted unmarried child;

(3) the employee's stepchild who

is living in the employee's home and is chiefly dependent on the employee for support; and

(4) A child who is living in the employee's home and for whom the employee or his or her spouse has been appointed the legal guardian by a state court of competent jurisdiction.

B. Family coverage must be offered to the family of an employee who is not eligible for coverage because of his or her eligibility for medicare, provided that the dependents enrolling meet the timely enrollment requirements set forth in 13.10.11.27 NMAC.

C. Coverage of a dependent unmarried individual terminates on the first day of the month following the date when the individual becomes ~~[19 (or 25, if enrolled in an accredited educational institution full time as determined by the institution) except as provided below]~~ 25.

(1) Attainment of the limiting age does not terminate coverage of a dependent child as a dependent when the individual continues to be incapable of self-sustaining employment by reason of mental retardation or physical handicap and is primarily dependent upon the employee or primary insured for support and maintenance.

~~[(2) If the disability occurs after age 19 (or 25) and the individual is not already enrolled, the individual is not eligible for enrollment as a dependent child.]~~

~~[(3)]~~ (2) A dependent child ~~[19 (or 25)]~~ aged 25 or older is not eligible to enroll, even if that child became disabled

prior to attaining that age unless coverage is required under the "no-loss, no-gain" rules for replacement group policies set forth in 13.10.5 NMAC, Group Coverage Discontinuance and Replacement.

D. A newly born child of the family member or the individual in whose name the **alliance** coverage is issued must be covered from birth if enrolled within 31 days of birth. If payment of a specific premium is required to provide coverage for the child, the particular policy or plan may require that notification of the birth of a child and payment of the required premium shall be furnished to the carrier within 31 days after the date of birth in order to have the coverage from birth.

E. Adopted children are eligible for coverage on the same basis as other dependents. Coverage shall be effective from the date of placement (i.e., physical custody) for the purpose of adoption, if the child is enrolled and any additional premium is paid within 31 days from such date. Coverage continues unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage shall include the necessary care and treatment of medical conditions existing prior to the date of placement.

F. Coverage of children is subject to all requirements of federal and state law, including but not limited to the requirements of Sections 59A-22-34.2 and 59A-46-38.1 NMSA 1978.

G. A dependent is not eligible for coverage if the dependent would be ineligible as an employee under Subsection B of 13.10.11.21 NMAC.

[13.10.11.29 NMAC - N, 6-1-01; A, 3-31-08]

13.10.11.34 INDIVIDUAL COVERAGE:

A. Eligibility as an individual.

(1) An individual is eligible for an **alliance** plan outside of a small employer if:

(a) as of the date of application for coverage the individual is a resident of the state of New Mexico and has an aggregate of 18 or more months of creditable coverage, as defined in the act, provided that during this period the individual did not have a break in creditable coverage lasting 63 days or longer; and either

(i) the individual's most recent coverage was under a group health plan, governmental plan or church plan, or

(ii) the individual was covered by a group health plan, governmental plan or church plan less than 63 days prior to the date the individual applies for coverage through the **alliance**;

(b) the individual is a resident of the state of New Mexico and is entitled to

continuation coverage under the act, as provided in 13.10.11.31 NMAC;

(c) the individual is a resident of the state of New Mexico and his coverage has been terminated pursuant to the provisions of Section 59A-23E-14 NMSA 1978 (i.e., when a carrier has withdrawn from the small group market) or Section 59A-23E-19 NMSA 1978 (i.e., when a carrier has withdrawn from the individual market).

(2) The **alliance** may require the individual to provide an affidavit, signed under oath, stating that the individual is or will be a resident of the state of New Mexico as of the effective date of coverage.

(3) Notwithstanding the foregoing, an individual is not eligible for coverage if the coverage is being paid for or reimbursed by the individual's employer, unless the individual is either self-employed or employed by his own corporation and in either case has no other employees, or if on the effective date of coverage the individual:

(a) has or is eligible for coverage under a group health plan, as defined in the Alliance Act;

(b) is eligible for coverage under medicare or medicaid;

(c) has other health insurance coverage as defined by Subsection R of Section 59A-23E-2 NMSA 1978 (which is not terminating);

(d) was terminated from the most recent coverage within the coverage period described in Paragraph 1 of Subsection A of 13.10.11.34 NMAC as a result of nonpayment of premium or fraud; or

(e) has been offered the option of coverage under a COBRA continuation provision or a similar state program (other than through the **alliance**), and either did not elect or did not exhaust the coverage available under the offered program.

(4) An individual may elect to obtain coverage for his or her eligible dependents under an individual plan. The requirements of 13.10.11.29 NMAC shall apply to the eligibility and enrollment of dependents under individual coverage.

(5) A covered dependent is eligible for individual continuation coverage under the act only if the dependent has been continuously covered under an **alliance** plan as a dependent of a covered individual for at least six months, and then only if the dependent applies for continuation coverage within 31 days of:

(a) the death of the individual;

(b) the divorce, annulment or dissolution of marriage or legal separation of the spouse from the individual; or

(c) for covered dependent children, upon attainment of the limiting age of 25, as provided in Subsection C of 13.10.11.29 NMAC.

(6) No person is eligible to enroll

or to remain on continuation coverage if he or she resides outside of the United States for a period of over six months or, if continuation coverage under this section became effective after the effective date of this rule, he or she moves from the state of New Mexico or resides outside of the state of New Mexico for a period of over six months.

(7) Continuation coverage under the act is considered to be individual coverage for purposes of state and federal law. Persons electing to continue coverage under the act shall be subject to the provisions of 13.10.11.34 NMAC. Premiums for this continuation coverage shall be calculated at individual coverage rates.

B. Effective date.

(1) If the documentation required by the **alliance** is received by the 15th of the month, coverage shall be reviewed for an effective as of the first day of the following month. If the complete documentation required by the **alliance** is received after the 15th of the month, coverage shall be not be effective until the first day of the month after the month following that in which the documentation is received. (If the 15th of the month falls on a weekend or holiday, the documentation must be received by the **alliance**, or delivered to its post office box, before 5:00 p.m. on the next business day.)

(2) The effective date of a continuee's individual coverage shall be the first of the month following termination of the individual's group coverage through the **alliance** provided the required documentation is received.

C. Renewability.

(1) Coverage under an **alliance** plan for an individual can be terminated or non-renewed only in the event of the following:

(a) the individual loses eligibility by residing outside of the state of New Mexico for a period of over six months, and the individual:

(i) obtained individual coverage through the **alliance** after the date on which this residency requirement first became effective; and

(ii) is not covered as a continuee under state six-month continuation. Termination under this paragraph is allowed if the individual is covered under 13.10.11.31 NMAC;

(b) nonpayment of premium;

(c) fraud; or

(d) termination of the plan.

(2) If coverage under an **alliance** plan is terminated or not renewed because of termination of the plan, the individual shall have the right to transfer to any other **alliance** plan. If the individual's coverage terminates for any reason, covered dependents shall be given the opportunity to obtain conversion coverage directly from the

member.

D. HMO service area requirements. In order to be eligible to enroll in an **alliance** plan offered by an HMO, an individual must live or work within the HMO's service area. The HMO may approve exceptions on an individual basis in accordance with the HMO's usual business practice. If the individual moves from the service area, the individual may enroll in the HMO's affiliated indemnity plan offered through the **alliance**.

E. Coverage of out-of-country services. Services provided outside of the United States will be covered only if they are for emergency treatment.

F. Pre-existing condition exclusions. An individual or dependent enrolling for individual coverage shall not be subject to any pre-existing condition exclusion.

G. Individual rates.

Premium rates for individuals, including **alliance** continuees, shall be based on the age of the individual on the effective date of the individual or continuation coverage. Rates, excepting age-based increases or tier changes, shall be guaranteed for 12 months from that effective date and from each annual anniversary thereafter. Any applicable age-based increase shall not be considered a violation of the guarantee and shall become effective on the first of the month following the individual's birthday. Any applicable tier-change increase shall not be considered a violation of the guarantee and shall become effective on the first of the month in which the change in dependents becomes effective. Changes in premiums for renewal periods shall take effect on the anniversary of the effective date of individual or continuation coverage.

H. Plan selection.

Individuals must select a carrier (member) as of the effective date of individual coverage and may not thereafter change carriers except on the annual anniversary of the effective date of individual coverage or if the carrier withdraws from participation in the **alliance**. An individual may change plan design, e.g., level of deductible or co-pay/co-insurance, as of any annual anniversary of the effective date of individual coverage.

[13.10.11.34 NMAC - N, 6-1-01; A, 3-31-08]

13.10.11.35 CERTIFICATES OF CREDITABLE COVERAGE:

Members shall be responsible for issuing certificates of creditable coverage for groups and individuals. A member may transfer this responsibility to an individual group only by means of a written agreement signed by both parties. The member may charge a reasonable fee for such service, subject to the approval of the **alliance**.

[13.10.11.35 NMAC - N, 6-1-01; A, 3-31-08]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 247: DEDUCTION - GROSS RECEIPTS TAX - SOLAR ENERGY SYSTEMS

3.2.247.1 ISSUING AGENCY:
Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.247.1 NMAC - N, 3/14/08]

3.2.247.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.247.2 NMAC - N, 3/14/08]

3.2.247.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.247.3 NMAC - N, 3/14/08]

3.2.247.4 DURATION: Permanent.

[3.2.247.4 NMAC - N, 3/14/08]

3.2.247.5 EFFECTIVE DATE: 3/14/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.247.5 NMAC - N, 3/14/08]

3.2.247.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.247.6 NMAC - N, 3/14/08]

3.2.247.7 DEFINITIONS: The terms and phrases defined in 3.2.247.7 NMAC apply to the implementation of the deduction pursuant to Section 7-9-112 NMSA 1978.

A. Equipment: "Equipment" means an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system. Equipment is included in the solar energy system when the cost can be included in the basis of the solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986.

B. Trombe wall: A "trombe wall" is a sun-facing wall built from material that can act as a thermal mass,

such as stone, concrete, adobe or water tanks, combined with an air space and glass to form a solar thermal collector.

C. Solar panel: A "solar panel" is a solar thermal collector, such as a solar hot water or air panel used to heat water, air or otherwise collect solar thermal energy. "Solar panel" may also refer to a photovoltaic system.

D. Solar thermal collector: A "solar thermal collector" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

E. Solar thermal energy: "Solar thermal energy" is a technology for harnessing solar power for practical applications from solar heating to electrical power generation.

F. Photovoltaic system: A "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity.

G. Installation of a solar energy system: The "installation of a solar energy system" includes replacement of some part of the system, or a similar change to the system that would qualify as an adjustment to basis for federal income tax purposes. Labor for maintenance or service of a solar energy system does not qualify for the deduction in the absence of an installation of some part of the system. Labor to perform post-installation adjustments to the solar energy system qualifies for the deduction when the adjustments are performed to optimize the operation of the solar energy system as part of the initial installation and are performed within one year of the initial installation.

H. Solar energy system: A "solar energy system" as defined in Subsection B of Section 7-9-112 NMSA 1978, includes components or systems for collecting and storing energy, but does not include components or systems related to the use of the energy. Examples of use would include the pipes carrying heated water to a faucet or the electrical wire carrying electricity to an outlet.

[3.2.247.7 NMAC - N, 3/14/08]

3.2.247.8 WRITTEN STATEMENT

A. Receipts from selling equipment or installation services to persons who state in writing that they are purchasing the equipment or installation services for the exclusive use in installation and operation of a solar energy system pursuant Section 7-9-112 NMSA 1978, may be deducted from the seller's gross receipts pursuant to Section 7-9-112 NMSA 1978 if the statement:

(1) contains a declaration that the purchaser-signer will be using the equip-

ment or component part in a qualified solar energy system pursuant to Section 7-9-112 NMSA 1978;

(2) that the equipment purchased or installed is an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system;

(3) that the equipment or component part can be included in the basis of the qualified solar energy system as established under the applicable provisions of the Internal Revenue Code of 1986;

(4) is personally signed by the purchaser or the purchaser's agent who makes the statement, and

(5) is accepted in good faith by the seller.

B. Receipts from selling or installing solar energy systems pursuant to Section 7-9-112 NMSA 1978 may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.247.8 NMAC, or can provide evidence acceptable to the department that the service or equipment is purchased solely for use in a qualified solar energy system.

C. For the purposes of Section 7-9-112 NMSA 1978 it is sufficient if the seller receives one written statement from each purchaser. The one written statement may cover multiple purchases of equipment or installation services used solely in a qualified solar energy system provided the seller maintains that statement on file.

[3.2.247.8 NMAC - N, 3/14/08]

3.2.247.9 GOOD FAITH ACCEPTANCE OF BUYER'S WRITTEN STATEMENT

A. When a seller accepts in good faith a person's written statement that the person is purchasing the service or equipment for the sole use of the sale and installation of a solar energy system pursuant to Section 7-9-112 NMSA 1978, the written statement shall be conclusive evidence that the proceeds from the transaction with the person having made this statement are deductible from the seller's gross receipts.

B. Example 1: X is installing a non-vented trombe wall in his home. Y sells adobe blocks to X for the trombe wall. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. X may deduct the gross receipts received from the sale of the adobe blocks.

C. Example 2: Same facts as example 1, but some of the adobe blocks being purchased from Y are to be used for the construction of a block wall around the perimeter of X's property. X is not using the adobe blocks solely to construct a non-vent-

ed trombe wall in his home. X gives Y the proper written statement that the block is for the sole use of installing a solar energy system. Y accepts the statement in good faith and may deduct the gross receipts received from the sale of the block. Because X is not using the block for the sole use of installing a solar energy system, X will be liable for the compensating tax on the value of the block and may be liable for making false statements.

D. Example 3: C buys a tractor from E, to haul materials used to construct a non-vented trombe wall in his personal residence. The equipment is not an essential machine, mechanism, or a component or fitting thereof, used directly and exclusively in the installation or operation of a solar energy system and is not includable in the basis of the solar energy system to which the equipment is installed under the provisions of the Internal Revenue Code of 1986; E may not take the deduction.

E. Example 4: S is a contractor who performs construction services which includes the sale and installation of solar energy systems. S purchases materials and services from T. S may provide T with a buyers written statement pursuant to 3.2.247.8 NMAC. T cannot substantiate the deduction for the solar energy system materials and installation services with a nontaxable transaction certificate for the sale of construction materials that will become ingredients or components of a construction project pursuant to Section 7-9-51 NMSA 1978, or for construction services performed on a construction project pursuant to 7-9-52 NMSA 1978, because the next sale is not subject to gross receipts tax upon completion of the construction project.

F. Example 5: Same facts as example 4. When S sells the completed construction project to home owner H, S may deduct the materials and installation costs of the solar energy system pursuant to Section 7-9-112 NMSA 1978, with sufficient documentation to include the written statement pursuant to 3.2.247.8 NMAC, or other evidence acceptable to the department that the service or equipment is sold for the sole use of the sale and installation of a qualified energy system.

[3.2.247.9 NMAC - N, 3/14/08]

History of 3.2.247 NMAC: [RESERVED]

End of Adopted Rules 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
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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 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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